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FCC Grants KWHD's Must Carry Complaint Against Comcast for Failure to Test Properly

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From: Cavan Fabris

On July 28, 2006 the Federal Communications Commission (FCC) granted a must carry complaint filed by LeSEA Broadcasting of Denver, Inc., licensee of television broadcast station KWHD, Castle Rock, Colorado ("KWHD"), against several Comcast cable systems in Colorado due to Comcast's failure to test KWHD's signal in accordance with recognized FCC parameters.

The FCC has previously stated that when challenging a must-carry request, a cable operator's signal strength testing should, at a minimum, include: 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.

KWHD, licensed to Castle Rock, Colorado, is located within the Denver, Colorado DMA. On February 8, 2006 KWHD formally demanded that Comcast commence carriage of its signal on Channel 18 of the Comcast cable systems at issue. Comcast did not respond to that demand. KWHD argued that it had not been advised by Comcast that the station failed to deliver a good quality signal to the various headends at issue. Comcast replied that KWHD's complaint should be dismissed because KWHD fails to deliver a good quality signal to the principal headends of the Fort Collins and Greeley, Colorado systems, which serve the cable communities. Comcast stated that the signal strength tests it conducted confirmed that KWHD's signal does not meet the signal strength standards established by the FCC.

KWHD replied, stating that Comcast's signal strength measurements were not reliable because they were taken while Comcast was aware that the station was broadcasting at a reduced power level due to problems with the air conditioning unit in the station's transmitter building. Furthermore, KWHD claimed that Comcast used an antenna type that was at a lower height and inferior to those used by Comcast to receive other broadcasters' signals off-air. In addition, KWHD maintained that Comcast improperly oriented the antennas in both tests and could not properly measure KWHD's signal. KWHD concluded that as a result of these errors Comcast 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.

The FCC, upon review, found that Comcast did not follow the minimum requirements, as stated above, for conducting signal survey tests. Comcast incorrectly pointed the antennas in the wrong direction instead of adjusting them to find the maximum signal level and measured the KWHD signal at a different height than those of other broadcast stations it carries.

The FCC ordered Comcast to demonstrate, within 20 days from the date of its Order and using FCC recognized signal strength testing parameters, that KWHD does not provide a good quality signal to its principal headends in Fort Collins and Greeley, Colorado. The FCC further ordered Comcast to carry KWHD contingent upon KWHD supplying a good quality signal even if the delivery of good signal requires additional specialized equipment provided and paid for by KWHD.

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