

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

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

REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS

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August 12, 2019

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**I. INTRODUCTION AND SUMMARY**

The Media Bureau’s Public Notice in the above-captioned proceeding seeks comment on a narrow issue. It states that Telepak Networks, Inc. d/b/a/ C Spire Fiber (C Spire) “seeks a finding 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>1</sup> This proposed declaratory ruling, standing alone, does not raise concerns. In fact, it does little more than restate what everyone understands to be the existing obligations of broadcasters and multichannel video programming distributors (MVPDs) following a market modification.<sup>2</sup> Thus, C Spire’s request for declaratory ruling appears unnecessary at best.

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<sup>1</sup> *Clarification of the Ex Parte Status of, and Establishment of Comment Dates for, Telepak Networks, Inc.’s Petition for Declaratory Ruling*, Public Notice, MB Docket No. 19-159, DA No. 19-581 (Jun. 20, 2019) at 1 (Public Notice or Notice) (citing Retransmission Consent Complaint and Petition for Declaratory Ruling of Telepak Networks, Inc., d/b/a/ C Spire Fiber, MB Docket No. 19-159 (Jun. 3, 2019) at 19 (C Spire Petition)).

<sup>2</sup> Both broadcasters and MVPDs are required to negotiate in good faith for retransmission consent. Market modification decisions direct broadcasters to make an election of must carry or retransmission consent, and if a retransmission consent election is made, both parties are required to negotiate in good faith.

However, as discussed below, C Spire and other MVPD commenters are attempting to hoodwink the Commission into transforming the seemingly benign language in the proposed declaratory ruling to allow a level of governmental intrusion into both retransmission consent and network affiliation agreements that is unprecedented, unlawful and contrary to the public interest.<sup>3</sup> Significantly, C Spire and the MVPD parties would have the Commission rewrite the terms of the Gray-C Spire retransmission consent agreement,<sup>4</sup> Gray's affiliation agreement with CBS, and countless other retransmission consent and network affiliation agreements to improperly restrict both the ability of broadcast networks

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<sup>3</sup> As an initial matter, the FCC must be cognizant of C Spire's faulty, if not misleading, phrasing of its request that the Commission declare stations to be "in-DMA" in market modification communities for reciprocal retransmission consent purposes. See Public Notice at 1. As the FCC knows, Designated Market Areas (DMAs) are established by the Nielsen Company, and FCC market modification determinations do not affect the geographic boundaries of DMAs. A local TV station is "in-DMA" only if it is actually within the geographic boundaries of a Nielsen DMA. The FCC has never claimed it has authority to establish the boundaries of Nielsen DMAs or that market modifications have that effect. So while no TV stations object to the requirement that they negotiate retransmission consent with MVPDs serving market modification communities, the FCC should make clear that such requirement does not mean that the market modification communities at issue are within an affected station's DMA. To the extent C Spire is asking for a determination that a market modification changes the geographical boundaries of a station's DMA, rendering the station "in-DMA," its request should be rejected.

<sup>4</sup> Gray has identified three terms of its retransmission consent agreement with C Spire that would conflict with C Spire's carriage of WLOX in Diamondhead (two of which Gray offered to waive): (i) a blanket prohibition on any carriage of a multicast channel outside a station's DMA; (ii) a prohibition on carriage of a program stream outside a station's DMA unless the system also carries the in-market network affiliate; and (iii) a provision stating that Gray only grants consent to out-of-DMA carriage where such carriage is consistent with its affiliation agreement. Gray Media Group, Inc., Answer to Retransmission Consent Complaint, MB Docket No. 19-159, CSR-8978-C (Jun. 24, 2019) at Exhibit 2, page 1. While NAB does not have access to the actual retransmission consent agreement, C Spire has not disputed this description of the agreement's terms. Accordingly, C Spire's desired outcome hinges not only on rewriting network affiliation agreement terms, but retransmission consent agreement terms as well. While NAB is commenting on the broader application of C Spire's proposals and not the good faith complaint itself, we note that other retransmission consent agreements likely contain similar geographic limitations to effectuate the terms of network affiliation agreements.

to determine whether and how their content is used by affiliates, and the ability of stations to determine whether and how their signals are retransmitted.

Under Section 325 of the Communications Act, its legislative history and applicable FCC precedent, the Commission cannot lawfully dictate the terms and conditions of retransmission consent agreements (and certainly cannot alter the terms of existing agreements). The Commission also has previously acknowledged the importance of the network-affiliate relationship to our nation's system of local broadcasting and has appropriately rejected past proposals for governmental intrusion into the terms of network affiliation agreements in a manner that would interfere with geographic exclusivity. And in any event, even lawful changes to long-standing FCC policies regarding good faith negotiation of retransmission consent and network affiliation agreements can only be properly made through a notice and comment rulemaking, not shoehorned into a declaratory ruling request (let alone one requesting unlawful relief). Accordingly, the C Spire Petition should be denied.

## **II. THE DECLARATORY RULING REQUEST IS UNNECESSARY**

NAB initially observes that C Spire's requested declaratory ruling appears unnecessary, if the question at issue is truly limited to the narrow one set forth in the Public Notice.<sup>5</sup> C Spire's requested finding, as cited in the Notice, does little more than restate with some additional specificity what broadcasters and MVPDs already understand their good faith negotiation obligations to entail following a market modification. Market modification

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<sup>5</sup> The Public Notice (at 1) states that C Spire requests a finding that when the FCC modifies a TV station's market to include an additional community or communities, that station and its broadcast streams are considered to be in-DMA (*i.e.*, local) for reciprocal retransmission consent purposes in those communities. (See note 3, *supra*, for a discussion of the problematic "in-DMA" language.)

decisions direct broadcasters to make an election of must carry or retransmission consent, and, if a retransmission consent election is made, both the broadcaster involved and the MVPDs in the relevant market must negotiate in good faith.<sup>6</sup>

If the Commission remains faithful to the Public Notice's description of the request for declaratory ruling, there is little cause for concern. Indeed, there would be little cause for the declaratory ruling in the first instance. NAB encourages the Commission to confine its inquiry to the statement in the declaratory ruling and to find there is simply no need for a ruling, because there is no misconception about the obligations of the parties to retransmission consent negotiations. As discussed in detail below, however, C Spire has urged the Commission to adopt a much broader – indeed, unlawful – interpretation of the requested declaratory ruling language and the good faith negotiation requirements. The Commission should be wary of playing into C Spire's sleight of hand.

### **III. REWRITING RETRANSMISSION CONSENT AGREEMENT TERMS IS UNLAWFUL**

While it does not follow from the language of the proposed declaratory ruling, C Spire specifically states that it wants the Commission to interpret the ruling as follows: “a network affiliation agreement that restricts the ability of a broadcast station to grant consent to an MVPD to retransmit a broadcast station's stream that has been found to be local . . . should violate the Commission's rules.”<sup>7</sup> Moreover, unlike the declaratory ruling request itself, the

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<sup>6</sup> See 47 U.S.C. § 325(b)(3)(C) (reciprocal good faith negotiation requirement).

<sup>7</sup> C Spire Petition at 19. See *also* Comments of the Electric Plant Board of the City of Russellville, MB Docket No. 19-159 (Jul. 22, 2019) (EPB Comments); Comments of ACA Connects – America's Communications Ass'n, MB Docket No. 19-159 (Jun. 24, 2019) (ACA Comments). As discussed above, according to the record, C Spire's carriage of WLOX apparently is precluded not only by a network affiliation agreement but also by a retransmission consent agreement executed by C Spire and Gray. To the extent that other existing agreements contain similar provisions, the MVPDs' desired outcome is inconsistent with the broader retransmission consent system.

“relief” that C Spire and other MVPD commenters actually seek would directly contravene the Communications Act of 1934 (Act).

Section 325(b)(1) of the Act unequivocally prohibits a cable system or other MVPD from retransmitting a TV broadcast station’s signal without the station’s express consent.<sup>8</sup> The Act plainly states that no MVPD “shall retransmit the signal of a broadcasting station” except “with the express authority of the originating station.”<sup>9</sup> The language of the Act is clear: MVPDs do not have any rights to distribute a broadcast signal unless the broadcaster has provided consent to do so. There are no geographic restrictions on a broadcaster’s retransmission consent authority. Given this clear statutory directive, it would be unlawful for the FCC to step into the shoes of a broadcaster to grant an MVPD the right to retransmit a station’s signal over the broadcaster’s objections, regardless of a market modification.<sup>10</sup>

The relief sought by C Spire and other MVPDs also is inconsistent with the legislative history of Section 325(b), which makes clear that Congress intended to provide broadcast stations with the exclusive right to control others’ retransmission of their signals and to negotiate the terms and conditions of such retransmission through private agreements. Congress intended to create a free “marketplace for the disposition of the rights to retransmit broadcast signals” where the government would not “dictate the outcome of the ensuing marketplace negotiations.”<sup>11</sup> Based on the plain language and legislative history of

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<sup>8</sup> 47 U.S.C. § 325(b)(1).

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

<sup>10</sup> See *Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2728 (2011) (FCC stated that it “lacks authority” under § 325(b)(1) “to order carriage in the absence of a broadcaster’s consent”); *id.* (stating that the statute “expressly prohibits the retransmission of a broadcast signal without the broadcaster’s consent”).

<sup>11</sup> S. Rep. No. 102-92 at 36 (1991) (Senate Report).

Section 325(b), the FCC has consistently and correctly concluded that “Congress did not intend that the Commission should intrude in the negotiation of retransmission consent,”<sup>12</sup> as the substantive terms and conditions of carriage are to be negotiated privately by broadcasters and MVPDs, subject only to a mutual obligation to negotiate in good faith.

Modifications to the good faith standard made in the STELA Reauthorization Act of 2014 (STELAR) and the related FCC rule do not support C Spire’s proposal.<sup>13</sup> Section 103(b) of STELAR directed the Commission to amend its retransmission consent rules to “prohibit a television broadcast station from limiting the ability of a [MVPD] to carry into the local market (as defined in section 122(j) of title 17, United States Code) of such station a television signal that has been deemed significantly viewed . . . or any television broadcast signal such distributor is authorized to carry under section 338, 339, 340, or 614 of [the] Act, unless such stations are directly or indirectly under common de jure control permitted by the Commission.”<sup>14</sup>

As is clear from the statutory language, Congress intended Section 103(b) of STELAR to prohibit one station from limiting the ability of an MVPD to carry *a different station* that the MVPD is otherwise authorized to carry. Indeed, the provision does not even apply where the *stations* in question are commonly owned. And contrary to C-Spire’s position, this section certainly does not prohibit a station from entering into a network affiliation or retransmission

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<sup>12</sup> *Implementation of Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 15 FCC Red 5445, 5450 ¶ 14 (2000); accord *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 8 FCC Red 2965 (1993); see also *Mediacom Communications Corp. v. Sinclair Broadcast Group, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 35 (MB 2007).

<sup>13</sup> C Spire Petition at 14-18. See also Pub. L. No. 113-200, § 103(b); 47 U.S.C. § 325(b)(3)(C)(v); 47 C.F.R. § 76.65(b)(1)(ix).

<sup>14</sup> STELAR, § 103(b) (codified at 47 U.S.C. § 325(b)(3)(C)(v)).



consent agreement that limits the geographic area of *its own carriage*. Such an interpretation of this provision would, *inter alia*, fly in the face of TV stations' unfettered authority under Section 325 of the Act to control the retransmission of their own signals. In short, C Spire's irrational interpretation of Section 103(b) and the FCC's related rule is legally and factually unsupported and provides no justification for its request here.

The ability of broadcasters and MVPDs to freely negotiate the prices, terms and conditions of retransmission consent is critical to ensuring that viewers continue to enjoy the quality, quantity and diversity of programming available from local broadcast stations today. Rewriting the C Spire-Gray agreement to eliminate one or more conditions on C Spire's carriage of Station WLOX would undermine the retransmission consent system established by Congress. The broader relief sought would require the FCC to override a broadcaster's own determination about whether its station should be carried in a particular geographic area, directly contravening Section 325, its legislative history and decades of FCC decisions interpreting the law. The Commission must decline C Spire's and other MVPDs' invitation to dictate the specific terms of stations' retransmission consent agreements.<sup>15</sup>

#### **IV. THE COMMISSION HAS ALREADY CONSIDERED – AND CORRECTLY REJECTED – PROPOSALS TO REGULATE NETWORK AFFILIATION AGREEMENTS**

The network-affiliate system is a key element of the service local broadcasters provide to American viewers.<sup>16</sup> The system enables each local station to provide a unique

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<sup>15</sup> To the extent that C Spire desires the Commission to amend its good faith negotiation rules consistent with the limited authority it possesses in the retransmission consent area, C Spire's proper course would be to file a petition for rulemaking proposing lawful changes to the FCC's rules.

<sup>16</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 (Jul. 22, 2019) (Affiliate Association Comments) at 3, 13-16.

combination of entertainment and information to local audiences, including news, public affairs programming and life-saving coverage of emergencies and severe weather. The Commission should decline to upend this system by interfering with the ability of networks and stations to enter into arrangements that are built, in part, on geographic exclusivity. Any changes to the FCC's long-standing rules and policies in this area, moreover, cannot properly be made through a declaratory ruling but should only be considered via a notice and comment rulemaking proposing changes consistent with all statutory requirements.

Both Congress and the Commission have acknowledged the importance of the network-affiliate relationship to our system of local broadcasting, including its dependence on geographic exclusivity. MVPDs have repeatedly sought to undercut the network-affiliate system to their own advantage, and the FCC has repeatedly rebuffed those efforts.

For example, during the proceeding imposing reciprocal good faith negotiation requirements on MVPDs pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), the pay TV industry urged the FCC to declare certain network affiliation agreement terms to be good faith violations—including terms that limit the ability of a broadcaster to negotiate retransmission consent outside its DMA boundaries.<sup>17</sup> The Commission denied the request, finding that Congress had repeatedly “stressed the importance of” the network-affiliate system, citing legislative history from the Cable Competition and Consumer Protection Act of 1992 (1992 Cable Act), the Satellite Home Viewer Improvement Act of 1999 (SHVIA) and SHVERA.<sup>18</sup> The Commission “agree[d] with

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<sup>17</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, 10354 ¶ 33 (2005) (2005 Good Faith Order).

<sup>18</sup> *Id.* (citing Senate Report at 38 (“the Committee has relied on the protections which are afforded local stations by the FCC's network nonduplication and syndicated exclusivity rules. Amendments or deletions of those rules in a manner that would allow distant stations to be

[broadcasters] that neither the text nor the legislative history of the SHVIA or the SHVERA indicate a congressional intent to restrict the rights of networks and their affiliates through the good faith or reciprocal bargaining obligation to agree to limit an affiliate's right to redistribute affiliated programming."<sup>19</sup> Because the Commission "perceive[d] no intent on the part of Congress that the reciprocal bargaining obligation interfere with the network-affiliate relationship or to preclude specific terms contained in network-affiliate agreements," it declined to adopt the MVPD proposals.<sup>20</sup> The Commission held only that a broadcaster who receives a request for carriage by an out-of-market MVPD and is subject to geographic limitations on carriage must "at least inquire with its network whether the network would waive the limitation with regard to the MVPD in question."<sup>21</sup>

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substituted on cable systems for carriage [of] local stations carrying the same programming would, in the Committee's view, be inconsistent with the regulatory structure created in [the 1992 Cable Act]"); H.R. Rep. No. 106-464, Conference Report, Joint Explanatory Statement of the Committee of the Conference, at 92-93 (1999) (SHVIA Conference Report) ("the broadcast television market has developed in such a way that copyright licensing practices in this area take into account the national network structure, which grants exclusive territorial rights to programming in a local market to local stations either directly or through affiliation agreements . . . allowing the importation of distant or out-of-market network stations in derogation of the local stations' exclusive right – bought and paid for in market-negotiated arrangements – to show the works in question undermines those market arrangements." Congress structured the compulsory copyright license in SHVIA "to hew as closely to those arrangements as possible."); H.R. Rep. No. 108-634, 108th Cong., 2nd Sess. 19, at 11 (2004) (SHVERA House Report) ("[w]here a satellite provider can retransmit a local station's exclusive network programming but chooses to substitute identical programming from a distant network affiliate of the same network instead, the satellite carrier undermines the value of the license negotiated by the local broadcast station as well as the continued viability of the network-local affiliate relationship").

<sup>19</sup> 2005 Good Faith Order at ¶ 33.

<sup>20</sup> 2005 Good Faith Order at ¶ 33.

<sup>21</sup> 2005 Good Faith Order at ¶ 35. While NAB is not privy to all the communications between the parties here, there appears to be no disagreement in the record as to whether Gray was willing to modify its retransmission consent agreement with C Spire to remove the geographic restrictions, and that Gray sought a waiver of the geographic restrictions in its CBS affiliation agreement. Gray apparently obtained a waiver subject to the condition that C Spire carry the local CBS affiliate assigned to the same DMA as C Spire's cable system.

Nothing suggests that the Commission should disturb its previous conclusion. At that time, the cable market modification process had been in place for more than ten years, and the FCC was well aware that geographic limitations in network affiliation agreements were generally based on DMAs (not markets as defined by FCC action on market modification petitions).<sup>22</sup> C Spire's only cited authority for its proposal that the Commission interfere with network affiliation agreements is a statement that the FCC has "repeatedly examined" whether certain network involvement in retransmission consent negotiations should be a factor under its good faith negotiation rules.<sup>23</sup> C Spire is (partially) correct: the Commission *has* repeatedly examined this issue *and* has repeatedly *declined* to adopt any restrictions.<sup>24</sup>

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<sup>22</sup> 2005 Good Faith Order at ¶ 33 (certain "commenters assert that some networks, through their affiliation agreements, restrict a broadcaster's ability to grant retransmission consent outside of a specified geographic area, *often the broadcaster's DMA*"). See also Affiliate Association Comments at 10-11 (when the Commission adopted the 2005 Good Faith Order, "the market modification system was well established, and dozens of such modifications had been granted. The Commission knew that many stations had carriage markets that were larger (or smaller) than their DMAs. If the Commission meant to say that network territorial restrictions are acceptable as long as they permit retransmission in market modification communities, it would have said so. Instead, the Commission said the good faith rules were not meant to be a lever to force networks and their affiliates to change territorial limitations in network affiliation agreements.").

<sup>23</sup> C Spire Petition at 19 (citing *Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test*, Notice of Proposed Rulemaking, 30 FCC Rcd 10327 ¶ 14 (2015); *Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718 ¶ 22 (2011)).

<sup>24</sup> Chairman Wheeler concluded the STELAR-mandated review of the FCC's retransmission consent rules by stating that "[b]ased on the staff's careful review of the record, it is clear that more rules in this area are not what we need at this point . . . So, today I announce that we will not proceed at this time to adopt additional rules governing good faith negotiations for retransmission consent." *An Update on Our Review of the Good Faith Retransmission Consent Negotiation Rules*, FCC Blog, Chairman Tom Wheeler (Jul. 14, 2016), available at: <https://www.fcc.gov/news-events/blog/2016/07/14/update-our-review-good-faith-retransmission-consent-negotiation-rules>. The Commission also did not impose any restrictions on network-affiliate relationships as a result of its 2011 rulemaking notice on retransmission consent or its 2014 further notice in that proceeding.

Similarly, the Commission has declined to eliminate the network nonduplication and syndicated exclusivity rules, despite a decades-long effort by MVPDs urging removal of the rules. Both Congress and the FCC are keenly aware of the importance of geographic exclusivity to our current system of free over-the-air local broadcasting. When adopting STELAR, for example, Congress reiterated its goal of preserving the “localism regime by which television networks and stations serve individual communities with news, weather, and information,” and stressed that “[b]roadcast localism is based on the exclusive territorial rights granted to local affiliate stations by programming networks, which are reinforced by regulatory requirements established by the FCC.”<sup>25</sup> Time and time again, Congress has accounted for the network-affiliate relationship and geographic exclusivity as it develops laws and policies, and FCC actions have, in turn, reflected the will of Congress.<sup>26</sup>

Finally, it remains unclear whether the C Spire proposal would impair only the ability of networks and affiliates to negotiate geographic areas of MVPD carriage. C Spire states that “a network affiliation agreement that restricts the ability of a broadcast station to grant

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<sup>25</sup> H.R. Rep. No. 113-518, at 5 (2014).

<sup>26</sup> The Commission also has acknowledged the efforts of local broadcast stations to address “orphan” county issues through voluntary agreements that permit delivery of non-network programming to communities outside a station’s DMA. See, e.g., *Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014*, MB Docket No. 15-43, DA 16-613, at ¶¶ 108-111 (Jun. 3, 2016) (citing NAB Comments in MB Docket No. 15-43 at 16-17) (observing that while some agreements have been successful, MVPDs are sometimes reluctant to enter into such agreements because it would not be profitable to allocate an entire channel to an out-of-market broadcast signal and have to black out all but the locally produced programming). Stations continue to make this option available to MVPDs serving orphan counties today. See, e.g., Petition for Special Relief (KDVR) of La Plata County, CO, MB Docket 16-366 (Sept. 7, 2016), at Exhibit H; Petition for Special Relief (KCNC) of La Plata County, CO, MB Docket 16-367 (Sept. 7, 2016), at Exhibit H; Petition for Special Relief (KMGH) of La Plata County, CO, MB Docket 16-368 (Sept. 7, 2016), at Exhibit H; and Petition for Special Relief (KUSA) of La Plata County, CO, MB Docket 16-369 (Sept. 7, 2016), at Exhibit H (each offering to enter into voluntary agreements for local, non-network programming in LaPlata and Montezuma counties).

consent to an MVPD to retransmit a station's broadcast stream that has been found to be local under section 534 should violate the Commission's rules."<sup>27</sup> This broad language suggests that *any* restriction – not just geographic ones – on the ability to grant retransmission consent should violate the rules. But network affiliation agreements typically contain limitations on a station's ability to negotiate retransmission consent to guard against a variety of potential harms. For example, affiliation agreements may restrict retransmission consent that would result in: (i) diminishing other stations' content distribution rights; (ii) a higher risk of content piracy; (iii) preventing audience measurement; and/or (iv) general entertainment programming appearing in "channel neighborhoods" with programming clearly aimed at adult audiences.<sup>28</sup>

Broadcast networks have reasonable, legitimate interests in preserving geographic exclusivity and guarding against their content being misused, and these interests are effectuated through their affiliation agreements. Neither C Spire nor the MVPD commenters have identified any legal authority for the Commission to interfere in stations' agreements with networks in the manner they propose here.

## **V. CONCLUSION**

As set forth in the Public Notice, the declaratory ruling sought by C Spire does not appear to seek anything more than what the law already requires. What C Spire and other MVPDs hope to achieve through their interpretation of the proposed ruling's language, however, is another matter entirely. They want the Commission to ban network affiliation

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<sup>27</sup> C Spire Petition at 19.

<sup>28</sup> See *also* Affiliate Association Comments at 15 (discussing additional provisions of network affiliation agreements affecting retransmission consent including retransmitting programming simultaneous with the live broadcast; retransmitting programming at a certain level of picture quality; retransmission of network programming in its entirety; "and the list goes on").

agreement conditions on retransmission consent—a proposal which the FCC already has considered and rejected. They also would have the Commission rewrite existing retransmission consent agreements that effectuate the terms of network affiliation agreements and ban provisions that ensure territorial exclusivity, a central feature of the network-affiliate relationship. Such governmental intrusion into both retransmission consent and network affiliation agreements is unprecedented, unlawful and contrary to the public interest. Accordingly, NAB urges the Commission to deny the Petition.

Respectfully submitted,

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August 12, 2019

**Certificate of Service**

I, Jerianne Timmerman, hereby certify that on this 12<sup>th</sup> day of August, 2019, I caused the foregoing "Reply Comments of the National Association of Broadcasters" to be mailed via first class posted prepaid mail:

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