

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

In the matter of:	)	
	)	
Telepak Networks, Inc. d/b/a C Spire Fiber	)	
Petition for Declaratory Ruling	)	MB Docket No. 19-159
	)	

**COMMENTS OF THE ELECTRIC PLANT BOARD  
OF THE CITY OF RUSSELLVILLE**

The Electric Plant Board of the City of Russellville (“RPB”) submits these comments in response to the Petition for Declaratory Ruling filed by Telepak Networks, Inc. d/b/a C Spire (“Petition”).<sup>1</sup> In its Petition, C Spire explains that the Commission modified the local market of WLOX to include an in-state community, Diamondhead, Mississippi, that C Spire sought to serve,<sup>2</sup> but that C Spire has been unable to obtain consent from WLOX to retransmit WLOX’s multicast programming stream affiliated with the CBS network.<sup>3</sup> RPB files these Comments to inform the Commission of a nearly identical situation RPB has faced since 2017, when it obtained a market modification addressing areas that lacked access to television broadcast station signals that originated in the same State.

In August 2017, RPB, North Central Telephone Cooperative and Cumberland Cellular, Inc., d/b/a Duo County Telecom jointly filed a petition to modify the television market of WBKO, Bowling Green, Kentucky, to include six Kentucky communities: Russellville,

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

<sup>2</sup> Petition at 7-8; *see also 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).

<sup>3</sup> Petition at 8-11.

Scottsville, Burkesville, Columbia, Jamestown and Russell Springs.<sup>4</sup> Russellville is about 25 miles from Bowling Green, Kentucky, but its county, Logan County, had been assigned to the Nashville, Tennessee Designated Market Area (“DMA”). RPB previously retransmitted WBKO, but was forced to cease retransmission when its retransmission consent agreement with the station expired on December 31, 2014.<sup>5</sup> At that time, WBKO informed RPB that it could no longer grant retransmission consent outside of the Bowling Green DMA pursuant to its ABC network affiliation agreement. In December 2017, the Media Bureau granted the joint petition,<sup>6</sup> finding that “grant of the Petition will promote consumers’ access to television broadcast station signals that originate in their home state of Kentucky.”<sup>7</sup> Moreover, the Media Bureau added that “[g]ranting the Petition will ensure that the Communities receive WBKO’s complete in-state signal.”<sup>8</sup>

After the Media Bureau granted the Petition, WBKO elected must carry, and RPB began retransmitting WBKO’s full primary stream affiliated with ABC to its subscribers. RPB then sought to negotiate retransmission consent with WBKO so that RPB could also retransmit WBKO’s multicast programming streams affiliated with the Fox and CW networks. RPB sought consent to retransmit WBKO’s multicast streams so that its subscribers watching Fox and CW

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<sup>4</sup> *Petition of Electric Plant Board of the City of Russellville, North Central Telephone Cooperative and Cumberland Cellular, Inc. d/b/a Duo County Telecom*, Petition for Special Relief, MB Docket No. 17-225 (filed Aug. 23, 2017).

<sup>5</sup> In 2015, RPB installed switching equipment in its headend so that it could carry local, prescheduled programming on WBKO. RPB continued to retransmit only WBKO’s local programming until the Media Bureau granted its market modification petition.

<sup>6</sup> *The Electric Plant Board of the City of Russellville, North Central Telephone Cooperative and Cumberland Cellular, Inc. d/b/a Duo County Telecom*, Memorandum Opinion and Order, 32 FCC Rcd 10255 (2017) (“WBKO Market Modification Order”).

<sup>7</sup> WBKO Market Modification Order, ¶ 17.

<sup>8</sup> *Id.*, ¶ 13 (emphasis added).

network programming would also receive highly important unscheduled local programming, including breaking news, emergency alerts and severe weather events.<sup>9</sup> Unfortunately, RPB has not been able to gain consent to retransmit WBKO's multicast streams affiliated with the Fox and CW networks because WBKO's network affiliation agreements with Fox and CW do not permit WBKO to grant retransmission consent outside of its local (Bowling Green) DMA.

It is troubling to RPB that the Commission's market modification process is seemingly being abrogated by the national networks. RPB spent considerable time and expense to bring WBKO programming back to its subscribers, who much prefer viewing Bowling Green stations rather than the Nashville stations, and would also prefer watching Fox and CW programming via WBKO. The Commission must take into account RPB's inability to obtain WBKO's multicast programming when considering C Spire's request that the Commission declare that "[w]hen the Commission modifies a commercial television broadcast station's market to include an additional community or additional communities, that station and all of its broadcast streams are now considered to be in-DMA (or "local") for reciprocal retransmission consent purposes in those communities."<sup>10</sup> As C Spire argued in its Petition, "there is no evidence that Congress intended stations deemed local through a cable market modification have any lesser status for retransmission consent purposes as stations deemed local by Nielsen."<sup>11</sup> Alas, it appears common that multichannel video programming distributors ("MVPDs") cannot obtain consent to retransmit multicast programming streams even after the Commission modifies a station's local market.

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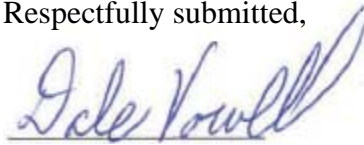
<sup>9</sup> *See Id.*

<sup>10</sup> Petition at 19.

<sup>11</sup> *Id.* at 16.

In summary, as the Commission reviews C Spire's declaratory ruling request, it must also consider that C Spire is not the only MVPD that has been unable to obtain a station's multicast programming streams after a market modification.

Respectfully submitted,



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Russellville Electric Plant Board

Dated: July 22, 2019