



# City of Golden

911 Tenth Street, Golden, Colorado 80401  
Telephone: 303/384-8000 · Facsimile: 303/384-8001

RECEIVED

MAY 24 2000

FCC MAIL ROOM

May 4, 2000

Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington D.C., 20554

Re: DA 00-746, Lake Cedar Group LLC Petition

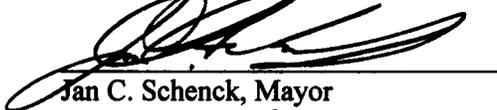
Ladies and Gentlemen:

The Golden, Colorado City Council has been following very closely the attempt by Lake Cedar Group to rezone land near our community for the purpose of constructing a multi-user antenna tower. We have enclosed for your review the resolution that we have adopted on January 28, 1999 and letters regarding this important matter.

We were very impressed with the fair and thorough process by which Jefferson County Commissioners reached their decision. Their process presented an excellent example of our democratic system of government, and we are very disappointed that Lake Cedar Group is attempting to involve the FCC in a local land use decision merely because Lake Cedar Group did not achieve the outcome they desired. They were given a fair hearing and opportunity to present their case in the best traditions of our system of government.

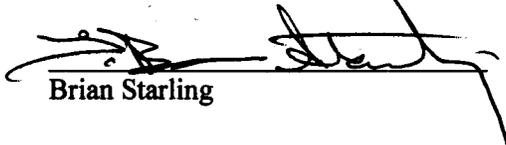
The Golden City Council is united with the Colorado State Legislature and other local governments in requesting that you deny Lake Cedar Group's petition.

GOLDEN CITY COUNCIL

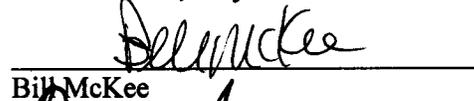
  
Jan C. Schenck, Mayor

  
Chuck Baroch

  
Ed Ramstetter

  
Brian Starling

  
Webb Aldrich, Mayor Pro Tem

  
Bill McKee

  
Dave Shuey

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RESOLUTION NO. 975

**A RESOLUTION OF THE CITY OF GOLDEN CITY COUNCIL  
REQUESTING ADDITIONAL IMPARTIAL AND EXPERT  
EVALUATION OF THE PROPOSED HDTV TOWER ON  
LOOKOUT MOUNTAIN**

WHEREAS, the City of Golden is home to the Colorado School of Mines, which is the oldest institution of higher education in the State of Colorado; and

WHEREAS, the Colorado School of Mines is world renowned for the quality of its teaching and research; and

WHEREAS, the members of the Colorado School of Mines faculty have expressed to City Council (see attached memorandum) their grave concerns over the potential negative technical impact of the proposed broadcast facilities on their research which brings over twenty million dollars into the local economy; and

WHEREAS, the Golden area is the location of more than a dozen high tech businesses that may also experience serious problems with the proposed tower; and

WHEREAS, many of those businesses may be forced to move out of the Golden area if the tower is constructed; and

WHEREAS, Colorado School of Mines faculty and Golden business owners have expressed to City Council that the tower proponents and the County have not adequately evaluated and addressed their concerns.

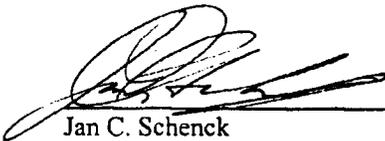
THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. The Golden City Council respectfully requests that the Jefferson County Board of County Commissioners not approve any new broadcast towers on Lookout Mountain until competent studies of all potential interference is completed.

Section 2. Those studies should be conducted by an independent entity and in a manner acceptable to the faculty at the Colorado School of Mines.

Section 3. City Council further requests that the Commissioners give due consideration to the visual impacts the tower and associated buildings will have on the Golden community.

Adopted the 28<sup>th</sup> day of January, 1999.

  
Jan C. Schenck  
Mayor

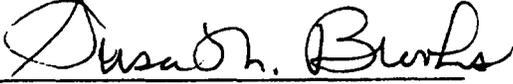
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Resolution No. 975  
Page 2

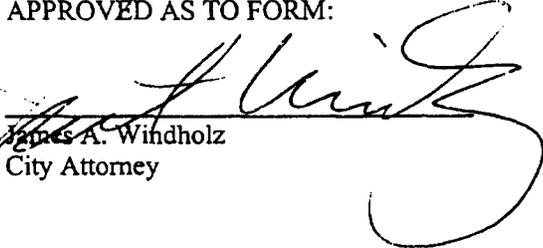
FCC MAIL ROOM

ATTEST:



Susan M. Brooks, CMC/AAE  
City Clerk

APPROVED AS TO FORM:

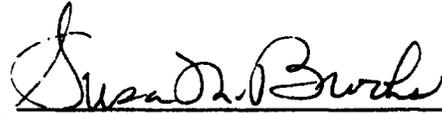


James A. Windholz  
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 28<sup>th</sup> day of January, A.D., 1999.

(SEAL)

ATTEST:



Susan M. Brooks, City Clerk of the City  
of Golden, Colorado

OFFICE OF THE MAYOR  
CITY HALL



CITY OF MT. VERNON  
P.O. BOX 1708  
1100 MAIN • CITY HALL  
MT. VERNON, ILLINOIS 62864

MARK TERRY

RECEIVED

618 / 242-5000

FAX 618/244-0746

May 26, 2000

MAY 31 2000

FCC MAIL ROOM

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

Re: Lake Cedar Group's Petition for Expedited Special Relief and Declaratory Ruling,  
FCC Docket Number DA 00-764,

Dear Ms. Salas:

On behalf of the City of Mt. Vernon, I am writing to support the Comments of Jefferson County, Colorado in Docket number DA 00-764.

As noted in the Comments of Jefferson County, federal agencies do not have the authority to intervene in local zoning decisions, and the Telecommunications Act of 1996 does not give the Commission authority to preempt local land use authority over broadcast towers. See Comments of Jefferson County at 6.

Section 332(c), 47 U.S.S. § 332(c), generally preserves local zoning authority and only preempts this authority under a limited set of circumstances for wireless facilities. It does not include television broadcast towers. The Commission does not have the authority to preempt the zoning authority of the Jefferson County Board and the Commission should not grant the Cedar Lake Group's request.

In addition, local zoning decisions must weigh important local interests. Land use decisions are a core function of local government. This principle is well-rooted and should not be disturbed absent strong Congressional intent, which does not exist here. Respectfully, the Commission is not in a position to be able to weight these local interests. There are no guidelines or criteria for the Commission to make these decisions. Without the authority, or experience, to make this local decision, the Commission should not attempt to do so.

Respectfully submitted,

Mark Terry  
Mayor



**Charlie Hales**  
Commissioner, City of Portland

Phone: 503/823-4682

FAX: 503/823-4040

e-mail: [chales@ci.portland.or.us](mailto:chales@ci.portland.or.us)

Web site: <http://www.ci.portland.or.us/hales>

May 25, 2000

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

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MAY 30 2000

FCC MAIL ROOM

**Lake Cedar Group's Petition for Expedited Special Relief and Declaratory Ruling,**  
**FCC Docket Number DA 00-764,**

Dear Ms. Salas:

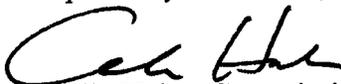
On behalf of the City of Portland, Oregon, I am writing to support the Comments of Jefferson County, Colorado in Docket number DA 00-764.

Like most cities, Portland is eager to develop the telecommunications infrastructure necessary to support commerce in the 21<sup>st</sup> Century. However, our community cares deeply about the aesthetic value of our natural and built environment. Our Comprehensive Plan and Zoning Code seek to promote new infrastructure investment in appropriate places. The balance of community interests represented in our Code is a responsibility that is best carried out on a local level.

As noted in the Comments of Jefferson County, federal agencies do not have the authority to intervene in local zoning decisions, and the Telecommunications Act of 1996 does not give the Commission authority to preempt local land use authority over broadcast towers. See Comments of Jefferson County at 6. Section 332(c), 47 U.S.C. § 332(c), generally preserves local zoning authority and only preempts this authority under a limited set of circumstances for wireless facilities. It does not include television broadcast towers. The Commission does not have the authority to preempt the zoning authority of the Jefferson County Board and the Commission should not grant the Cedar Lake Group's request.

Land use decisions are a core function of local government. This principle is well-rooted and should not be disturbed absent strong Congressional intent, which does not exist here. Respectfully, the Commission is not in a position to be able to weigh these local interests. There are no guidelines or criteria for the Commission to make these decisions. Without the authority, or experience, to make this local decision, the Commission should not attempt to do so.

Respectfully Submitted,

  
Charlie Hales, Commissioner



# ILLINOIS MUNICIPAL LEAGUE

Member: National League of Cities

KENNETH A. ALDERSON  
Executive Director

500 EAST CAPITOL AVENUE - P.O. BOX 5180  
SPRINGFIELD, ILLINOIS 62705-5180  
Phone (217) 525-1220 Fax (217) 525-7438  
Web Site: www.iml.org

May 23, 2000

RECEIVED  
MAY 26 2000  
FCC MAIL ROOM

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

**Lake Cedar Group's Petition for Expedited Special Relief and Declaratory Ruling, FCC  
Docket Number DA 00-764.**

Dear Ms. Salas:

On behalf of the Illinois Municipal League, I am writing to support the comments of Jefferson County, Colorado in Docket number DA 00-764. We do this on behalf of all municipalities in Illinois.

As noted in the Comments of Jefferson County, federal agencies do not have the authority to intervene in local zoning decisions, and the Telecommunications Act of 1996 does not give the Commission authority to preempt local land use authority over broadcast towers. See Comments of Jefferson County at 6.

Section 332(c), 47 U.S.C. § 332(c), generally preserves local zoning authority and only preempts this authority under a limited set of circumstances for wireless facilities. It does not include television broadcast towers. The Commission does not have the authority to preempt the zoning authority of the Jefferson County Board and the Commission should not grant the Cedar Lake Group's request.

The Illinois Municipal League strongly encourages the F.C.C. not to assume jurisdiction in this dispute by granting the broadcast tower location. Obviously this matter is local in nature and the consortium of broadcasters should submit a new site for the location of their collective tower to Jefferson County Board of Commissioners. It is inappropriate to make a "federal case" out of a local zoning decision. All parties who will live with this broadcast tower should be given a reasonable opportunity to express their opinions, creating a venue in Washington, D.C. is inappropriate.

In addition, local zoning decisions must weigh important local interests. Land use decisions are a core function of local government. This principle is well-rooted and should not be disturbed absent strong Congressional intent, which does not exist here. Respectfully, the Commission is not in a position to be able to weigh these local interests. There are no guidelines or criteria for the Commission to make these decisions. Without the authority, or experience, to make this local decision, the Commission should not attempt to do so.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth A. Alderson". The signature is fluid and cursive, with a large initial "K" and "A".

Kenneth A. Alderson  
Executive Director

Megalie R. Salas  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, DC 20554

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MAY 24 2000

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RE: DA 00-764  
Lake Cedar Group Petition "PETITION FOR EXPEDITED SPECIAL RELIEF AND  
DECLARATORY RULING" to preempt Jefferson County Denial of Supertower

Dear Ms. Salas:

I observed over the course of many months in 1998 and 1999 the conscientious process of the Jefferson County Board of County Commissioners in review of an application by the Lake Cedar Group, LLC, to rezone land on Lookout Mountain to allow for the construction of an 854-foot telecommunications supertower and adjacent support building. There was an exhaustive and thorough review. The possibility that our community of more than 9,000 people would suffer the effects of even greater levels of electromagnetic radiation was cause for great anxiety. We were enormously relieved by the Commissioners' rejection of the application.

I am assured that alternative (and, most importantly, non-residential) sites to house the digital supertower do exist and would urge the Lake Cedar Group to explore those sites. Instead, I understand that they have petitioned the FCC to override the local authority in this matter. I ask that you respect the thoughtful decision-making of the Jefferson County Board of County Commissioners over what is a complex set of local zoning and other issues. To do otherwise would set a regrettable and dangerous precedent for our country.

Sincerely,

I, DAVID CASTANON, certify that on this 8<sup>th</sup> day  
of May, 2000, I mailed a copy of this filing to:

Edward W. Hummers, Jr., J. Steven Rich  
Holland & Knight LLP  
Suite 400  
2100 Pennsylvania Avenue, N.W.  
Washington, DC 20037-3202

Signed by: David Castanon, 352 Paradise Rd, Golden, CO 80401

cc: Frank Hutfless, Jefferson County Attorney; Deborah Carney, C.A.R.E. Attorney;  
Senator Wayne Allard; Peter Jacobson, Senator Allard's Office; Senator Ben Nighthorse  
Campbell; Congressman Tom Tancredo; Congressman Scott McInnis; Congresswoman  
Diana DeGette; Congressman Mark Udall

CONSUMER INFORMATION BUREAU

RECEIVED  
2000 MAY 25 P 3:00

Kristine A. Marshall  
265 Union Ave #C1046  
Campbell, CA 95008  
trvlchk@yahoo.com

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MAY 24 2000

FCC MAIL ROOM

Megalie R. Salas  
Secretary, Federal Communications Commission  
445 12th St. S.W.  
Washington, DC 20554

Tuesday, May 09, 2000

Re: DA 00-764 Lake Cedar Group Petition "PETITION FOR EXPEDITED SPECIAL RELIEF AND DECLARATORY RULING" to Preempt Jefferson County Denial of Supertower

Dear Ms. Salas,

I am opposed to the FCC preemption over local governmental control particularly with regard to zoning issues. The local governments have developed zoning laws based upon each community's unique characteristics. The local government also provides easy access for local communities to express their concerns. The FCC does not have the zoning knowledge of each community nor the access from local communities to make the decision for these communities. I thereby request your denial of the DA 00-764 petition.

Sincerely,



Ms. Kristine A. Marshall

Please see attached

Certificate of Mailing:

I, Kristine Marshall certify that on this 19 of May, 2000, I mailed a copy of this filing to :

Edward W. Hummers, Jr, J. Steven Rich  
Holland & Knight LLP  
Suite 400  
2100 Pennsylvania Ave., NW  
Washington, DC 20037-3202

RECEIVED

MAY 24 2000

FCC MAIL ROOM

Signed by: Kristine Marshall

Cc:

Frank Hutfless  
Jefferson County Attorney  
Jefferson County Building  
100 Jefferson County Parkway  
Golden, Co. 80419

Congressman Scott McInnis  
Colorado 3rd District  
320 Cannon House Office Building  
Washington, D.C. 20515  
Fax: 202-226-7840

Deborah Carney  
Attorney for C.A.R.E.  
21789 Cabrini Blvd.  
Golden, Co. 80401

Congresswoman Diana DeGette  
1339 Longworth  
Washington, D.C. 20515  
Fax: 202-225-5657

And the Colorado Delegation:  
Senator Wayne Allard  
513 Hart Senate Office Bldg.  
Washington, D.C. 20510  
Fax: 202-224-6471  
Phone: 202-224-5941

Congressman Mark Udall  
Colorado 2nd District  
128 Cannon HOB  
Washington, DC 20515  
FAX: 202-226-7840

Peter Jacobson  
Senator Wayne Allard's Office  
7340 E. Caley Suite 215  
Englewood, Co. 80111  
Fax: 303-220-8126

The Honorable Ben Nighthorse  
Campbell  
U.S. Senate  
380 Russell Senate Office Bldg  
Washington, D.C. 20510  
Fax: 202-224-1933

Congressman Tom Tancredo  
Colorado 6th District  
1123 Longworth  
Washington, D.C. 20515  
FAX-(202) 225-7882

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MAY 25 2000

FCC MAIL ROOM



*Mount Vernon Country Club  
Metropolitan District*

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
COMMENTS of

**MOUNT VERNON COUNTRY CLUB METROPOLITAN DISTRICT**

to "PETITION FOR EXPEDITED SPECIAL RELIEF AND DECLARATORY RULING"

by LAKE CEDAR GROUP LLC

Docket No. DA 00-764

May 22, 2000

This document is submitted in response to the recent filings submitted on Docket No. DA 00-764.

Mount Vernon Country Club Metropolitan District ("MVCC") is a political subdivision of the State of Colorado. It encompasses approximately 1,200 acres that span the ridge at the crest of Lookout Mountain in the foothills of the Rocky Mountains near Denver, Colorado. Within the area of the MVCC Metro District are 102 homes and a restaurant/catering facility/dining club with more than 3,500 members from all over the Denver metropolitan area. Also within MVCC are a swimming club with an outdoor pool and a tennis club with six outdoor courts.

The MVCC restaurant, swimming pool, and tennis courts are all located within line-of-sight of many of the existing broadcast antennas on the eastern edge of Lookout Mountain, as are a number of MVCC's homes. The tower that was proposed by the Lake Cedar Group LLC ("LCG"), for which Jefferson County denied the zoning, would also have been within line-of-sight of these same structures, at a distance of approximately 3 to 3 1/2 miles. Additionally, because of its location at the top of the Lookout Mountain ridge to the west of the proposed tower, MVCC's facilities and homes would have been at approximately the same altitude as the tower's antennas.

MVCC participated as a party to the rezoning proceeding that resulted in Jefferson County's denial of LCG's rezoning application. MVCC provided testimony to both the Planning Commission and the Board of County Commissioners of Jefferson County, establishing the threat to MVCC's restaurant and special event catering business, as well as to its membership activities (dining, swimming, tennis), that would be posed by a substantial increase in radio frequency emissions from the proposed new broadcast tower. Along with numerous other residents and businesses from our Lookout Mountain neighborhood, MVCC requested that Jefferson County's elected Commissioners exercise their authority over land use to deny LCG's rezoning request. After considering mountains of documents and days worth of oral testimony from dozens of witnesses, the Commissioners unanimously denied the LCG application. They determined that under the Jeffco planning and zoning documents applicable to LCG's request, the visual, site design, compatibility, safety (ice-fall and tower collapse), and health (RF emissions) impacts of the requested tower were too adverse for the adjacent community, and that LCG had not established that there was no acceptable alternative location.

LCG's petition to the FCC claims that Jefferson County's decision to deny the requested rezoning made it impossible for LCG to comply both with the mandate of federal law (*i.e.* the broadcasters must implement DTV) and the local land use decision (*i.e.* no tower will be

No. of Copies rec'd \_\_\_\_\_ Page 1 of 3  
List A B C D E

permitted on the eastern edge of Lookout Mountain). But this argument presents a false dilemma -- because both the federal and the local mandates can be complied with if the necessary antennas are established at one or more locations other than Lookout Mountain. Yes, compliance with both federal and local mandates might prove more expensive and less convenient to the broadcasters, but that does not render the project impossible. We are willing to believe that from the broadcasters' point of view, the Lookout Mountain location for an antenna tower is optimal -- indeed, the LCG materials say this over and over -- but that does not mean that the Lookout Mountain location is inevitable, or that it somehow justifies federal preemption of a valid local land use decision. Because there are many alternative locations for a new DTV tower and/or for new DTV antennas, there are no insurmountable barriers to the broadcasters' compliance with all applicable federal and local regulations.

It is the proper role of the local land use decision making authority to balance the needs and reasonable investment-backed expectations of those relying on existing and permitted land uses versus the hopes of would-be modifiers of land use. Jefferson County's Board of County Commissioners followed meticulously their reasonable rules providing due process and a right and opportunity to be heard to all interested persons, and after reviewing a voluminous factual record, made their decision. MVCC hopes and expects that the FCC will realize that a brief review of selected parts of such a record will not adequately prepare the FCC to overcall the local decision.

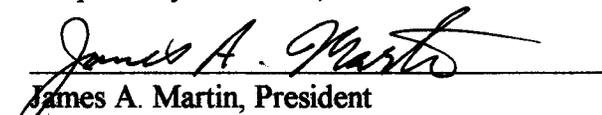
MVCC also points out that granting the petition would really open a can of worms. If the Jefferson County decision were preempted, then what? Would the FCC reach into Colorado, and into Jefferson County, and grant the rezoning itself? If so, upon what terms? The requested rezoning was a Planned Development, with a proposed Official Development Plan ("ODP") containing proposed conditions and limitations on the implementation of the rezoning -- would the FCC undertake to enforce the terms of the ODP, which Jefferson County found to be inadequate? Would the FCC modify the ODP to meet any of the concerns raised by the County and the objecting witnesses? Clearly, preemption by the FCC of the local land use determination would only begin the list of difficult questions.

\* \* \* \* \*

At its regular meeting of April 19, 2000, the Board of Trustees of the Mount Vernon Country Club Metropolitan District unanimously adopted the following Resolution, and authorized the submission of these comments on behalf of MVCC:

"We strongly urge the FCC to deny LCG's petition for FCC preemption of Jefferson County's decision denying LCG's rezoning application. Because there are one or more alternative locations for DTV transmission antennas to serve the Denver metropolitan area, the denial by Jefferson County of LCG's rezoning request does not raise a Supremacy Clause issue, and preemption of Jefferson County's decision is therefore not warranted."

Respectfully submitted,

  
James A. Martin, President  
Mount Vernon Country Club Metropolitan District

**CERTIFICATE OF MAILING**

I certify that on May 22, 2000, I mailed a copy of these "Comments of Mount Vernon Country Club Metropolitan District" in Docket No. DA 00-764 to the following:

Edward W. Hummers, Jr.  
J. Steven Rich  
Holland & Knight LLP  
Suite 400  
2100 Pennsylvania Ave., NW  
Washington, DC 20037-3202

Arthur Goodkind  
Koteen & Naftalin, LLP.  
1150 Connecticut Ave., NW  
Washington, DC 20036

Todd D. Gray  
Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Ave., NW  
Washington, DC 20036-6802

Howard F. Jaeckel  
CBS, Inc  
51 West 52nd Avenue  
New York, NY 10019-6119

David P. Fleming  
Gannett Co., Inc.  
1100 Wilson Blvd., 29th Floor  
Arlington, VA 22234

Scott D. Albertson  
Holley, Albertson & Polk, P.C.  
1667 Cole Boulevard, Suite 100  
Golden, CO 80401

Henry L. Baumann  
National Association of Broadcasters  
1771 N Street, NW  
Washington, DC 20036

Claire B. Levy  
3172 Redstone Road  
Boulder, CO 80303

  
James A. Martin

May 1, 2000

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MAY 17 2000  
FCC MAIL ROOM

Megalie R. Salas  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, DC 20554

RE: DA 00-764

Lake Cedar Group Petition "PETITION FOR EXPEDITED SPECIAL RELIEF AND DECLARATORY RULING" to preempt Jefferson County Denial of Supertower

Dear Ms. Salas:

I feel certain that the concept of the FCC pre-empting the Jefferson County Board of County Commissioners in the above-captioned matter is an unconstitutional one, and I'm astonished that the petition by the Lake Cedar Group was not immediately rejected in principle. The Commissioners' consideration of placement of an 854' digital supertower and accompanying 26,000 square foot support building in the middle of this residential community was arduous and extraordinarily thorough. The process took many months and was an agonizing one for the thousands of residents of this community worried about the health effects of ever-increasing levels of electromagnetic radiation.

We have pleaded with the Lake Cedar Group to explore alternative sites not populated by people; their unwillingness to do so seems lazy, perseverative and completely without conscience. On behalf of my family, I urge that you deny this request and avoid, at all costs, interference in the decision made by our local governing body through a very careful and painstaking process.

Sincerely yours,

Monnie E. Barrett  
792 Aspen Road  
Golden, CO 80401  
303-526-1363

Certificate of Mailing:

I, Monnie E. Barrett, certify that on this 1<sup>st</sup> day of May, 2000, I mailed a copy of this filing to:

Edward W. Hummers, Jr., J. Steven Rich  
Holland & Knight LLP  
Suite 400  
2100 Pennsylvania Avenue, N.W.  
Washington, DC 20037-3202

Signed by: Monnie E. Barrett

cc: Frank Hutfless, Jefferson County Attorney  
Jefferson County Building  
100 Jefferson County Parkway  
Golden, CO 80419

Deborah Carney, Attorney for C.A.R.E.  
21789 Cabrini Boulevard  
Golden, CO 80401

Senator Wayne Allard  
513 Hart Senate Office Building  
Washington, D.C. 20510

Peter Jacobson  
Senator Wayne Allard's Office  
7340 East Caley, Suite 215  
Englewood, CO 80111

The Honorable Ben Nighthorse Campbell  
U. S. Senate  
380 Russell Senate Office Building  
Washington, D.C. 20510

Congressman Tom Tancredo  
Colorado 6<sup>th</sup> District  
1123 Longworth  
Washington, D.C. 20515

Congressman Scott McInnis  
Colorado 3<sup>rd</sup> District  
320 Cannon House Office Building  
Washington, D.C. 20515

Congresswoman Diana DeGette  
1339 Longworth  
Washington, D.C. 20515

Congressman Mark Udall  
Colorado 2<sup>nd</sup> District  
128 Cannon HOB  
Washington, D.C. 20515



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MAY 24 2000

FCC MAIL ROOM

May 2, 2000

Megalie R. Salas  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> Street, S. W.  
Washington D.C. 20554

RE: DA-00764, Lake Cedar Group Petition for Expedited Special Relief and Declaratory Rulings to Preempt Jefferson County Denial of Supertower

Dear Megalie R. Salas,

The purpose of this letter is to express my opposition to the above referenced petition and to ask the FCC to deny the acceptance of it.

They are asking to put a supertower up in a residential neighborhood, where the radiation is already a major concern.

This issue was decided by the local government and should be left as a local matter. It is not the Federal Governments job to intervene in making decisions at local levels.

The proposed tower would increase the risk of radiation and interference with my television and would be more potential risk to my kids. There are other sites available, and they should use them instead of putting at risk all of the families in the neighborhood.

Please deny the petition and let the local government work with the Lake Cedar Group to find an acceptable solution. This would be consistent with the local government, the public, and Senator Allard's and Congressman Tancredo's (both from Colorado) inquiries that the matter is a local problem.

Sincerely,  
Larry Fine   
Cc:Mr. Hummers



May 2, 2000

Megalie R. Salas  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> Street, S. W.  
Washington D.C. 20554

RE: DA-00764, Lake Cedar Group Petition for Expedited Special Relief and Declaratory Rulings to Preempt Jefferson County Denial of Supertower

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Please deny the petition and let the local government work with the Lake Cedar Group to find an acceptable solution. This would be consistent with the local government, the public, and Senator Allard's and Congressman Tancredo's (both from Colorado) inquiries that the matter is a local problem.

Sincerely,   
Larry Fine  
Cc:Mr. Hummers

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Megalie R. Salas  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, DC 20554

RE: DA 00-764  
Lake Cedar Group Petition "PETITION FOR EXPEDITED SPECIAL RELIEF AND  
DECLARATORY RULING" to preempt Jefferson County Denial of Supertower

Dear Ms. Salas:

I observed over the course of many months in 1998 and 1999 the conscientious process of the Jefferson County Board of County Commissioners in review of an application by the Lake Cedar Group, LLC, to rezone land on Lookout Mountain to allow for the construction of an 854-foot telecommunications supertower and adjacent support building. There was an exhaustive and thorough review. The possibility that our community of more than 9,000 people would suffer the effects of even greater levels of electromagnetic radiation was cause for great anxiety. We were enormously relieved by the Commissioners' rejection of the application.

I am assured that alternative (and, most importantly, non-residential) sites to house the digital supertower do exist and would urge the Lake Cedar Group to explore those sites. Instead, I understand that they have petitioned the FCC to override the local authority in this matter. I ask that you respect the thoughtful decision-making of the Jefferson County Board of County Commissioners over what is a complex set of local zoning and other issues. To do otherwise would set a regrettable and dangerous precedent for our country.

Sincerely,

*Sandra Nye*  
455 mt. Vernon Circle

I, *Sandra L. Nye*, certify that on this \_\_\_\_\_ day  
of May, 2000, I mailed a copy of this filing to:

Edward W. Hummers, Jr., J. Steven Rich  
Holland & Knight LLP  
Suite 400  
2100 Pennsylvania Avenue, N.W.  
Washington, DC 20037-3202

Signed by: *Sandra L. Nye*

cc: Frank Hutfless, Jefferson County Attorney; Deborah Carney, C.A.R.E. Attorney;  
Senator Wayne Allard; Peter Jacobson, Senator Allard's Office; Senator Ben Nighthorse  
Campbell; Congressman Tom Tancredo; Congressman Scott McInnis; Congresswoman  
Diana DeGette; Congressman Mark Udall

April 27, 2000

Karen & George Griffin  
2083 Montane Drive East  
Golden, CO 80401

Megalie R. Salas  
Secretary, Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

Regarding: DA 00-764

***Lake Cedar Group Petition for Expedited Special Relief and Declaratory Ruling to Preempt Jefferson County Denial of Supertower***

Dear Ms. Salas:

We oppose Lake Cedar Group's petition for special relief to pre-empt Jefferson County Denial of the Supertower.

We would like to urge the Commission to personally visit *in person* the situation on Lookout Mountain and Mount Morrison, Colorado with reference to pre-empting our local governments decision to not allow digital broadcasting. What we're about to say is nothing new to you but you must consider

1. **The topography of the area.** The altitude of the land and the location of the homes in the foothills outside of Denver is very unusual. The towers are situated at about 7200'. Add to that the 850' tower and the device on top of the tower is shooting directly into the living room of the thousands of homes surrounding it at 7500' to 8000'. Our local grade school where our 2 children attend is approximately 7800'. Our church is 7500' and our home about 7500'. How does our family or our friends families escape this radiation infiltrating our lives? This "output" messes up electronic devices, television reception and potentially the lives of the inhabitants of this community.
2. **Alternative Site for the Tower.** Should you visit our area, you will see an alternative site on Squaw Mountain just west of Lookout Mountain and Mount Morrison. It is over 8000' in elevation and has an existing tower site which is located below the peak so the red blinking lights are not necessary. It also does not have homes that will be impacted by the device's "output." For some reason the Lake Cedar Group will not consider this as a viable location. Perhaps because they will be forced to pay rent instead of using the land their consortium owns on Lookout Mountain. They apparently feel that they can do as they choose with their land - legal or not! That saga continues to unfold about illegally built towers, devices and alterations to existing hardware.

RECEIVED

MAY 24 2000

FCC MAIL ROOM

RECEIVED

MAY 24 2000

FCC MAIL ROOM

Page 2 of 2  
George & Karen Griffin to the FCC  
April 27, 2000

3. **Why go through the process of local government only to have it pre-empted?** What about the thousands of hours of testimony, expert's testimony, the preparation and education needed to present before our elected officials. Our small community has been pitted against a very wealthy, cleverly represented group of businessmen who won't even live amongst us. As a group they pay less in property tax than the majority of our population who has rallied against them. The Jefferson County Board of Commissioners listened, learned and made an educated decision to put an end to the Lake Cedar Group rein into our lives. Where was the FCC during all that? Our previous letter to the FCC went unanswered. It appears that you only cared when the Lake Cedar Group was denied - not when the citizens of this area pleaded with you to make the Lake Cedar Group look for alternatives! It is time now for the FCC to listen, learn and become educated about our situation.

We trust you have heard this from many other sources but hope our letter will convince you that this is a very strong community that will not subject their families to these hazards without a fight. The FCC has a responsibility to our citizens to make a thorough investigation without the prejudice of Cedar Lake Group's money or attorneys misrepresenting viable albeit more expensive alternative sites.

Sincerely,



Karen & George Griffin  
303 526 2118

cc: Edward W. Hummers, Jr., J. Steven Rich  
Holland & Knight LLP  
Suite 400  
2100 Pennsylvania Avenue, NW  
Washington DC 20037-3202

Senator Wayne Allard  
513 Hart Senate Office Building  
Washington, DC 20510

Senator Ben Nighthorse Campbell  
US Senate  
380 Russell Senate Office Building  
Washington DC 20510

Congressman Tom Tancredo  
1123 Longworth  
Washington DC 20515



RECEIVED

MAY 31 2000

May 25, 2000

FCC MAIL ROOM

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

By e-mail and regular mail

**Re: FCC Docket Number DA 00-764, Lake Cedar Group's Petition for Expedited Special Relief and Declaratory Ruling**

Dear Ms. Salas:

The Texas Municipal League (TML), supports Jefferson County, Colorado in its decision to deny the rezoning and building permit request of Lake Cedar Group for the construction of a 1200 foot digital-TV antenna on Lookout Mountain near Denver.

TML is committed to preserving local zoning authority as a fundamental tenet of local governmental police powers. Local zoning decisions are based on protection of the health, safety, and welfare of local residents. In its original denial of the permit/rezoning request, Jefferson County stated that the tower would endanger three homes that are located inside the fall-zone of the tower, and that the applicants are unwilling to comply with local setback requirements. The Commission is not in a position to re-consider and possibly disregard such a local public safety and welfare decision. Should the Commission elect to override local authority in this case, it will encourage similar petitions from across the country, and will significantly weaken the ability of local governments to protect the interests of their citizens in dealing with HDTV providers.

Also as noted in the Comments of Jefferson County, the Commission does not have the authority to intervene in a local zoning decision in this type of matter. Section 332(c) of 47 U.S.C.A preserves local zoning authority and that authority may be preempted only with regard to a limited set of circumstances for wireless facilities. The preemption circumstances do not apply to television broadcast towers.

TML understands that broadcasters in Jefferson County are under a FCC mandate to establish digital TV as soon as possible and that a November 1999 deadline extended to May 2000 is about to pass. Nevertheless, in the rush to implement technological advances in the information, entertainment, and broadcast arenas, no local government can abdicate its duty to protect the safety of its citizens, and no federal agency should attempt to preempt local land use decisions in the absence of clear statutory authority to do so.

Yours truly,

Monte Akers,  
Director of Legal Services

1821 Rutherford Lane

Suite 400

Austin, Texas

78754-5128

512/719-6300

Fax: 512/719-6390

Website: www.tml.org



**CARNEY  
LAW  
OFFICE**

21789 CABRINI BOULEVARD

GOLDEN, COLORADO 80401

(303) 526-9666

FAX (303) 526-9843

Deb Carney: deb@carneylaw.net

**RECEIVED**

MAY 31 2000

May 25, 2000 **FCC MAIL ROOM**

Megalie R. Salas  
Secretary, Federal Communications Commission  
445 12th St. S.W.  
Washington, DC 20554

Re: DA 00-764

Lake Cedar Group Petition "**PETITION FOR EXPEDITED SPECIAL RELIEF AND DECLARATORY RULING**" to Preempt Jefferson County Denial of Supertower

Dear Secretary Salas,

Enclosed please find an original and four copies of Errata to the CARE Public Comments filed on May 10, 2000. Please attach these to the original filing.

Thank you for your assistance.

Sincerely,

CARNEY LAW OFFICE



Deborah Carney

**CERTIFICATE OF SERVICE**

I, Deborah Carney, hereby certify that on May 25, 2000, I mailed copies of the foregoing **ERRATA to CANYON AREA RESIDENTS FOR THE ENVIRONMENT PUBLIC COMMENTS IN OPPOSITION TO LAKE CEDAR GROUP'S PETITION FOR EXPEDITED SPECIAL RELIEF AND DECLARATORY RULING** by first-class postage prepaid mail to the following:

Edward W. Hummers, Jr.

Holland & Knight, LLP  
Suite 400  
2100 Pennsylvania Avenue NW  
Washington, D.C. 20037-3202

Henry L. Baumann  
National Association of Broadcasters  
1771 N Street, NW  
Washington, D.C. 20036

Claire B. Levy, Esq.  
3172 Redstone Road  
Boulder, CO 80303

  
Deb Carney

**RECEIVED**

**MAY 3 1 2000**

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

**FCC MAIL ROOM**

In the Matter of )  
Lake Cedar Group LLC's )  
Petition for Expedited Special Relief ) DA 00-764  
And Declaratory Ruling Seeking )  
Preempting of a Resolution by )  
the Board of County Commissioners of )  
Jefferson County, Colorado )

CANYON AREA RESIDENTS FOR THE ENVIRONMENT PUBLIC  
COMMENTS  
IN OPPOSITION TO LAKE CEDAR GROUP'S PETITION  
FOR EXPEDITED SPECIAL RELIEF AND  
DECLARATORY RULING

ERRATA

- Page 8 Reference to 47 USC should not include Part 73, but should read only 47 USC with each section number following.
- Page 22 Testimony of Margot Zallen. Pages 6278 and 6280 were eliminated from Volume III.
- Page 29 Bates numbers referred to at the end of the only full paragraph should read: (V. 4, Bates 360021-360027, 360145-360148, 360072-360082, 360114-360116, 360148, 360178-360186, 560081-560092, 570064-570083, 570112-570113, 570117.)
- Page 31 Tim Carl's zoning analysis is attached as Appendix R.
- Page 33 The two indented portions refer to a transcript from the video "Broadcast Blues." A copy of the transcript is enclosed as Appendix U. The first quote can be found on page BB5, last quote by Cleveland. The second quote can be found on page BB6, second from last quote by Cleveland.
- Page 34 FCC report of 1/4/99 is attached as Appendix S.
- Page 43 On the third line above Section IV, the phrase "with no environmental impact" should read "with no environmental impact statement."
- Page 43-44 Dr. Hutchison's detailed report is attached as Appendix T.

- Page 44      The first line of section V on interference which refers to the Jefferson County Telecommunications Land Use Plan should also refer to Appendix P.
- Page 53      The appeal that C.A.R.E. withdrew was from the U.S. Court of Appeals for the D.C. Circuit, not from the U.S. District Court.
- Page          Volume IV should have included Bates numbered pages 060819-060823.

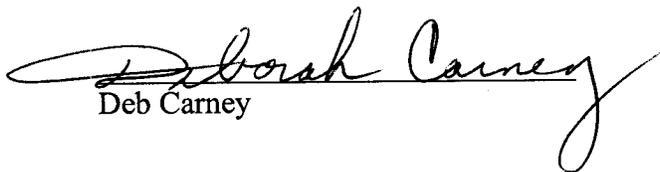
**CERTIFICATE OF SERVICE**

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Washington, D.C. 20036

Claire B. Levy, Esq.  
3172 Redstone Road  
Boulder, CO 80303

  
Deb Carney

# **Testimony of Margot Zallen**

1 here have recognized the unique importance of this backdrop. I am going to  
2 quote from several County documents and I will be providing copies of those for  
3 the record. As stated in the May 1999 final report for Jefferson County and the  
4 other four counties involved in the Front Range Mountain Backdrop Project the  
5 front range mountain backdrop is a visual anchor for the millions of residents of  
6 Colorado's front range. The mountain backdrop is in peril. For this reason  
7 Jefferson County is a leader of the five county effort to maintain the scenic  
8 integrity of our mountain backdrop and to develop sensitive development plans  
9 which will preserve this scenic resource. Thus the backdrop project includes  
10 sensitive development as well as land acquisition and is applicable to this  
11 rezoning. It further states that if development continues to degrade this resource  
12 eventually the backdrop ecological integrity will be lost permanently. A vast  
13 majority of Coloradoans live within the shadow of the front range mountain  
14 backdrop enjoying it's visual majesty every day. The front range mountain  
15 backdrop is a recognized landmark. The foothills rising out of the plains is a  
16 defining image for the State. Continued growth threatens to degrade the visual  
17 quality of this landmark. Additionally Jefferson County's own proposal for a  
18 \$50,000 grant from Great Outdoors Colorado states that the backdrop is an  
19 unifying natural feature and a that good percentage of our population wakes up  
20 each day to have some visual association with the backdrop as do the hundreds  
21 of thousands of visitors to the State each year. The vision statement also  
22 recognizes the extraordinary character and beauty of this area. Furthermore the  
23 1996 Front Range Mountain Backdrop Report tells us the residents of the front

1 plan and to the commissioners who adopted the Central Mountain Community  
2 Plan. Therefore on behalf of Plan Jeffco and all of our supporters I ask that you  
3 deny Lake Cedar's rezoning request. In my other role as a resident of Lookout  
4 Mountain I also ask you to deny the proposal. My husband and I are against  
5 playing "Russian roulette" with peoples lives. Congress made a similar  
6 statement when it directed Federal agencies to give "the benefit of the doubt to  
7 endangered or threatened species when there is insufficient information" as is  
8 the situation here. Dr. Johnson, an impartial expert and CARE's experts have  
9 stressed that although there is insufficient information to prove definitive cause  
10 and effect relationship from the existing towers there is indication that they may  
11 have such effect. I believe that the residents who depend upon you to protect  
12 the health, safety and welfare should receive no less protection than is accorded  
13 rare species of animals. Give people the benefit of the doubt and vote no. In  
14 closing, I wish to quote from the 1997 update from the Front Range Mountain  
15 Backdrop Task Force, "we praise it in song, purple mountain majesty above the  
16 fruited plain. It's profile graces our license plates. It provides a visual compass  
17 that firmly anchors west". And to again ask, do not mar this majestic profile, a  
18 visual resource that we all hold precious. Thank you.

19 HOLLOWAY: Thank you. Sorry about that, Margot. Your name  
20 was on here. It just somehow got crossed off. Okay. Come on down. Were you  
21 sworn in?

22 ZELLAN: Yes.

# **Appendix R**

## **Tim Carl's Zoning Analysis**

## CASE SUMMARY

**B.C.C. Hearing Date:** March 10, 1999

**Applicant's Name:** Lake Cedar Group, LLC

**Case Number:** 98015154RZP1

**Property Address:** 21079 Cedar Lake Road (Top of Lookout Mountain - near existing Channel 4 tower)

**Summary of Request:** Rezoning to allow the installation of a new 854 foot tall broadcast tower and support equipment for digital TV, FM broadcasting, analog TV and low power telecommunication devices.

**Issues:**

- Proposal does not comply with "minimum standards" in Section 15 of the Zoning Resolution.
- FCC is mandating broadcasting of High Definition Television and that construction of facilities for this broadcasting must be completed by November 4, 1999.
- Existing Channels 4 and 6 towers would be taken down immediately upon completion of the proposed new tower. Existing Channels 7 and 9 towers would be taken down when current analog TV ceases.
- Proposal does not conform with Visual Resources, Public Service/Facilities and Mountain Site Design policies of the Central Mountains Community Plan.
- Proposal does not conform with the Tower Siting policies in the Telecommunications Land Use Plan.

**Recommendation:**

**Staff:** Staff recommends **denial** of this case.

**Planning Commission:** Planning Commission recommended **approval** of this case.

**Interested Parties:**

- CARE
- Genesee Foundation
- Panorama Estates Homeowners Association
- Mount Vernon Country Club Metropolitan District
- Many concerned neighbors.

**For More Information, Contact:**

Planning and Zoning Department Case Manager: Timothy Carl (ex. 8710)

**Level of Controversy:** Very High

ZONING CASE NUMBER: 98015154RZP1  
PLANNER: Timothy W. Carl

PC HEARING: December 2, 1998  
BCC HEARING: March 10, 1999

MAP NO.: 107

LOCATION: 21079 Cedar Lake Road

OWNER: Lake Cedar Group, LLC

PHONE: 303-841-6624

REPRESENTATIVE: J. Bart Johnson

PHONE: 303-575-7533

**PROPOSED ZONING: Planned Development (PD) SUMMARY OF PROPOSAL:** The Lake Cedar Group, LLC proposes to install a new 854 foot tall broadcast tower and support equipment building on Lookout Mountain. The tower will be designed to support a variety of antennas, including High Definition Television (HDTV), analog TV, broadcast FM radio and low power telecommunication devices (i.e., paging, PCS, mobile radio). The tower will be guyed and will hold five (5) HDTV antennas for Channels 4, 6, 7, 9 and 20; three analog antennas for Channels 4, 6 and 20 (to facilitate the removal of towers currently accommodating Channels 4 and 6, see discussion under Background/Unique Information below); two multiplexed FM antennas (one omni-directional and one uni-directional); an auxiliary DTV antenna and low power telecommunication devices. The proposed tower will be constructed of galvanized steel and lighted to meet Federal Aviation Administration (FAA) requirements. Upon construction of the new tower, the towers accommodating Channels 4 and 6 will be removed. When analog TV broadcasting ceases, currently slated for 2006, the towers accommodating Channels 7 and 9 will be removed. The removal of the towers has been stipulated in the proposed written restrictions for the property as well as a proposed Development Agreement to be entered into between the County and Lake Cedar Group, LLC. This request includes a transmitter building which can be up to 32,250 square feet of total floor area.

The applicant has also proposed a Development Agreement to be entered into with the County. The Development Agreement would provide for vested rights in the area affected by the proposed rezoning. The Development Agreement must be included as part of the hearing before the Board of County Commissioners.

EXISTING ZONING: Mountain Residential-One (MR-1) and Agricultural-Two (A-2)  
EXISTING USE: Broadcast towers, equipment and accessory buildings  
ACREAGE: 79.6 Acres

#### BACKGROUND/UNIQUE INFORMATION:

Several key points should be noted about this proposal:

1. This proposal involves complex planning issues and has been analyzed using the Central Mountains Community Plan, Telecommunications Land Use Plan and applicable Zoning Resolution policies. Staff comments contained in this report reflect evaluation of both land use plans and the Zoning Resolution. On balance, this proposal does comply with many of the land use policies found within both Plans.
2. Recent measurements have been conducted by the FCC related to nonionizing electromagnetic radiation (NIER) which affect this proposal and which is discussed in this staff report.
3. NIER levels have been resolved to the satisfaction of the federal government and the County. If issues related to the structural integrity and ice fall debris of the proposed tower can be satisfied, per Section 15 of the Zoning Resolution, Staff would recommend approval with conditions as noted on the last page of this report.

Lookout Mountain has had broadcast antennas located on it since the 1950s, which coincides with commercial television broadcasting in the Denver metropolitan area. All three stations who operate towers within the property to be rezoned (Channels 4, 7 and 9) began their operations at the locations they now occupy. Based on information provided by these broadcast stations, the Channel 7 tower and accessory building were constructed in 1955, as well as the Channel 9 tower and accessory building. The Channel 4 tower and its accessory building were constructed in 1958. These towers were approved prior to the adoption of the Central Mountains Community Plan, Telecommunications Land Use Plan and specific telecommunication regulations found in the Zoning Resolution. Lookout Mountain has a top elevation of 7,414 feet. Because of its height and proximity to the Denver Metropolitan Area, Lookout Mountain has been used for broadcast and mobile radio transmission. The Lookout Mountain site is presently used by eight FM radio stations (KALC, KBPI, KCFR, KHIH, KKHK, KOSI, KRFX, and KUVO), seven TV stations (KCEC, KCNC-TV, KDVR, KMGH-TV, KRMA-TV, KUSA-TV, and KWGN-TV), and two low power TV stations (K43DK AND K57BT), as well as a multitude of accessory and secondary telecommunications equipment.

The Federal Communications Commission (FCC) has mandated that all full-power television stations in the U.S. construct digital television (DTV) facilities. In the Denver area, which is the 18th largest television market in the U.S., stations affiliated with ABC, CBS, NBC and FOX television networks must construct DTV facilities by November 1, 1999. The FCC has established the end of the year 2006 as the target by which existing analog broadcasting should cease. That date will be reviewed every two years. The actual date will be when 85% of the households have adopted DTV.

In order to accommodate DTV, a consortium of the local broadcast stations (Channels 4, 6, 7, 9 and 20) have proposed a new telecommunications tower. The tower, at 854 feet, would accommodate the DTV antennas for these channels. The consortium or Lake Cedar Group, LLC has proposed to remove four existing telecommunications towers from Lookout Mountain. The removal of the towers would occur in two phases. In Phase I, which is immediately after construction of the new tower, the Channel 6 tower supporting the antennas for KRMA-TV and FM stations KCFR and KUVO, and the Channel 4 tower, supporting the antennas for KCNC-TV and FM station KRFX will be removed--their antennas being relocated to the proposed tower. The Channel 6 tower is located on the backside of Lookout Mountain, near the Boettcher Mansion. The Channel 4 tower is currently the tallest tower on Lookout Mountain, at 817 feet. During Phase II, Lake Cedar Group, LLC will remove the Channel 7 and 9 towers when the analog TV has been phased out as established by the FCC. The phasing and removal of the towers has been stipulated in the written restrictions as well as a proposed Development Agreement. Lake Cedar Group, LLC has proposed a bond or other security to guarantee removal of the existing towers.

The proposed location on the new consolidated tower is about 110 feet east of the existing Channel 4 tower. The tower will be a guyed tower and will have a starmount attached (30 feet per side) to the top to accommodate the placement of antennas. The new tower will also require the installation of an accessory transmitter building. The transmitter building will not exceed a total square footage of 32,250 square feet.

The applicant has also proposed a Development Agreement to be entered into with the County. The Development Agreement must be included as part of the hearing before the Board of County Commissioners.

**Concerns have been raised by the community and the County in regard to nonionizing electromagnetic radiation (NIER) on Lookout Mountain. The Telecommunications Plan notes that new telecommunications facilities should be located and designed to prevent exposure to RF (radio frequency) in excess of current, projected or suggested standards**

(Page 12). Some indication occurred that RF levels exceeded established federal standards on Lookout Mountain. On October 29, 1998, testing on RF levels occurred on Lookout Mountain by the FCC. The County's technical consultant on this matter, Hammet & Edison (Lake Cedar Group's technical expert) and members of C.A.R.E. were present to observe and measure RF levels. Results of the tests indicate that RF levels exceeded established standards in four publicly accessible areas (see Technical Reports - attached notebook for further details).

It should also be noted that the community has strong concerns about an increase in interference levels from this proposal that will affect their quality of life. The community also believes this proposal will expose the residents to EMR levels running 100,000 - 400,000% above the national average. The community has petitioned elected officials in Congress to delay the outcome of this proposal until more scientific research can be completed.

**UPDATE (1/19/1999):**

*On December 16, 1998, the FCC's Office of Engineering and Technology conducted a second measurement survey of RF levels in publicly accessible areas on Lookout Mountain. The purpose of the second survey was to confirm that actions had been taken by broadcasters on the mountain to bring non-complying areas into compliance with FCC RF exposure guidelines. The detail of the results occurs under Hazards, Central Mountain Community Plan and Health, Telecommunications Land Use Plan. Essentially, based on changes requested by the FCC, the Lookout Mountain area currently meets compliance with FCC guidelines for exposure of the general public to RF electromagnetic energy.*

*During the public hearings before the Planning Commission, the community expressed concerns about elevated rates of brain cancer in the Lookout Mountain area. The State Health Department conducted a survey in June 1998, to consider a number of different types of cancer in the area. The results at that time did not show a statistically significant increase in brain cancer on Lookout Mountain. Since that time, the State Health Department has undertaken a new study, which they believe will be complete by mid-February. The current study is restricted to brain tumors, both malignant and non-malignant; the previous study incorporated census tract 98.10 where the pending study will measure concern incidence in block group subsets; and interviews and time frame analysis have been modified. According to the State Health Department letter of January 5, 1999, "The results of the current study may provide some indication of whether the incidence of brain tumor is increased among residents of particular block groups within census tract 98.10 (which includes the Lookout Mountain area)." The letter, however, also notes, "This study will not establish a cause and effect relationship with any particular potential exposure, such as electromagnetic radiation from antennas."*

**UPDATE (2/26/1999):**

*On February 17, 1999, the Colorado State Health Department completed their survey of brain and central nervous system tumors in residents living near or in close proximity to the Lookout Mountain Antenna Farm. The report did not draw a direct correlation with these types of cancers and the existing towers on Lookout Mountain. The report did find higher than normal rates of cancer in two block groups near the antenna farm. The report did not consider the proposed rezoning by the Lake Cedar Group, LLC. The Center for Disease Control and Prevention in Atlanta also reviewed the report and concluded that there is not a cancer cluster in this population and that no further local studies need to be conducted. The report does state that "further scientific study is needed to overcome the limitations of the present study."*

**The recommendations of the report include monitoring concern incidence in the area, review of national and international studies and an update of "expected counts" when the Census 2000 data becomes available.**

**C.A.R.E. has requested a continuance of this proposal to allow for additional research and study on this matter.**

**The City of Golden recently passed a resolution on January 28, 1999, expressing concern about interference problems identified by the Colorado School of Mines. In the resolution, the City requests that Jefferson County not approve the proposed new broadcast tower on Lookout Mountain until "competent studies of all potential interference is completed." The County does not currently have any regulations that require a study of interference to businesses or residences from proposed or existing telecommunication facilities.**

#### SURROUNDING ZONING/LAND USE:

N: A-2/Vacant land  
E: A-2/Vacant land

S: A-2, MR-1/Vacant land and single-family residential  
W: A-1, MR-1/Single-family residential

#### COMMUNITY COMMENTS:

The proposal was sent to:

C.A.R.E.  
Chimney Creek Homeowner's Association  
Cody Park Neighborhood Association  
Genesee Foundation  
Genesee Village Homeowner's Association  
Golden Hills/Golden Heights Homeowner's Association  
Grapevine Homeowner's Association  
Lookout Mountain/Paradise Hills Homeowner's Association  
Lookout Mountain Crest Homeowner's Association  
Lookout Mountain Civic Association  
Mount Vernon Estates Homeowner's Association  
Mt. Vernon Country Club Homeowner's Association  
Mt. Vernon Country Club Metropolitan District  
Panorama Estates Homeowner's Association  
Rilliet Park Homeowner's Association  
Riva Chase Homeowner's Association

Responses were received from C.A.R.E., Genesee Foundation, Panorama Estates Homeowners Association, Mount Vernon Country Club Metropolitan District, several community activists in the area and many local residents that live near these facilities. These groups overwhelmingly have expressed strong concerns about health effects associated with this proposal, tower siting and placement, consolidation and visual and aesthetic impacts. The letters have been included with this staff report (contained in Letters section of attached notebook). We have also received letters in support of this request which have also been included.

The Jefferson County Policies and Procedures Manual and Zoning Resolution requires that all applicants processing a rezoning request must hold a community meeting. The community meeting provides an opportunity for the applicant to answer any community concerns about the proposal and also to solicit community input so as to achieve the best possible results.

The applicant held a community meeting on May 28, 1998. More than 150 people attended the meeting to express outrage and concern of the proposed rezoning application. The predominant issues stated by the community included comments on health impacts associated with RF levels and NIER standards, as well as consolidation requirements and the "need" for such a facility on Lookout Mountain.

**UPDATE (2/26/1999):**

*The County has received over 100 letters since this proposal was formally accepted by the Planning and Zoning Department. The majority of the letters express strong opposition to this proposal. Technical experts assisting C.A.R.E. and other Interested groups who live near this proposal have calculated power density increases and increased interference problems from the proposed tower. The calculations have been reviewed by the County's technical expert.*

**PLAN APPLICABLE: Central Mountains Community Plan**

The Plan is a guide for land use decisions made by the Board of County Commissioners and the Planning Commission involving rezoning proposals. The Community Plan contains goals, objectives and policies which have been deemed appropriate for evaluating land development in the Central Mountains of Jefferson County. Staff evaluates all rezoning proposals that fall within this area using this Community Plan to determine if the proposed land use conforms to the policies outlined in the document.

**PLAN ASSESSMENT:**

	Visual Res.	Open Space	Wild-life	Air, Odor, Noise	Haz-ards	Public Serv./ Facil.	W & S	Hous-ing	Comm/ Office	Trans.	Mtn. Site Des.
<b>Conform- ance</b>		X(A)	X(B)	X(C)	X(D) <sup>1</sup>		N/A	N/A	X(E)	N/A	
<b>Noncon- formance</b>	X(F)					X(G)					X(H)

\* Foothills Fire Protection District  
Lookout Mountain Water and Sanitation District

**Summarize Plan Conformance:**

- A. **Open Space** - The Community Plan notes that natural open space should be preserved and enhanced for Jefferson County's environmental, aesthetic, scenic, recreational, and education quality and opportunities (Page 21). The slopes of Lookout Mountain are considered as part of the Mountain Backdrop and are considered an open space priority according to the Community Plan (Page 23). As part of this proposal, the applicant has proposed to set aside 74.7 acres for open space. This accounts for 94% of the total site acreage. Guy wires and guy wire anchors will be placed in portions of this area, but will have minimum impact on the open space area. The proposed tower and transmitter building will be located away from the ridgeline to minimize impact to the slopes of Lookout Mountain.

<sup>1</sup>This Plan policy was originally identified as "Nonconformance."

B. Wildlife - The Central Mountains Community Plan does not identify this area as being within any critical wildlife habitat area. The Division of Wildlife referral response indicated that due to the nature of the proposed telecommunications facilities, they do not expect that this proposal will have significant impacts to wildlife or wildlife habitat.

C. Air, Odor, Noise - The Central Mountains Community Plan notes that careful consideration should be given to enhancing the fresh air and quiet appeal that characterize the area (Page 28). This proposal will not have any impacts to air, odor, or noise. The equipment associated with the broadcast antennas will be contained within transmitter buildings. Building materials including concrete block and steel will conceal noise associated with equipment for this tower. The consolidated tower itself does not generate noise that can be heard by residents or users of open space in the area. No odor or impacts to the air will be generated by these facilities.

**(THIS POLICY WAS ORIGINALLY NONCONFORMANCE.)**

D. Hazards - The Community Plan notes that hazards in this area should be mitigated or eliminated prior to development (Page 31). The Plan also notes that development proposal in the vicinity of electromagnetic energy emission sources and proposed major new EMF emission sources should be referred to the Jefferson County Department of Health and Environment for evaluation of health hazards (Page 33).

This proposal was sent to the Jefferson County Department of Health and Environment for evaluation. The Health Department commented that "The applicant has submitted a report on NIER which demonstrates theoretical compliance with the applicable health based guidelines and standards. The Federal Communications Commission (FCC) Bulletin OET-65 and the American Nation Standards Institute (ANSI) Standard C95.1-1992 apply in this case. Public exposure to a NIER source, also referred to as an "uncontrolled" environment, must not exceed 200  $\mu\text{W}/\text{cm}^2$ ."

The County's technical expert expressed concerns on levels of existing RF in the general location of the property affected by this rezoning. On October 19, 1998, the County technical expert, Hammet & Edison (consultant to Lake Cedar Group, LLC) and a technical expert with C.A.R.E. took various measurements on the property. Initial readings indicated that RF levels exceeded standards established by the federal government. Subsequently, on October 29, 1998, the FCC, along with the County's technical expert, Hammet & Edison and members of C.A.R.E. again took readings on RF levels. Initial measurements indicated that several "hot spots" exist that exceed federal standards. The measurements indicate that there are at least four publicly accessible areas with power density levels exceeding the limits established for continuous exposure to RF energy in uncontrolled environments. These four general areas were:

- northwest of KOSI/KKHK(FM) site - more specifically, along Cedar Lake Road near the tower accommodating KOSI/KKHK(FM);
- south of the KMGH-TV Channel 7 site - along the lower (main) driveway of KMGH-TV Channel 7, near the "Green Building" along the upper driveway of KMGH-TV;
- east of the KRMA-TV Channel 6 site - along Colorow Road, and
- southeast of the KHIH-FM site - in the forested area near the KHIH(FM) tower.

The high power density levels were found to be primarily caused by the nearby FM stations. This presents a health and safety issue to the community in this area. This issue must be resolved before any new tower can be placed on Lookout Mountain. The FCC has initiated action with these broadcasters to meet federal compliance.

**UPDATE (1/19/1999):**

*As noted above, the FCC conducted a second survey on Lookout Mountain on December 16, 1998. As before, measurements were taken in three general areas: (1) public roads and other accessible locations near the KOSI/KKHK FM transmission tower, (2) generally accessible areas near the KHIH-FM tower, and (3) accessible areas and public roads near the tower supporting KRMA-TV and FM stations KUVU and KCFR. During the original October 29, 1998 survey, the FCC required that those stations over established RF limits take necessary steps to resolve the situation, including power reductions, fencing and warning signs to identify the area as having Radio Frequency radiation. According to the FCC conclusions in their January 4, 1999 report, "The fencing that has now been installed in the vicinity of the Channel 7 and Channel 6 towers should provide adequate demarcation and restriction to prevent public access to high-RF areas until such time as more permanent barriers can be erected. This along with the reductions in operating power for KOSI, KKHK, KHIH, KCFR and KUVU have, in the opinion of the FCC staff, brought the Lookout Mountain site into satisfactory compliance with FCC guidelines for exposure of the general public to RF electromagnetic energy."*

- E. **Commercial/Office** - The Community Plan states that commercial activities should be tailored for the convenience of local residents and to provide limited employment opportunities and that they be improved through landscaping, painting and regular maintenance (Page 44). Because this proposal involves a multi-user facility, it will provide employment opportunities for technicians, engineers and maintenance personnel running the operation of the facility. The applicant has provided designs and landscape plans that will be used to enhance the appearance of the site.

**Summarize Plan Non-Conformance:**

- F. **Visual Resources** - This proposal does not lie within a designated scenic corridor, however, Lookout Mountain is identified as a "prominent feature" within the Central Mountains area. Lookout Mountain has also historically served as a major transmission site for broadcast and telecommunication facilities. The proposed 854 foot consolidated broadcast tower will be visually prominent on Lookout Mountain, but in context with existing towers on the mountain, the impact has existed for over 40 years. Many of the plan policies within this section have been met including:

Existing vegetation should be preserved whenever possible.

- The vegetation on site will be used to screen the proposed building.
- Terracing of the building will limit disturbance areas.

Satellite dishes and cellular telecommunications facilities should be placed where they are not visually obtrusive, colored to blend with the background and/or screened to mitigate visual impact.

- This has been incorporated into the design standards for the proposed rezoning with respect to satellite dishes.

Concern does exist on the proposed "bridge" connecting the transmitter building to the broadcast tower. The proposed building should be located closer to the tower to reduce or remove the "bridge" associated with the proposal.

**UPDATE (1/19/1999):**

*The applicant has not clearly identified alternatives to the ice bridge, such as burying cable or locating cable at ground level.*

*The Planning Commission expressed strong concerns about the size and placement of the proposed transmitter building. The Planning Commission asked that the applicant explore alternative designs that could reduce visual impact. These alternatives included reshaping the building or terracing/stepping the building into the terrain. This concern has been reflected in the Planning Commission resolution.*

- G. **Public Services/Facilities** - The Community Plan states that any change in telecommunication tower quantity or location should conform to the most recent County Telecommunications Plan and policies. This proposal cannot meet all Plan policies within the Telecommunications Land Use Plan. Most Plan policies have been met in terms of siting and placement of the facility. See the Telecommunication Plan analysis below.
- H. **Mountain Site Design** - Mountain Site Design criteria are discussed throughout the Central Mountains Community Plan. The purpose of the criteria is to guide land use requests in creating high quality development which respects the environment and encourages creative and flexible approaches to site design (Page 52). Clearly, an 854 foot consolidated telecommunication tower cannot meet all design policies established in the Community Plan. The proposal has attempted to create written restrictions which use design and topographic criteria for placement of the transmitter building into the site, rather than creating a dominate feature. This includes placing the building at an angle to reduce the visual plane of the building and terracing the structure into the hillside. Staff has concerns with the proposed "bridge" associated with the application. If the proposal is approved, a condition has been drafted that responds to this issue. It should be noted that written restrictions and site design have met the following:
- Maximized the use of existing vegetation and natural landforms where possible (Page 52).
  - Utilized an architectural design emphasizing natural materials, light, shadow, depth, and texture in all exterior building surfaces (Page 52).
  - Varied facades and roofs to minimize large expanses of flat planes (Page 52).
  - Minimized exposed building foundations. Screened all mechanical equipment including rooftop, with materials similar to or compatible with the building facade (Page 52).

**UPDATE (1/19/1999):**

**Again, as previously noted, the Planning Commission expressed strong concern about the visual impact of the proposed building. The Planning Commission expressed a concern to limit the size of the transmitter building to a maximum of 32,250 square feet of gross floor area, with no additional square footage allowed for balconies or attached areas. The Planning Commission also asked that the applicant explore alternative designs to the building, including if possible, a U-shaped or T-shaped design.**

**PLAN APPLICABLE: Telecommunications Land Use Plan**

The Telecommunications Land Use Plan provides guidelines for land use decisions related to the review of proposed telecommunication facilities. This Plan aids the Board of County Commissioners and Planning Commission in making land use decisions on these types of proposals. Telecommunication facilities can cause many impacts on the surrounding community if they are not properly sited and designed. This is especially true of high powered broadcasting facilities. To avoid and minimize these impacts, the Plan contains policies regarding visual and noise impacts, residential interference, health issues, engineering and tower siting. The relevant Plan policies are outlined below.

	Tower Siting	Visual & Noise	Engineering	Interference	Health
Conformance		X(A)	X(B)	X(C)	X(D) <sup>2</sup>
Nonconformance	X(E)				

In order to effectively analyze this proposal, the applicable Plan policies associated with the request have been identified and an explanation provided as it relates to this application.

Summarize Plan Conformance:

- A. Visual & Noise - The applicable plan policies include the following:
  - 1. **Telecommunication facilities should result in a minimal visual impact for those residents in the immediate area and for those in the larger community who view these facilities from a distance.**
    - a. **Examples of minimal visual impact would be:**
      - 1) **A facility sited so that at least 80% of the height of the tower(s) and accompanying structure(s) is screened from view from off of the subject property by vegetation or landform.**

<sup>2</sup> This Plan policy was originally identified as "Nonconformance."

- 2) **A uni-directional facility which is surrounded by vegetation or landform that screens the tower(s) from view on the non-broadcast side and screens accompanying structure(s).**
- 3) **A facility where all broadcast equipment is contained within a building, the size, character and location of which is permitted by the underlying zone district.**
- 4) **A facility that is located down-slope from the top of a ridge line so that from key public viewpoints, a minority of the height of the tower is viewed against the sky.**

**b. It is acknowledged that large, multi-use towers located within major use transmission areas cannot be effectively screened. In order to minimize the visual impact, such new facilities should be located in close proximity to other comparable structures. Accompanying buildings, ground-mounted antennas, and other equipment and structures should be subject to screening recommendations.**

**Analysis of Item 1:**

- Yes. It is acknowledged that the proposed tower will be visible to the residents in the immediate area. However, the criteria established in items 1.a.1) through 1.a.4) relate to the visual impact of a tower placed in a new, previously unused transmission area and are not related to this proposal. This proposal would establish a new tower on an existing major use transmission area. This facility will be sited on Lookout Mountain which has a multitude of broadcast and telecommunication facilities located on it.

**2. Visual impact of telecommunication facilities should be compatible with the aesthetic character of the surrounding area.**

- Yes/No. The aesthetic character of the surrounding area includes a multitude of existing telecommunication and broadcast towers and buildings. Interspersed with these facilities are residential homes. A conflict exists in regard to the newer residential homes on Lookout Mountain in relationship to the existing and proposed facilities. Attempts have been made to design the transmitter building to incorporate natural materials, pitched roof and topography in keeping with the aesthetic character of the area. The proposed facility is as compatible with the character of the area as is possible for a consolidated telecommunications facility.

**3. FAA requirements for coloring and lighting of towers must be considered in looking at visual impact.**

- Yes. This has been considered.

**4. The specific communication facility design issues that should be examined in looking at visual impact are: coloring, lighting, relationship to view corridors, topography, materials and architecture. Towers and antennas should be neutral in color to blend with the visual backdrop, unless specifically required by the FAA to be painted otherwise.**

- Yes. As noted above, this has been considered.

5. **The visual impact of telecommunication facilities should be compatible with the aesthetic character of the surrounding area.**
- Yes/No. Again, as noted above, attempts have been made to design the transmitter building to incorporate natural materials, pitched roof and topography in keeping with the aesthetic character of the area.
6. **To minimize the visual impact of new telecommunication towers, these measures should be implemented where possible:**
- a. **Avoid tower heights and locations which necessitate FAA coloring and lighting. Towers of any height should not be lighted unless specifically required by the FAA. If FAA lighting is required, strobe lights should be avoided unless specifically required by the FAA.**
    - Yes/No. The 854 foot tower is required to elevate the attached equipment above the surrounding residential area and to reduce RF exposure. The FAA has not commented on allowing waivers from coloring and lighting of this proposed tower.
  - b. **Tower and antenna consolidation.**
    - Yes. This would be accomplished by this proposal.
  - c. **Locating away from key public viewpoints.**
    - No. This cannot be accomplished with this proposal.
  - d. **Utilize monopoles or guyed towers rather than bulky self supporting lattice towers whenever possible.**
    - Yes. The proposed tower will be a guyed tower rather than a bulky self supporting lattice tower.
  - e. **Placement of two-way and microwave antenna inside accessory buildings when technically possible.**
    - Yes. This has been incorporated into the written restrictions for the proposal.
  - f. **Locating towers near similar uses or near industrial areas.**
    - Yes. This tower will be located in close proximity to existing broadcast and telecommunication towers.
  - g. **Planning antenna on existing structures of sufficient height (i.e., water tower, buildings, etc.).**
    - Yes. No existing structures can hold all the proposed antennas. Squaw Mountain indicated they could accommodate a facility for a structure. Their letter did not indicate they have an existing tower capable of handling antennas associated with this proposal. Discussions with Clear Creek County indicated that a tower must first be constructed on the Squaw Mountain site.
  - h. **Any new road to a telecommunication site should be acceptable to County Engineering and the local fire department and its visual impact should be minimized by reseeding excavated area, avoiding cuts and fills when possible, and other feasible measures.**
    - Yes. No new roads will be created for this proposal. The road leading to the site has existed for some time and no new improvements have been proposed for it. The local fire department can gain access to the site.

- i. **Where possible, waivers to FAA coloring and lighting requirements should be sought.**
- Yes. The applicant has sought waivers from coloring and lighting requirements established by the FAA. The FAA has not commented on the approval of such waivers.
- UPDATE (1/19/1999):**
- The applicant has proposed to light the tower with high intensity strobe lights during the day and red beacon lights at night. The high intensity strobe lights will eliminate the need to paint the tower red and white. The lighting proposed by the applicant complies with FAA regulations.***
- j. **Careful placement of power lines.**
- Yes. This proposal will not affect power lines.
- k. **Noise impacts could be minimized through careful location and screening.**
- Yes. Generators and other audible equipment will be placed inside the proposed building to eliminate noise impacts to the surrounding area.
7. **To minimize the visual impact of microwave dishes and commercial satellite operations, these measures should be used if technically feasible:**
- a. **Microwave dishes placed inside structures; use non-reflective colors-galvanized or gray; use open grid dishes instead of solid ones.**
- Yes. This has been included in the written restrictions for this proposal.
- b. **Commercial satellite operations use colors compatible with the surrounding environment; incorporate landscaping; place in depressed areas shielded from view.**
- Yes. Any ground mounted satellite dishes used with this facility will be painted in earthtone colors and located in areas that will maximize screening of such facilities.
8. **To minimize the visual and noise impacts of new equipment buildings and accessory uses (fuel tanks, fences, etc.), these measures should be utilized:**
- a. **Equipment buildings should blend in with the surrounding area by considering coloring, texture of materials, topography and scale of buildings.**
- Yes. These criteria have been incorporated into the written restrictions for the proposal.

**UPDATE (1/19/1999):**

***As noted above, the Planning Commission expressed strong concerns about the visual impact of the proposed transmitter building. In the Planning Commission resolution, they note "Prior to the Board of County Commissioner's hearing, the applicant shall evaluate other building designs so as to minimize the visual impact and conform with the Mountain Backdrop Plan to the maximum extent possible."***

- b. Fuel tanks can be buried or screened with landscaping, fencing or berms.**
  - Yes. This has been incorporated into the proposed written restrictions for this proposal.
- c. Trash areas can be screened.**
  - Yes. This has been incorporated into the proposed written restrictions for this proposal.
- d. The noise impacts of cooling and other types of equipment could be minimized through proper location and screening.**
  - Yes. Again, cooling and other types of equipment that can generate noise will be placed inside the transmitter building to reduce noise impacts.
- e. Noise should not exceed state noise standards.**
  - Yes. This has been noted in the written restrictions for this proposal.

**B. Engineering - The applicable plan policies include the following:**

- 1. Broadcasting sites should be capable of serving most of the metropolitan area.**
  - Yes. This proposal will provide broadcast coverage for the Denver Metropolitan area, including areas west of the Front Range.
- 2. Telecommunication sites should recognize consumer needs.**
  - Yes. The FCC has determined that there is consumer need for digital TV. This proposal will comply with FCC mandates.
- 3. Telecommunication facilities should be located, designed and operated in a manner that will comply with all FCC permits and conditions to prevent objectionable levels of interference.**
  - Yes. The applicant has initiated permit processing with the FCC. In addition, the written restrictions contain language that limits objectionable levels of interference in compliance with federal standards set by the FCC.
- 4. Telecommunication facility location and design must meet the requirements imposed by the FAA and FCC.**

- Yes. The applicant will comply with these standards as it relates to the design and construction of the consolidated tower. Additional requirements associated with antenna placement and auxiliary equipment will also comply with federal standards. The applicant has attempted to request a waiver of painting requirements associated with FAA standards. The FAA has not responded to the applicant indicating whether or not such a waiver would be granted.

C. Interference - The applicable plan policies include the following:

1. **New telecommunication facilities will minimize interference for nearby residents.**

- Yes/No. All federal, state and local standards will be met, however, this will not guarantee no interference with nearby residences.

2. **The responsibility for resolving interference problems should be shared by all parties involved.**

- Yes. Lake Cedar Group, LLC will resolve any interference issues, if they occur, in compliance with county, state and federal standards.

3. **The practical solutions that should be used by the County to avoid interference problems with new towers are:**

a. **Encourage the establishment of cooperative multiple use sites. One incentive which could be used to accomplish this is the use of public lands for cooperative tower sites or using public funds to buy land for tower sites or the buffering of surrounding tower sites.**

- Yes. This proposal will be a cooperative multiple use site allowing for TV and FM broadcasting.

b. **The factors which should be considered in minimizing the interference from new towers are setbacks; height of tower-towers should be elevated above populated areas; antenna design (modifications to the antenna to minimize signal strength in a given direction); adjusting transmitter power levels; topography, i.e., locating tower on mountain top above residential areas.**

- Yes. Setbacks have been proposed that place the tower a minimum of 150 feet from the western Use Area boundary (adjacent to residential development). The proposed transmitter building will be setback a minimum of 75 feet.

The proposed tower will be 854 feet and elevated above nearby residence to reduce NIER levels. The tower will be located on Lookout Mountain which has historically served as a telecommunications area. The equipment placed on the tower will be above residential areas.

c. **The County should retain a paid private consultant to provide information on the technical considerations (i.e., interference) in siting new towers. The funds needed to pay this consultant could be raised by increasing the application fee for tower requests.**

- Yes. The County obtained Mr. James Hart, Hartech Inc., as a paid private consultant to assist in the review of the technical

information associated with this proposal. Funds for his services have been provided by the applicant, per the Jefferson County Zoning Resolution.

**d. Rezoning of land near established broadcasting sites for more intensive residential uses should be discouraged.**

- Yes. No rezoning requests have been proposed for more intensive residential uses within established broadcasting sites.

**e. Rezoning of residentially zoned land for towers should be discouraged.**

- No. The proposed rezoning incorporated both Mountain Residential-One (MR-1) and Agricultural-Two (A-2) zoned property. The A-2 portion of the proposal does allow telecommunication facilities as a special use review. Specifically, these types of facilities are considered acceptable in the A-2 zone district provided further review and approval occur before the Planning Commission and Board of County Commissioners.

The MR-1 zone district does not consider telecommunication facilities as a use by right or as a special use. This is a residential zone district. However, the existing towers on Lookout Mountain were constructed prior to the establishment of the MR-1 zone district and have historically existed on the mountain for over 40 years. Most of the telecommunication facilities on Lookout Mountain are legal nonconforming uses. A large majority of the land affected by this rezoning has been under the control of members of the consortium group (Lake Cedar Group, LLC) for the same period of time. Therefore, the property affected by this rezoning would not have been developed residentially. The area where the proposed tower would occur exists on the Channel 4 property. This property has been operational as a telecommunication facility since 1958.

**(THIS POLICY WAS ORIGINALLY NONCONFORMANCE.)**

**D. Health - The applicable plan policies include the following:**

1. **Telecommunication facilities should be located and designed to prevent exposure to RF in excess of current, projected, or suggested standards. At the time of rezoning application, the applicant should show that when the proposed facility is fully operational, the NIER level measured at the property line will not exceed the standard established by ANSI C95.1 or the most current applicable standard.**

- Yes. On October 29, 1998, Robert Cleveland and Jerry Ulcek, of the Federal Communications Commission's Office of Engineering and Technology, conducted measurement surveys of radio frequency (RF) radiation levels in publicly accessible areas on Lookout Mountain. Measurements were made in four general areas as follows:

- 1) Public roads and other accessible locations near the KOSI/KKHK FM transmission tower;
- 2) generally accessible areas near the KHIH-FM tower;

- 3) accessible areas and public roads near the tower supporting KRMA-TV and FM stations KUVO and KCFR; and
- 4) Near KMGH tower.

Results of the measurements indicate that there are locations (based on the three areas measured) where FCC limits for continuous exposure to RF radiation are exceeded. This has been summarized in the attached FCC summary report included with these staff comments. It should be noted that the County staff, members of C.A.R.E. and the firm of Hammet and Edison (representing Lake Cedar Group, LLC) were present during these measurements.

The FCC has suggested that certain actions be taken in order for these stations to meet federal standards and compliance. The FCC has begun discussions with these stations to turn down their power levels to meet compliance as part of these certain actions. The issue still exists, even if these stations turn down their power levels, whether the overall cumulative level for RF exposure, with the proposed tower will exceed established federal standards.

Unless it can clearly be shown that the cumulative effect of RF exposure will be less with the proposed tower, the situation on Lookout Mountain continues to be a health and safety issue. For these reasons, this proposal cannot meet this policy requirement established in the Telecommunications Land Use Plan.

**UPDATE (1/19/1999):**

***As noted above, the FCC conducted a second survey on December 16, 1998, on Lookout Mountain and concluded that the mitigation measures taken by non-compliant broadcasters has brought the Lookout Mountain site into satisfactory compliance with FCC guidelines for exposure of the general public to RF electromagnetic energy.***

***In addition, the applicant completed a new RF analysis of the proposed tower, which the County's technical consultant has reviewed. The County's technical consultant noted during the January 13, 1999, Planning Commission hearing that the proposed tower along with existing operations on Lookout Mountain would be in compliance with current federal guidelines on the matter.***

2. The practical measures that could be used to reduce RF exposure for residents living near existing tower sites or that would minimize RF exposure in future siting of towers are:
  - a. Encourage stations to lease space on tall, existing towers.
    - Yes/No. This rezoning involves the construction of a new tower. However, no existing tower can accommodate the antennas needed for DTV.
  - b. Require an adequate buffer separating towers from residential and commercial uses, based on RF standards.

- Yes/No. The tower height will accomplish this task. The tower itself will be in close proximity to residential uses.
- c. **The County should adopt the ANSI standards for RF exposure (i.e., 1000uW/cm<sup>2</sup> for 30-300 MHZ). The County should review adopted standards on a regular basis and change its regulations when necessary to reflect new evidence of health effects, improved measurement of RF levels, or standards promulgated by the State of Colorado, the Federal Government, or national industry groups like ANSI. Health standards should only apply to transmitters with a power output above 2,000 watts. Power output below this level does not present a health concern.**
  - Yes. The County follows established federal standards as noted in this policy. The current RF exposure standard is 200uW/cm<sup>2</sup> for 30-300 MHZ.
- d. **The ANSI standards should apply to new or upgraded facilities. Applicants should provide calculations to show what the cumulative RF levels would be at various locations. These calculations should be reviewed by the County's consultant.**
  - Yes. The applicant has provided measurements based on points agreed to by the County's consultant and in conjunction with C.A.R.E.'s technical expert on these issues.
- e. **Expected RF levels should be calculated for the nearest habitable structure near the proposed tower, adjacent residentially zoned property, locations with the highest theoretical RF level, and other location deemed necessary by the County after consideration of topography and antenna pattern.**
  - Yes. This has been done for this proposal. The technical information is contained within the Technical Reports section of the attached notebook.
- f. **Actual RF levels should be measured at the locations described above, after start-up of facility. If RF levels exceed the adopted standard, transmitter power level should be reduced to a level which will meet RF standards until operations are modified. Failure to do so will be considered a zoning violation.**
  - Yes. This has been incorporated into the written restrictions. In addition, this proposal must comply with Section 2 of the Zoning Resolution which requires measurements to be taken after start-up of the facility and prior to the installation on any new antenna on the proposed tower.

**Summarize Plan Non-Conformance:**

**E. Tower Siting - The applicable Plan policies include the following:**

1. **All telecommunications facilities:**
  - a. **Towers and other structures should be located in the area of least visual impact within the site which will allow the facility to function consistent with its purpose.**

- **Yes. The tower has been sited to function consistent with its purpose and placed further away, as is possible, to reduce visual impact to adjoining properties. The proposed transmitter building will be located in an area of the site which will provide for screening and reduce visual impact. The placement of the tower has been sited to provide coverage to the Denver metropolitan area.**

**b. The applicant must show that their proposed equipment cannot be accommodated and function as required by its construction permit or license without unreasonable modifications on any other existing facility.**

- **No. The County has received several responses from other telecommunication facilities that indicate they could accommodate this proposal at their location (please see responses in the Letter of Intent section of the enclosed notebook). The County received responses from Mt. Morrison, Squaw Mountain and Eldorado Mountain. The response from Bear Creek Development Corporation, which owns Mt. Morrison indicated that "Mt. Morrison can accommodate a tower that can safely support five digital television stations and their associated transmission lines." This may be possible, however, the site does not currently have a tower that could accommodate the equipment associated with this proposal. An application is pending that would allow for the construction of a new tower of Mt. Morrison. This application has not yet been approved by the Board of County Commissioners.**

**Squaw Mountain operates in Clear Creek County and can accommodate broadcast facilities, such as those proposed with this application. The facility is located at an elevation of 10,800 feet making it the highest broadcast site in this region. A follow-up discussion with the Clear Creek County Planning Department indicated that the Squaw Mountain site is zoned for broadcast facilities. It is their understanding that a tower would still need to be constructed to accommodate the equipment associated with this rezoning proposal.**

**Eldorado Mountain indicated that they "may be able to accommodate the facilities described in your letter (Lake Cedar Group, LLC letter)." The facilities on Eldorado Mountain are at maximum capacity. The facility would need to be amended to allow for an additional tower. This process would require either a rezoning or special use review.**

**UPDATE (1/19/1999):**

***Eldorado Mountain has expressed strong concern about this component of the Staff Report. It is the opinion of Eldorado Mountain that their site could, in fact, accommodate the facility proposed by Lake Cedar Group,***

**LLC. Staff reviewed the original application for Eldorado Mountain approved in 1984 and consulted with the County Attorney's Office on the matter. The application limited the size of the proposed tower to 180 feet and stated an intent to facilitate a radio station and two way broadcasting.**

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Lake Cedar Group, LLC has responded to these letters and included reasons why Lookout Mountain provides the best coverage and location for their operation. The technical information has been included in the Letter of Intent section of the enclosed notebook.

- c. **Dishes and accessory buildings should be located to minimize their visual impact while functioning consistent with the purpose.**
    - **Yes. Language has been placed into the written restriction which incorporates screening and placement to minimize visual impact.**
  - d. **Applicants should make reasonable efforts to obtain waivers to FAA coloring and lighting requirements.**
    - **Yes. The applicant has contacted the FAA to obtain waivers from coloring and lighting requirements. At this point, we are not aware of the FAA granting such waivers.**
  - e. **The ODP should specify a timeframe within which all buildings or towers to be abandoned or consolidated will be removed.**
    - **Yes/No. The ODP does specify timeframes for the removal of the towers associated with Channels 4, 6, 7 and 9. The applicant has not proposed to remove any of the buildings associated with these towers. The current written restrictions reflect language that would allow for these buildings to remain. It is unclear what function these buildings would have in relationship to the new consolidated tower and transmitter building.**
  - f. **The applicant should show that adequate fire protection is available.**
    - **Yes. Fire protection is provided by the Foothills Fire Protection District. The District can get emergency vehicles to the site, should they be needed.**
  - g. **All other recommendations concerning interference, health and design of accessory structures should be followed.**
    - **Yes/No. Recommendations regarding interference and design of accessory structures have been incorporated into this proposal. Any issue on health effects exists as noted in these comments. It is the applicant's intent to comply with all health standards established by the FCC. Please see further discussion below, under Health.**
2. **Broadcast facilities proposed within major use transmission areas should meet the following guidelines:**

- a. **The new tower should be stressed to accommodate multiple users. If the new tower is to be used for major broadcasters (TV or FM), it should be stressed for a multiplexed FM antenna and/or two multiplexed TV antenna or the equivalent.**

- **Yes. The proposed tower will accommodate 5 TV broadcasters and will have a multiplexed FM antenna that can accommodate up to 12 FM broadcasters.**

- b. **New towers on Lookout Mountain should be located on the eastern slope (based on a North-South axis) of Lookout Mountain unless it can be demonstrated that a proposed tower in another location would have less visual impact and still function consistent with its purpose.**

- **Yes. This will be located on the eastern slope of Lookout Mountain.**

- c.1 **New towers should be permitted only when an equal face area (one face width x height) of existing tower(s) can be removed or as credited in c.2 below. If a new tower is proposed in a major use transmission area, the tower(s) to be removed must come from that area.**

- **Yes. The towers to be removed will come from the same area. The applicant has proposed a phased removal of the towers. The towers for Channels 4 and 6 will be removed upon completion of the new tower. The towers for Channels 7 and 9 will be removed when the analog TV is phased out by the FCC.**

**Staff has calculated the face area for the proposed new tower. The new tower has 27,534 square feet inclusive of the starmount. The Channel 4 tower has 15,750 square feet, the Channel 6 tower has 9,125 square feet, the Channel 7 tower has 15,900 square feet and the Channel 9 tower has 13,600 square feet. The total amount of tower square footage to be removed will be 54,375 square feet versus 27,534 square feet that will be added with the new tower. We have a total reduction of 26,841 square feet.**

**UPDATE (1/19/1999):**

***Errors exist in the original calculation of face area. As such, Staff has recalculated the "single face area" of the existing towers to be removed and the "single face area" of the proposed tower. The total square footage to be removed will be 15,667 square feet versus 11,880 square feet that will be added with the new tower. A reduction in square footage will occur.***

- c.2 **Some tower face area credit should be allowed for new facilities that will provide space for at least 2 different TV or FM stations which are not the same channel and are not redundant or back-up systems.**

- **Yes. This will occur with the proposed new tower. It will accommodate five TV stations and up to 12 FM stations.**

- d. **Multiplexing and other methods should be used whenever possible and practical to maximize the capacity of the towers.**
- **Yes. Multiplexing for the FM broadcasting will be used with this tower. The DTV antennas will allow for two TV stations on one antenna.**

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**ZONING RESOLUTION, Section 15.F.b. - Minimum Standards Planned Development for Telecommunication Towers:**

The Zoning Resolution requires the Board of County Commissioners to consider "minimum standards" in their determination on rezoning applications for telecommunication towers. The standards that are applicable have been identified below.

1. **The applicant must provide expert testimony that demonstrates to the satisfaction of the Board of County Commissioners that no existing telecommunications site is available to accommodate the equipment or purpose for which the tower or increase in height is proposed at a reasonable cost or other business terms (Section 15.F.b.(1)).**
  - **Yes/No.** The applicant has provided expert testimony during the Planning Commission hearing on why Lookout Mountain provides the best location for their needs. Staff comments reflect that other locations do exist including Squaw Mountain, that could accommodate this type of facility.
  
2. **All new structures must be set back from the property line sufficient to prevent all ice-fall materials and debris from tower failure or collapse from falling onto occupied dwellings other than those occupied by the tower owner, and protect the public from NIER in excess of that allowed herein.**
  - **No.** The applicant provided information during the Planning Commission hearing on the issue of tower failure and the likelihood of impact to adjacent property. The information did not clearly address this provision of the Zoning Resolution. In addition, C.A.R.E. has provided information from a mechanical engineer stating that if structural failure occurred it could fall onto adjacent residential property. Staff has attempted to contract a competent structural engineer to assist us in this analysis. As of this writing, we have not hired an individual to assist us in this analysis.

The intent of this provision in the Zoning Resolution is for the applicant to demonstrate this requirement to the satisfaction of the Board of County Commissioners.

Yes. The applicant has met the requirements for NIER as noted under Health, Telecommunications Land Use Plan.
  
3. **The tower must be designed to accommodate structurally multiple antennas if recommended by the Telecommunications Plan.**
  - **Yes.** The applicant has met this requirements.
  
4. **NIER emissions from the tower facility, when operating with maximum power output from all proposed antennas and transmitting facilities, may not exceed the level set forth in the Zoning Resolution, as measured in accordance with methods published by the united States Office of Science and Technology or any other applicable federal agency by qualified experts.**