



NEWS

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See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

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JOINT STATEMENT OF COMMISSIONERS AJIT PAI AND MICHAEL O'RIELLY ON THREE MORE TV STATIONS GOING DARK UNDER THE FCC'S NEW JSA POLICY

Just two months ago, we predicted that the FCC's decision to restrict television stations' use of joint sales agreements (JSAs) would drive many stations out of business. We're well on our way. In addition to three stations in South Carolina and Alabama that are slated to go dark as a result of the FCC's new policy,¹ three stations in Nebraska and North Dakota recently went off the air.

Specifically, as a result of the FCC's crackdown, and after more than 58 years of providing service to Central Nebraska and Northern Kansas, KHAS in Hastings, Nebraska went dark eleven days ago. That same day, KNDX in Bismarck, North Dakota and KXND in Minot, North Dakota also went off the air because of the Commission's decision.

Before the Commission's restriction on JSAs, agreements were in place to save these three stations.

- KHAS, an NBC-affiliate, was slated to be purchased by Excalibur Broadcasting. Pursuant to the deal, KHAS would have had a JSA with KSNB, a MyNetworkTV and Me-TV affiliate owned by Gray Television.
- KNDX and KXND, FOX affiliates, were going to be purchased by Excalibur Broadcasting. Pursuant to the deal, those stations would have had JSAs with KFYZ and KMOT, NBC affiliates owned by Gray Television.

These transactions, however, were blocked by the Commission's new rules prohibiting the use of JSAs in these markets.

So what has the Commission's JSA crackdown yielded?

- Gray Television's KSNB is now serving as the NBC affiliate, MyNetworkTV affiliate, and Me-TV affiliate for Central Nebraska through use of its multicast channels, while KHAS has gone out of business.
- Gray Television's KFYZ is now serving as the NBC affiliate and FOX affiliate for Bismarck through use of its multicast channels, while KNDX has gone out of business.

¹ See Statement of Commissioners Ajit Pai and Michael O'Rielly on the Negative Impact of the Decision to Restrict Television Stations' Use Of Joint Sales Agreements (May 29, 2014), <http://go.usa.gov/9N7V>.

- Gray Television's KMOT is now serving as the NBC affiliate and FOX affiliate for Minot through its use of multicast channels, while KXND has gone out of business.

And that is not all. Gray Television has also announced that three more stations—KXJB in Fargo, North Dakota; KAQY in Monroe, Louisiana; and KJCT in Grand Junction, Colorado—will soon go dark because of the Commission's JSA restrictions. Their programming will be transferred to Gray stations in those markets.

As a result, Gray Television will earn a *greater* share of local advertising revenue in Hastings, Bismarck, Minot, Fargo, Monroe, and Grand Junction than would have been the case with the JSAs that were originally proposed.

Are these the victories for competition that critics of sharing agreements were hoping to see? Or has the real goal all along just been to drive television stations off the air?

We hope that Gray Television succeeds in its efforts to find a buyer for KHAS, KNDX, and KXND so these stations can return to the airwaves. We also hope that the company is able to find a buyer for KXJB, KAQY, and KJCT so these stations will only be off the air for a limited period of time. But it could be difficult for a station to be viable in markets of this size over the long term with neither a major network affiliation nor a sharing agreement. That's proving to be a feature, not a bug, of the FCC's new rules.