

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

In the matter of )
)
FANT BROADCASTING COMPANY OF )
NEBRASKA, INC. (Assignor) )
and ) File Nos. BALCT-19960723KJ, KL
) Facility ID Nos. 21160, 21162
PAPPAS TELECASTING OF CENTRAL )
NEBRASKA (Assignee) )
)
For assignment of Licenses of Stations KHGI-TV, )
Kearney, Nebraska, and KWNB-TV, Hayes )
Center, Nebraska )
and )
)
FANT BROADCASTING COMPANY OF )
NEBRASKA, INC. (Assignor) )
and ) File Nos. BALCT-19970128IA-ID
) Facility ID Nos. 21161, 21164, 21167, 21165
COLINS BROADCASTING COMPANY )
(Assignee) )
)
For assignment of Licenses of Stations KSNB-TV, )
Superior, Nebraska, and Television Translator )
Station K17CI, Beatrice, Nebraska, and K22CX )
and K18CD, Lincoln, Nebraska )

MEMORANDUM OPINION AND ORDER

Adopted: March 3, 2004

Released: May 4, 2004

By the Commission: Commissioners Copps and Adelstein dissenting and issuing a joint statement.

1. The Commission has before it an Application for Review filed on March 29, 1999, by Citadel Communications, L.L.C. (Citadel). Citadel requests review of a February 17, 1999 letter decision of the Chief, Video Division, Media Bureau. The letter decision denied Citadel's Petition to Deny the assignment of the licenses for KHGI-TV and KWNB-TV from Fant Broadcasting Company of Nebraska, Inc. (Fant) to Pappas Telecasting of Central Nebraska (Pappas); denied Citadel's Informal Objection to the assignment of the license for KSNB-TV from Fant to Colins Broadcasting Company (Colins); and granted the above-captioned license assignment applications.

2. Citadel claims the following grounds for review: (1) Fant's sale of substantially all of the assets of the three stations to Pappas, in combination with a time brokerage agreement or local marketing agreement (LMA), prior to receiving Commission consent constituted an unauthorized transfer of control

in violation of Section 310(d) of the Communications Act; (2) the staff erred by ruling that Pappas did not remain the real-party-in interest in the KSNB-TV assignment after a major amendment was filed substituting Colins as the assignee; and (3) the combination of Pappas' proposed LMA with KSNB-TV and ownership of the station's assets violated the Commission's LMA policy.

3. We find that the above arguments, which were raised by Citadel in prior pleadings, were thoroughly considered and properly resolved by the staff, and we uphold the staff decision for the reasons stated therein. There is no reason to disturb it. *See WAMC, Inc.*, 10 FCC Rcd 12219 (1995). For the first time on appeal, Citadel argues that the staff should have taken into account the fact that through the transactions with Fant and Colins, Pappas would control six stations serving the Omaha and the Lincoln-Hastings-Kearney DMAs and should have conditioned the validity of Pappas' LMA of KSNB-TV on the outcome of the Commission's then ongoing rulemaking proceeding regarding the attribution of broadcast interests. We disagree. Pappas' television station ownership was fully in compliance with our former duopoly rule, which precluded one entity from owning two television stations with Grade B overlap. While Pappas was the licensee of KPTM-TV, Omaha, Nebraska, there was no Grade B contour overlap between KPTM-TV and KHGI-TV and its satellite station, KWNB-TV. Similarly, Pappas' LMA agreements with KSNB-TV and with KXVO-TV, Omaha, Nebraska and KTVG-TV, Grand Island, Nebraska, were not attributable under our multiple ownership rule, nor did they confer to Pappas control over those stations. Finally, since the LMA between Fant and Pappas was consistent with the Commission's rules then in effect, there was no staff error in not delaying consideration of the assignment of the licenses.

4. Accordingly, IT IS ORDERED, that the Application for Review filed by Citadel Communications, L.L.C., IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**JOINT STATEMENT OF  
COMMISSIONERS MICHAEL J. COPPS AND JONATHAN S. ADELSTEIN  
DISSENTING**

*Re: Fant Broadcasting Company of Nebraska, Inc. (Assignor) and Pappas Telecasting of Central Nebraska (Assignee) For Assignment of Licenses of: Stations KHGI-TV, Kearney, Nebraska, and KWNB-TV, Hayes Center, Nebraska, and Fant Broadcasting Company of Nebraska, Inc. (Assignor) and Colins Broadcasting Company (Assignee) For Assignment of Licenses of Station KSNB-TV, Superior, Nebraska, and Television Translator Station K17CI, Beatrice, Nebraska, and K22CX and K18CD Lincoln, Nebraska.*

On June 2<sup>nd</sup>, the Commission significantly weakened its media concentration protections and allowed corporations to own even more stations in each market. As media consolidation increases, the Commission must be vigilant in investigating relationships between companies to ensure that they do not exercise control over other stations in the market in excess of the few limits that remain. Today, however, the Commission demonstrates that it intends to look the other way when licensees to push the consolidation envelope even further.

We believe the transactions presented here raise questions of fact requiring further investigation. As petitioners point out, several facts related to the transfer of the Fant stations to Pappas and Colins call into question whether there was a premature transfer of control and whether Colins is truly an independent buyer. Moreover, there are questions of whether the LMA in combination with having paid upfront over 90 percent of the value of the station and retaining an option to purchase the license renders the Colins stations attributable to Pappas. Further, there is the question of whether the Fant-Pappas-Colins transaction was structured to allow Pappas to pay almost all of the purchase price of the Fant stations and Colins to obtain one of the stations at a small fraction of its value.

Taken as a whole, the structure and value of the transaction raise a number of questions of fact related to these transactions. We believe that we cannot grant these applications without further review. We would therefore have designated these applications for a hearing.