

April 3, 2013

BY ELECTRONIC MAIL AND ECFS

Evan C. Baranoff
Federal Communications Commission
Media Bureau, Policy Division
445 12th Street, S.W.
Washington, DC 20554

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”)

Dear Mr. Baranoff:

Fox Television Holdings, Inc. (“Fox”), the parent of the licensee of the above-referenced television broadcast stations, submits this letter in response to the Media Bureau’s email dated March 28, 2013, which requested information related to the above-captioned complaint. Fox has no reason to believe that TV Max has ceased retransmitting the signals of KTXH(TV) and KRIV(TV) as part of TV Max’s cable programming packages. TV Max’s web site continues to indicate that both KTXH(TV) and KRIV(TV) are available as part of the company’s residential cable programming channel line-up.¹ Fox cannot determine whether these signals are being retransmitted via TV Max’s fiber ring, but Fox has not entered into any retransmission consent agreement with TV Max (or any affiliated entity), nor has Fox otherwise granted TV Max (or any affiliated entity) authorization to retransmit the stations’ signals. To the extent that TV Max is retransmitting either station’s signal, TV Max is doing so without Fox’s legally required authorization.

Fox also would like to direct the Media Bureau’s attention to the attached filing that TV Max’s affiliate – Broadband Fiber, LLC – submitted February 28, 2013 to the Public Utilities Commission of Texas (the “Texas PUC”).² The Texas PUC had asked Broadband Fiber to provide information concerning the status of the FOX Complaint (and other similar complaints pending at the Commission relating to allegations that TV Max was retransmitting broadcast signals without consent in violation of the Communications Act and Commission rules). Remarkably, Broadband Fiber’s response to the Texas PUC asserts that TV Max is “waiting for the FCC’s response” to the complaints.³ It omits any mention of the Media Bureau’s December 20, 2012 letter, in which the Bureau confirmed that TV Max “has willfully and repeatedly violated, and continues to violate” the Communications Act and Commission rules.⁴

¹ See <http://www.wavevision.com/houston/channel-line-up> (last visited April 3, 2013).

² See Broadband Fiber, LLC’s Response to Commission Staff’s Request for Information (Question Nos. Staff 1-1 Through Staff 1-7), In re: Application of Broadband Fiber, LLC for Service Provider Certificate of Operating Authority, Texas PUC Docket No. 41023 (Feb. 28, 2013), at 5 (“Response to Texas PUC”) (attached hereto as Exhibit No. 1).

³ *Id.*

⁴ Letter from William T. Lake, Chief, Media Bureau, to Carl E. Kandutsch, Counsel to TV Max, Inc., MB Docket No. 12-113, CSR No. 8623-C (rel. December 20, 2012) (the “Bureau Letter”).

TV Max also misleadingly says that, following a December 2012 conference call, Fox and the other complainant broadcasters “understood the technical aspects of TVMax’s compliance with the requirements of 47 C.F.R. § 76.64(e).”⁵ To the degree that there is any doubt, Fox hereby makes clear that this statement is not accurate as to Fox. Put simply, Fox does *not* understand TV Max’s retransmission of the signals of KTXH(TV) and KRIV(TV) to comply with the Commission’s rules. Quite the contrary – if TV Max is continuing to retransmit the stations’ signals without consent in the manner it previously has described to the Commission, Fox strongly believes that TV Max is violating applicable law.

Fox urges the Commission to promptly issue to TV Max the Notice of Apparent Liability recommended by the Bureau Letter and to pursue additional enforcement action, including reiterating the order that TV Max “immediately stop retransmitting the [s]tations’ signals without consent”⁶

Respectfully submitted,

/s/

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⁵ Response to Texas PUC, at 5.

⁶ Bureau Letter, at 1.

EXHIBIT 1



Control Number: 41023



Item Number: 21

Addendum StartPage: 0

DOCKET NO. 41023

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APPLICATION OF BROADBAND FIBER, LLC) PUBLIC UTILITIES COMMISSION
FOR SERVICE PROVIDER CERTIFICATE) OF TEXAS
OF OPERATING AUTHORITY)

BROADBAND FIBER, LLC'S RESPONSE TO COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION (QUESTION NOS. STAFF 1-1 THROUGH STAFF 1-7)

By and through its undersigned counsel, the Applicant, Broadband Fiber, LLC ("BBF") files the following responses to Commission Staff's First Request for Information dated February 1, 2013.

Staff 1-1 Does Broadband Ventures Six, LLC have a municipal franchise to provide cable or video services in Texas. If yes, provide evidence of the municipal franchise.

Answer: Broadband Ventures Six, LLC ("BV 6") does not have a municipal franchise to provide cable or video services in Texas. BV 6 is not a "cable operator," and does not own or operate a "cable system" as those terms are defined in 47 U.S.C. §§ 522 (5) and 522 (7), respectively.

Sponsor: Tom Balun.

Staff 1-2 Broadband Fiber states in its application that Broadband Ventures Six, LLC is "successor to TVMax, Inc." and operates "under the TVMax cable television franchise." Please provide any documents relating to this transfer of interest and provide references to any City of Houston regulations or ordinances that permit Broadband Ventures Six, LLC to operate using TVMax, Inc.'s City of Houston municipal franchise.

Answer: Pursuant to a lease agreement dated June 7, 2012, BV 6 leased capacity ("dark fiber") on the fiber optic network owned and operated by TVMax Houston, LP. Exhibit 1 is a photocopy of the Lease Agreement (with exhibits) dated June 7, 2012.

On June 7, 2012, BV 6 acquired certain assets of TVMax Houston, LP. Exhibit 2 is a photocopy of the Asset Purchase Agreement dated June 7, 2012 between BV 6 and TVMax Houston, LP.

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On July 1, 2012, the Applicant acquired certain assets of TVMax Houston, LP, including the fiber optic network located in the City of Houston. As part of that same transaction, the June 7 Lease Agreement (between BV 6 and TVMax Houston, LP) was acknowledged and attorned to the Applicant by BV 6. Exhibit 3 is a photocopy of the attornment of lease agreement dated July 1, 2012.

The Applicant's statement in the application that BV 6 operates "under the TVMax cable television franchise" does not accurately describe the relationships existing between TVMax, BV 6 and the Applicant as a result of the transactions enumerated above. In particular, TVMax continues to hold the City of Houston municipal cable franchise. BV 6 is a private cable operator, and does not own or operate any cable system or other facility that is physically located wholly or in part in within any public right-of-way. Rather, BV 6 leases dark fiber that is owned by the Applicant and used for the transmission of video programming signals to subscribing residents of multi-dwelling buildings served by BV 6.

The Applicant has applied for a Service Provider Certificate of Operating Authority in order that it can engage in business activities other than the leasing of dark fiber.

Sponsor: Tom Balun.

Staff 1-3 The City of Houston states in its Statement of Position and Request for Hearing, filed January 30, 2013, that Broadband Ventures Six, LLC has never been approved for a municipal franchise to provide cable and/or video services. Does Broadband Ventures Six, LLC have a State-issued Certificate of Franchise Authority (SICFA) to provide cable and/or video services in Texas? If yes, provide the SICFA Certification Number.

Answer: Broadband Ventures Six, LLC does not have a SICFA. Again, BV 6 does not own or operate a "cable system" as defined in Federal law, and does not own or operate a "communications network" as that term is defined in Section 66.002(4) of the Texas Utilities Code, Chapter 66.

Sponsor: Tom Balun.

Staff 1-4 In Broadband Fiber's application for a service provider certificate of operating authority, filed December 6, 2012, please explain why Broadband Fiber, LLC stated "No" in response to Questions 12(a) and 12(b)? Please provide a list of permits, licenses, or certificates held by Broadband Fiber or any of its affiliates, including Broadband Ventures Group, LLC, Cincinnati Communications, LLC, Broadband Ventures Six, LLC and TVMax Houston, LP.

Answer: Question 12 (a) – Has the Applicant, its owners, or any affiliate applied for a permit, license, or certificate to provide telecommunications services in any state other than Texas? If yes, identify the affiliates, what permit, license, or certificate they have applied for, and the state(s) in which they have applied.

We repeat the former answer, No, for each of: Broadband Ventures Group, LLC, Cincinnati Communications, LLC (other than local building permits), Broadband Ventures Six, LLC, and TVMax Houston, LP.

Question 12(b) – Has the Applicant, its owners, or any affiliate ever had a permit, license, or certificate to provide telecommunications services granted by any state, including Texas? If yes, identify the affiliates, what permit, license, or certificate they have and when they were held and the state(s) in which they are held. Provide an explanation.

We repeat the former answer, No, for each of: Broadband Ventures Group, LLC, Cincinnati Communications, LLC (other than local building permits), Broadband Ventures Six, LLC, and TVMax Houston, LP.

Sponsor: Tom Balun.

Staff 1-5 Please provide the information referenced in P.U.C. SUBST. R. 26.111 (g) (3) as to Broadband Fiber and any of its affiliates.

Answer: P.U.C. Subst. R. 26.111(g)(3)(A)(i): Other than the pending enforcement actions listed in responses to Staff 1-6 and 1-7, none.

P.U.C. Subst. R. 26.111(g)(3)(A)(ii): N/A

P.U.C. Subst. R. 26.111(g)(3)(A)(iii): N/A

P.U.C. Subst. R. 26.111(g)(3)(B): The Applicant was established in Delaware on June 27, 2012. It has no history of the type described in P.U.C. Subst. R. 26.111(g)(3)(B). On July 1, 2012, the Applicant acquired certain assets from TVMAX Houston, LP. A controlling interest in TVMAX Holdings, Inc., the ultimate parent corporation of TVMAX Houston, LP, was acquired by Broadband Ventures IV, LLC on June 30, 2010.

P.U.C. Subst. R. 26.111(g)(3)(C): Neither the Applicant nor any of the Applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations.

P.U.C. Subst. R. 26.111(g)(3)(D): None.

Sponsor: Tom Balun.

Staff 1-6 Broadband Fiber states that its affiliate (TVMax Houston, LP d/b/a Wavevision) has three enforcement complaints pending at the FCC concerning:

- a) Fox Television Holdings, Inc. (Docket No. 12-113),
- b) Univision Communications, Inc. (Docket No. 12-181),
- c) Post-Newsweek Stations, Houston, Inc. (Docket No. 12-222).

Please provide a summary of the allegations and a summary of the status of the complaints.

Answer: These complaints all relate to retransmission consent between TVMAX Houston, LP and each of Fox Television Holdings, Inc. ("Fox"), Univision Communications, Inc. ("Univision") and Post-Newsweek Stations Houston, Inc. ("Post"), (Fox, Univision and Post are each a "Broadcaster", together they are the "Broadcasters").

The Broadcasters complain that TVMax has retransmitted signals of the Broadcasters without such Broadcasters consent in violation of Section 325(b) of the Communications Act of 1934 as amended, and Section 76.64 of the FCC's rules. The Broadcasters seek orders from the FCC compelling TV Max to cease retransmission of their signals and imposing sanctions on TVMax.

As TVMax Houston noted in its response to the FCC, TVMax is unusual among franchised cable operators in that all of its subscribers reside in multi-dwelling unit ("MDU") buildings. This concentration of its customer base allowed management to avail itself of exemption to retransmission consent that is available under the FCC's rules.

During the second half of 2011, TVMax management commenced implementation of a plan to qualify for exemption from the retransmission consent regime under Section 76.64(e) of the FCC's rules relating to broadcast signals received by master antenna television ("MATV") facilities. In order to meet the exemption provided for by the FCC, TVMax did the following:

1. TVMAX installed, at its own expense, master antennas on the rooftops of the MDU buildings that it serves. These antennas are owned and controlled by the building owners and are used to make available broadcast television programming to MDU residents at no charge.

2. Beginning in November 2011, the off-air broadcast signals, including those of Fox, Univision and Post, were de-linked from any tier of pay-television programming. These stations are provided for free to all residents of the MDU, whether they are a TVMAX customer or not.

Having implemented these changes, TVMax believes it fully complies with the exemption available under 47 C.F.R. § 76.64(e).

In December 2012, the FCC held an hour-long call with TVMAX management with included FCC legal and technical staff as well as counsel for the Broadcasters so that TVMAX could explain why it believes it is in compliance with the means by which it complies with the FCC's Rules and how it complies with the exemption available under 47 C.F.R. § 76.64(e). We, along with the Broadcasters, are waiting for the FCC's response. It is our opinion that, in spite of having explained our position in writing, it was not until our conversation with the FCC – and its engineering staff – that the legal counsel for the Broadcasters understood the technical aspects of TVMax's compliance with the requirements of 47 C.F.R. § 76.64(e).

Sponsor: Tom Balun.

Staff 1-7 Broadband Fiber stated that its affiliate (TVMax Houston, LP d/b/a Wavevision) has concluded (with a settlement) an enforcement complaint at the FCC concerning ABC, Inc. (Docket No. 12-266). Please provide:

- a) A summary of the violations alleged,
- b) A summary of the terms of the settlement reached with ABC, Inc., and
- c) A summary of what steps Broadband Fiber, LLC has taken to cure any potential violation.

Answer: The violations alleged are substantially identical to those described in response to Staff 1-6. TVMax is in settlement discussions with ABC.

Sponsor: Tom Balun.

Broadband Fiber, LLC

By: Carl Kandutsch

Date: February 28, 2013

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON THIS 28th DAY OF FEBRUARY 2013, a true and accurate copy of the foregoing document was served on all parties of record by facsimile and/or first-class U.S. mail, postage paid.

Carl Kandutsch

Carl E. Kandutsch

EXHIBIT 1

[Protected Materials]

EXHIBIT 2
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EXHIBIT 3
[Protected Materials]