

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Application of
PAPPAS TELECASTING OF THE CAROLINAS
(Assignor)
and
MEDIA GENERAL BROADCASTING OF SOUTH CAROLINA HOLDINGS, INC.
(Assignee)
For Consent to the Assignment of
WASV-TV, Asheville, North Carolina
File No. BALCT-20010727ABS
Facility ID No. 70149

MEMORANDUM OPINION AND ORDER

Adopted: January 14, 2002

Released: January 15, 2002

By the Chief, Mass Media Bureau:

1. The Chief, Mass Media Bureau, acting pursuant to delegated authority, herein considers the above-captioned application to assign the license of WASV-TV, Channel 62 (UPN), Asheville, North Carolina, from Pappas Telecasting of the Carolinas ("Pappas") to Media General Broadcasting of South Carolina Holdings, Inc. ("Media General"). This application is unopposed.

2. Media General currently programs WASV pursuant to a local marketing agreement dated March 26, 1996. Media General is also the licensee of WSPA-TV, Channel 7 (CBS), Spartanburg, South Carolina, which is located in the same DMA (Greenville-Spartanburg (South Carolina) - Asheville (North Carolina) - Anderson (South Carolina)) as, and has overlapping Grade B signal contours with, WASV. Because this would be the second station in the DMA licensed to Media General, its proposed acquisition of WASV is governed by Section 73.3555(b)(2) of the Commission's Rules, 47 C.F.R. §73.3555(b)(2). That rule provides, in pertinent part, that the same entity may own or control two television stations in the same market so long as: (i) at the time the application is filed, at least one of the stations is not ranked among the top four stations in

1 Media General is the successor-in-interest to the local marketing agreement as a result of its acquisition of Spartan Communications, Inc. in March 2001, which had entered into that agreement with Pappas. Spartan simultaneously acquired an option to acquire WASV, which Media General succeeded to and, in this transaction, exercises.

audience rankings in the DMA; and (ii) at least 8 independently owned and operating full-power commercial and noncommercial educational television stations would remain in the market after the proposed acquisition. WASV is not ranked among the top four stations in the DMA, but there would not be 8 remaining independently owned and operating television stations in the Greenville-Spartanburg (South Carolina) – Asheville (North Carolina) – Anderson (South Carolina) DMA following the proposed merger. Accordingly, Media General requests a waiver of Section 73.3555(b)(2) of the Commission's Rules to permit it to acquire WASV on the basis that it is a "failing" station.<sup>2</sup>

**3. Duopoly Waiver.** The Commission's *Local Ownership Order* established the criteria for a waiver of the television duopoly rule for a "failing station" -- one which has been struggling for "an extended period of time both in terms of its audience share and financial performance." These criteria are:

(a) One of the merging stations has had a low all-day audience share (*i.e.*, 4 percent or lower);

(b) The financial condition of one of the merging stations is poor. "A waiver is more likely to be granted where one . . . of the stations has had a negative cash flow for the previous three years;"

(c) The merger will produce public interest benefits. "A waiver will be granted where the applicant demonstrates that the tangible and verifiable public interest benefits of the merger outweigh any harm to competition and diversity;" and

(d) The in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station; selling the station to an out-of-market buyer would result in an artificially depressed price.<sup>3</sup>

If the applicant satisfies each criterion, a waiver of the rule will be presumed to be in the public interest. 14 FCC Rcd at 12939. Moreover, in the case of LMAs, applicants may seek a waiver based on circumstances as they existed at the time just prior to the parties entering into the LMA. 14 FCC Rcd at 12964. It appears that Media General has satisfied

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<sup>2</sup> 47 C.F.R. §73.3555, Note 7. *See also Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12935-40 (1999) ("*Local Ownership Order*"), *recon. granted in part*, 16 FCC Rcd 1067 (2001) ("*Local Ownership Reconsideration*").

<sup>3</sup> 14 FCC Rcd at 12939. Ordinarily, the applicant for a failing station duopoly waiver must demonstrate that active and serious efforts were made to sell the station to an out-of-market buyer and the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station. However, this showing is not required of a waiver applicant that seeks to acquire a station with which it formed an LMA arrangement prior to the adoption of the *Local Ownership Order* in August 1999. *See Local Ownership Reconsideration*, 16 FCC Rcd at 1077. Such is the case here, where the LMA arrangement for WASV has existed since March 1996.

each of the above criteria such that we can presume that waiver of the duopoly rule, as requested in this case, is in the public interest.

4. **Ratings.** Media General has submitted Nielsen ratings information for the Greenville-Spartanburg (South Carolina) – Asheville (North Carolina) – Anderson (South Carolina) market that demonstrates that, between 1993-96, the three years prior to the LMA, WASV had an all-day audience share of less than 4 percent. That information reveals that prior to the LMA, WASV's viewership was so small that it failed to meet Nielsen's minimum reporting standards. The station achieved its first reportable audience share in November 1997.

5. **Financial Condition.** Media General has submitted financial information supporting a finding that it meets the "poor financial condition" prong of the "failing" station test. In this regard, Media General notes that Pappas acquired the station in August 1995, and reports that no detailed financial records for the time between March, 1993 and December 1994, the first 21 months of the relevant three-year, pre-LMA period, were kept by the prior owners of the station. Nevertheless, it maintains that WASV's poor financial condition at that time is evidenced by the following facts. The station was silent between March 1993 and April 1994 – and therefore not generating any income. Between April and December 1994, the station operated at extremely low power (12 kW) rebroadcasting an all-religious television station's programming to a small population, and did not generate any sales revenues. Media General claims that it is appropriate to assume that if financial records for this period did exist, they would show a loss, particularly in light of the station's later-documented financial performance. At the time Pappas acquired the station in August 1995, it was still rebroadcasting religious programming with a low power facility, and its year-end financial statement indicated that it had no revenues in 1995 and an operating loss of \$105,917.

6. Media General states that WASV's tower collapsed in January of 1996, and the station was dark for the first quarter of that year and had no operating revenues. Other than income earned on payments after it entered into the LMA arrangement with Spartan in March of that year (excluded to reflect the pre-LMA financial condition of the station), Media General asserts that the station had no income from operations against \$83,262 in expenditures for that quarter. Thus, Media General asserts that it has demonstrated the station's dire financial position during the relevant three-year, pre-LMA period. Based upon this analysis of the station's ratings and finances between March 1993 and March 1996, we conclude that Media General has satisfied the first two criteria established in the *Local Ownership Order* to raise a presumption that a "failing station" waiver of the duopoly rule would be in the public interest.

7. **Public Interest.** As to the public interest benefits to be achieved in this case, Media General notes that it has already made and will continue to make a financial commitment to significantly upgrade the station's facilities (including the conversion to digital television operations). It notes that its efforts have resulted in the acquisition of broadcast network and non-network programming that has transformed the station into a competitive and viable voice in the community. Media General also pledges to continue

to carry local programming and public service announcements made possible by the combined operation (equipment and personnel) of the two stations (*e.g.*, minority scholarship, humane society, hurricane and flood relief telethons, local youth programming, local sporting events, in excess of the three-hour core minimum of children's programming); to continue to regularly convene advisory councils of area community representatives to ascertain issues to be addressed by its local programming; and to continue its off-air public service (*e.g.*, food drives, contributions to local school fund-raisers, blood drives, and volunteering and youth mentoring efforts).

8. Moreover, upon its acquisition of the station and using the combined resources of both WASV and WSPA, Media General commits to develop a new weekday prime-time 30-minute newscast on WASV targeted to younger viewers, with a projected start in the first quarter of 2002. It asserts that such a program would not only represent the station's first-ever regularly scheduled news program, but also one of the few UPN-affiliate newscasts in a market ranked below the top 30. Media General maintains that such a program on WASV could not otherwise be justified, but that the efficiencies of joint operation will make such an investment sustainable along with its other programming and non-programming efforts.

9. Based on this information and Media General's representations described above, we believe that the applicant has demonstrated specific public interest benefits consistent with the presumptive waiver of the duopoly rule for failing stations as outlined by the Commission in *Local Ownership Order*.

10. **Conclusions.** The applicant has submitted sufficient information to show that one of the merging stations has had a low all-day audience share of 4 percent or lower, that the financial condition of one of the stations is poor, and that the proposed acquisition of this station will produce verifiable public interest benefits such that it has demonstrated that the grant of a "failing station" waiver of the multiple ownership rule is warranted. Moreover, we have reviewed the assignment application, and find that the applicants are fully qualified, and that the grant of that application, as described herein, will serve the public interest, convenience and necessity.<sup>4</sup>

11. Accordingly, IT IS ORDERED, That the request for a "failing station" waiver of the television duopoly rule, Section 73.3555(b)(2), to permit Media General to own and operate both WASV and WSPA-TV, IS GRANTED.

12. IT IS FURTHER ORDERED, That the application (BALCT-20010727ABS) for consent to the assignment of license of WASV(TV), Asheville, North Carolina, from

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<sup>4</sup> Media General also notes that WASV places a *predicted* Grade A signal over all of Marion, NC, where it operates a weekday newspaper, *The (Marion) McDowell News*. Media General asserts, however, that mountainous terrain precludes WASV's *actual* Grade A signal from encompassing Marion, and submits an engineering study, using Longley-Rice methodology, to support its assertion. Therefore, Media General asserts that no waiver of the newspaper/television cross-ownership rule (47 C.F.R. §73.3555(d)) is necessary in this case. We agree that no such waiver is required in this case. *Cf. KCRA License Corp.*, 15 FCC Rcd 1794, 1795 n.2 (1999); *Heritage Media Services, Inc.*, 13 FCC Rcd 5644, 5648 (1998).

Pappas Telecasting of the Carolinas to Media General Broadcasting of South Carolina Holdings, Inc., IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau