

**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. |) | |
| |) | |
| Gray Television Group, Inc. |) | |
| |) | |

REPLY COMMENTS OF PINE BELT COMMUNICATIONS, INC.

Pine Belt Communications, Inc. (“Pine Belt”), by counsel, hereby submits these reply comments in support of the Petition for Declaratory Ruling (“Petition”) filed by Telepak Networks, Inc. d/b/a C Spire Fiber (“C Spire” or “Petitioner”) in the above-captioned proceeding.¹ Only three parties filed comments in response – ACA Connects – America’s Communications Association (“ACA”), the Electric Plant Board of the City of Russellville (“RPB”), and the Networks Affiliates Associations (the “Affiliates Associations”).² Pine Belt generally supports ACA and RPB’s position that existing rules should not allow network affiliation agreements to “abrogate” the market modification process or good faith bargaining obligations.³ Moreover, Pine Belt generally opposes the Affiliates Associations’ position that

¹ *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 (rel. June 20, 2019) (“Public Notice”).

² Comments of the ACA Connects – America’s Communications Association, MB Docket No. 19-159 (filed Jul. 22, 2019) (“ACA Comments”) (incorporating ACA’s earlier comments filed in response to the Retransmission Consent Complaint filed by C Spire (“Attachment”)); Comments of the Electric Plant Board of the City of Russellville, MB Docket No. 19-159 (filed Jul. 22, 2019) (“RPB Comments”); Joint Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates, MB Docket No. 19-159 (filed Jul. 22, 2019) (“Affiliates Association Comments”).

³ ACA Comments at 2; RPB Comments at 3.

network territorial restrictions do not violate the good faith bargaining rules and the Petition should be denied because the issue has previously been considered and rejected.

Pine Belt shares the concerns raised by the Petitioner regarding “the good faith negotiation status of stations deemed local as a result of market modifications granted by the [Federal Communications] Commission” (“FCC” or the “Commission”) and supports the relief requested by C Spire.⁴ Pine Belt also reiterates its own position that the current market determination system, Designated Market Areas (“DMAs”), unnecessarily interferes with good faith negotiations for retransmission consent.⁵ Therefore, Pine Belt urges the Commission to issue a declaratory ruling that when the Commission modifies a market to add communities served by a significantly viewed station, that all of the station’s streams are also considered to be in that market for the purposes of retransmission consent negotiations.⁶

Much like C Spire and RPB, Pine Belt has video subscribers in communities that are a part of an out-of-state DMA and has concerns of its subscriber communities being “underserved by the broadcast stations in the current DMA because they are deprived of in-state news, politics, sports, and weather.”⁷ Pine Belt has encountered difficulties, similar to those of C Spire and RPB, in obtaining retransmission consent to deliver local or significantly viewed stations to

⁴ Retransmission Consent Complaint and Petition for Declaratory Ruling, MB Docket No. 19-159, at 18 (filed Jun. 3, 2019), (“*Petition*”).

⁵ Letter from Donald L. Herman, Jr., Counsel to Pine Belt Communications, to Marlene Dortch, Secretary, Federal Communications Commission, at 2 (filed Oct. 30, 2017) (Pine Belt *Ex Parte*); Reply Comments of Pine Belt Communications, WC Docket No. 17-317, at 2-3 (filed Mar. 26, 2019) (“Pine Belt Reply”).

⁶ Retransmission Consent Complaint and Petition for Declaratory Ruling, MB Docket No. 19-159, at 18 (filed Jun. 3, 2019), (“*Petition*”).

⁷ *Petition* at 8 (citing *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, ¶ 9, n.29 (rel. Apr. 18, 2019) (“WLOX and WXXV Market Modification Order”); *see also* RPB Comments at 1-3 (obtaining market modification in Kentucky to address the lack of access to television broadcast station signals that originate in the same state).

subscribers who would prefer them to more distant, out-of-state options. Broadcasters have sought to have cable operators pay for and carry additional undesired out-of-state signals, the cost of which ultimately ends up passed on to subscribers. Thus, Pine Belt echoes C Spire's and RPB's frustrations with some broadcast networks' attempts to utilize designated markets unfairly in negotiations for carriage of local and significantly viewed stations.

As evidenced by the Petition and the comments filed in response to the Petition, DMA boundaries are being used by broadcasters as leverage in retransmission negotiations in violation of the Commission's good faith rules.⁸ This is not news to many rural cable operators, including Pine Belt. Pine Belt previously told the Commission in 2017 that DMA boundaries, in general, present the potential to impede good faith negotiations.⁹ In early 2019, Pine Belt recommended that the Commission consider eliminating the arbitrary DMA borders altogether as a "common-sense way to reform retransmission negotiations."¹⁰ Pine Belt asserts that eliminating DMAs would reduce the geographical constraints placed on cable operators and enable cable operators to choose which broadcast stations they wish to receive and negotiate accordingly.¹¹ Instead of being forced to carry and pay for additional, out-of-state signals in order to receive in-market stations, the elimination of DMAs would allow for open market negotiations to set the terms for retransmission consent.

Moreover, the Commission should reject the Affiliates Associations' assertion that the Commission has sufficiently addressed the issue in its *2005 Good Faith Order*.¹² Given the various advances in technology and changes to the telecommunications ecosystem that have

⁸ *Petition* at 8; ACA Comments, Attachment at 2; RPB Comments at 3.

⁹ Pine Belt *Ex Parte* at 2.

¹⁰ Pine Belt Reply at 2-3.

¹¹ *Id.*


¹² Affiliates Associations Comments at 9-11.

occurred over the course of the last fifteen years, particularly with respect to video content distribution, the argument that an Order issued in 2005 should render legitimate consumer and distributor concerns fruitless and prohibit the Commission from considering how customers are currently being served is self-serving and against public interest. There are unnecessary price increases and blackouts forced on cable operators resulting from territorial limitations in network affiliation agreements which are ultimately being passed down to customers and the Affiliates Associations fail to explain how this does not violate the good faith rules. Thus, the Commission should examine how these territorial restrictions are affecting the obligation to negotiate in good faith.

Alternatively, and at a minimum, the Commission should issue a declaratory ruling clarifying that these bad faith negotiating tactics used by broadcasters are not allowed under the Commission's rules, regardless of any restrictions in a network-affiliation agreement or otherwise. Pine Belt continues to believe that DMA boundaries should not be used as a barrier to a community receiving local and significantly viewed stations and therefore, urges the Commission to prevent broadcasters from limiting their ability to negotiate for retransmission consent based on geographical restrictions.

Respectfully submitted,

PINE BELT COMMUNICATIONS, INC.

By: 
Donald L. Herman, Jr.
Molly O'Connor
Herman & Whiteaker, LLC
6720B Rockledge Drive, Suite 150
Bethesda, MD 20817
Its Attorneys

August 12, 2019