

**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 Groups, Inc.	)	

**REPLY COMMENTS OF CBS CORPORATION**

CBS Corporation (“CBS”)<sup>1</sup> hereby files these reply comments in the above-referenced proceeding in which the Commission seeks comment on a Petition for Declaratory Ruling (“Petition”) filed by Telepack Networks, Inc. d/b/a/ C Spire Fiber (“C Spire”)<sup>2</sup>. As the Petition seeks an unnecessarily broad declaration by the Commission based on an incorrect premise and would both alter long-standing Commission policy and potentially disrupt the network-affiliate relationship, the Commission should decline C Spire’s request.

Initially C Spire narrowly requests a declaration that, when a broadcast station’s television market is modified under the Commission’s rules to include additional communities, then the station and all of its broadcast streams would be considered “in-DMA” or “local” for retransmission consent negotiation purposes in those communities.<sup>3</sup> But then C Spire recasts that

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<sup>1</sup> CBS owns and operates the CBS Television Network whereby it licenses a slate of national programming to affiliates across the country for broadcast and retransmission on a network basis and is also the owner and operator of 28 full power broadcast television stations in 17 DMAs.

<sup>2</sup> *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).

<sup>3</sup> See Petition at 19. To the extent C Spire requests that the Commission find that a station subject to a market modification is literally “in-DMA” in a new community, such a declaration is beyond the Commission’s authority. The Nielsen Company determines the geographic boundaries of a DMA and the Commission’s market modification procedures do not alter those boundaries.

request to ask for a broad declaration that any restriction in a network affiliation agreement on a broadcast station's ability to grant retransmission consent in a geographic area where it is "local," seemingly including reasonable restrictions that have long been part of network affiliation agreements, violates the Commission's rules.<sup>4</sup>

The potential ramifications of such a declaratory ruling, potential invalidating multiple provisions of every agreement between a broadcast network and each of its affiliates, could significantly disrupt the relationship between a broadcast network and its affiliated stations contrary to Congressional intent. Indeed, preserving and fostering the network-affiliate relationship, not harming it, has been a goal of Congress since the original Satellite Home Viewer Act in 1988:

The Committee believes that historically and currently the network-affiliate partnership serves the broad public interest. It combines the efficiencies of national production, distribution and selling with significant decentralization of control over the ultimate service to the public. It also provides a highly effective means whereby the special strengths of national and local program services support each other. This method of reconciling the values served by both centralization and decentralization in television broadcast service has served the country well.<sup>5</sup>

#### **I. Network Affiliation Agreements Legitimately Include Obligations/Restrictions.**

As has been established in this proceeding, broadcast network affiliation agreements routinely include obligations and conditions on an affiliate's broadcast and subsequent retransmission of the network-provided content that serve legitimate business purposes and further the public interest.<sup>6</sup> In previously rejecting a request that the Commission declare network affiliation agreement restrictions on a broadcaster's ability to negotiate retransmission consent to

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<sup>4</sup> See *Id.*

<sup>5</sup> Satellite Home Viewers Act of 1988, H.R. Rep. 100-887 (Part 2) (1988), at 20.

<sup>6</sup> See *Joint Comments of The ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, And NBC Television Affiliates On The C Spire Petition for Declaratory Ruling*, MB Docket No. 19-159, filed July 22, 2019, at 15.

be a *per se* violation of a station's obligation to negotiate in good faith, the Commission stated that "we perceive no intent on the part of Congress that the reciprocal bargaining obligation interfere with the network-affiliate relationship or to preclude specific terms contain in network-affiliate agreements."<sup>7</sup> Nothing in C Spire's Petition supports the Commission abandoning this long-held and well-reasoned policy.

## **II. C Spire's Declaratory Ruling Request Is Premised On Inaccurate Assertions.**

An examination of the Petition and its accompanying Retransmission Consent Complaint reveals that C Spire's requested declaration is premised on false assertions and the requested grant would harm, not advance, longstanding congressional and Commission interests. Specifically, C Spire's Petition was filed in conjunction with a Retransmission Consent Complaint against Gray Television Group, Inc. ("Gray") regarding distribution of the CBS Network-affiliated programming stream of station WLOX(TV) licensed to Biloxi, Mississippi in connection with a modification of that station's television market.

Earlier this year the Commission modified WLOX(TV)'s local television market at C Spire's request to include the community of Diamondhead, Mississippi, which is located within the New Orleans Designated Market Area ("DMA"),<sup>8</sup> as part of what C Spire termed "its journey to bring local in-state signals to Diamondhead."<sup>9</sup> Indeed, as the Commission noted in granting the WLOX(TV) market modification, its market modification procedures are designed to implement "Congress's intent to promote consumer access to *in-state* and other relevant television

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<sup>7</sup> Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004: Reciprocal Bargaining Obligation, *Report and Order*, 20 FCC Rcd 10339, ¶ 33 (2005) (the "Good Faith Order").

<sup>8</sup> See *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. April 18, 2019) (the "Diamondhead MOO").

<sup>9</sup> Petition, at 7.

programming”<sup>10</sup> and in this instance would address that residents of Diamondhead are “deprived of in-state news, politics, sports, and weather.”<sup>11</sup>

C Spire states in its complaint that when it sought Gray’s consent to retransmit WLOX(TV)’s CBS program stream into Diamondhead, Gray informed C Spire that it could consent to the retransmission conditioned on simultaneous carriage of the in-DMA CBS affiliate from New Orleans based on a provision in its CBS network affiliation agreement.<sup>12</sup>

Apparently rather than reaching out to the in-DMA CBS affiliate to discuss potential distribution,<sup>13</sup> C Spire instead filed the Petition, claiming that any limitation on C Spire distributing WLOX(TV)’s CBS program stream in Diamondhead constitutes a *per se* violation of the FCC’s good faith rules.<sup>14</sup> C Spire in part bases this claim and its request for broad Commission relief, on the misleading statement that “CBS’s insistence to make the citizens of Diamondhead, and assumingly citizens in other similarly situated communities, pay for two CBS signals ... should be prohibited.”<sup>15</sup> In essence, a major portion of C Spire’s justification for its request is that a provision in a network affiliation agreement that relates only to the distribution of network-provided, non-local content is inhibiting its ability to provide local content of an in-state station to its MVPD subscribers.

To be clear, CBS has not imposed any obligation on any affiliate that limits the affiliate’s distribution of its local programming. With respect to the CBS network programming, CBS has

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<sup>10</sup> Diamondhead MOO, at ¶ 3. (Emphasis added).

<sup>11</sup> Id. at ¶ 7.

<sup>12</sup> To the extent CBS authorizes its broadcast affiliates to consent to retransmission of network programs by MVPDs outside the affiliate’s Nielsen DMA, it routinely conditions such carriage on the simultaneous retransmission of the CBS affiliate licensed to that Nielsen DMA.

<sup>13</sup> See *Comments of TEGNA Inc.*, MB Docket No. 19-159 (filed July 2, 2019), at 3.

<sup>14</sup> See Petition, at 10.

<sup>15</sup> Id., at 19-20.

not imposed any obligation on any affiliate that requires the affiliate to receive any monetary payment. Each CBS affiliate is able to determine the economic arrangement through which it will permit an MVPD to retransmit its CBS-affiliated program stream.

C Spire conveniently ignores that its broad request to restrict the terms of network affiliation agreements in no way advances its “journey” to bring local programming to Diamondhead residents. This is true due to the simple fact that the network affiliation agreement provisions to which C Spire objects, and which are the focus of both its Petition and Retransmission consent complaint, in no way limit the ability of any CBS affiliate, including WLOX(TV), from granting an MVPD the right to retransmit its local programming to viewers regardless of whether the network-provided content, which is inherently national, non-local content is also retransmitted.

Indeed, the local broadcast television stations owned and operated by CBS and its subsidiaries have found numerous creative ways to ensure that out-of-DMA viewers, including those in “orphan counties,” have access to the local programming they desire without infringing on the in-DMA CBS affiliate’s broadcast of national programs, including by offering to: (i) permit retransmission of its CBS-affiliated feed so long as the feed of the in-DMA affiliate is substituted over network programming (to help ensure the in-DMA affiliate receives the audience ratings credit), (ii) permit retransmission of just the local, non-network-affiliated programming in its CBS-affiliated feed with network programming blacked out, and (iii) make local, non-network content available to viewers on a video-on-demand basis.

At least as to affiliates of the CBS Network, any affiliate can similarly make its local content available for retransmission or other distribution by MVPDs to any local or in-state subscribers without limitation by the network affiliation agreement.

### **III. Conclusion**

As set forth herein, the Petition seeks a significant shift in Commission policy under the guise of advancing distribution of local content through a declaratory ruling that would restrict the ability of broadcast networks to limit distribution of their network, and therefore inherently non-local, programming. If granted, the petition would severely erode the network-affiliate relationship that provides for the robust television broadcast service Americans enjoy today. As a result, C Spire's request should be denied.

Respectfully submitted,  
CBS Corporation

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