

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

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DEC - 7 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Canyon Area Residents for the Environment)
Request for Review of Action Taken Under) ___ Docket No. 99-
Delegated Authority on a Petition for)
An environmental Impact Statement)

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

Lake Cedar Group has filed a "Petition for Expedited Special Relief and Declaratory Ruling" in which it requests that the FCC preempt the zoning decision of the Board of County Commissioners of Jefferson County, Colorado. Canyon Area Residents for the Environment (C.A.R.E.) hereby responds by opposing said Petition and requesting the FCC not to act upon it. C.A.R.E. notes that the Petition has not been scheduled for public comment, and, in the event such scheduling occurs, C.A.R.E. will submit more extensive comments at that time.

I. BACKGROUND

LCG filed an application for the rezoning of approximately 80 acres of property on Lookout Mountain in unincorporated Jefferson County, Colorado, with the Jefferson County Planning & Zoning Department in July, 1998. The application submitted at that time was not a complete rezoning application and lacked at least 17 items which were "to be supplied" at a later date (see the "Table of Contents of Materials Rezoning Application . . . Lake Cedar Group LLC" dated June 30, 1998, attached hereto as Exhibit 1). The rezoning

application proposed to rezone the property from Mountain Residential One and Agricultural Two zoning classifications to a Planned Unit Development zoning classification (PUD). The permitted land uses under the PUD would include construction of an 854 foot telecommunications tower which would house HDTV antennae, analog TV antennae, FM radio antennae, and other telecommunication devices, and would also permit construction of an approximately 27,000 square foot support building to house telecommunication equipment and devices. The site, the tower, and the building are all located essentially in the first foothill rising from the plains west of Denver and are highly visible from numerous locations in the Denver metropolitan area. Moreover, Lookout Mountain and its neighbor, Genesee Mountain, are predominantly a residential area with 1,800 homes, a population of more than 7,000, with churches, schools, and other similar land uses as would typically be found in a residential area.

It is very notable that the rezoning application, albeit incomplete at that time, was not filed with the local zoning authority until July 1998. This was more than 14 months after the FCC's Fifth Report and Order released April 21, 1997, more than two years after the Fourth Report and Order, and approximately six years after the Second Report and Order. While LCG and the NAB now seek to twist the facts to suggest that the local zoning authority is delaying the "roll out" of DTV in the Denver area, no explanation is provided for the delay in seeking local land use approval in the first instance, notwithstanding the knowledge that such approval would be necessary far in advance of the rezoning application.

As an aside, it is also appropriate to note that the Fifth Report and Order specifically recognizes the potential need for local zoning changes, the obligation of the broadcast industry to "expeditiously" seek those changes and "resolve [any] problems," as well as the potential for delay in DTV roll out if there were problems in securing local zoning approval (MM Docket No. 97-268, 12 F.C.C.R. 12809, §45, 77, 92, and 47 CFR. §79.604(d)(2)(ii)). There is nothing within the Fifth Report and Order, or any other rulings or regulations of the FCC which suggest, explicitly or implicitly, that local land use decisions and local tower siting decisions are to be decided anywhere but at the local level, by the local land use and zoning authority, applying the criteria traditionally utilized by that authority in making land use decisions.

It was not until December 1998 that the LCG application for rezoning was at a status ready to commence the rezoning hearing process. During the course of the rezoning process, the process was delayed as a result of Non-ionizing electromagnetic radiation (NIER) readings on Lookout Mountain in excess of the FCC standard in a "publicly accessible" area. These situations were supposedly "cured" by reducing the transmitted power of several nearby FM stations and by the erection of orange, plastic fences which did little or nothing to impede public access. A permanent fence was not erected until more than one year after the excessive levels were first measured. As a result of these excess readings, LCG was not able to demonstrate that its proposed new facilities would result in NIER levels under the limit. This resulted in further delay of the hearing process (in short, LCG selected a proposed site for rezoning/tower location which was and is problematic given existing conditions).

Throughout its Petition, LCG characterizes the opposition to the rezoning request as being a "minority," "small" and "strident" (see pages ii, iii, 2, 9, 31, and 32 of the Petition). In fact, the combination of individuals, groups, entities, and civic organizations opposing this rezoning request is anything but small and the breadth and depth of opposition, and the well-reasoned basis for opposition to, and ultimate denial of, the rezoning request is easily demonstrable. The NAB comments are much more demeaning, referring to the rezoning opponents as a "small cabal of intransigent activists." The LCG Petition attempts to suggest that residents of 43 counties in Colorado, Nebraska, Wyoming, and Nevada, as well as the larger Denver community, supported the LCG proposal, remarkably referring only to newspaper editorials written before the Board of County Commissioners hearings even started. Apparently, LCG is suggesting that newspaper editorials, which are, by definition, merely opinions of the writer and are "hearsay," merit evidentiary consideration by the FCC. This is a remarkable assertion by five large District of Columbia and New York law firms. In this regard, C.A.R.E. believes that the lawyers drafting the Petition were not in attendance at any of the BCC hearings, did not hear the testimony, and perhaps were and are unaware of the breadth and depth of opposition.

For a moment, let's compare the so-called "small minority" of opponents with the so-called "larger community" supporting the LCG rezoning request before the Board of County Commissioners. The "small minority" consists of the following:

1. More than 3,000 petition signers executed a petition directed to the Board of County Commissioners opposing the rezoning request.

2. The Golden City Council, elected representatives of all of the 15,259 residents of the City of Golden, unanimously opposed the request by official resolution (Exhibit 2 attached hereto) and appearance and testimony at the BCC.

3. State Representative John Witwer, elected State Representative representing approximately 75,000 citizens, opposed the request on behalf of his constituents.

4. Jon D. deStefano, President of the Jefferson County R-1 School Board, representing 501,591 residents in and 92,000 students of the District opposed the request.

5. Dr. Richard Hoffman, Chief Medical Officer of the Colorado Department of Health (a health official of the entire State of Colorado and its 3,970,971 citizens) opposed the request, by suggesting that no additional devices should be approved until further studies had been completed, and all alternatives fully explored.

6. Over ten professors from the University of Colorado, Colorado State University, and Colorado School of Mines, the three most recognized public universities in the State of Colorado, with combined student populations in excess of 60,000 students, opposed the request.

The "larger community" supporting the rezoning request consisted of the following:

A. Not a single resident of the Denver DMA (except LCG employees and spokesmen) spoke at the BCC or presented documentary evidence or signed petitions in favor of the request.

B. Not a single municipality, governmental entity, or elected representative from anywhere in the Denver DMA supported the request.

C. The "larger community" who supported this request by testimony or presentation of documentary evidence to the Board of County Commissioners consisted of the following nine (9) hired and highly paid experts and spokespersons:

- i. One lawyer from the law firm of Otten, Johnson, Jeff & Ragonetti;
- ii. One doctor from Alabama and one doctor from California;
- iii. Three engineers from Illinois, California, and Michigan;
- iv. An industry consultant from the Washington, D.C. area;
- v. A planning consultant and computer simulation consultant.

The above comparison is even more striking given the nature of the proposal and the identity of the applicants, entities which control the electronic media in the Denver DMA. These were lengthy and well-advertised County Commissioners hearings, but not one independent citizen or elected representative of citizens came forward in favor of this rezoning request, or presented testimony that it conformed to the land use goals and policies of Jefferson County.

II. THE FCC'S POSITION

Before summarizing the rationale for the denial of LCG's rezoning request and the evidence supporting those rationale, three additional matters should be discussed. First, the FCC has already weighed in on the fact that the rezoning and tower siting issue is exclusively a local zoning decision, not subject to preemption. Prior to the commencement of the Board of County Commissioner hearings, LCG had suggested and threatened on various occasions that the Board of County Commissioners did not have the authority to

deny the rezoning application, because the FCC had preempted all issues relating to DTV, including local zoning and tower siting decisions.

In response to this threat, the Honorable Tom Tancredo, U.S. House of Representatives, and the Honorable Wayne Allard, United States Senate, directed a letter to William Kennard, Chairman of the FCC. The letter inquired as to the continuing authority of local zoning authorities, such as the Board of County Commissioners, to make local zoning decisions relative to tower and antennae siting.

In response, Chairman Kennard directed letters dated March 3, 1999 to Representative Tancredo and Senator Allard. Chairman Kennard's letters state:

"As for the local permitting process, the FCC traditionally does not involve itself in local land use matters. The FCC has long held that zoning questions should be left as local zoning authorities who, the FCC believes, are best situated to resolve such questions."

Chairman Kennard's letter further states:

"The Commission . . . defers to the decision of the Jefferson County Commissioners on the remaining local land use matters."

These statements unequivocally and correctly advised all participants in the rezoning process (including the County Commissioners, LCG, and the various groups and entities opposing the rezoning), through their elected representatives, that the zoning decision was solely and purely a local decision from the FCC's perspective. The LCG Petition flies in the face of this enunciated position of the FCC (see the letters attached as Exhibits 3, 4, and 5).

III. LCG'S "INTRANSIGENCE"

Second, prior to the roll call for a vote on the Motion to Deny LCG's Rezoning Request on July 13, 1999, Commissioner Sheehan suggested that LCG and C.A.R.E. get together to discuss and attempt to resolve issues relative to the rezoning request, including the location, exploration of, and suitability of alternative sites. Chairman Holloway and Commissioner Lawrence echoed the need for further detailed identification of and analysis of alternative sites.

As a result of these public comments, C.A.R.E. made a concerted effort to engage LCG and its members in meaningful discussions. C.A.R.E. has requested the so-called detailed analyses that LCG has conducted of alternative sites on several occasions; LCG's local Denver counsel verbally promised delivery of this information on at least one occasion, but it was never forthcoming.

LCG has resisted and refused to participate in any meaningful discussions with C.A.R.E. concerning the local land use issues, as specifically suggested by the Board of County Commissioners. Rather than addressing the local land use issues on the local level, with local decision makers and community groups, LCG has proceeded with its Petition to the FCC in an effort to thwart and usurp the local land use process (see the letters attached hereto as Exhibits 6 through 11, inclusive).

IV. THE REZONING PROCESS

Third, the local rezoning process in Colorado is a quasi-judicial process. In that process, the Board of County Commissioners effectively act as administrative law judges. Although all of the strict rules of evidence are not followed, ex parte contact with the BCC

is not permitted, witnesses are sworn, a transcript is maintained, documentary evidence is marked and submitted for review, and a decision is rendered based upon the evidence.

The applicant, or proponent for the rezoning, is permitted to speak first and last and carries the burden of proof. The applicant has the burden of proving that the proposed rezoning is in conformity with all applicable comprehensive plans for the neighborhood or community in which the property is located, or, in the event of noncompliance with the comprehensive plans, that the character of the neighborhood has changed since the adoption of the comprehensive plan such that the proposed use is appropriate. The applicant also has the burden of establishing compliance with all of the criteria for rezoning contained in the Zoning Resolution.

If a rezoning application is denied by the rezoning authority, the applicant has the right to appeal that decision to the District Court (the court of general jurisdiction in Colorado) pursuant to C.R.C.P. 106(a)(4). The Court is charged with reviewing the record for the rezoning authority (i.e., the transcript of testimony in all written exhibits) and must determine whether there is competent evidence supporting the rezoning decision.

In this case, LCG's rezoning application was denied. LCG has exercised the right to appeal that denial to the District Court in Jefferson County and its appeal is currently pending. The appeal process is an expedited judicial process which does not involve discovery or a trial per se, but is a review of the record of the lower tribunal. As such, it can be anticipated that judicial review of the rezoning decision will be completed by late spring, 2000.

In short, there is an established process for judicial review of and appeal of local rezoning decisions in Colorado. The FCC should not take action which would effectively usurp the state judicial process.

V. THE RATIONALE FOR AND EVIDENCE SUPPORTING THE REZONING DECISION

WITH ALL OF THE ABOVE IN MIND, let us examine the rationale for the denial of LCG's rezoning request. In doing so, it should be recognized that the record before the rezoning authority is in the process of being prepared and submitted to the Jefferson County District Court for review. It is estimated that the transcript of testimony will exceed 2,000 pages and that the volume of exhibits exceeds 10,000 pages. Thus, the following is a brief encapsulation.

A. Noncompliance with Central Mountains Community Plan. In Resolution CC99-427, the first reason supporting denial of the rezoning is stated as follows:

"That the proposal does not substantially conform with the Central Mountains Community Plan because it does not conform to the policy recommendations associated with visual resources, public services/facilities and mountain site design criteria." (See Attachment 1 to LCG's Petition).

The Central Mountains Community Plan is the community plan which is applicable to and encompasses Lookout Mountain and its environs. Section 15(f)(2)(a) of the Zoning Resolution (see Attachment 4 to LCG's Petition) specifically provides that in reviewing proposals for rezoning, the Board of County Commissioners "... shall consider ... the County's Comprehensive Plan including, but not limited to the applicable community plan ... and the Telecommunications Land Use Plan" The Central Mountains Community Plan states:

"Development throughout the Central Mountains area should be designed to compliment the landscape, not degrade it. Protection of visually sensitive areas is a priority because they are critical to the composition and unique character of the foothills landscape. . . . Development proposals, particularly rezoning requests, within or adjacent to these resources, must be carefully considered and judged against the recommendations set forth in this section."

Lookout Mountain is specifically identified as an important visual resource within the Plan. Goals of the Plan include preservation of important visual resources, protection of those visual resources from degradation, minimization of visual disruption and protection of the aesthetic values of scenic corridors. The mountain site design criteria in the Plan provide "buildings or other structures should be located to avoid a dominant silhouette," "ridge line silhouette should be composed predominantly of trees and land forms," "massive structures in their overall form should convey a small town/village image . . .," "buildings should be designed and sited to be in proportion . . . to the surrounding land form and vegetation," and that there should be significant buffers between nonresidential and residential uses, etc.

Numerous witnesses, including Andy Beck, an architect who restored the Old Faithful Inn at Yellowstone, Jean Widner, the president of Panorama Estates Homeowners Association, Jake Mola, president of a homeowners association, Bryan Starling, Golden City Council member, Margo Zallen, president of Plan Jeffco, an open space watchdog organization, and Jan Wilkens, a member of the committee which authored the Plan, testified to the direct violations of the policies, goals and criteria in the Central Mountains Community Plan.

Clearly, telecommunication towers 85 stories high, with large star mount antennae on the top, and buildings more than a half an acre in size, both constructed at or close to a ridge line, within a visual corridor of the gateway to the Rocky Mountains, constitute an eyesore. Numerous cases in which aesthetic concerns such as this have formed the sole basis for denial of a land use request have been affirmed by the courts under the Telecommunications Act of 1996, as they pertain to much shorter and smaller wireless communication towers, See, e.g. *AT&T Wireless PCS, Incorporated v. City Council of City of Virginia Beach*, 155 F.3d 423 (4th Cir., 1998); *Town of Amherst New Hampshire v. Omnipoint Communications Enterprises, Inc.*, 173 F.3d 9 (1st Cir., 1999); *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630 (2nd Cir., 1999); *Aegerter v. City of Delafield, Wisconsin* (7th Cir., 1999); *AT&T Wireless PCS Incorporated v. Winston-Salem Zoning Board of Adjustment*, 172 F.3d 307 (4th Cir., 1999); *APT Pittsburgh Limited Partnership v. Penn Township*, U.S. Court of Appeals for the Third Circuit, Case Nos. 98-3519 and 98-3546 (Nov. 8, 1999); *Sprint Spectrum L.P. v. Board of County Commissioners*, 59 F. Supp.2d 1101 (D. Colo. 1999) [the last case cited upheld the Jefferson County Board of County Commissioners denial of a wireless communications tower, for aesthetic reasons, located in the same general geographic area as the proposed LCG tower]. The same aesthetic concerns, standing alone, form a legitimate basis for denial of the subject rezoning request. These types of concerns also evidence the underlying rationale for leaving local land use decisions where they belong, in the hands of local land use authorities.

B. Non-compliance with Telecommunications Land Use Plan. The second reason for denial of the rezoning, as articulated in Resolution CC99-427, is:

“That the proposal does not substantially conform with the Telecommunications Land Use Plan because it does not conform to the policy recommendations associated with tower siting.”

The tower siting requirements in the Telecommunications Land Use Plan include locating towers and structures “. . . in the area of least visual impact . . .” and require that all other recommendations concerning “interference, health and design of accessory structures should be followed.” Policies regarding interference in the Telecommunications Land Use Plan include the following statement, “rezoning of residentially zoned land for towers should be discouraged” (by its own application, the LCG proposal is for the rezoning of residentially zoned land for towers). Other articulated policies in the Telecommunications Land Use Plan include that any new telecommunication facilities should “minimize interference” and should “avoid interference problems.”

The aesthetic components of the telecommunications plan are not as detailed as those in the Central Mountains Plan, but are discussed above.

Bryan Starling, Golden City Council representative, testified to interference problems occurring at the Colorado School of Mines, a world renowned institution in the area of engineering and surveying teaching and research. Dr. Gary Othoelt, a Professor of Geophysics at the School of Mines testified to the loss of funding because of broadcast and cell phone interference and to the Colorado School of Mines faculty's concerns about increased interference problems which would be created by construction of a new

telecommunications facility on Lookout Mountain. Bob Crowder, a geophysics business owner in the Golden area, testified about the adverse impacts which additional RF interference would have on businesses, as well as the problems created by existing RF interference. Al Hislop, an RF electrical engineer, testified to adverse impacts from interference starting at .5 micro watts per centimeter squared and to the additional interference problems which would be created by digital signals.

A survey of practical interference problems as experienced by residents and business owners was presented, as was a video tape of interviews detailing specific interference problems. Again, overwhelming evidence was presented supporting the lack of compliance of the LCG rezoning request with the policies and criteria set forth in the Telecommunications Plan.

C. Non-compliance with "minimum standards" in the Zoning Resolution. The next reason for denial of the rezoning request articulated in Resolution CC99-427 states:

"That the proposal does not meet minimum standards for telecommunications facilities contained in the Jefferson County Zoning Resolution. The proposal fails to meet these standards because it does not demonstrate that no alternative existing site is available to accommodate the equipment at a reasonable cost or other business terms, because the proposal does not contain sufficient setbacks, and because the proposal does not demonstrate that the NIER emission levels set forth in the Zoning Resolution are met."

This finding concludes that three specific and different requirements of the Zoning Resolution were not fulfilled by LCG, i.e., that LCG failed to meet its burden of proof with respect to these three criteria.

With respect to alternative sites, the Zoning Resolution requires the applicant to 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 . . . is proposed at a reasonable cost or other business terms ”

It should be pointed out that this is a minimum standard and that the Zoning Resolutions specifically states:

“Satisfaction of the minimum standards set forth above shall not entitle an applicant to approval of the rezoning if the Board of County Commissioners determines that rezoning should not be allowed pursuant to the general criteria for review.”

Again, there was substantial evidence presented relative to the availability of alternative sites in the form of testimony and exhibits. This evidence was presented by Jefferson County Planning and Zoning Staff (the staff report notes Squaw Mountain and El Dorado Mountain specifically as potentially viable alternative sites), Al Hislop, Kevin Groenoweg, an attorney and investment consultant for RF land-based towers and ventures, and others. Documentary evidence was submitted from Squaw Mountain Communications to the effect that it was fully capable of accommodating the needs of LCG and its members.

Just as important, LCG failed to present even the minimum evidence of consideration and analysis of alternative sites, as required by the zoning resolution and the complimentary provisions in the Telecommunications Land Use Plan. As discussed above, after denial of its rezoning request, LCG has continued to fail to be forthcoming in providing information concerning alternative sites.

In its Petition, LCG has asserted the proposition that Lookout Mountain is the one and only site on which DTV can be located to serve the Denver DMA. On its face, without the need for any expert analysis, this proposition is ludicrous. Hypothetically, what if Lookout Mountain did not exist? What if Lookout Mountain were not available as a broadcast site for reasons which presumably even LCG would acknowledge as being valid (e.g., FAA regulations, NIER levels in excess of the FCC standards, etc.)? Obviously, the broadcast industry would solve the problem posed by these hypothetical questions by locating alternative sites and, to the extent there were technical problems with shadowing or coverage area with one or more of those sites, devise technical solutions to solve those problems. During the course of his testimony at the BCC hearings, LCG's own expert acknowledged that there were technical solutions to alternative sites, and that the main reason LCG wanted to remain on Lookout Mountain was one of convenience.

The Zoning Resolution contains the following minimum requirement for set backs:

All new structures must be setback 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"

The professional Planning and Zoning Staff of Jefferson County determined that this requirement had not been met. In their report to the Board of County Commissioners, the Planning and Staff stated:

"Sufficient [setbacks] in this case, must meet the worst case scenario, which in the applicant's report assumes 110% of the tower's height. In that situation, three occupied dwellings exist within this radius."

Bob Barrett, a mechanical engineer, presented evidence and a visual demonstration showing that the setback requirements had not been fulfilled, as they related both to dwellings and power lines, confirming the conclusions of Jefferson County Staff. He also presented the results of his investigations concerning debris and ice-fall. LCG was not able to purchase all the property within the required setback area, notwithstanding efforts to do so.

Finally, although the so-called "hot" spots on Lookout Mountain exceeding the FCC's NIER standard had been "resolved" in December 1998, apparently by turning down the power on one or more FM antennae and by the plastic fence barrier described above, Jefferson County conducted new NIER testing while the BCC hearings were proceeding in June 1999. Again, Jefferson County found a number of "hot spots" on Lookout Mountain at or close to the FCC standards. The Jefferson County Staff found, "With the addition of the new tower, the RF cumulative exposure would exceed the FCC limit for RF." These measurements were uncontested and form the basis for the third finding of noncompliance with the Zoning Resolution (see Exhibit 12 attached hereto).

D. Incompatibility. The final reason articulated in Resolution CC00-427 for denial of the rezoning is:

"That the proposal is incompatible with residential uses in the surrounding area."

The Zoning Resolution, as well as Colorado state statutes, specifically direct the zoning authority to look at the "compatibility of [a rezoning] proposal with existing and allowed land uses in the surrounding area." Lack of compatibility of a proposed use with existing uses has traditionally and universally been recognized as a valid reason for denial of a

rezoning request. In this case, all of the rationale and testimony summarized above support the conclusion of incompatibility of this high intensity, visually intrusive industrial use in a residential area and community. In further support of this conclusion, two professional real estate appraisers, as well a PhD in economics, all testified to the adverse effect granting of the rezoning proposal would have on real estate values in the surrounding area.

Just as the opposition to LCG's rezoning request was substantial in breadth and depth, the rationale underlying the denial of the rezoning and the evidence supporting that rationale is substantial. LCG's Petition to the FCC mischaracterizes the process, the evidence, and the rationale supporting the result of the process.

VI. CONCLUSION

If rezoning decisions and Petitions to the FCC were determined based on vitriol, hyperbole, and misrepresentation, or on the use of turgid prose, Jefferson County and its citizens and representatives would stand little chance in the face of LCG's petition and NAB's supporting comments. Fortunately, we operate under rules of law, not rhetoric. The law clearly leaves local land use decisions at the state and local level, as opposed to the federal level, and provides criteria for those decisions.

C.A.R.E. respectfully submits that the LCG Petition should be summarily rejected by the FCC. The FCC has previously represented in this case that it does not involve itself in local land use matters, that zoning questions should be left to local zoning authorities who are best situated to resolve those questions, and that it would defer to the decision of the Jefferson County Board of County Commissioners.

The decision of the Board of County Commissioners is based upon multiple rationales supporting denial of the rezoning request, those rationales were all supported by substantial evidence, and the Board of County Commissioners correctly interpreted and applied the criteria contained in its land use plans and zoning resolution, as well as the general principles of land use law in denying the LCG rezoning application.

To the extent that LCG contests the Board of County Commissioner's decision, the LCG has a speedy and adequate method of review through the state court system in Colorado pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure, and LCG has availed itself of that right of appeal. LCG's efforts to circumvent the local land use authority and state court system via this site-specific request for preemption should simply be rejected.

Respectfully submitted,

HOLLEY, ALBERTSON & POLK, P.C.

BY: 

Scott D. Albertson, #8022

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CERTIFICATE OF SERVICE

I, Scott D. Albertson, hereby certify that on December 6, 1999, I mailed copies of the foregoing INITIAL COMMENTS OF CANYON AREA RESIDENTS FOR THE ENVIRONMENT IN OPPOSITION TO LAKE CEDAR GROUP'S PETITION FOR EXPEDITED SPECIAL RELIEF AND DECLARATORY RULING by first-class postage prepaid mail to the following:

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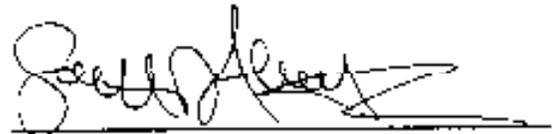
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A handwritten signature in black ink, appearing to read "Scott Albert", written over a horizontal line.

**TABLE OF CONTENTS
OF MATERIALS
REZONING APPLICATION FOR PLANNED DEVELOPMENT
LAKE CEDAR GROUP LLC**

1. Completed Rezoning Application Form
2. Copy of Title Commitment and Title Insurance Policy for Property to be Rezoned
3. Copies of Recorded Deeds for Property to be Rezoned
4. Copies of Easements Encumbering the Property to be Rezoned
5. Proposed Receipt and Agreement Concerning \$10,000 Deposit for County Expert
6. Boundary Survey of Site [to be supplied]
7. Copies of Documents Referenced in Boundary Survey [to be supplied]
8. Site Plan and Landscape Plan [to be supplied]
9. ODP Text [to be supplied]
10. ODP Graphic [to be supplied]
11. Expert Report Concerning Design of Tower [to be supplied]
12. Expert Report Concerning NIER Levels [to be supplied]
13. Declaration of Intent Concerning Lease of Excess Tower Space to Third Parties [to be supplied]
14. Evidence of Contact With Owners of Existing and Approved Towers [to be supplied]
15. Viewshed Study for Visibility of Tower Within 3-Mile Radius [to be supplied]
16. Visual Study from 5 Designated Viewpoints [to be supplied]
17. Analysis of the Area to be Rezoned [to be supplied]
18. Elevations of Proposed Tower and Transmitter Building [to be supplied]
19. Documentation Concerning Water and Sewer Service [to be supplied]
20. Documentation Concerning Fire Protection [to be supplied]
21. Soils/Geologic Report for Building Site [to be supplied]
22. Grading and Erosion Control Plan [to be supplied]





CITY OF GOLDEN



June 16, 1999

Honorable Patricia Holloway, Chair
Honorable Michelle Lawrence
Honorable Rick Sheehan
Jefferson County Board of County Commissioners
100 Jefferson County Parkway
Golden, Colorado 80419

Dear Pat, Michelle, and Rick:

We admire and respect the careful way you have considered the difficult issue of permitting the new broadcast tower on Lookout Mountain. Your approach has been responsible and fair to all concerned. While we have not listened to the hours and hours of testimony that you have, we have heard enough at City Council and other meetings to conclude that the application by Lake Cedar Group should be denied.

Approval of the request will adversely affect home values, the success of many of our high-tech businesses, the attractiveness of our community, and the health of our citizens. Every member of this City Council believes very strongly that you should deny the request. We are enclosing another copy of our Resolution 975 which we sent you in January. We do not believe that Lake Cedar Group has made a compelling argument or been as diligent as they should have been in addressing legitimate concerns raised by our citizens and yours.

If this proposed tower were within the city limits of Golden, we would vote "No," and we urge you to do the same.

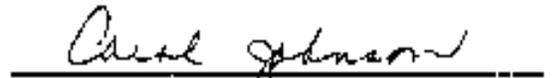
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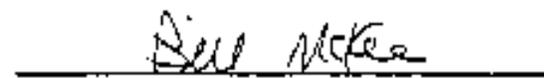
GOLDEN CITY COUNCIL

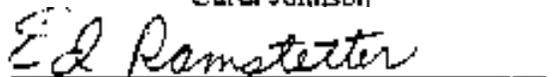

Jan Schenck, Mayor

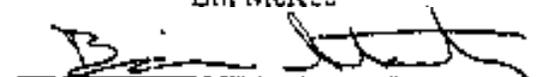

Webb Aldrich


Chuck Baroch


Carol Johnson


Bill McKee


Ed Ramstetter


Brian Starling

RESOLUTION NO. 979

A RESOLUTION OF THE CITY OF GOLDEN CITY COUNCIL
REQUESTING ADDITIONAL IMPARTIAL AND EXPERT
EVALUATION OF THE PROPOSED EDTV 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 25th day of January, 1999.



Jan C. Schenck
Mayor

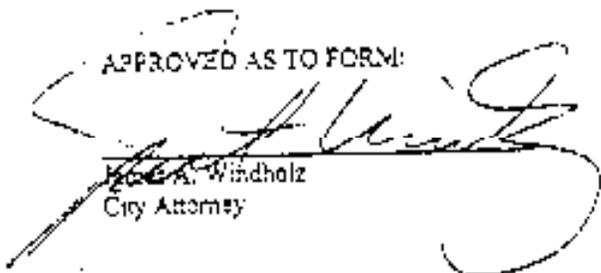
Resolution No. 975
Page 2

ATTEST:



Susan M. Brooks, CMC/AAE
City Clerk

APPROVED AS TO FORM:


Robert 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 23rd day of January, A.D., 1999.

(SEAL)

ATTEST:



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

Congress of the United States
Washington, DC 20510

February 24, 1999

The Honorable William E. Kennard
Federal Communications Commission
1919 M Street, N.W. Room 614
Washington, D.C. 20554

Dear Chairman Kennard:

Concerns have arisen among our constituents because of a proposal to site a new High Definition Television (HDTV) tower on Lookout Mountain in Jefferson County, Colorado. As you may be aware, several of the major television stations in the Denver market have contracted with a company to erect this HDTV tower. We have been following this issue for several months; we have attended meetings and been in contact with local community groups, county zoning officials and commissioners, and the Colorado Department of Health. We are writing to request some specific information from the Commission that will help us to better understand this issue and the role that the FCC plays in this particular case. We would appreciate answers to the following questions:

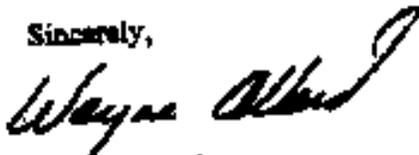
1. What role does the FCC have, if any, in the permitting process for private companies that propose to build HDTV towers on private land?
2. Currently several broadcast towers exist at the Lookout Mountain site. There are 9,000 to 11,000 residents in the immediate area (within 4 miles of the antennas), and some residents live at a higher altitude than the radio towers. Is this situation unique? Specifically, is this a comparatively large number of people within a small radius of such towers?

Also, do other antenna sites exist in the United States where people live at an equivalent elevation or above the towers? Does the FCC have knowledge of any studies conducted to determine whether special health risks are posed to those who live at an elevation above such towers?
3. If the FCC is aware that a proposed tower would exceed the RF guidelines for that site, can or will the FCC take preemptive action against the proposed tower?
4. The FCC has mandated that affiliates in the top 30 markets provide a digital signal by a date certain. Would you please confirm the ranking of the Denver market, and the date by which a digital tower for Denver networks, like the one proposed, must be operational?
5. The Lake Cedar Group, the contractor which proposes to erect the tower on Lookout

Mountain, will go before the Jefferson County Commissioners on March 10, 1999 to request zoning approval for its project. Does the Board of Commissioners have absolute authority to deny or grant this request? Does the FCC have any authority to override the decision of the Commissioners in this particular case?

A timely response is necessary due to the upcoming Board of Commissioners meeting to review this issue. We would very much appreciate your written response by March 3. Thank you for your prompt attention to our questions.

Sincerely,



Wayne Allard
United States Senator



Tom Tancredo
Member of Congress

cc: Jefferson County Commissioners

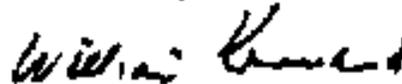
The Honorable Tom Taucredo

Page 3

and defers to the decision of the Jefferson County Commissioners on the remaining local land use matters.

I appreciate your concern in this matter, and will be happy to answer any further questions you might have.

Sincerely,



William E. Kennard
Chairman

Enclosure



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON

March 3, 1999



The Honorable Wayne Allard
United States Senate
513 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Allard:

Thank you for your letter on behalf of your constituents concerning the siting of broadcast facilities on Lookout Mountain near Denver, Colorado. The following information responds to the specific questions contained in your letter.

Television stations throughout the United States are in the process of converting to new digital television (DTV) facilities. The FCC's rules provide for a staggered implementation schedule for DTV. Television stations in Denver, Colorado (the 18th largest television market according to Nielsen rankings) that are affiliated with the top four networks (ABC, CBS, Fox, and NBC) must complete construction of their DTV facilities by November 1, 1999. All remaining Denver commercial television stations must complete DTV construction by May 1, 2002, and Denver noncommercial television stations must complete DTV construction by May 1, 2003. Six television stations in Denver with separate existing towers are seeking to construct their DTV facilities on a new unified tower to be sited on Lookout Mountain by a consortium, known as the Lake Cedar Group, LLP (LCG), thus reducing the total number of towers at that site.

While the FCC maintains a database on the location of communications towers, it does not maintain records on the number of persons residing within the vicinity of those towers, or the altitude of such residences. Accordingly, we cannot determine whether the proposed tower siting on Lookout Mountain is a unique situation. Similarly, while studies have been conducted to examine generally the effects of human exposure to radiofrequency radiation (RFR) produced by communications facilities, we are not aware of any studies that have been conducted specifically to examine the health risks posed to those who live at an elevation above a communications tower.

The FCC's review of the proposed DTV facilities on Lookout Mountain encompasses certain matters within its rules and the Communications Act of 1934, as amended. Each DTV application receives a technical review by FCC staff to assure that the proposed facilities will, among other things: (1) not cause objectionable interference to other DTV or analog (NTSC) facilities; (2) provide adequate signal strength to cover the city of license; (3) not create a hazard to air navigation; and (4) not involve a violation of the FCC's rules regarding harmful

The Honorable Wayne Ailard

Page 2

exposure to RFR. If the projected RFR from any proposed tower exceeds federal limits, the Commission will not approve the tower application until it complies with the federal limits. As for the local permitting process, the FCC traditionally does not involve itself in local land use matters. The FCC has long held that zoning questions should be left to local zoning authorities who, the FCC believes, are best situated to resolve such questions.

We have been aware of the allegations concerning RFR exposure levels at the Lookout Mountain tower site that may have been in excess of the FCC's limits. While FCC staff were reviewing applications filed by each of the six Denver television stations proposing their new DTV facilities on Lookout Mountain, Canyon Area Residents for the Environment (CARE) sent a series of filings to the FCC maintaining that measurement studies performed by members of their group indicated that certain locations on Lookout Mountain already exceeded the FCC's RFR exposure limits. On October 9, 1998, the Chief of the FCC's Office of Engineering Technology (OET) responded to CARE's filings and denied their request for a blanket prohibition on new or renewed antenna facilities on Lookout Mountain. However, OET stated that evidence submitted by CARE established that a closer look at the Lookout Mountain RFR matter was warranted.

On October 29, 1998, FCC staff conducted a measurement survey of RFR exposure levels in publicly accessible areas at the Lookout Mountain site and determined that certain locations on Lookout Mountain exceed the RFR limits. OET determined that the relatively high RFR levels measured were the result of emissions from the existing antennas of five Denver FM radio stations. At the recommendation of FCC staff, the FM stations promptly reduced their power and took other steps temporarily to eliminate the RFR problem on Lookout Mountain. The FM stations also agreed to implement a more permanent solution, pending local approval, including the erection of fencing to prohibit public access and exposure in the future. Thereafter, OET staff revisited the Lookout Mountain site and confirmed that the remedial measures taken by the FM stations had been implemented and that the Lookout Mountain site was in compliance with RFR guidelines. These facts were reported to the Jefferson County Planning and Zoning Commission in a letter dated November 25, 1998, from OET and the Mass Media Bureau, a copy of which is enclosed.

The existing TV facilities were found to be in compliance, and when Commission staff factored in the projected RFR from the proposed DTV facilities, the emission levels from all the TV towers remained within federal limits. Based upon these actions, on December 2, 1998, the FCC granted the Denver DTV applications.

I understand that, since that time, the local Jefferson County Planning and Zoning Commission has approved the construction of the LCC tower. As you indicated in your letter, the issue is scheduled to go before the Jefferson County Commissioners on March 18, 1999. The Commission has provided its input to local officials concerning the RFR matter

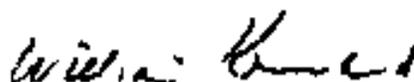
The Honorable Wayne Allard

Page 3

will defer to the decision of the Jefferson County Commissioners on the remaining local land use matters.

I appreciate your concern in this matter, and will be happy to answer any further questions you might have.

Sincerely,



William E. Konward
Chairman

Enclosure



Canyon Area Residents for the Environment, Inc.

Golden, Colorado 80401

C.A.R.E. is a coalition of homeowners' associations & neighborhoods in the Mount Vernon Canyon. Since 1987 it has served as an umbrella organization representing the central mountain communities of Jefferson County - from Clear Creek to Bear Creek, the Hogback to Rainbow Hills.

August 4, 1996

Re: CARE Invitation to Broadcasters

Dear Network Presidents, Lake Cedar Group Members, Attorneys and National Affiliates:

The Jefferson County Commissioners requested that CARE work with the broadcasters on a solution to the siting of HDTV broadcast antennas. This suggestion was made following the Commissioner's rejection of the Lake Cedar Group Rezoning Proposal for a superpower and transmission building on Lookout Mountain for both HDTV and FM. Numerous CARE Community members have expertise and contacts that may help solve problems with alternative sites suggested or anticipated by Lake Cedar Group. CARE offers its help in coping with issues that may be raised by the FAA, the Department of Commerce, the FCC and others regarding these alternative sites as well as sites not even previously discussed.

Lookout Mountain, with numerous residents in the main beam of radiation and even more residents exposed to major interference problems is a highly problematic site. These and many other issues raised at the Jefferson County Commissioners Hearings and in CARE filings with the FCC point to the need for a careful evaluation of alternatives. Please join us in reaching a solution that will promptly provide HDTV for Denver without harming people.

Sincerely,

Deborah Carney, on behalf of CARE
21789 Cabrini Boulevard Golden, Colorado 80401
303-526-9666
e-Mail: deb@carneylaw.net

Copy to:
Robert Iger
ABC President
77 W. 66th
New York,
New York 10023
Via fax: 212-456-1002

Mel Karnazin
CBS President

51 W 52 nd St.
New York,
New York 10019
Via fax, 212-975-5361

Robert C. Wright
NBC President and CEO
30 Rockefeller Plaza
New York,
New York 10119

Ervin Duggan
PBS President and CEO
1320 Braddock Place
Alexandria,
Va. 22314-1698
Via fax: 703 739 0715

Corporation for Public Broadcasting
Robert T. Coonrod
President and CEO
901 E. Street, NW
Washington, DC. 20004-2037
Via fax: 202 783 1019

Edward W. Hummers, Jr.
Holand & Knight, LLP
2100 Pennsylvania Avenue, N.W. Suite 400
Washington, D.C. 20037-3202
(Counsel for Lake Cedar

Group LLP and Twenver Broadcast, Inc.)
Todd D. Gray
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036-6802
(Counsel for Rocky Mountain Public Broadcasting Network)

Marnie K. Sarver
Wiley, Rein & Fielding
1776 K Street N.W.
Washington, D.C. 20006
(Counsel for Gannett Colorado Broadcasting, Inc.)

Arthur B. Goodkind

Koteen & Naftalin, LLP
1150 Connecticut Avenue N.W.
Washington, D.C. 20036
(Counsel for McGraw-Hill Broadcasting)

Howard F. Jaeckel
CBS, Inc.
51 West 52nd Avenue
New York, New York 10019-6119
(Counsel to Group W CBS Television Stations Partners)

Thomas Ragonetti, Esq.
Otten, Johnson, Robinson and Neff
950 17th St. #1600
Denver, Co. 80202-2827
(Attorney for Lake Cedar Group)

And the following broadcast stations:

KWGN, Inc. (KWGN)
6160 S. Wabash Way
Englewood, Co. 80111

Group W CBS TV Stations Partnership (KCNC)
C/o CBS, Inc.
600 New Hampshire Ave., NW
Washington, D.C. 20037

McGraw-Hill Broadcasting Co., Inc. (KMGH)
122 Speer Blvd.
Denver, Co. 80202

Fox TV Stations Inc. (KDVR)
5151 Wisconsin Ave., NW
Washington, DC 20016

Gannett Colorado Broadcasting Inc (KUSA)
500 Speer Blvd.
Denver, Co. 80302

Rocky Mountain Public Broadcasting Network, Inc. (KRMA)
1089 Bannock St.
Denver, Co. 80204

And the following additional interested parties:

Jefferson County Commissioners

Michelle Lawrence

Pat Holloway

Richard Sheehan

Jefferson County Building

100 Jefferson County Pkwy.

Golden, CO 80401-3550

(through Mr. Ron Holliday, with extra copy for Mr. Tim Carl of Planning Department)

LAKE CEDAR GROUP LLC

13974 Trevois Trail _____
Parker, Colorado 80135 _____
Voice & FAX 303-841-6624 _____
Internet: james@user@aol.com _____

J.H. (Jim) MacDermott
Vice-President & General Manager



August 12, 1999

Ms. Deborah Carney
Canyon Area Residents for the Environment
21789 Cabrini Boulevard
Golden, CO 80401

Dear Ms. Carney:

This will respond to your August 4, 1999 letter addressed to Lake Cedar Group Members, among others, of which I have received a copy.

As you know the Jefferson County Commissioners urged that Lake Cedar Group (LCG) and CARE seek ways to achieve a "win-win" solution to improve the antenna farm on Lookout Mountain and the concurrent implementation of digital television as mandated by the Federal government. The members of LCG own approximately 80 acres of property on Lookout which is, and will continually be, legally used for purposes of television and radio broadcast transmission. We thoroughly analyzed and evaluated all other potential sites many years ago when we began the consolidation process, and repeated that again prior to and during the application hearings, and determined that Lookout was the only feasible site. No other existing or approved site, or any other location, was or is capable of handling the consolidated facility or of delivering satisfactory signal coverage to the citizens of the metro area.

As we have stated in the past, we stand ready to meet with you and the Commissioners in order to bring about that "win-win" goal on Lookout. Please provide me with some alternative dates and times that you would be available for such a meeting so that we can schedule it at a mutually convenient time.

Yours truly,

A large, stylized handwritten signature in black ink, written over the "Yours truly," text.

Courtesy copies per attached list.



Canyon Area Residents for the Environment, Inc.

Colden, Colorado 80401

C.A.R.E., 25950 Geneva Trail Road, Unit K 203, Colden, CO 80401-5742

C.A.R.E. Web Page: <http://www.c-a-r-e.org>

C.A.R.E. is a coalition of homeowners, associations & neighborhoods in the Mount Vernon Canyon. Since 1987 it has served as an umbrella organization representing the central mountain communities of Jefferson County - from Clear Creek to Bear Creek, the Hogback to Rainbow Hills

August 18, 1999

Jim MacDermott
Vice-President and General Manager
Lake Cedar Group LLC
13970 Travois Trail
Parker, Colorado 80138



Re: Invitation

Dear Mr. MacDermott,

CARE is in receipt of your letter of August 12, 1999. Our representatives are available and welcome the opportunity to meet with LCG members and representatives, as suggested by the Board of County Commissioners and our 8/4/99 letter. The County Commissioners did not limit the issues to be discussed at our meeting(s) to Lookout Mountain. Indeed, the Commissioners have indicated that there has not been thorough and comprehensive evaluation and consideration of alternate sites. The Board of County Commissioners has suggested, and CARE agrees, that all siting alternatives should be reviewed.

Perhaps the perceived problems with some of those alternatives can be resolved through mutual, cooperative effort. Perhaps there are alternative sites that have not yet been examined. As a starting point, it would be helpful for Lake Cedar Group to provide CARE with copies of any studies, reports, or other available information containing the "[analyses and evaluation of] all other potential sites" completed by LCG "many years ago" and those that were apparently more recently conducted during the hearing process. This base data will assist CARE in understanding all of the alternatives which have been considered and understanding with specificity the identified problems with these various alternatives. It will facilitate and expedite future discussion(s) of alternatives and allow us to focus more clearly on problem solving.

If you could assemble and provide us with the above information by August 30, we would propose scheduling a meeting for September 8, 9, 10, 15, 16, or 17 at 9 a.m. Mount Vernon Country Club.

We trust that commencing this dialogue is important to LCG and its members. It is a high priority for CARE. We will look forward to hearing from you.

LAKE CEDAR GROUP LLC

13974 Tirolis Trail _____
Parker, Colorado 80138 _____
Voice & FAX 303-841-0624 _____
Internet: jcmestvser@aol.com _____

J.H. (Jim) MacDermott
Vice-President & General Manager



September 2, 1999

Ms. Deborah Carney
Canyon Area Residents for the Environment
21789 Cabrini Boulevard
Golden, CO 80401

Dear Ms. Carney,

As CARE does, we at Lake Cedar have many people involved in formulating our plans. We are presently evaluating various thoughts as to the most effective way to work together, and will get back to you in the near future.

Yours truly,

A handwritten signature in cursive script, appearing to read "J. MacDermott", written over a horizontal line.

Courtesy copies per attached list.



Canyon Area Residents for the Environment, Inc.

Golden, Colorado 80401

C.A.R.E., 25958 Genesee Trail Road, Unit K 203, Golden, CO 80401-5742

C.A.R.E. Web Page: <http://www.c-a-r-e.org>

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September 9, 1999

Jim MacDermott
Vice-President and General Manager
Lake Cedar Group LLC
13970 Travis Trail
Parker, Colorado 80138

Re: CARE Invitation to Meet

Dear Mr. MacDermott,

CARE is in receipt of your letter of September 2, 1999 advising that you are presently evaluating various thoughts as to the most effective way to work together. In the meantime, we would like to again request copies of any studies or documentation of any perceived problems with alternative sites. A response to this request does not necessitate an overall determination of strategy on the most effective way to work together. Thank you.

Sincerely,

Deborah Carney
21789 Cabrini Blvd.
Golden, Co. 80401
303-526-9666



Copy to:

National affiliates, Council and Station Managers for members of Lake Cedar Group by station:

Denver Channel 4 (CBS) KCNC
Mel Karmazin
CBS President
51 W 52 nd St.
New York
New York 10019



Canyon Area Residents for the Environment, Inc.

Golden, Colorado 80401

C.A.R.E., 25958 Genesee Trail Road, Unit K 203, Golden, CO 80401 5712

C.A.R.E. Web Page <http://www.c-a-r-e.org>

Jeff Holland, President

(E-Mail: jefferydholland@email.msn.com)

C.A.R.E. is a coalition of homeowners' associations & neighborhoods in the Mount Vernon Canyon. Since 1987 it has served as an umbrella organization representing the central mountain communities of Jefferson County - from Clear Creek to Bear Creek, the Hogback to Rainbow Hills.

September 17, 1999

Thomas Ragonetti, Esq.
Oren, Johnson, Robinson and Neff
950 17th St. #1600
Denver, Co. 80202-1527



Re: Meeting on September 16th

Dear Mr. Ragonetti:

Thank you for talking with me on September 16th. It is important to keep the lines of communication open and flowing.

I wanted to remind you of the information you agreed to get to us.
Extensive technical engineering analysis of all sites with overlays of line of sight, interference, quiet zone, shadowing, etc.
List of reasons that Squaw and El Dorado would not work.

It is our intention to create a win-win situation for everyone and help find a site that works for all. By providing us this information, we will interpret this as evidence good faith in finding a site.

Sincerely,

Jar. Wilkins,

CASE SUMMARY

H.C.C. Hearing Date: July 13, 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 254 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.
 - Recent measurements by the County, CARE and broadcast industry show ratings at maximum level or right below maximum level of RF exposure. With the addition of the new tower, the RF cumulative exposure would exceed the FCC limit for RF.
 - If tower failure were to occur, it has not been demonstrated to staff that no other towers would be affected. It has also not been demonstrated that sufficient distance has been met to prevent damage to nearby occupied structures not currently owned by the applicant.
- 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. 3710)

Level of Controversy: Very High

103) 526-9843