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

In the Matter of:	)	
	)	
LeSEA Broadcasting Corp.	)	
	)	CSR-6103-M
v.	)	
	)	
Cox Communications Kansas, L.L.C.	)	
	)	
Request for Mandatory Carriage of	)	
Television Station KWHB-TV,	)	
Tulsa, Oklahoma	)	

ORDER ON RECONSIDERATION

Adopted: March 29, 2004 **Released: April 5, 2004**

By the Deputy Chief, Media Bureau:

1. LeSEA Broadcasting Corp. ("LeSEA"), licensee of television broadcast station KWHB-TV, Tulsa, Oklahoma ("KWHB" or the "Station") filed the above-captioned must carry complaint against Cox Communications Kansas, L.L.C. ("Cox"), for failing to carry KWHB on its cable television systems serving Montgomery County, Kansas in the Tulsa, Oklahoma designated market area (DMA), specifically Coffeyville, Cherryvale, Caney and Tyro, Kansas (the "cable communities"). In our *Order*[1] addressing the complaint, we conditionally granted LeSEA's complaint. We stated that cable operators have the burden of establishing that a commercial television station is not entitled to carriage. The *Bureau Order* further stated that if a cable operator claimed that a station failed to deliver a signal of adequate strength, this allegation must be supported by signal strength tests that comply with good engineering practices. To support its claim that LeSEA did not provide an adequate signal, Cox submitted tests conducted at Cherryvale and Parsons, Kansas,[2] which we found did not comply with good engineering practices. There was also apparent confusion regarding which site was the principal headend of Cox's cable system.[3] Although we conditionally granted LeSEA's complaint, we authorized Cox to conduct new signal quality tests at its principal headend and to submit the results to the Commission's Media Bureau which would then "decide the issue on reconsideration."[4]

2. In response to the *Bureau Order*, Cox submitted a pleading entitled "Supplement," which included new signal quality tests. As indicated in the *Bureau Order*, Cox's Supplement is actually a Petition for Reconsideration. LeSEA submitted an Opposition to the Petition for Reconsideration, and

[1] *LeSEA Broadcasting Corp. v. Cox Communications, L.L.C.*, 18 FCC Rcd 11469 (2003) ("*Bureau Order*").

[2] Parsons is approximately 16 miles northeast of Cherryvale.

[3] *LeSEA Broadcasting Corp.*, 18 FCC Rcd at 11471-2.

[4] *Id.* at 11473.

Cox submitted a Reply to Opposition.[5] For the reasons discussed, we grant Cox's Petition for Reconsideration.

3. Cox in its Petition for Reconsideration designated Parsons, Kansas as the principal headend of the cable system. Cox explains that it does not maintain a tower or microwave antennas at the Parsons facility, but imports television broadcast signals from various receive sites in Kansas, including Cherryvale, to Parsons by fiber networks. At its principal headend in Parsons, Cox explains that the broadcast signals are processed and combined with satellite delivered cable programming into specific channel line-ups, which are then transported over Cox's fiber network to the appropriate hub, including a hub located in Coffeyville which serves the cable communities. Cox also explains that it has identified Parsons as the system's principal headend in numerous filings with the Commission that predate LeSEA's complaint.[6] Cox further explains that it conducted new signal strength tests at Parsons that reflect that it does not receive a discernable signal from KWHB. Thus, Cox claims KWHB does not deliver a good quality signal to Parsons, and does not qualify for mandatory carriage in the cable communities.[7] Cox also asserts that LeSEA is solely responsible for delivering KWHB's signal to the headend at Parsons.[8]

4. LeSEA's Opposition states that the cable system serving the cable communities has its principal headend in Cherryvale, not Parsons. LeSEA argues that the evidence that Cherryvale, and not Parsons, is Cox's principal headend includes the signal quality tests conducted by Cox involving KWHB's signal at Cherryvale, Cox's failure to previously designate Parsons as the principal headend, the necessity for the separate cable system serving the cable communities to have its own headend as opposed to designating Parsons as the single principal headend for multiple cable systems, and the fact that Cox's tower and processing equipment are located at Cherryvale.[9] LeSEA further explains that Parsons does not qualify as a principal headend because it serves no subscribers within 35 miles, and has no tower or broadcast or microwave antennas to receive off-air television signals, instead importing television signals over a fiber network.[10] LeSEA also argues that if cable systems were allowed to "collapse" a number of cable systems into a single headend,, the distance between this principal headend and television stations seeking carriage might be so great, it would be impossible for the stations to deliver a good quality signal.[11] Finally, LeSEA explains that even if Parsons were the headend, the signal strength test should be conducted at the first active piece that processes its television signal which is at Cherryvale.[12]

5. A review of the signal strength tests resubmitted by Cox reflects that the signal quality test discrepancies noted in the *Bureau Order* have been resolved. The tests submitted as part of Cox's Petition for Reconsideration comply with good engineering practices, and indicate that KWHB does not provide a good quality signal at Parsons. We also find that Cox's headend is at Parsons rather than

[5] Because Cox's Supplement is appropriately a Petition for Reconsideration of the *Bureau Order*, Cox's argument that LeSEA was not entitled to file an Opposition is without merit.

[6] Petition for Reconsideration at 2-4, and Exhibits A and B.

[7] *Id.* at 4-5, and Exhibit B.

[8] *Id.* at 5-7.

[9] Opposition at 2-5.

[10] *Id.* at 5-6.

[11] *Id.* at 6-8.

[12] *Id.* at 8-10.

Cherryvale, and, therefore, it was proper for Cox to conduct the above signal strength tests at Parsons. A cable system may designate its own headend, and, if a cable system has more than one headend, the choice of a principal headend should be reasonable and not made to circumvent must carry obligations. Factors that we consider in judging reasonableness include whether the headend serves the majority of subscribers, accommodates the majority of the signal processing equipment, and is near the center of the cable system. Further, a cable system may change its headend when, for example, the system adds communities. If a cable system changes its principal headend, it should notify stations carried on the system based on must carry status, and include the new designation in its public file.[13]

6. Cox claims that the cable system has only one principal headend, namely, Parsons, and even if the system were considered to have multiple headends, Parsons has been properly designated as the principal headend.[14] Although Cox has no subscribers in the vicinity of Parsons, it has significant equipment there, including satellite receive antennas; and equipment for video playback, commercial insertion, signal processing and signal transport. In addition, Parsons is centrally located in terms of the communities it serves (for example, Cherryvale and Coffeyville to the Southwest, Pittsburg to the east, and Iola to the north).[15] Cox also claims that it had a statement in its public file identifying Parsons as the principal headend.[16]

7. Cox, moreover, states that in numerous official filings at the Commission, it has consistently identified Parsons as the principal headend.[17] Cox recently acquired cable television systems in communities in southeast Kansas. These cable systems were in addition to cable systems it had been operating in other area communities. Cox subsequently consolidated these previously owned and newly acquired cable facilities into a single cable system with the principal headend in Parsons. In a letter from Cox to the Commission, which was received January 31, 2002 (before LeSEA formally requested carriage by Cox in September 2002), Cox stated that it requests "that the Physical system Identification Numbers ("PSID") for the following communities listed on Attachment A be merged with PSID 009110. Recently these communities have been linked via fiber and are now served by a new headend in Parsons, KS adjacent to Pittsburg, KS0005, the lead community in this consolidated system. The community units included in Attachment A previously comprised numerous small systems in southeastern Kansas that have been eliminated by incorporation into the Pittsburg system."[18]

8. A recent Media Bureau decision addressed some of the issues raised by LeSEA. In *Minority Television Project, Inc. v. AT&T Broadband, LLC,*[19] AT&T operated a facility on Mt. Sutro, California to receive television broadcast signals. AT&T asserted that the Mt. Sutro facility was not a headend. AT&T argued that the Mt. Sutro facility received, processed and distributed television signals to a number of separate AT&T cable systems, and that each cable system had its own principal headend. Minority

[13] 47 C.F.R. § 76.5(pp); *Implementation of the Cable Television Consumer Protection and Compliance Act of 1992, Broadcast Signal Carriage Issues,* 8 FCC Rcd 2965, 2968 (1993).

[14] Petition for Reconsideration at 2.

[15] *Id.* at 3-4, and Exhibit A.

[16] *Id.* at 4, and Exhibit C.

[17] *Id.*

[18] *Id.* at Exhibit C.

[19] 17 FCC Rcd 22810 (2002).

Television Project (MTP) argued that Mt. Sutro was the principal headend for all of the cable systems at issue. The Bureau held that:

> We cannot conclude that Mt. Sutro is the principal headend for all of AT&T's cable systems in the San Francisco area. The Commission has stated that a cable system may designate its own principal headend, provided that its choice is reasonable and is not made in order to circumvent must-carry obligations. We have permitted cable operators to designate their principal headends even when there may be another receive site controlled by the operator that is more convenient to the broadcaster. We have also stated that cable operators need not employ extraordinary measures or specialized equipment in accommodating carriage requests from stations that are not currently carried.[20]

In a situation involving facts similar to the case before us, namely, the transmission of cable programming from a principal headend to hubs which were previously separate headends and cable systems, the Bureau found that this was a properly consolidated cable system and not an evasion of the Commission's must carry requirements.[21]

9. A review of the signal strength tests submitted by Cox in its Petition for Reconsideration reflects that the discrepancies indicated in the *Bureau Order* have been resolved and the signal tests comply with good engineering practices. As a result, we find that Cox has met its burden and has presented valid evidence that LeSEA does not presently provide a good quality signal to Cox's principal headend in Parsons. We therefore grant Cox's Petition for Reconsideration, and find that KWHB does not currently qualify for mandatory carriage on Cox's cable system serving the cable communities. We note that if KWHB is able to provide a good quality signal to Cox using, for example, a specialized antenna and equipment furnished by LeSEA, KWHB would have the right to be carried by Cox in the cable communities within 60 days.

[20] *Id.* at 22812 (footnotes omitted). The Bureau has reached the same conclusion in similar cases. *See, e.g., Good Companion Broadcasting, Inc. v. Charter Communications,* 15 FCC Rcd 13257 (2000) (Cable system receives local television signals at reception antenna site on Iron Mountain which it transmits over microwave link to its headend in Cumberland); *Channel 5 Public Broadcasting, Inc. v. WestStar Cable,* 10 FCC Rcd 8215 (1995) (Cable system receives off-air television signals at Ward Peak facility and sends them by microwave to its principal headend at Indian Jack Road); *Family Stations, Inc. v. Sonic Cable Television,*10 FCC Rcd 1672 (1995) (Cable system receives television signals at Mills Peak which it sends by microwave to the principal headends of four cable systems), *recon. denied,*16 FCC Rcd 8233 (1995); and *Jasas Corporation v. TCI Cablevision of Maryland, Inc.,*14 FCC Rcd 7063 (1999) (Cable system has receive sites for television signals on Cacapon Mountain and Iron Mountain which deliver signals by microwave to cable system's principal headend in Cumberland). *See also Channel 5 Public Broadcasting, Inc.,* 10 FCC Rcd at 8215-6 (Bureau upheld a cable system's designation of its principal headend even though in earlier pleadings it had identified a different location as the principal headend because of a "good faith error.")

[21] *Washburn University Topeka v. Kansas City Cable Partners,* 14 FCC Rcd 9323, 9324-6 (1999). In this case, a cable operator had provided service through separate cable systems in dozens of communities in seven counties in Kansas and Missouri near Kansas City, Missouri. The cable operator proposed to eliminate existing headends and to consolidate these cable systems into a single cable system with a headend in Kansas City. The Kansas City headend would then transmit cable programming by fiber optics to locations where headends had previously existed which were redesignated "hubs." The Bureau found that this was consistent with a system-wide upgrade and was not an evasion of must carry obligations. *Id.*

10. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended,[22] that the Petition for Reconsideration filed by Cox Communications Kansas, L.L.C. **IS GRANTED**.

11. **IT IS FURTHER ORDERED** that if KWHB provides in the future a good quality signal[23] to the principal headend of Cox's cable system serving the cable communities, Cox Communications Kansas shall commence carriage of KWHB within 60 days.

12. This action is taken under authority delegated by Sections 0.283 and 1.106 of the Commission's rules.[24]

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief
Media Bureau

[22] 47 U.S.C. § 534.

[23] For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45 dBm. 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

[24] 47 C.F.R. §§ 0.283 and 1.106.