

**Before the
FEDERAL COMMUNICATIONS COMMISSIONS**
Washington, DC 20554

In the Matter of	:	MB Docket No. 12-113
	:	CSR No. 8623-C
	:	:
TV Max, Inc. and Broadband Ventures Six, LLC d/b/a Wavevision, Thomas M. Balun, Eric Meltzer, and Richard Gomez, <i>et al.</i>	:	MB Docket No. 12-181
	:	CSR No. 8669-C
	:	:
	:	MB Docket No. 12-222
	:	CSR No. 8694-C
	:	:
	:	MB Docket No. 12-266
	:	CSR No. 8707-C
	:	:
	:	NAL/Acct. No.: 201341410008
	:	FRN: 0009645938

**STATEMENT SEEKING CANCELLATION OR REDUCTION OF FCC'S PROPOSED
FORFEITURE IN THE NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND
ORDER OF JUNE 25, 2013**

TV Max, Inc., TV Max, LP, TV Max Houston, Inc., TV Max Holdings, Inc., TV Max Houston, LP, TV Max Houston GP, LLC, TV Max Corporate, Inc., Broadband Ventures Group, LLC, Broadband Fiber, LLC, Broadband Ventures IV, LLC, Broadband Ventures Six, LLC, Thomas M. Balun, Eric Meltzer, and Richard Gomez (collectively "TV Max"), by and through undersigned counsel, respectfully submit this Statement Seeking Cancellation or Reduction of the Federal Communication Commission's ("FCC") Proposed Forfeiture in the Notice of Apparent Liability for Forfeiture and Order of June 25, 2013 ("NAL"). Because there is no legal or factual basis for directing the forfeiture to the three individual respondents, and because the forfeiture is grossly excessive based upon the nature, circumstances, extent and gravity of the violations; the degree of culpability, lack of prior offenses, and respondents' ability to pay; and

the interests of justice, TV Max respectfully seeks cancellation or, in the alternative, reduction of the NAL's forfeiture.¹

A. The NAL of June 25, 2013

On June 25, 2013, the FCC issued an NAL in the above-captioned matter finding that TV Max TV Max, Inc.; TV Max, LP; TV Max Houston, Inc.; TV Max Holdings, Inc.; TV Max Houston, LP; TV Max Houston GP, LLC; TV Max Corporate, Inc.; Broadband Ventures Group, LLC; Broadband Fiber, LLC; Broadband Ventures IV, LLC; Broadband Ventures Six, LLC; Thomas M. Balun; Eric Meltzer; and Richard Gomez had violated Section 325 of the Communications Act of 1934, as amended, and Section 76.64 of the FCC's rules, by "retransmitting the signals" of designated television broadcast stations. Concluding that "the record supports treating these entities and their controlling parties as one and the same," NAL at ¶ 10, the FCC proposed forfeiture against all of the respondents, jointly and severally, in the staggering amount of \$2,250,000 based on a purported formula that is not discernable from the NAL itself. The NAL was based on limited written submissions and there was no testimony or other opportunity for TV Max to be heard. For the reasons set forth below, this outcome is unjustified both legally and factually.

B. There is No Basis for the Imposition of Individual Liability on Messrs. Balun, Meltzer or Gomez

Central to the NAL's decision was the conclusion that all of the respondent entities and individuals are to be treated as "one and the same." This finding was based solely on the following scraps of information described in the NAL:

- That TV Max² and Broadband Ventures Six, LLC "appear to be under the common control" of Thomas M. Balun and Eric Meltzer;

¹ TV Max is contemporaneously submitting a separate Declaration of Thomas M. Balun Regarding Statement of Planned Compliance to address the directive contained in Paragraph 19 of the NAL.

- That Broadband Ventures Six, LLC and Broadband Fiber LLC share a common mailing address.
- That in an application to the Texas Public Utilities Commission (“PUC”), Broadband Fiber, LLC identified TV Max as its affiliate. In the same application, it was represented that Broadband Ventures Group, LLC wholly owns Broadband Ventures Six, LLC and Broadband Fiber, LLC, and that Richard Gomez is the Vice President and General Manager of TV Max.
- That the PUC application also indicated that Broadband Ventures IV, LLC had acquired 73.8% of TV Max Holdings, Inc. and that TV Max Houston, LP was an indirect wholly owned subsidiary of TV Max Holdings, Inc.
- That in a filing responding to PUC staff questions, Broadband Fiber, LLC stated that Broadband Ventures Six, LLC leased dark fiber on the fiber optic network owned and operated by TV Max Houston, LP and that Broadband Fiber LLC subsequently acquired the fiber network from TV Max.

See NAL at ¶ 10. These “findings” do not remotely approach the standard necessary to hold individual officers liable for the alleged violations of their companies.

In particular, the FCC claims that in addition to the various TV Max legal entities, it can assign personal liability to Messrs. Balun, Meltzer, and Gomez. See NAL at ¶¶ 9-10. In reaching this conclusion, the FCC states:

In light of the Licensees' letters to TV Max requesting that it cease carriage of their stations with the expiration of their retransmission consent agreements, the Licensees' complaints before the Commission, and the Bureau's ongoing investigation, it appears that TV Max simply assigned the cable operation and

² The NAL does not indicate whether in this context “TV Max” refers to TV Max, Inc., TV Max, LP, or some other entity. For purposes of this discussion, we will assume this refers to TV Max, Inc.

fiber optic network to two related companies in an effort to evade responsibility for its ongoing violations. To the extent that TV Max seeks to avoid the consequences of its illegal operation through the use of various related and commonly controlled corporate entities, the Commission and the courts have long stated that, "[w]here the statutory purpose could ... be easily frustrated through the use of separate ... entities, the Commission is entitled to look through corporate form and treat separate entities as one and the same for purposes of regulation. We have treated affiliated entities collectively where necessary to ensure compliance with the Communications Act and Commission policies and regulations." As a result of its evasion, the record is unclear as to the precise relationship of these entities and their respective roles in TV Max's ongoing misconduct. However, what the record suggests is that their functions are controlled by TV Max, Inc. and its principals, including Messrs. Balun, Meltzer and Gomez. We reject TV Max's apparent attempt to evade responsibility before the Commission, and find that, for all purposes relevant here, the record supports treating these entities and their controlling parties as one and the same.

NAL at ¶ 10 (emphasis added). In supposed support of this conclusion, the FCC cites: (1) *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18, Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd 13874, 13887, ¶ 33 (2010) ("*Improving Public Safety*"); and (2) *Lansdowne on the Potomac Homeowners Ass'n, Inc. v. OpenBank at Lansdowne, LLC*, 713 F.3d 187 (4th Cir. 2013). Neither of these cases, however, supports the FCC's claim that an officer, director, or shareholder can be held personally liable for a corporation's regulatory violations.

In *Improving Public Safety*, the FCC was asked to determine whether a parent company should be liable for reimbursements owed under an FCC order by the parent company's bankrupt subsidiaries. The FCC noted that although there are many sound business reasons for adopting various corporate structures and engaging in affiliate transactions, "the Commission and the courts have long stated that '[w]here the statutory purpose could . . . be easily frustrated through the use of separate . . . entities, the Commission is entitled to look through corporate form and treat the separate entities as one and the same for purposes of regulation.'" As an example, the

FCC cited the FCC forfeiture proceeding, *Liability of Federated Pub., Inc.*, 7 FCC 2d 552 (1967), in which the FCC imposed a monetary forfeiture on a parent corporation for rule violations by the parent company's wholly owned subsidiary.

In *Lansdowne on the Potomac*, a homeowners association brought suit against a group of related legal entities based on allegations that the defendant legal entities entered into a contract for the exclusive right to provide telecommunications services to the homeowners association development in violation of an FCC order and regulations prohibiting such exclusive arrangements. The defendant legal entities argued that the order and regulations did not apply because of the manner in which the entities divided their functions. The Fourth Circuit disagreed, holding that the defendants' "arguments hinge, at bottom, on the belief that it can evade unambiguous federal regulations by playing a shell game in which it divides up corporate functions so that one entity obtains certification from the FCC . . . while a separate entity enters into otherwise-unlawful exclusivity agreements." The Fourth Circuit explained it was rejecting the defendants' arguments because to hold otherwise "would create a blueprint for regulatory circumvention." See *Lansdowne on the Potomac*, 715 F. 3d at 204.

At best, these authorities provide support for the conclusion that the FCC can impose a forfeiture order on the parent company of a subsidiary that violated FCC regulations. These authorities do not address and consequently do not support the contention that an individual can be held personally liable for a forfeiture owed by a corporation, simply because that individual happens to be an officer, director, or shareholder of the corporation. Without some supporting authority, the FCC should not be able to impose personal liability on Messrs. Balun, Meltzer, and Gomez.

Moreover, it should be noted that a fundamental concept of corporate law is that a corporation is a wholly distinct legal entity and that, therefore, the corporation and not its officers, directors, or shareholders, is liable for the corporation's debts. *See Western Horizontal Drilling, Inc. v. Jonnet Energy Corp.*, 11 F.3d 65, 67 (5th Cir. 1994) (citing *Krivo Indus. Supply Co. v. National Distillers and Chem. Corp.*, 483 F.2d 1098, 1102-03 (5th Cir.1973)). Indeed, courts only pierce the corporate veil in rare circumstances where: (1) the corporation is the alter ego of its owners and/or shareholders; (2) the corporation is used for illegal purposes; or (3) the corporation is used as a sham to perpetuate a fraud. *See Western Horizontal Drilling*, 11 F.3d at 67-68. Nothing in the record or in the NAL would support a finding that any of these situations exists here. Therefore, regardless of whether forfeiture is warranted as to the various TV Max legal entities, the FCC should not hold Messrs. Balun, Meltzer, and Gomez personally liable for payment of that forfeiture.

Finally, even under the relaxed standards employed by the FCC concerning "veil-piercing," there is no support for the sweeping conclusions that all of the entities are "one and the same." First, there is literally no mention at all in the NAL's discussion of "common control" of TV Max, LP, TV Max Houston, Inc., TV Max Houston GP, LLC, and TV Max Corporate, Inc. Second, there is no discussion concerning the relationship between TV Max, Inc., Broadband Fiber, LLC, Broadband Ventures Group, LLC, and Broadband Ventures Six, LLC, on the one hand, and Broadband Ventures IV, LLC, TV Max Holdings, Inc., and TV Max Houston, LP, on the other. Patching together stray items of information like common addresses or "indirect" ownership cannot substitute for a careful analysis of corporate relationships.

C. The Forfeiture Should be Cancelled or, in the Alternative, Drastically Reduced

In determining the amount of a forfeiture penalty, the FCC should consider: “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” *See* 74 U.S.C. § 503(b)(2)(E); 47 C.F.R. 1.80(b)(8). A note to 47 C.F.R. 1.80(b)(8) indicates that the FCC and its staff use guidelines to assess a forfeiture, while maintaining the discretion to issue a higher or lower forfeiture, to issue no forfeiture at all, or to apply alternative or additional sanctions. *See* note to 47 C.F.R. 1.80(b)(8). The guidelines provide that the following criteria can justify a downward assessment of a forfeiture: (1) minor violation; (2) good-faith or voluntary disclosure; (3) history of overall compliance; (4) and inability to pay. *Id.* Under these standards, the NAL’s forfeiture should be cancelled or, at a minimum, drastically reduced.

1. The nature, circumstances, extent and gravity of the violations

a. The MATV System was Installed by March 31, 2012

The NAL misconstrues the facts at issue and inaccurately concludes that TV Max conceded that it improperly “retransmitted the Stations” without paying any fees. In fact, the record demonstrates that when TV Max could not afford the price gouging engaged in by the Stations, which charge small operators like TV Max retransmission fees wildly higher than those it offers to much larger cable operators, it adopted a sensible and lawful plan to continue to serve its subscribers through a master antenna television (“MATV”) system. Once effectuated – at a cost of more than \$500,000 to TV Max -- this system would employ antennas on each of the multi-dwelling units (“MDU”) in which TV Max’s subscribers reside and would exempt TV

Max from paying retransmission fees by satisfying the three requirements of 47 C.F. R. § 76.64(e):

- The signals would be received by master antennal television facilities;
- Reception of such signals would be without charge and at the subscribers' option;
- and
- The antenna facility was owned by the building owners.

Given the magnitude of TV Max's project – installing master antennas on each of 245 MDU buildings in Houston, Texas – the timetable originally envisioned could not be perfectly met. This was due primarily to initial resistance by certain building owners to the installation of antennas and not to any delay on the part of TV Max. *See* Declaration of Thomas Balun Responding to June 13, 2012 Inquiries at ¶ 4.³ Despite the difficulties encountered, by March 1, 2012, 90% of the antennas had been installed on buildings having the greatest TV Max subscriber density. *Id.* The remaining 10% of the antennas were installed by March 31, 2012, a mere 90 days after the expiration of the license agreements permitting retransmission prior to implementation of the MATV system. *Id.* TV Max did everything within its power to hasten the completion of the MATV system and any relatively minor delays do not constitute willful violations.

The NAL places great weight on its finding that it was not until July 26, 2012, that TV Max completed installation of MATV systems on all of its buildings, citing an email from Carl Kandutsch, counsel for TV Max. *See* NAL at ¶ 5 and n. 20. While the NAL correctly cites the Kandutsch email, this date is incorrect. The correct date of completion, set forth in the sworn Declaration of Thomas M. Balun Responding to June 13, 2012 Inquiries at ¶ 4, is March 31,

³ This Declaration is part of the underlying record and is separate from the Balun Declarations submitted herewith.

2013. This discrepancy of nearly four months is significant and resulted in the dramatic overstatement of the alleged misconduct. Indeed, the NAL emphasized in footnote 55 that, “There is a gap of 208 days from when the agreements expired with FOX, Univision and Post-Newsweek and 146 days from when the extension agreement expired with ABC, and when TV Max asserted that it completed installation of the MATV antennas in all its buildings.” Id. at ¶ 16 and n. 55. In fact, the actual “gaps” are 90 and 29 days, respectively.

The NAL’s reliance on the greatly exaggerated amount of time it contends TV Max was improperly “retransmitting” the Stations’ signals in fashioning its enormous forfeiture is compounded by the NAL’s failure to recognize that as of November 2011 – before the license agreements in question had expired – TV Max de-linked off-air broadcast signals, including the signals TV Max is accused of improperly retransmitting, from all tiers of pay-television programming. Thus, no TV Max subscriber has been billed for or paid any fees for off-air broadcast programming, including that of any of the Stations in question. This is the case even as to those residents who do not subscribe to TV Max’s pay services. The absence of any economic motivation on the part of TV Max with respect to the provision of off-air programming is certainly a mitigating factor in determining the appropriateness of any forfeiture amount.

b. There have been no ongoing violations since the installation of the MATV System

The impetus for the NAL’s enormous forfeiture appears largely to be the FCC’s conclusion that TV Max “is still currently violating [] the Commission’s retransmission consent rules.” NAL at ¶18. The FCC claims that, “The record shows that TV Max is retransmitting the Stations’ signals from an offsite (central) headend that serves multiple MDUs . . . rather than

exclusively using the MATV antennas at the individual buildings for all of its customers.”⁴ *Id.* In fact, there is nothing in the record that establishes that a single subscriber in any of the 245 MDUs serviced by TV Max has received or is receiving off-air programming from any source other than the installed antennas. Absent such evidence, there is no sound basis to conclude that following the completion of the MATV system as of March 31, 2012, there were continuing violations.

This point is critical, because the NAL forfeiture determination is based on the erroneous conclusion that, “These violations have occurred for more than 365 days.” *Id.* Because, as noted in footnote 65 of the NAL, Section 503(b)(6) permits proposed forfeitures only for violations that occurred within one year of the NAL, there is no basis in this case for any forfeiture. The MATV system was complete as of March 31, 2012, which is nearly 15 months prior to the issuance of the NAL. Thus, forfeiture is neither authorized nor appropriate in this matter.⁵

2. The history of prior offenses, ability to pay, and such other matters as justice may require.

None of the TV Max respondents has any history of prior offenses. Moreover, as set forth in the Declarations of Thomas M. Balun and Eric Meltzer, attached hereto as Exhibits 1 and 2, neither the TV Max entities nor the individuals have any ability to pay a forfeiture in *any* amount, much less the amount proposed in the NAL.⁶

⁴ It should be noted that the fiber ring employed by TV Max cannot retransmit “signals” which, in itself, defeats the argument providing the foundation of the NAL. Fiber used in the TV Max network transmit light, not signals, and thus falls outside of the proscriptions against retransmitting “signals.”

⁵ It deserves mention that the complaints in this case were filed as early as April 2012, and the Stations requested that the FCC enter orders requiring TV Max to cease retransmission of the Stations’ “signals” immediately. The FCC did not do so until the NAL issued on June 25, 2013. TV Max’s practices during the more than one year that preceded the NAL were well known and it should not be punished now for continuing to engage in the very practices that the FCC knew about yet refused to restrain for more than one year.

⁶ Since the issuance of the NAL, counsel for respondents have been unable to locate Mr. Gomez. Accordingly, we respectfully seek leave to amend this Statement to address Mr. Gomez’s financial condition as soon as practicable after his location.

On June 30, 2011, an entity called BVONE, LLC acquired control of TV Max Holdings, Inc. in two simultaneous transactions undertaken by its two wholly-owned subsidiaries, Broadband Ventures III, LLC and Broadband Ventures IV, LLC as follows:

- Broadband Ventures IV, LLC acquired 73.8% of the common stock of TV Max Holdings, Inc. from 12 shareholders, all of which were funds managed either by Cerberus Capital Management (“Cerberus”) or Franklin Templeton Mutual Funds (“Franklin”). The aggregate purchase price for the stock was [REDACTED]
- Broadband Ventures III, LLC acquired all the secured debt issued by TV Max Holdings, Inc., all of which was owned by the same funds managed by Cerberus and Franklin. The purchase price paid by Broadband Ventures III, LLC for the notes was [REDACTED].
- The aggregate purchase price for the notes and the stock was [REDACTED]. The purchasers, Broadband Ventures IV, LLC and Broadband Ventures III, LLC, paid [REDACTED] in cash at closing. The balance of [REDACTED] was to be paid in 18 monthly installments commencing September 2010, with a final payment to be made in February 2012. At present, approximately [REDACTED], including accrued interest, remains outstanding.

See Declaration of Eric Meltzer at ¶ 16.⁷ Under prior management, TV Max Holdings, Inc. had a sustained history of extremely poor performance on both an EBITDA and net income basis. As shown in the table attached as Exhibit A to the Meltzer Declaration, current management has

⁷ It should be noted that neither the acquisition of TV Max Holdings, Inc. by Broadband Ventures III, LLC and Broadband Ventures IV, LLC, nor the acquisition by Broadband Ventures Six, LLC of the cable business of TV Max Houston, LP, was funded by any institutional investors. Rather, all capital required for these transactions was funded either by the principal individual owners or by the operations of the company itself. *Id.* at ¶ 19.

made great strides in eliminating enormous losses; however, the company is rapidly shrinking due to competition and is only marginally EBITDA positive. *Id.* at ¶ 17.

In addition, the cable TV operation has required significant working capital and capital expenditures that have resulted in a depletion of cash not reflected in the above. TV Max Holdings, Inc. and Broadband Ventures Six, LLC have also made note payments of [REDACTED] to Cerberus and Franklin. TV Max Holdings, Inc. made capital expenditures of more than [REDACTED] in 2011, and more than [REDACTED] in 2012. These working capital and capital expenditures, as well as the note payments, have placed a significant strain on the company and it presently operates in a manner that barely enables it to pay its bills. In the past two years the total of capital expenditures and note payments have exceeded EBITDA by [REDACTED]. Because the company did not raise additional investor capital during that period, the company is presently in an exceedingly precarious working capital position. *Id.* at ¶ 18.

Documents supporting the summary provided in Exhibit A to the Meltzer Declaration, including tax returns filed through 2010, show substantial losses.⁸ TV Max Holdings, Inc. and Broadband Ventures Six, LLC do not owe corporate income tax for 2011 and 2012, but returns have not yet been filed as the company has been unable to pay the necessary accounting fees. *Id.* at ¶ 17. Because these returns have not yet been prepared or filed, the company does not yet have figures related to debt retirement, depreciation, amortization, or interest; as such, while the Net Income figures for 2011 and 2012 are not included on Exhibit A, it is believed that they are in the range of [REDACTED] for each of the two years. *Id.*

⁸ Because of the highly confidential nature of the financial information contained in the Declarations of Thomas M. Balun and Eric Meltzer, including Exhibit A and sub-Exhibits A1-A6 to the Meltzer Declaration, TV Max respectfully requests that these materials be ordered to be maintained by the parties as Confidential and not to be disclosed to any third parties.

The Meltzer Declaration, including Exhibit A and sub-Exhibits A1-A6, demonstrates that at this time, there is simply no ability on the part of the TV Max respondents to make any forfeiture payment, much less in the enormous amount of \$2,250,000.

Although there is no legal basis to impose forfeiture of any of the individuals for the reasons set forth in detail above, neither Mr. Balun nor Mr. Meltzer have the resources to make any payment. As set forth in the Declaration of Thomas M. Balun, Mr. Balun owns no real estate, bank accounts, money market accounts, certificates of deposit, stocks, bonds, mutual funds or any brokerage accounts. *See* Declaration of Thomas M. Balun at ¶¶ 8-10. Mr. Balun's sole employment is as CEO of TV Max which, as discussed above, has [REDACTED] [REDACTED] during the past five years. *Id.* at ¶ 6. Other than a consulting fee of [REDACTED], he did not receive any other compensation, stock or stock options from TV Max or any of its related entities. *Id.* Moreover, he does not receive any compensation from any other persons or entities other than TV Max. *Id.* at ¶ 7. He owns no art work, jewelry or collectibles of any material value, nor does he receive royalties from any source. *Id.* at ¶ 12. He supports his wife and two children, one in college and one in high school. *Id.* at ¶ 13. In short, Mr. Balun is in no financial position to pay any forfeiture ordered in this case.

Mr. Meltzer is in no better position. As described in his Declaration, since the initial acquisition of TV Max Holdings in June 2010, his compensation has totaled [REDACTED] Declaration of Eric Meltzer at ¶ 2. Although his present salary is ostensibly [REDACTED] per year, since November 2012, he has only been paid approximately [REDACTED] due to the precarious financial position of the company. *Id.* Mr. Meltzer owns no real estate and the joint back account he owns with his wife has an average balance of [REDACTED]. *Id.* at ¶¶ 4 and 14. He has an IRA account worth approximately [REDACTED]. *Id.* at ¶ 7. Although he has ownership interests in

certain entities, these interests are of negligible value. *Id.* at ¶¶ 3, 5, 6, 8, 10 and 11. Mr. Meltzer and his wife support three children, one in college, one in high school, and one in second grade, and he has debts of approximately [REDACTED]. *Id.* at ¶¶ 13 and 15. He anticipates satisfying these debts by liquidating a brokerage account that has a current value of approximately [REDACTED]. *Id.* at ¶¶ 6 and 13. Thus, it is apparent that Mr. Meltzer is not in an economic position to satisfy the NAL's forfeiture amount or any meaningful portion thereof.

3. The forfeiture is inconsistent with other NAL orders

The disproportionateness of the NAL forfeiture is underscored by examining proposed forfeiture amounts in other NAL matters. While these cases are factually different, it is plain that the forfeiture amount proposed here is substantially larger – by orders of magnitude – and far more punitive than is typically proposed by the FCC. For example:

- *In re Bailey Cable TV, Inc.*, 27 FCC Rcd 2625 (F.C.C. 2012) (proposed forfeiture of only \$15,000 based on a cable operator's unauthorized retransmission of a broadcast station's signal where Commission rules set the base forfeiture amount at \$7,500 and violation occurred for 34 days);
- *In re Northeast Util. Serv. Co.*, File No.: EB-10-SE-147, (F.C.C. 2011) (proposed forfeiture of \$19,000 for operation of a PLMRS station for more than three years after license was canceled where the offending respondent was a company with more than \$4 billion in annual revenue and the Commission sought to ensure that the forfeiture was an effective deterrent and not simply a cost of doing business);
- *In re Remel, Inc.*, 2013 FCC LEXIS 2593 (F.C.C. 2013) (proposed forfeiture of only \$30,000 based on unlawful operation of radio frequency devices where Commission rules set the base forfeiture amount at \$10,000, the violation continued for more than nine

years, and the Commission expressed a desire “[t]o ensure that forfeiture liability is a deterrent and not simply a cost of doing business” for large or highly profitable businesses);

- *In re Comcast of Ala., Inc.*, File No. EB-11-AT-0001 (F.C.C. 2011) (proposing forfeiture of \$16,000 where cable operator failed to ensure that emergency alert system messages were properly transmitted to customers and where the Commission sought to ensure that the forfeiture would serve as a deterrent and not simply a cost of doing business to the multi-billion dollar offending respondent);
- *In re Harrah's Atl. City Operating Co. LLC*, File No.: EB-10-PA-0099 (F.C.C. 2011) (proposed forfeiture of \$15,000 for operation of radio station for ten years after expiration of license);
- *In re BASF Corp.*, File No. EB-10-SE-003 (F.C.C. 2010) (proposed forfeiture of \$25,000 based on operation of radio station for five years after cancelation of license where Commission sought to ensure that the forfeiture would act as a deterrent to multi-billion dollar global enterprises like the offending respondent);
- *In re Tesla Exporation, Inc.*, File Number: EB-11-PA-0153, (F.C.C. 2012) (proposed forfeiture of \$66,000 for operating radio transmitting equipment without a license on eleven unauthorized frequencies where the Commission rules called for base forfeiture of \$44,000 but where the Commission sought to use the forfeiture as an effective deterrent to large multi-national companies like the offending respondent);
- *In re RB Communications*, File No. EB-08-IH-5303 (F.C.C. 2012) (proposed forfeiture of \$100,000 for providing international telecommunications service for over six years without necessary Commission authorization);

- *In re Unipoint Technologies, Inc.*, File No.: EB-09-IH-1945 (F.C.C. 2012) (proposed forfeiture of \$100,000 for providing international telecommunications service for several years without necessary Commission authorization);
- *In Re Union Oil Co. of Cal.*, File No.: EB-11-SE-109 (F.C.C. 2012) (proposed forfeiture of \$96,200 for operation of PLMRS station for more than six years without necessary Commission authority and for operation of UNICOM station for more than eight years without necessary Commission authority)
- *In re The Supply Room, Inc.*, File No.: EB-FIELDSCR-12-00002402 (F.C.C. 2013) (proposed forfeiture of \$144,000 based on importation of illegal cell phone signal jamming devices and operation of multiple cellular phone jamming devices for more than two years);
- *In re Taylor Oilfield Manufacturing, Inc.*, File No.: EB-FIELDSCR-12-00002428 (proposed forfeiture of \$126,000 based on importation of illegal cell phone signal jamming devices and operation of multiple cellular phone jamming devices for several months);
- *In re Mason*, File No.: EB-FIELDWR-12-00004903, (F.C.C. 2013) (proposed forfeiture of only \$10,000 based on operation of a studio-transmitter link (STL) station without an FCC license where Commission rules set the base forfeiture amount at \$10,000 and violation occurred for more than 1 year);
- *In re Fellowshipworld, Inc.*, File No.: EB-FIELDNER-12-00004958 (F.C.C. 2013) (proposed forfeiture of only \$8,000 based on failure to operate a station at an unauthorized location where Commission rules set the base forfeiture amount at \$4,000 and violation occurred for more than 1 year);

- *In re General Communications Inc.*, File No.: EB-SED-12-00001715 (F.C.C. 2013) (proposed \$10,000 forfeiture based on operation of a CMRS station for approximately nine months despite the lack of Commission authority after expiration of license);
- *In re Life on the Way Communications, Inc.*, File No.: EB-SED-12-00000906 (F.C.C. 2013) (proposed \$18,000 forfeiture for operation of an earth station for more than eight years without Commission authority); and
- *In re National Farmworkers Serv. Ctr., Inc.*, EB-07-IH-5266 (F.C.C. 2010) (proposed forfeiture of \$12,500 based on non-commercial educational station's broadcast of 2,000 prohibited commercial advertisements).⁹

In contrast with the above decisions, the NAL's forfeiture proposal here stands out as an extreme outlier and one that is based on an overstatement of the alleged misconduct and that lacks a clearly discernable method by which it was calculated.

⁹ While the FCC on rare occasions has issued a notice of apparent liability that proposes a more substantial forfeiture, these typically involve behavior that includes some element of fraud and/or violation of consumer rights. *See e.g., In re Telseven, LLC*, File No.: ED-TCD-1200000416 (F.C.C. 2012) (proposing forfeiture of \$1,680,000 due to deceptive marketing practices and charging consumers for a service without receiving consumers' authorization for the charges). The allegations in this case do not implicate any such conduct, rendering the excessively large and punitive forfeiture proposed by the FCC unwarranted.

CONCLUSION

For the foregoing reasons, TV Max respectfully urges the FCC to cancel the NAL forfeiture as to all respondents. At a minimum, there should be no forfeiture issued as to any of the individual respondents and the amount as to the entities should be severely reduced.

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July 25, 2013

CERTIFICATE OF SERVICE

I, Laurence S. Shtasel, hereby certify that on July 25, 2013, I served a copy of the foregoing Statement Seeking Cancellation or Reduction of FCC's Proposed Forfeiture in the Notice of Apparent Liability for Forfeiture and Order of June 25, 2013 by email and U.S. mail on the following:

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I further certify that I served a copy of this document by email only on the following:

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EXHIBIT 1

**Before the
FEDERAL COMMUNICATIONS COMMISSIONS
Washington, DC 20554**

In the Matter of	:	MB Docket No. 12-113 CSR No. 8623-C
TV Max, Inc. and Broadband Ventures Six, LLC d/b/a Wavevision, Thomas M. Balun, Eric Meltzer, and Richard Gomez, <i>et al.</i>	:	MB Docket No. 12-181 CSR No. 8669-C
	:	MB Docket No. 12-222 CSR No. 8694-C
	:	MB Docket No. 12-266 CSR No. 8707-C
	:	NAL/Acct. No.: 201341410008 FRN: 0009645938

DECLARATION OF THOMAS M. BALUN

I, Thomas M. Balun, being of sound mind and full age do hereby declare as follows:

1. I am the CEO of TV Max, Inc., d/b/a Wavevision (“TV Max”). I submit this Declaration in support of the Statement Seeking Reduction or Cancellation of FCC’s Proposed Forfeiture in the Notice of Apparent Liability for Forfeiture and Order of June 24, 2013 (“NAL”), in the above-captioned matters.
2. The NAL in this matter was issued based on limited written submissions and no opportunity to be heard. Among the erroneous findings in the NAL, the FCC concluded that the following entities and individuals were to be treated as “one and the same”: TV Max, Inc.; TV Max, LP; TV Max Houston, Inc.; TV Max Holdings, Inc.; TV Max Houston, LP; TV Max Houston GP, LLC; TV Max Corporate, Inc.; Broadband Ventures Group, LLC; Broadband Fiber, LLC;

Broadband Ventures IV, LLC; Broadband Ventures Six, LLC; Thomas M. Balun; Eric Meltzer; and Richard Gomez. See NAL at n. 1 and ¶¶ 9-10. This finding was based solely on the following information:

- a. That TV Max and Broadband Ventures Six, LLC “appear to be under the common control” of Thomas M. Balun and Eric Meltzer;
 - b. That Broadband Ventures Six, LLC and Broadband Fiber LLC share a common mailing address.
 - c. That in an application to the Texas Public Utilities Commission (“PUC”), Broadband Fiber LLC identified TV Max as its affiliate. In the same application, it was represented that Broadband Ventures Group, LLC wholly owns Broadband Ventures Six, LLC and Broadband Fiber LLC, and that Richard Gomez is the Vice President and General Manager of TV Max.
 - d. That the PUC application also indicated that Broadband Ventures IV had acquired 73.8% of TV Max Holdings, and that TV Max Houston, LP was an indirect wholly owned subsidiary of TV Max Holdings, Inc.
 - e. That in a filing responding to PUC staff questions, Broadband Fiber, LLC stated that Broadband Ventures Six, LLC leased dark fiber on the fiber optic network owned and operated by TV Max Houston, LP and that Broadband Fiber LLC subsequently acquired the fiber network from TV Max.
3. Based on the above, the FCC concluded that “the record supports treating these entities and their controlling parties as one and the same.” See NAL at ¶ 10. As

set forth in accompanying Statement, these “findings” do not remotely approach the standard necessary to hold individual officers liable for the alleged violations of their companies.

4. In addition, and as further set forth in the Statement, the circumstances surrounding the alleged violations do not warrant the draconian forfeiture imposed here.
5. In the event that the FCC refuses to reverse the NAL, the amount of the forfeiture should nonetheless be reduced as to me based upon my financial condition. In short, I am unable to pay any sum as forfeiture much less than the extraordinary and seemingly unprecedented amount of \$2,250,000.
6. I am 65 years old and have limited sources of income. My sole employment is as CEO of TV Max, a company that has lost literally tens of millions of dollars in the past five years. In 2007, TV Max lost approximately [REDACTED]; in 2008, it lost approximately [REDACTED]; in 2009, it lost approximately [REDACTED]; and in 2010 it lost approximately [REDACTED]. TV Max has not yet filed a tax return for 2011 and 2012, but in these years it continued to lose money. During these years, I received a consulting fee of [REDACTED]; I did not receive any other compensation, stock or stock options from TV Max or any related companies.
7. I do not receive salary, fees, bonuses or any other compensation from any persons or entities other than TV Max. I own approximately 36% of Broadband Ventures Group, LLC.
8. I own no bank accounts, money market accounts, or certificates of deposit.
9. I do not hold any stocks, mutual funds or bonds.

10. I do not own any real property.
11. I own two automobiles. Their fair market values are [REDACTED] and [REDACTED]. I do not own or lease any other vehicles.
12. I do not own art work, jewelry or collectibles having any material value. I do not receive royalties from any source and I am not the beneficiary of any trust.
13. I support a wife, one full-time college student, and one high school student.

I declare under penalty of perjury that the foregoing is true and correct.


Thomas M. Balun

Dated: July 25, 2013

EXHIBIT 2

**Before the
FEDERAL COMMUNICATIONS COMMISSIONS
Washington, DC 20554**

In the Matter of	:	MB Docket No. 12-113
	:	CSR No. 8623-C
	:	:
TV Max, Inc. and Broadband Ventures Six, LLC d/b/a Wavevision, Thomas M. Balun, Eric Meltzer, and Richard Gomez, <i>et al.</i>	:	MB Docket No. 12-181
	:	CSR No. 8669-C
	:	:
	:	MB Docket No. 12-222
	:	CSR No. 8694-C
	:	:
	:	MB Docket No. 12-266
	:	CSR No. 8707-C
	:	:
	:	NAL/Acct. No.: 201341410008
	:	FRN: 0009645938

DECLARATION OF ERIC MELTZER

I, Eric Meltzer, being of sound mind and full age, do hereby declare as follows:

1. I am 55 years old and my sole employment is as CFO of Broadband Ventures Group, LLC.
2. Since the initial acquisition of TV Max Holdings by subsidiaries of BVONE, LLC in June 2010 through today, my compensation has totaled approximately [REDACTED]. My base compensation at the present time is [REDACTED] per year. However, due to the financial position of the company I have been paid only about [REDACTED] since November of last year.
3. I own approximately 26% of Broadband Ventures Group.
4. I do not own any real estate.
5. I am the sole member of Telecom Ventures I, LLC which has a bank account with

approximately [REDACTED].

6. Telecom Ventures I has a Scottrade account with approximately [REDACTED] in it.
7. I have an IRA with approximately [REDACTED] in it.
8. I own approximately 1% of an early stage mobile marketing company, Advanced Mobile with indeterminate value.
9. I own three vehicles with fair market values of [REDACTED], [REDACTED] and [REDACTED]. I do not lease any vehicles.
10. I am a limited partner and own 33% of the Meltzer Family Limited Partnership which has reported income to each of its limited partners of approximately [REDACTED] but has provided no distribution or other form of cash payments to its limited partners.
11. I own a 29% partnership interest in Broadband Ventures II, LLC, which through its subsidiaries provides fixed wireless internet service. Broadband Ventures II, LLC is insolvent, has significant deficit net worth and I receive no income from it.
12. I do not own any personal possessions, other than those listed above, having any material value.
13. I have debts of approximately [REDACTED] and anticipate liquidating my Scottrade account to satisfy this obligation and to provide living expenses.
14. My wife and I have a joint bank account with an average balance of [REDACTED].
15. My wife and I support one full time college student, a high school student and a child in second grade.
16. With respect to the entities in this matter, on June 30, 2010, BVONE, LLC acquired control of TV Max Holdings, Inc. in two simultaneous transactions

undertaken by its two wholly-owned subsidiaries, Broadband Ventures III, LLC and Broadband Ventures IV, LLC as follows:

- a. Broadband Ventures IV, LLC acquired 73.8% of TV Max Holdings, Inc. common stock from 12 shareholders all of which were funds managed either by Cerberus Capital Management or Franklin Templeton Mutual Funds. The aggregate purchase price for the stock was [REDACTED]
- b. Broadband Ventures III, LLC acquired all the secured debt issued by TV Max Holdings, Inc., all of which was owned by the same funds managed by Cerberus and Franklin. The purchase price paid by Broadband Ventures III, LLC for the notes was [REDACTED]
- c. The aggregate purchase price for the notes and the stock was [REDACTED]. The purchasers (Broadband Ventures IV, LLC and Broadband Ventures III, LLC) paid [REDACTED] in cash at closing. The balance of [REDACTED] was to be paid in 18 monthly installments commencing September 2010, with a final payment in February 2012. At present, approximately [REDACTED] including accrued interest, remains outstanding.

17. Under prior management, TV Max Holdings, Inc. had a sustained history of extremely poor performance on both an EBITDA and Net Income basis. As shown in Exhibit A to this Declaration, current management has made great strides in eliminating enormous losses yet the company is rapidly shrinking due to competition and is only marginally EBITDA positive. Documents supporting the summary provided in Exhibit A, including tax returns, are attached as sub-exhibits A-1 through A-6. Tax returns filed through 2010 show substantial losses.

TV Max Holdings, Inc. and Broadband Ventures Six, LLC do not owe corporate income tax for 2011 and 2012, but returns have not yet been filed as the company has been unable to pay the necessary accounting fees. Because these returns have not yet been prepared or filed, the company does not yet have figures related to debt retirement, depreciation, amortization, or interest; as such, while the Net Income figures for 2011 and 2012 are not included on Exhibit A, it is believed that they are in the range of [REDACTED] for each of the two years. Exhibit A and sub-Exhibits A1-A6 demonstrate that at this time, it would be impossible for TV Max to pay the forfeiture proposed in the NAL.

18. However, the cable TV operation has required significant working capital and capital expenditures that have been a use of cash not reflected above. Also, TV Max and Broadband Ventures Six have made note payments of [REDACTED] to Cerberus and Franklin. TV Max had capital expenditures of more than [REDACTED] in 2011, while TV Max and its successor Broadband Ventures Six, LLC made combined capital expenditures over more than half a million dollars in 2012. These working capital, capital expenditures and note payments have placed a significant strain on the company and it presently operates in a manner that barely enables it to pay its bills. In the past two years the total of capital expenditures and note payments have exceeded EBITDA by [REDACTED]. Having not raised additional investor capital in that period, the company is presently in an exceedingly precarious working capital position.
19. It should be noted that neither the acquisition of TV Max Holdings, Inc. by Broadband Ventures III, LLC and Broadband Ventures IV, LLC, nor the

acquisition by Broadband Ventures Six, LLC of the cable business of TV Max Houston, LP, was funded by any institutional investors. Rather, all capital required for these transactions was funded either by the principal individual owners or by the operations of the company itself.

I declare under penalty of perjury that the foregoing is true and correct.


Eric Meltzer

Dated: July 25, 2013

EXHIBIT A

(Not Filed Publicly Due to Confidential Nature of Document)

EXHIBIT A-1

(Not Filed Publicly Due to Confidential Nature of Document)

EXHIBIT A-2

(Not Filed Publicly Due to Confidential Nature of Document)

EXHIBIT A-3

(Not Filed Publicly Due to Confidential Nature of Document)

EXHIBIT A-4

(Not Filed Publicly Due to Confidential Nature of Document)

EXHIBIT A-5

(Not Filed Publicly Due to Confidential Nature of Document)

EXHIBIT A-6

(Not Filed Publicly Due to Confidential Nature of Document)