

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

In the Matter of:
LeSEA Broadcasting of Denver, Inc.
v.
Comcast of Colorado I, LLC and,
Comcast of Colorado II, LLC, and
Comcast of Colorado III, LLC, and
Comcast of Colorado IV, LLC, and
Comcast of California/Colorado, LLC and,
Comcast of California/Colorado/Texas/
Washington, Inc.
Request for Mandatory Carriage of
Television Station KWHD,
Castle Rock, Colorado
CSR-7004-M

MEMORANDUM OPINION AND ORDER

Adopted: July 28, 2006

Released: August 2, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. LeSEA Broadcasting of Denver, Inc. ("LeSEA"), licensee of television broadcast station KWHD, Castle Rock, Colorado ("KWHD" or the "Station") filed the above-captioned must carry complaint pursuant to Section 614(d) of the Communications Act of 1934, as amended, and Section 76.7 of the Commission's rules, against Comcast of Colorado I, LLC, Comcast of Colorado II, LLC, Comcast of Colorado III, LLC, Comcast of Colorado IV, LLC, Comcast of California/Colorado, LLC, Comcast of California/Colorado/Texas/Washington, Inc. (collectively, "Comcast"), for failing to carry KWHD on its cable systems serving Greeley (CO0047), Weld (unincorporated) (CO0048), (CO0302) and (CO0492), Frederick (CO0168), Dacono (CO0169), Firestone (CO0170), Lasalle (CO0181), Fort Lupton (CO0213), Windsor (CO0217), Evans (CO0218), Garden City (CO0219), Evanston (unincorporated) (CO0272), and Lochbui (CO0301), in Weld County; and Fort Collins (CO0132) and (CO0503), Loveland (CO0152), Berthoud (CO0265), Larimer (unincorporated) (CO0282), (CO0410) and (CO0481) in Larimer County, Colorado ("cable communities").¹ Comcast filed and Opposition to which LeSEA responded.

¹ Complaint at 1 and Exhibit A.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* (“*Must Carry Order*”), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.² A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

3. Pursuant to the Commission’s must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.⁴ One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system’s principal headend.⁵ Should a station fail to provide the required over-the-air signal quality to a cable system’s principal headend, it still may obtain carriage rights because under the Commission’s rules a television station may provide a cable operator, at the station’s expense, with specialized equipment to improve the station’s signal to an acceptable quality at a cable system’s principal headend.⁶

III. DISCUSSION

4. In support of its complaint, KWHD states that it is licensed to Castle Rock, Colorado, which is located within the Denver, Colorado DMA.⁷ It states further that Comcast operates several cable television systems serving the cable communities, which are also located in the Denver DMA.⁸ KWHD asserts that it formally demanded Comcast to commence carriage of its signal on Channel 18 of the Comcast cable systems at issue on February 8, 2006, and that Comcast did not respond to that demand.⁹ KWHD asserts further that it has not been advised by Comcast that the Station fails to deliver a good quality signal to the various headends at issue.¹⁰ KWHD requests that the Commission order Comcast to commence carriage of its signal on the cable systems in question.¹¹

² 8 FCC Rcd 2965, 2976-2977 (1993).

³ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets base on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(c). Section 76.55(e) requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. 47 C.F.R. § 76.55(e).

⁴ *See Must Carry Order*, 8 FCC Rcd at 2990.

⁵ 47 C.F.R. § 76.55(c)(3).

⁶ *Must Carry Order*, 8 FCC Rcd at 2991.

⁷ Complaint at 1-2.

⁸ *Id.* at 2.

⁹ *Id.* at 3 and Exhibit C.

¹⁰ *Id.*

¹¹ *Id.* at 4.

5. In opposition, Comcast argues that KWHD's Complaint should be dismissed because the Station fails to deliver a good quality signal to the principal headends of the Fort Collins and Greeley, Colorado systems, which serve the cable communities.¹² Comcast asserts that the signal strength tests it conducted, confirm that KWHD's signal does not meet the signal strength standards established in the Commission's rules.¹³

6. In reply, KWHD asserts that the signal test results Comcast submitted are technically insufficient, inaccurate and unreliable.¹⁴ KWHD maintains that Comcast's signal strength measurements are not reliable because they were taken while the Station was broadcasting at a reduced power level due to problems with the air conditioning unit in the Station's transmitter building.¹⁵ KWHD maintains further that Comcast was aware of its power problems.¹⁶ KWHD contends that Comcast used an antenna type that was inferior to those Comcast uses to receive other broadcasters' signals off-air.¹⁷ KWHD also asserts that Comcast measured the Station's signal at a different height than those of other broadcast stations it carries.¹⁸ KWHD points out that its signal was measured at a height of 31 feet at Fort Collins and 31.2 feet at Greeley, when other stations' signals are received at heights of at least 60 feet on Comcast's tower.¹⁹ Finally, KWHD maintains that Comcast improperly oriented the antennas in both tests and, therefore, it could not properly measure KWHD's signal.²⁰ KWHD contends that Comcast should have oriented the antenna for the Fort Collins test to the 153 degree mark rather than the 130 degree mark it used.²¹ KWHD contends further that the orientation mistake was greater at the Greeley headend where the orientation mark was off by about 100 degrees.²² Because of these errors, KWHD concludes, Comcast has failed to meet its burden to show that the Station does not provide a good quality signal to the Fort Collins and Greeley, Colorado headends.²³ KWHD states that if a properly conducted test shows that its signal is deficient, it will provide, at its own cost, any equipment that may be necessary to provide a good quality signal to the two principal headends in question.²⁴

7. Commercial television broadcast stations, such as KWHD, are entitled to carriage on cable systems located in the same DMA. Cable operators, on the other hand, have the burden of showing that a commercial television broadcast station that is located in the same television market is not entitled to

¹² Opposition at 1-2.

¹³ *Id.* at 2.

¹⁴ Reply at 2-3.

¹⁵ *Id.* at 3-4.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *Id.* at 7.

²⁰ *Id.* at 3-4.

²¹ *Id.* at 8 and Exhibit A.

²² *Id.*

²³ *Id.* at 9.

²⁴ *Id.* at 4, n.3.

mandatory carriage.²⁵ One method of doing so is for a cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.²⁶ Comcast has failed to meet this burden. A cable operator's burden of showing the inadequacy of a station's signal is not satisfied by studies conducted while a station is not operating at full power or is not broadcasting.

8. In this instance, Comcast submitted signal strength studies which indicate that KWHD does not provide a good quality signal to the Fort Collins and Greeley headends. Upon review, we find that it appears that in conducting its tests, Comcast incorrectly pointed the antennas in the wrong direction instead of adjusting them to find the maximum signal level. In addition, Comcast measured the Station's signal at a different height than those of other broadcast stations it carries. We have previously stated that a cable operator's signal strength surveys should, at a minimum, include the following: 1) specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; 2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; 3) height of the antenna above ground level and whether the antenna was properly oriented; and 4) weather conditions and time of day when tests were conducted.²⁷ When measured against these criteria, we conclude that Comcast's signal strength tests are insufficient to demonstrate that KWHD's signal is not of good quality. Comcast will have 20 days from the date of this *Order* to demonstrate that KWHD does not provide a good quality signal to its principal headends in Fort Collins and Greeley, Colorado. Evidence supporting this finding shall be submitted to the Commission and served upon KWHD at the conclusion of the testing. When conducting the new tests, Comcast should do so using the proper height and antenna orientation for KWHD's signal.

9. We also note that KWHD has stated that it will provide, at its own expense, any equipment that may be necessary to ensure the delivery of a good quality signal to Comcast's principal headends at Fort Collins and Greeley, Colorado. The Commission has stated that specialized equipment may be employed to deliver a good quality signal to a cable system headend. KWHD, by committing to provide specialized equipment, satisfies its obligation to bear the costs associated with delivering a good quality signal to Comcast's headends. Consequently, we order Comcast to carry KWHD when it supplies a good quality signal. We expect Comcast and KWHD to work together in this regard.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the must carry complaint filed by LeSEA Broadcasting of Denver, Inc., licensee of television broadcast station KWHD, Castle Rock, Colorado, against Comcast of Colorado I, LLC, Comcast of Colorado II, LLC, Comcast of Colorado III, LLC, Comcast of Colorado IV, LLC, Comcast of California/Colorado, LLC, and Comcast of California/Colorado/Texas/Washington, Inc. **IS CONDITIONALLY GRANTED**.

11. **IT IS FURTHER ORDERED** that Comcast shall conduct signal strength tests to measure KWHD's signal at the Fort Collins and Greeley, Colorado headends within 20 days from the date that this *Order* is released; and shall submit to the Commission, within 10 days from the date of completion

²⁵ See *Must Carry Order*, 8 FCC Rcd at 2990.

²⁶ 47 C.F.R. § 76.55(c)(3).

²⁷ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues ("Clarification Order")*, 8 FCC Rcd 4142 (1993).

of the Station's signal strength survey, evidentiary documentation supporting its findings.

12. **IT IS FURTHER ORDERED** that Comcast **SHALL COMMENCE CARRIAGE** of the KWHD signal on its cable systems serving Greeley (CO0047), Weld (unincorporated) (CO0048), (CO0302) and (CO0492), Frederick (CO0168), Dacono (CO0169), Firestone (CO0170), Lasalle (CO0181), Fort Lupton (CO0213), Windsor (CO0217), Evans (CO0218), Garden City (CO0219), Evanston (unincorporated) (CO0272), and Lochbui (CO0301), in Weld County; and Fort Collins (CO0132) and (CO0503), Loveland (CO0152), Berthoud (CO0265), Larimer (unincorporated) (CO0282), (CO0410) and (CO0481) in Larimer County, Colorado, within sixty (60) days after KWHD delivers a good quality signal to Comcast's Fort Collins and Greeley principal headends.

13. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁸

FEDERAL COMMUNICATIONS COMMISSION

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²⁸ 47 C.F.R. § 0.283.