

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Telepak Networks, Inc. d/b/a C Spire Fiber)	MB Docket No. 19-159
v.)	CSR-8978-C
)	
Gray Media Group, Inc.)	

COMMENTS OF TEGNA INC.

TEGNA Inc. (“TEGNA”) hereby submits these Comments regarding the above-captioned complaint (the “Complaint”) by Telepak Networks, Inc. d/b/a C Spire Fiber (“C Spire”),¹ which alleges that Gray Media Group, Inc. (“Gray”)² failed to negotiate in good faith regarding the carriage of the CBS-affiliated program stream of Gray’s station WLOX on C Spire’s cable system in Diamondhead, Mississippi (the “Diamondhead System”).³ WLOX is licensed to Biloxi, Mississippi, in the Biloxi-Gulfport DMA as defined by Nielsen; the Diamondhead System is located in the adjacent New Orleans DMA, where TEGNA’s station WWL-TV is the local CBS affiliate.⁴ C Spire objects to Gray’s compliance with a provision of WLOX’s CBS affiliation agreement that requires, as a condition of Gray’s consent to the Diamondhead System’s carriage of WLOX’s CBS programming, that the Diamondhead System also carry WWL-TV.⁵

¹ Telepak Networks, Inc. d/b/a C Spire Fiber, Retransmission Consent Complaint and Petition for Declaratory Ruling, MB Docket No. 19-159 (filed June 3, 2019).

² See Gray Media Group, Inc., Answer to Retransmission Consent Complaint, MB Docket No. 19-159, at 1 n.1 (filed June 24, 2019) (“Gray Answer”) (noting merger of Gray Television Group, Inc., into Gray Media Group, Inc., as of May 1, 2019).

³ Complaint at 1. These Comments are timely filed within 20 days after the Media Bureau’s June 12, 2019, public notice of C Spire’s petition for special relief. See 47 C.F.R. § 76.7(b)(1); *Special Relief and Show Cause Petitions*, Docket No. 19-159, Public Notice, Report No: 0481 (MB Jun. 12, 2019).

⁴ Complaint at 1, 3, 6.

⁵ Complaint at 3-4.

As explained below, TEGNA previously offered to grant its consent for the Diamondhead System's carriage of WWL-TV, but C Spire never responded to TEGNA's proposal. TEGNA submits these Comments in the interest of providing the Commission with a more complete factual record in this matter.⁶

Pursuant to Section 76.64(k) of the Commission's rules,⁷ C Spire's parent company, Telapex, Inc., notified TEGNA of C Spire's intent to launch the Diamondhead System by letter dated August 6, 2018. TEGNA Director of Program Strategy Rebecca Rahm responded to C Spire on August 17, 2018, with letters electing retransmission consent status on behalf of TEGNA's New Orleans stations, WWL-TV and WUPL-TV. At C Spire's request, Ms. Rahm on September 25, 2018 e-mailed TEGNA's proposal for the Diamondhead System's carriage of WWL-TV and WUPL-TV to Bruce Beard, C Spire's counsel. TEGNA's proposal consisted of a complete draft of a retransmission consent agreement, including economic terms. C Spire never responded to TEGNA's proposal.

The Commission granted C Spire's petition to add Diamondhead to WLOX's cable carriage market on April 18, 2019.⁸ The e-mails attached to the Complaint demonstrate that C Spire was aware by no later than May 14, 2019 that Gray's right to authorize the Diamondhead System's carriage of WLOX's CBS stream would be conditioned on the Diamondhead System also carrying WWL-TV.⁹ Indeed, it appears C Spire may have anticipated such a condition as

⁶ In accordance with Section 76.7(b)(1) of the Commission's rules, and the Commission's prohibition on *ex parte* presentations in restricted proceedings, these Comments are being served on the parties to this proceeding and on all other persons listed on C Spire's certificate of service. See 47 C.F.R. §§ 1.1202(b)(1), 1.1208, and 76.7(b)(1).

⁷ 47 C.F.R. § 76.64(k).

⁸ *Telepak Networks, Inc., d/b/a C Spire Fiber, for Modification of the Television Markets of Stations WLOX(DT), Biloxi, MS and WXXV-TV, Gulfport, MS to include Diamondhead, MS*, Memorandum Opinion and Order, MB Docket No. 18-381 (rel. Apr. 18, 2019) ("*Diamondhead Market Mod Order*").

⁹ See Complaint at Ex. 1.

early as May 3, 2019.¹⁰ It therefore is notable that C Spire apparently decided to make no effort to determine if it could comply with the conditions contained in Gray’s CBS affiliation agreement (and, apparently, a related condition in its own retransmission consent agreement with Gray¹¹). C Spire never attempted to negotiate for carriage of WWL-TV – a broadcast television station within the Diamondhead System’s local market – either by responding to TEGNA’s outstanding proposal or by offering a proposal of its own. Moreover, it seems evident from the Complaint that C Spire was unwilling to carry WWL-TV and, even if C Spire had entered into negotiations for such carriage, it would have been unwilling to consider any arrangement for the station other than no-fee carriage.¹² C Spire’s chosen approach is surprising, considering its recognition that under the Commission’s good faith rules it is “a *per se* violation [to] refus[e] to negotiate retransmission consent and a *per se* violation [to] refus[e] to put forth more than a single, unilateral proposal.”¹³

It is impossible to say whether TEGNA and C Spire ultimately would have reached an agreement for the Diamondhead System’s carriage of WWL-TV had C Spire entered into good faith negotiations in response to TEGNA’s offer. What is clear, however, is that in considering how the conditions in WLOX’s CBS affiliation agreement affect Gray’s good faith negotiation

¹⁰ *Id.*, at E-mail from Scott Friedman, Cinnamon Mueller, to Rob Folliard, Gray Television, Inc. (May 3, 2019, at 2:50 p.m.) (asserting that “any ‘limitation’ on Telapex carrying WLOX’s CBS feed in Diamondhead, including a requirement that Telapex also carry the in-DMA CBS feed, would constitute a *per se* violation under the FCC’s good faith rules”).

¹¹ See Gray Answer at 10 (“More fundamentally, ***C Spire has Gray’s consent to retransmit WLOX’s CBS-affiliated multicast stream today.*** C Spire, however, has decided to not exercise that right because, for its own reasons, it does not wish to comply with a provision in the *Retrans Agreement* requiring that it simultaneously retransmit the in-DMA (and ‘local’ under FCC’s rules) CBS affiliate from New Orleans, WWL-TV.”) (emphasis in original, footnote omitted).

¹² See, e.g., Complaint at 1 (indicating C Spire’s unwillingness to “retransmit – and pay for – WWL”), 4 (objecting to any “requirement that C Spire also carry (and pay for)” WWL), 10-11 (noting C Spire’s objection “to the requirement that it also retransmit WWL” and characterizing that requirement as requiring Diamondhead residents to pay for both WLOX and WWL).

¹³ See Complaint at 4 (citing 47 C.F.R. §§ 76.65(b)(1)(i) and (b)(1)(iv)). See also § 76.65(b)(1)(v) (defining as a *per se* good faith violation “[f]ailure of a Negotiating Entity to respond to a retransmission consent proposal of the other party, including the reasons for the rejection of any such proposal”).

obligations, the Commission should bear in mind C Spire's unwillingness to make any attempt to meet those conditions.

Respectfully submitted,
TEGNA INC.



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July 2, 2019

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DECLARATION OF REBECCA RAHM

I, Rebecca Rahm, hereby declare as follows:

1. I am Director of Program Strategy for TEGNA Inc.
2. I have read the attached "Comments of TEGNA Inc." and believe the information to be true and accurate in all respects.

I, Rebecca Rahm, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on July 2, 2019



Rebecca Rahm

Certificate of Service

I, Michael Beder, hereby certify that on July 2, 2019, I caused a true and correct copy of the foregoing "Comments of TEGNA Inc." to be sent to the following persons by U.S. Postal Service first class mail and, where indicated with an asterisk, by electronic mail:

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Montgomery, AL 36104

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VP and General Manager
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Biloxi, MS 39531

Gray Television Licensee, LLC
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WPXL
Ion Media New Orleans License, Inc.
601 Clearwater Park Road
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Cable One, Inc.
210 E. Earll Drive
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WHNO

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WGNO

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