Be It Resolved by the Senate of the Sixty-second General Assembly of the State of Colorado, the House of Representatives concurring herein:

That the General Assembly of the State of Colorado hereby encourages the FCC not to preempt local government land use decision-making and state judicial processes, thus overriding local and state government authority.

Be It Further Resolved, That copies of this Joint Resolution be sent to the President of the United States Senate; the Speaker of the United States House of Representatives; each member of Colorado's Congressional delegation; each member of the House of Representatives Subcommittee on Telecommunications, Trade and Consumer Protection of the Committee on Commerce; the Governor of Colorado; and the Commissioners of the Federal Communications Commission.

Ray Powers
PRESIDENT OF
THE SENATE

Russell George
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Patricia K. Dicks
SECRETARY OF
THE SENATE

Judith M. Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Appendix X

Bates Numbered Documents Regarding KUVO FM

LAW OFFICES
HALEY, BADER & POTTS
SUITE 600
2000 M STREET, N.W.
WASHINGTON, D.C. 20036-4574
202-331-0606

ANDREW C. HALEY (1904-1966)
MICHAEL H. BADER
WILLIAM J. POTTS, JR.
HENRY A. SOLOMON
WILLIAM J. BYRNES
RICHARD M. RIEHL
JOHN WELLS KING
RAYMOND C. FAY
ALAN M. SERWER
JOHN M. PELKEY

KENNETH A. COX
COUNSEL

LEE W. SHUBERT
THOMAS R. GIBBON
THEODORE D. KRAMER
SUSAN D. GOLAND
JOHN P. CRIGLER
MELODIE A. VIRTUE
JAMES E. DUNSTAN
ELIZABETH H. CAMERON

LARRY D. SUMMERVILLE
BROADCAST ANALYST

CHICAGO OFFICE
11 SOUTH LASALLE STREET
CHICAGO, ILLINOIS 60603
312-782-7416

AUG 13 6 45 DIVISION

August 13, 1985

RECEIVED
AUG 13 1985
FCC
Office of the Secretary

AUG 1985
FM BRANCH

Mr. William J. Tricarico
Secretary
Federal Communications Commission
Washington, D.C. 20554

Reference: Denver Educational Broadcasting
KUVO (FM-ED)

Dear Mr. Tricarico:

The purpose of this letter is to notify the Commission that, beginning August 13, 1985, Denver Educational Broadcasting, the permittee of KUVO (FM-ED), Denver, Colorado, will initiate equipment tests to ensure compliance with the condition imposed on its construction permit. Specifically the tests will involve the taking of measurements to ensure compliance with Sections 73.317(A)(12) through 73.317(A)(14) of the Commission's Rules. By the terms of the construction permit these tests must be performed before program tests can commence. The tests will be performed at the authorized antenna site and at an ERP not to exceed that specified in the construction permit.

If there are any questions in regard to this matter, kindly communicate directly with this office.

Respectfully submitted,

DENVER EDUCATIONAL BROADCASTING

By _____
John M. Pelkey
Its Attorney

JMP:dh

SEP 17 1985
FM BRANCH

001717

363
DEB

United States of America

FEDERAL COMMUNICATIONS COMMISSION

FM BROADCAST STATION LICENSE

Official Mailing Address:

DENVER EDUCATIONAL BROADCASTING
1225 WAZEE
DENVER, CO 80204

Authorizing Official:

Gerardo Daubar
Supervisory Engineer, FM Branch
Audio Services Division
Mass Media Bureau

Grant Date: DEC 23 1985

Call sign: KUVO

This license expires 3:00 am.
local time: April 01, 1990

License File No.: BLED-851022KD

This license covers Permit No.: BPED-1691, as extended as modified by Permit No.: 841001AB

Subject to the provisions of the Communications Act of 1934, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this license, the licensee is hereby authorized to use and operate the radio transmitting apparatus herein described.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve the public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934.

Name of Licensee:

DENVER EDUCATIONAL BROADCASTING

Station Location:

CO-DENVER

001726

Frequency (MHz): 89.3

Channel: 207

Class: CC

Hours of Operation: Unlimited

Main Studio Address:

CO-1225 WAZEE STREET, DENVER

Transmitter location (address or description):

LOOKOUT MOUNTAIN, 22.5 KM West of Denver, Colorado

Remote control point address:

CO-1225 WAZEE STREET, DENVER

Transmitter: Type accepted. See Sections 73.1650, 73.1665 and 73.1670 of the Commission's Rules.

Transmitter output power (kW): 5.8

Antenna type: (directional or non-directional): Non-directional

Desc: SEE CONDITIONS

Antenna coordinates: North Latitude: 39 43 49.0
West Longitude: 105 14 59.0

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective radiated power in the horizontal plane (kW) . . . . . :	22.5	22.5
Height of radiation center above ground (meters) . . . . . :	41.0	41.0
Height of radiation center above mean sea level (meters) . . . . . :	2333.0	2333.0
Height of radiation center above average terrain (meters) . . . . . :	278.0	278.0

Overall height of antenna structure above ground (including obstruction lighting, if any) . . . . . : 65.0 meters

Obstruction marking and lighting specifications for antenna structure:

Paragraph 1.0, FCC Form 715 (March 1978):

Antenna structures shall be painted throughout their height with alternate bands of aviation surface orange and white, terminating with aviation surface orange bands at both top and bottom. The width of the bands shall be equal and approximately one-seventh the height of the structure, provided however, that the bands shall not be more than 100 feet nor less than 1 and 1/2 feet in width. All towers shall be cleaned and repainted as often as necessary to maintain good visibility.

Paragraph 3.0, FCC Form 715 (March 1978):

There shall be installed at the top of the structure one 300 m/m electric code beacon equipped with two 620- or 700-watt lamps (PS-40, Code Beacon type), both lamps to burn simultaneously, and equipped with aviation red color filters. Where a rod or other construction of not more than 20 feet in height and incapable of supporting this beacon is mounted on top of the structure and it is determined that this additional construction does not permit unobstructed visibility of the code beacon from aircraft at any normal angle of approach, there shall be installed two such beacons positioned so as to insure unobstructed visibility of at least one of the beacons from aircraft at any normal angle of approach. The beacons shall be equipped with a flashing mechanism producing not more than 40 flashes per minute nor less than 12 flashes per minute with a period of darkness equal to approximately one-half of the luminous period.

Paragraph 11.0, FCC Form 715 (March 1978):

At the approximate mid point of the over-all height of the tower there shall be installed at least two 116- or 125-watt lamps (A21/TS) enclosed in aviation red obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of a least one light at each level from aircraft at any normal angle of approach.

Paragraph 21.0, FCC Form 715 (March 1978):

All lighting shall burn continuously or shall be controlled by a light sensitive device adjusted so that the lights will be turned on at a north sky light intensity level of about 35 foot candles and turned off at a north sky light intensity level of about 58 foot candles.

Special operating conditions or restrictions:

ANTENNA DESCRIPTION: Shively 6810-8 eight section antenna, circularly polarized, shared with KCFR (FM), side-mounted at the 41 meter level (Center of Radiation Above Ground Level) on a self-supporting structural steel tower

001729

KUVO
89.3FM
P.O. Box 11111 • Denver, CO 80211

November 25, 1996

FCC
Office of the Secretary
1919 M Street NW
Washington DC 20554

ATTN: Radio License Renewal Staff

Enclosed is an original and 1 copy of a license renewal request for non-commercial FM radio station KUVO/Denver Educational Broadcasting. This includes Form FCC 303-S, FCC 323-E, and FCC 396.

If there is anything that is required, please call me.

Sinceramente,

Florence Hernández-Ramos

Florence Hernandez-Ramos
President & CEO

060000

(303) 480-9272 - Bus. Office • (303) 291-0757 - Fax • (303) 291-0666 - Studio
Denver Educational Broadcasters, Inc. • Affiliated with National Public Radio, American Public Radio & Community Shares of Colorado

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-0110
Expires 12/31/97

FOR FCC USE ONLY

FCC 303-S

APPLICATION FOR RENEWAL OF LICENSE FOR AM, FM, TV, TRANSLATOR OR LPTV STATION

FOR COMMISSION USE ONLY

FILE NO.

AM, FM and TV APPLICANTS MUST COMPLETE AND SUBMIT SECTIONS I, II, III AND V ONLY.

FM TRANSLATOR, TV TRANSLATOR and LPTV APPLICANTS MUST COMPLETE AND SUBMIT SECTIONS I, II, IV AND V ONLY.

IF APPLICATION IS FOR RENEWAL OF LICENSES FOR BOTH A PRIMARY STATION and A CO-OWNED TRANSLATOR WHICH REBROADCASTS THE PRIMARY STATION'S SIGNAL, APPLICANT MUST COMPLETE AND SUBMIT SECTIONS I, II, III, IV AND V.

SECTION I (FEE INFORMATION) - TO BE COMPLETED BY ALL APPLICANTS

1. PAYOR NAME (Last, First, Middle Initial)

Denver Educational Broadcasting, Inc.

MAILING ADDRESS (Line 1) (Maximum 35 characters)

P.O. Box 11111

MAILING ADDRESS (Line 2) (Maximum 35 characters)

CITY	STATE OR COUNTRY (if foreign address)	ZIP CODE
Denver	CO	80211

TELEPHONE NUMBER (include area code)	CALL LETTERS	OTHER FCC IDENTIFIER (IF APPLICABLE)
(303) 480-9272	KUVO	

2. A. Is a fee submitted with this application? ☐ Yes ☒ No

B. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1112):

☐ Governmental Entity ☒ Noncommercial educational licensee ☐ Other (Please explain):

C. If Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(1)			$	

To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

	(A)	(B)	(C)	FOR FCC USE ONLY
(2)			$	

	TOTAL AMOUNT REMITTED WITH THIS APPLICATION	FOR FCC USE ONLY
ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) AND (2), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.	$	

SECTION II - TO BE COMPLETED BY ALL APPLICANTS

1. NAME OF LICENSEE OF AM, FM OR TV STATION	NAME OF LICENSEE OF FM OR TV TRANSLATOR OR LOW POWER TV STATION
Denver Educational Broadcasting, Inc.	

MAILING ADDRESS		
P.O. Box 11111		
CITY: Denver	STATE: CO	ZIP CODE: 80211

2. This application is for: ☐ Commercial ☒ Noncommercial

(a) ☐ AM , ☒ FM ☐ TV

Call Letters	Community of License	
	City	State
KUVO	Denver	CO

(b) ☐ FM Translator ☐ TV Translator ☐ Low Power TV

Call Letters	Area Licensed to Serve	
	City	State

Call Letters	Area Licensed to Serve	
	City	State

3. Attach as an Exhibit an identification of any FM booster or TV booster station for which renewal of license is also requested. N/A

Exhibit No.

4. Is the applicant in compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments?

☒ Yes ☐ No

If No, attach as an Exhibit an explanation.

Exhibit No.

5. Since the filing of the applicant's last renewal application or any other application for the subject station(s), has an adverse finding been made or final action been taken by any court or administrative body with respect to the applicant or parties to the application in a civil or criminal proceeding, brought under the provisions of any law relating to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☒ No

If the answer is Yes, attach as an Exhibit a full disclosure concerning the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c), the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing; and (ii) the disposition of the previously reported matter.

Exhibit No.

6. Would a Commission grant of this application come within 47 C.F.R. Section 1.1307, such that it may have a significant environmental impact, including exposure of workers or the general public to levels of RF radiation exceeding identified health and safety guidelines issued by the American National Standards Institute?

☐ Yes ☒ No

NOTE: Licensees of FM translator stations transmitting with an effective radiated power (ERP) of 100 watts or less are not subject to the RF radiation requirements of 47 C.F.R. Section 1.1307(b).

If Yes, attach as an Exhibit an Environmental Assessment, as required by 47 C.F.R. Section 1.1311.

If No, explain briefly why not.

Exhibit No.

☒ Explanation attached

066002

KUVO
89.3FM
P.O. Box 11111 • Denver, CO 80211

Application for Renewal - Denver Educational Broadcasting
FCC 303-S

 # 6 - Explanation

I have examined the Commission's environmental requirements in 47 C.F.R. Section 1.1307 as outlined in Appendix C to the License Renewal Booklet. Based on my completion of the worksheets therein, I have determined that operation of my facilities will not have a significant environmental impact as defined by Section 1.1307 which includes consideration of the exposure of workers or the general public to levels of Radio Frequency radiation exceeding identified guidelines issued by the American National Standards Institute.

066003

(303) 291-0666 - Studio

SECTION III: TO BE COMPLETED BY COMMERCIAL AND NONCOMMERCIAL AM, FM and TV APPLICANTS ONLY

1. Have the following reports been filed with the Commission:

(a) The Broadcast Station Annual Employment Reports (FCC Form 395-B), as required by 47 C.F.R. Section 73.3612? [XX] Yes [ ] No

If No, attach as an Exhibit an explanation. Exhibit No.

(b) The applicant's Ownership Report (FCC Form 323 or 323-E), as required by 47 C.F.R. Section 73.3615? [XX] Yes [ ] No

If No, give the following information:

Date last ownership report was filed: ----------

Call lettters of station for which it was filed: ----------

2. Has the applicant placed in its public inspection file at the appropriate times the documentation required by 47 C.F.R. Section 73.3526 and 73.3527? [XX] Yes [ ] No

If No, attach as an Exhibit a complete statement of explanation. Exhibit No.

3. FOR COMMERCIAL AM, FM AND TV APPLICANTS ONLY:

Is the station currently on the air? [ ] Yes [ ] No

If No, attach as an Exhibit a statement of explanation, including the steps the applicant intends to take to restore service to the public. Exhibit No.

4. FOR COMMERCIAL TV APPLICANTS ONLY:

(a) Attach as an Exhibit a summary of the applicant's programming response, nonbroadcast efforts and support for other stations' programming directed to the educational and informational needs of children 16 years old and under, and reflecting the most significant programming related to such needs which the licensee has aired, as described in 47 C.F.R. Section 73.3526(a)(8)(iii). Exhibit No.

(b) For the period of time covered by this report, has the applicant complied with the limits on commercial matter as set forth in 47 C.F.R. Section 73.670? (The limits are no more than 12 minutes of commercial matter per hour on weekdays, and no more than 10.5 minutes of commercial matter per hour during children's programming on weekends. The limits also apply pro rata to children's programs which are 5 minutes or more and which are not part of a longer block of children's programming.) [ ] Yes [ ] No

(c) If No, submit as an Exhibit a list of each segment of programming 5 minutes or more in duration designed for children 12 years old and under and broadcast during the license period which contained commercial matter in excess of the limits. For each programming segment so listed, indicate the length of the segment, the amount of commercial matter contained therein, and an explanation of why the limits were exceeded. Exhibit No.

SECTION V: TO BE COMPLETED BY ALL APPLICANTS

FOR AM, FM OR TV APPLICANTS ONLY: Applicant has attached Sections I, II, III, and V only. [XX] Yes [ ] No

FOR FM TRANSLATOR, TV TRANSLATOR OR LPTV APPLICANTS ONLY: Applicant has attached Sections I, II, IV and V only. [ ] Yes [ ] No

FOR CO-OWNED TRANSLATOR AND PRIMARY STATION APPLICANTS ONLY: Applicant has attached Sections I, II, III, IV and V. [ ] Yes [ ] No

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATION

1. By checking Yes, the applicant certifies, that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b). [ ] Yes [ ] No

2. I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name	Signature
Florence Hernandez-Ramos	
Title	**Date**
President & CEO	11/25/96

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FOREFITURE (U.S. CODE, TITLE 47, SECTION 503))

0660035

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-0084
Expires 4/30/96

FCC 323-E
Ownership Report
For Noncommercial Educational Broadcast Station

FOR COMMISSION USE ONLY

File No.

Name of Applicant
Denver Educational Broadcasting, Inc.

Telephone No. (include area code)

1. All of the information furnished is reported as of 11/1, 19 95

Date must comply with 47 C.F.R. Section 73.3615(d) when box 1(a) below is checked.

This Report is filed pursuant to Instruction (check one)

1(a) [XX] Renewal (b) [ ] Transfer of Control, Assignment of License, or Construction Permit

(c) [ ] Change of prior report, for the following stations:

Call Sign
KUVO

Type of station
Radio - FM- Non-commercial

Location
89.3 FM - 2900 Welton

City
Denver

State
CO

INSTRUCTIONS

1. This report is to be filed as follows by noncommercial educational TV, FM or AM broadcast stations (see 4 C.F.R. Section 73.3615):

(a) By licensees with the application for renewal of station license. Licensees with current unamended Ownership Reports on file at the Commission may so indicate on their renewal applications and be relieved of the obligation to file a new Ownership Report.

(b) By licensees or permittees within 30 days, after the consummation pursuant to Commission consent, of a transfer of control or an assignment of license, or the grant of an original construction permit.

(c) By licensees or permittees within 30 days after changes in the information called for by this form.

(d) File one copy with the Federal Communications Commission, Washington, D. C. 20554. If information submitted is equally applicable to each station above listed, one report may be filed for all such stations; otherwise a separate report shall be filed for each station.

(e) This form is to be filled out completely when filed pursuant to (a) and (b) above. When filled out pursuant to (c), changes only need be noted.

2. Any contract or modification of contract relating to the ownership, control, or management of the licensee or permittee must be filed with the Commission, as required by 47 C.F.R. Section 73.3613. Attention is directed to the fact that Section 73.3613 requires the filing of all contracts of the types specified and is not limited to executed contracts but includes options, pledges, and other executory agreements and contracts relating to ownership, control or management.

3. This form should be used to report all types of transactions concerning agreements and voting control.

4. If the licensee or permittee is directly or indirectly controlled by another entity, a separate FCC 323-E should be submitted to report changes in the officers and directors of such entity.

5. This form is not to be used to report or request a transfer of control or assignment of license or construction permit (except to report a transfer of control or assignment of license made pursuant to prior Commission consent). The appropriate forms for use in conection with such transfers or assignments are FCC 314, 315, and 316. It is the prime responsibility of the licensee or permittee to determine whether a given transaction constitutes a transfer of control or an assignment.

6. The official title of the respondent must be an officer of the licensee or permittee corporation or association, or in case of a governmental or public educational agency, a duly authorized administrative representative thereof.

2. List all contracts and other instruments set forth in 47 C.F.R. Section 73.3613. N/A

Description of contract or instrument

Name of person or organization with whom contract is made

Date of execution

Date of expiration

3. Is the governing board directly or indirectly under the control of another entity? [ ] Yes [XX] No

If "Yes", give name and nature of entity

4. Show the interests in any other broadcast station of the licensee or permittee, or any of its officers, members of the governing board, and holders of 1% or more ownership interest, if any.

N/A

066006

(11/90 edition usable)

5. Give the following information as to applicant's officers, members of governing board, and holders of 1% or more ownership interest, if any.

NAME AND RESIDENCE	OFFICE HELD	CITIZENSHIP	PRINCIPAL PROFESSION OR OCCUPATION	BY WHOM APPOINTED OR ELECTED
Art Karstaedt 176 Ramshorn, Castle Rock, CO	Chair	US	Attorney	Board
Millie Duran 12037 W. Quincy, Morrison, CO	Vice -Pres	US	Bus. Mgr.	Board
Thomas Payne 2641 Julian , Denver, CO	Treasurer	US	Accountant	Board
Robert Bassett 1550 Lakeside, Greeley	Secretary	US	Attorney	Board
Steve Velazquez 660 Vine, Denver, CO	None	US	Invest Exec	Board
Gina Del Castillo 4740 Saulsbury, Wheat Ridge, CO	None	US	Counselor	Board
Belinda Hoods, 140 Willow, Denver	None	US	Self	Board

CERTIFICATION

(Date of certification must be within 30 days of date shown in Item 1 when box 1(a) is checked and in no event prior to Item 1 date.

I certify that the statements in this Report are true, complete and correct to the best of my knowledge and belief, and are made in good faith.

NAME OF LICENSEE OR PERMITEEE	SIGNATURE
Denver Educational Broadcasting, Inc.	
TITLE	DATE
President & CEO	11/25/96

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this Report is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this Report to assess compliance with the Commission's regulations and policies. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing may be delayed while a request is made to provide the missing information or the Report may be returned without action pursuant to the Commission's Rules. Your response is required to obtain the requested authorization.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, can be sent to the Federal Communications Commission, Records Management Branch, AMD-IM, Paperwork Reduction Project (3060-0084), Washington, D. C. 20554.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

Appendix Y

FCC Report dated November 12, 1998

SUMMARY OF FCC SURVEY AT LOOKOUT MOUNTAIN ANTENNA SITE

November 12, 1998

On October 29, 1998, Robert Cleveland and Jerry Ulcek, of the Federal Communications Commission's Office of Engineering and Technology, conducted a measurement survey of radiofrequency (RF) radiation levels in publicly accessible areas at the Lookout Mountain, Colorado, antenna transmission site. Measurements were made in three 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, and (3) accessible areas and public roads near the tower supporting KRMA-TV and FM stations KUVO and KCFR. Survey equipment used included a Narda Model 8718 broadband meter connected to a Model 8722B conformal E-field probe, a Wandel and Goltermann (W&G) EMR-30 broadband meter and a Holaday Model 3001 broadband field meter connected to a Model GRE E-field probe. Most of the measurement data were obtained using the Narda and W&G instruments. The Narda conformal probe used is normalized to display values as a percentage of the ANSI/IEEE limits for "controlled" exposure. Since for the frequency ranges of interest on Lookout Mountain these limits are essentially the same as those adopted by the FCC for "occupational/controlled" exposures, use of this probe should not result in any significant error. Readings taken with the Narda equipment were multiplied by a factor of "5" to account for the five-fold difference between FCC limits for workers and the general public. For frequencies of 30-300 MHz FCC limits for continuous exposure of the public are 200 microwatts per square centimeter (200 $\mu W/cm^2$).

RESULTS:

Results of the survey indicate that there are certain locations on Lookout Mountain where FCC limits for continuous exposure of the general public ("general population/uncontrolled" exposures) are exceeded. These locations are generally the same as those where Mr. Hislop of CARE previously reported finding high RF fields. This was also subsequently confirmed by the firm of Hammett and Edison in a recent follow-up study. By selectively having certain stations go off the air during the FCC survey, it was possible to determine that the relatively high levels measured were largely the result of emissions from certain nearby FM antennas at each location. When the respective FM stations shut down briefly at each location the measured signals dropped to a small percentage of the original values. Contributions from the television antennas in the vicinity were relatively low when compared with those from the nearby FM antennas. Specific results and recommendations are noted as follows.

(1) Publicly accessible area on property owned by KMGH, Channel 7, and adjacent dirt roadway. The highest readings of the survey were found at this location. Since this area is

not fenced, there is no restriction on public access. In the area generally encompassing the dirt driveway leading to KMGH's fenced transmitter building spatially-averaged readings were obtained that ranged up to as much as 250% of the FCC limits for public exposure. Also, in the dirt roadway leading to the Channel 7 driveway readings obtained in a few locations were in excess of the public limits, ranging up to about 140% of the limits in one area. By having KOSI and KKHK go off the air briefly it was conclusively shown that the excessive levels in these areas are predominantly due to the KOSI/KKHK signals. This is not surprising since, because of the topography of the area, this location appears to be essentially in the main beam of the KOSI/KKHK antenna. By having Channel 7 briefly go off the air, it was further confirmed that the FM stations were, by far, the greatest contributors to the exposure in this area (KOSI appeared to contribute approximately 70% of the signal and KKHK approximately 30%).

(2) Roadway (Cedar Lake Road) immediately in front of KOSI/KKHK tower. In the general area encompassing parts of Cedar Lake Road that are within about 20 meters of the KOSI/KKHK tower spatially-averaged readings of equivalent power density were obtained that were up to 102 % of FCC limits for public exposure. FCC staff double-checked readings using two independent instruments at this and other locations, and readings were in good agreement. At this location, and in a few other spots, readings made by Mr. Hislop were sometimes higher than those obtained by FCC staff. However, there is no apparent explanation for Mr. Hislop's higher readings. Given the dual confirmation of the FCC's readings, conclusions in this report are based on the FCC measurements.

(3) Wooded area near KHIH tower. This is an area that is generally accessible to the public, although because it is forested it is not clear that there is significant public access. Spatially-averaged readings were obtained over a fairly wide area near the base of the KHIH tower. The highest spatially-averaged values ranged from about 110% to 220% of the FCC's limits for public exposure at various locations within this area. It was not clear whether the areas in question are on public or private property.

(4) Area in immediate vicinity of KRMA-TV/ KUVO/KCFR-FM tower. This tower is immediately adjacent to Colorow Road, a paved, public road with a fair amount of traffic. It is also directly across the street from public land that includes a nature center that was the subject of a previous measurement study performed by Richard Tell for Jefferson County. In two locations, one adjacent to the tower and the other directly across Colorow Road, spatially-averaged readings were obtained that were slightly in excess of the public exposure limits. In very localized areas adjacent to the tower (near top of concrete stairs and adjacent to a telephone pole) spatially-averaged readings were obtained up to about 190% of the public limits, and across the road from the transmitter building the spatially-averaged readings were up to 104% of the public limits. By turning off the FM stations approximately 30% to 35% of the RF field was attributed to the KUVO signal and about 65% to 70% to the KCFR signal. The contribution from the Channel 6 antenna was relatively low.

RECOMMENDED ACTIONS:

As a result of this survey it is concluded that certain measures are necessary to bring the Lookout Mountain site into compliance with FCC guidelines for continuous exposure of the general public. There are several options that are available for reducing the potential for excessive exposure, but those discussed below may be the simplest and most reasonable short-term solutions. In the long-term eventual relocation of some of the FM antennas should result in lower ground-level RF field levels. By far, the greatest responsibility for bringing these areas into immediate compliance belongs to the FM stations in question, since it was conclusively shown that it is their signals that are causing the non-complying situations.

(1) Publicly accessible area on property owned by KMGH, Channel 7 and adjacent dirt roadway. The types of remedial actions to apply in this area depend on whether appropriate fencing can be installed at the locations where excessive readings were obtained. It is not clear at this time how much of this entire area is actually on private property and could be fenced. At the time of the FCC's survey Jefferson County officials were not sure regarding this point and will have to advise later. Fencing off the area or a combination of fencing and power reduction/antenna height increase (for KOSI/KKHK) would be appropriate measures to take. If fencing can be installed then the options to bring the area into compliance become: (a) install fencing to restrict the entire area, including the Channel 7 driveway as well as the adjacent dirt roadway, or (b) install fencing that includes only the Channel 7 property and take other actions with respect to KOSI/KKHK to reduce exposure on the dirt roadway. If fencing cannot be installed ***at all***, then much more drastic actions (e.g., significant power reduction above that recommended below) would have to be taken to reduce the signal strength of KOSI/KKHK in this area and ensure compliance.

If a reduction in power by KOSI/KKHK or increase in KOSI/KKHK antenna height were necessary to reduce ground-level fields, a determination of how much power reduction (or antenna height increase) would be necessary depends on whether and where a fence could be placed. If a fence can be installed that encompasses the dirt roadway ***as well as*** the Channel 7 driveway then much less power reduction or height increase would be required on the part of KOSI/KKHK. However, if ***only*** the Channel 7 driveway area can be fenced, then a significant reduction in power (or height increase) would be required of KOSI/KKHK in order to lower exposure levels in the accessible dirt roadway adjacent to Channel 7's property. If the dirt roadway can be fenced off, then the only KOSI/KKHK power reduction necessary would be to slightly lower exposure levels on Cedar Lake Road (see number 2 below).

If only the Channel 7 driveway area can be fenced and not the adjacent dirt roadway [i.e., case (b) above] it is estimated that a reduction in effective radiated power (ERP) of at least 20% by KOSI and 10% by KKHK would be necessary to lower RF levels in the dirt roadway to comply with the FCC guideline for continuous exposure of the public of 200 $\mu W/cm^2$ at FM frequencies. Another option (assuming no fence around the roadway) would

be to increase the height above ground of the KOSI/KKHK antenna. For example, it is estimated that an additional height on the order of 10 meters (same tower) should allow KOSI/KKHK to operate at fully authorized power and still meet FCC public limits in the dirt roadway. Some combination of power reduction and antenna height increase would also be possible. It should be emphasized again that this particular recommendation for power reduction or antenna height increase assumes that the Channel 7 property *will be* fenced.

If fencing is installed on the Channel 7 property, the area to be restricted should include all areas exceeding the limits for public exposure. This includes the large green metal structure adjacent to the Channel 7 driveway where, because of severe reflections, the field is intensified in the immediate area. Standard RF "warning" or "alerting" signs should be prominently posted at regular intervals on such a fence. Any fence installed should be of sufficient size and strength to prevent normal access by members of the public. In other words, only authorized personnel would be allowed inside the enclosed area. These requirements also are recommended if a larger fence were to be installed to include the dirt roadway.

(2) Roadway (Cedar Lake Road) immediately in front of KOSI/KKHK tower. If the entire area in (1) above is fenced, this will still not address the apparent non-complying situation on Cedar Lake Road. However, the measured RF levels at this location were not greatly in excess of the public limits. They are of concern because they occur in the middle of a public road used by pedestrians. In order to meet the FCC limits for continuous public exposure a fence here is not an option, since the fields occur in the road itself. Therefore, either a power reduction or increase in antenna height would be required for compliance here. It is estimated that a reduction of only about 1.4 % in the ERP for KOSI and 0.6 % in ERP for KKHK should bring the area in the road into compliance. An increase in antenna height of at least 2 meters should accomplish the same thing. Of course, if power reduction or increase in antenna height were carried out to bring the area near Channel 7 into compliance [as discussed in (1) above] this would also likely result in simultaneously bringing this area into compliance.

(3) Wooded area near KHIH tower. It is not yet completely clear if the area where excess fields occur is public or private land. If the area is private land, then fencing off the area would solve the problem of access. Such a fence should be as described above for the Channel 7 property. If the area is public land that cannot be fenced, then it is estimated that a reduction in ERP on the order of 50-60% would be required to ensure compliance. Alternatively, the KHIH antenna could raise its height to reduce ground-level exposure. An additional 20-25 meters in antenna height above ground should reduce ground exposure to comply with the FCC public limit of 200 $\mu W/cm^2$.

(4) Area in immediate vicinity of KRMA-TV/ KUVO/KCFR-FM tower. The areas adjacent to the tower (near the top of concrete stairs and next to a telephone pole) could be enclosed fairly easily by an appropriate fence. This would resolve the compliance issue for this very localized area. However, if a fence could ***not*** be erected here it is estimated that the total power of both stations would have to be lowered to about 38.4 kW (about 53% of present total power) to bring this localized area into compliance. Alternatively, raising the KUVO/KCFR antenna by about 10-12 meters should also reduced the ground-level fields below the public exposure limit. The area across the road was only slightly above FCC limits. However, erection of a fence or other barrier there does not appear to be possible since that location is on public land. The most feasible solution would appear to be a slight reduction in ERP, that is estimated as 1.2% for KUVO and 2.8 % for KCFR, or an increase in antenna height of about 2 meters (this assumes that the other area adjacent to the tower is fenced as recommended above). Of course, if power reduction is used in lieu of fencing for the area next to the tower, this would also automatically resolve the problem across the road. For the longer term, all three broadcast stations at this location plan to relocate to the new tower proposed by the Lake Cedar Group, and this tower would then be permanently removed.

OTHER OPTIONS, GENERAL DISCUSSION:

In addition to the remedial measures mentioned above, more drastic actions could be taken to bring the site into compliance, such as relocating the affected FM antennas or replacing them with redesigned antennas. As noted, for the case of KUVO and KCFR, relocation is already planned for the long term.

It is also suggested that the stations involved be required to perform a new measurement survey once all mitigating measures have been completed to verify that the site has indeed been brought into compliance. Periodic monitoring of the various sites may also be appropriate. In general, it appears that there is a need for overall coordination between all the various licensees at the site, including TV and FM broadcast and non-broadcast licensees concerning issues of mutual interest such as RF exposure. At many other antenna sites around the country site tower owners' associations have been formed to coordinate such issues, and such an association is needed for Lookout Mountain.

Appendix Z

Resume
Letters of Recommendation
Confirmation of Calculations for
Al Hislop

AL HISLOP-ELECTRICAL ENGINEER

Resume

Letters of Recommendation

Confirmation of Calculations of Future Radiation if Supertower Built by County Independent Engineering Expert

Alfred R. Hislop

BSEE California Polytechnic College, Pomona, 1971

MSEE University of California, Irvine, 1973

Engineer, Naval Ocean Systems Center, San Diego, CA. 1972-1987

UHF Technology Group: Designed spread spectrum communications systems.

Microwave Group: Designed and developed microwave antennas and radar systems, including three dimensional high resolution imaging radars.

Millimeter Wave Technology Group: Designed and developed millimeter wave components, radars, surveillance receivers and communications systems.

1984-present: Owner, Pacific Millimeter Products.

Design millimeter wave components for use in radio astronomy, test instrumentation, communication systems, anti-collision radar and fusion plasma diagnostics.

Patents:

4,286,229	Multiple Frequency Oscillator
4,433,314	Millimeter Wave Multiplexer
4,492,960	Switching Mixer
4,873,501	Transmission Line Notch Filter Element

Publications:

"A Broadband 40-60 GHz Balanced Mixer," IEEE Transactions on Microwave Theory and Techniques, Volume 24, No. 1, pp 63 & 64, January, 1976.

"An 88-100 GHz Receiver Front-End," IEEE 1979 International Symposium on Microwave Theory and techniques, digest pp 222 & 223.

"Millimeter Wave Coupled Line Filters," Microwave Journal, October, 1980, pp 67-78.

"Suspended Substrate Ka Band Multiplexer," Microwave Journal, June, 1981, pp 73-77.

"A Compact, Low-Cost 60 GHz Communicator," IEEE 1982 International Symposium on Microwave Theory and Techniques, digest pp 231 & 232.

Jefferson County Board of Commissioners
Golden, Co. 80419

April 14, 1999

Gentlemen,

This is a letter of recommendation as to the technical competence of Mr. Alfred Hislop.

I have been associated with Mr. Hislop for over ten years in the engineering of RF and microwave components. During this last year Mr. Hislop and I have had many detailed analysis sessions regarding dangerous potential impacts of the plans to increase the radiated power levels on Lookout Mountain.

I am a trained and practicing RF systems engineer. My initial training was in the US Marine Corps where I graduated from the Collins Radio (now Rockwell Corp.) course "Wave Propagation and Antenna Construction". After returning to and completing college I worked in the Space Shuttle Avionics Lab as a communications/ navigation systems engineer. I then joined Motorola where I attended their schools on RF and microwave system design and radio wave propagation. This course taught the Bullington (Bell Labs) method of radio wave propagation, the most universally applied radio wave propagation prediction tool. There I went on to design communication systems for the California Counties of Orange and Kern and some State of California systems. I then held the positions of County Communications Engineer for both Butte and Santa Barbara Counties in California and designed their communications systems.

I joined the staff of the "RF Measurements Lab" at Vandenburg Air Force Base as a Senior RF Measurement Engineer. Among my responsibilities in this position was the measurement and determination of hazardous RF levels at the various transmitters on the base. Using the same equipments as both Mr. Hislop and the FCC have used in your situation, I would measure the "keep out boundaries" around high power (up to 10 megawatt ERP) communication transmitter and radar (pulsed energy) antennas operating in the 3 to 1000 MHz and 5 to 15 GHz frequency ranges. We had several of these antennas in the same frequency range as your subject transmitters. Under the Air Force criteria we would establish "keep out zones" based on one fourth the acceptable safe RF power exposure level recognized at that time. Of primary concerns were the development of cataracts, brain and liver cancers, and RF burns which would cause damage deep into the human skin. I later returned to public sector communications acting as the project manager for the new City of Los Angeles public safety communications systems.

I went on to work for Varian Associates, the manufacturer of the power amplifiers used in the transmitters such as you are considering, as field engineer and then an engineering manager. During that eleven years I personally was involved in the investigations of many major injuries and deaths due to high RF power levels. These were primarily due to operators failing to follow written and well established safety procedures. I now own my own company designing microwave state-of-the-art test equipment for Hewlett Packard and many of the other test equipment manufacturers around the world. I have, in the past, performed as a consultant for the construction of mountain top radio sites and if at all possible have advised that populated areas be avoided for legal, ergonomic, and health reasons. It is with this background that I assert that Mr. Hislop is one of the most insightful and talented RF/microwave engineers that I have ever known. I have discussed and reviewed with him all of the procedures and analysis that he has utilized in determining the magnitude of the RF hazard problem that exists on Lookout Mountain. I would place great credibility in his measurements and the data that he has presented you.

Sincerely,

Charles Oleson

Charles Oleson, owner, Oleson Microwave Labs

OML OLESON MICROWAVE LABS

355 Woodview Dr. Suite 300, Morgan Hill, Ca. 95037 Tel. (408) 779 2698 Fax (408) 778 0491

4/13/99

C.A.R.E.
25608 Sunrise Lane
Golden, CO 80401

Dear C.A.R.E.,

This letter is to convey to you the very high regard that I have for my former co-worker, Alfred Hislop, and to help establish his credentials in dealing with r.f. radiation problems such as you are now having in your area.

Al and I worked together at the Naval Ocean Systems Center in San Diego for more than 10 years. We were both doing microwave research and engineering, sometimes sharing responsibility for the same project.

During those years and the years since he left government service, I have known him to be exceptionally talented, innovative, and knowledgeable in the microwave and r.f. fields. He is also as honest as any individual I have ever met. I am certain that his radiation measurements were taken with care, calculations made with precision, and reports given truthfully without embellishments of any kind.

You are fortunate to have Al Hislop in your community.

Sincerely,

David Rubin
Government Scientist (retired)

3311 Happy Valley Road
Sequim, WA 98382

Letter of Reference for Mr. Alfred Hislop

From about 1973 to 1985 Mr. Hislop was an electronic engineer in the Microwave Branch, Naval Ocean Systems Center (NOSC, now SPAWAR Systems Center San Diego), a major U.S. Navy R&D center. During this time he worked on microwave circuits and antennas, receiver subsystems, and radar. His technical skills in analysis, design, instrumentation, and measurement led to significant contributions in a number of critical Navy programs. Long before he left NOSC to enter private business, he was so highly regarded by his fellow engineers and area project managers that his advice and services were always in constant demand.

It was my privilege to have been associated with Mr. Hislop during his 12 years in the Microwave Branch, much of that time as his supervisor. In looking back on my 38-year R&D career, I can honestly say that Mr. Hislop is one of the most outstanding technical people I've known, having a rare combination of analytical ability, technical insight, and experimental skill. And possibly most important, a person of real integrity, one in whom I always had total trust and still do.

In summary, I can attest with complete confidence to Mr. Hislop's outstanding engineering competence and ethics, and I believe he is eminently qualified for doing technical assessments for the Canyon Area Residents for the Environment (CARE).

John Carson 13 April 1999

John Carson
(retired; electronic engineer at NOSC from 1970 to 1990 and former head of the Microwave Branch at NOSC)

Robert Schunemann
4519 Oaklyn Lane
Bowie, MD 20715

CARE
25958 Genesee Trail Road, Unit K-203
Golden, CO 80401

Gentlemen:

This is a letter of recommendation for Alfred Hislop with regard to the placement of digital television transmitters, and associated health concerns.

Conducting a survey of laboratories twenty years ago, as a "Special Project" manager charged with advanced electronic surveillance capabilities for U.S. intelligence community, I discovered Al Hislop. Al got the contract, delivering a series of sophisticated electronic equipment. Skeptics doubted Al's genius, until the equipment proved successful beyond expectations. Although classified, I can assure you that his work made a great contribution to the our national defense. Al's hallmark is precision work, precise calculation, and an uncanny understanding of electromagnetics.

Nine years ago I worked on Capital Hill as the Technical Advisor to Staff Director of the U.S. House Technology and Competitiveness Subcommittee. I became familiar with Senate and the House staffers working the so called "HDTV" issue. We set about to lay the legislative groundwork for HDTV and its compatibility with computers and telecommunications. Data from cable, broadcast, or telephony, etc., was considered to be necessary for national advancement. Steps would be taken in the legislation to deflect nuisance real estate ownership and states rights arguments/litigation with regard to issues that arise from transmitter placement. Although the legislation has a "ram rod" posture in this regard, it was not intended to override legitimate public health and safety concerns.

In a question of transmission power levels relative to the health of the local population, I am no expert. However, I can assure you, if Al delves into this issue, he is quite capable of getting at the root of the situation and substantiate it with supporting calculations.

Those pushing in one direction. with honest intent, generally select assumptions that support that direction. From my past experience, certain generally accepted assumptions are often used, one of which may be proven wrong. So, I recommend that you consider seriously what Al Hislop has to contribute, and not let the sole representative of the FCC be the deciding factor. Outside the FCC, there are brilliant minds fully capable of exploring both the fundamental assumptions and the detailed calculations of the installation in question. A legitimate question of health concerns demands no less.

Respectfully,

Robert Schunemann
Retired, National Security Agency

cc: Al Hislop

REPORT TO JEFFERSON COUNTY PLANNING AND ZONING DEPARTMENT CONCERNING THE LAKE CEDAR GROUP TOWER PROPOSAL AND STATION CONTRIBUTIONS TO GROUND RADIATION IF THE TOWER IS IMPLEMENTED AT FAR-OUT LOCATIONS AND BUFFALO BILL'S GRAVE

General

HARTECH was asked by Jefferson County personnel to calculate the ground radiation density anticipated from the new energy sources to be located on the LCG proposed tower at five points around Lookout Mountain. These were made to check a few of the calculations made by CARE, plus a calculation at Genesee Mountain. *

Calculations, Results and Discussion

HARTECH utilized the FCC formulas described in our January report on the subject. The calculations are shown in the accompanying exhibit and are summarized in the table below. We plotted the points on 7.5 minute USGS quad maps as shown in Exhibit 1, obtained the approximate elevations from the map contours and measured the distances and azimuth angles from the proposed tower site to each point calculated. The highest additional maximum power density found was at the Mount Vernon Country Club which was 9.8 $\mu W/cm^2$ or 4.9% of 200 $\mu W/cm^2$, the lowest OET Bulletin #65 limit. The calculations are substantially the same as those derived by CARE. *

Location	Calculated Power Density In $\mu W/cm^2$	Calculated Maximum Power Density in Percent of 200 $\mu W/cm^2$
Buffalo Bill's Grave	2.28	1.14
Cabrini Shrine	2.38	1.19
Mount Vernon Country Club	9.80	4.90
Ralston School	7.11	3.56
Geneseee Mountain	2.13	1.07

To properly add these to the spatially averaged field measurements made by CARE, the calculated values should be multiplied by 0.6, the approximate ratio of the average spatial energy density to the maximum energy density calculated. When added to the CARE measurements at their four locations the energy density is still well below the most severe FCC standard. For example, at the Mount Vernon Country Club, the additional calculated average spatial energy density is expected to be (9.8 times 0.6) 5.88 $\mu W/cm^2$ which when added to the measured 0.46 equals 6.34 $\mu W/cm^2$.

Appendix AA
Public Comments of Golden City Council

City of Golden

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

May 4, 2000

Federal Communications Commission
445 12th 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

Webb Aldrich, Mayor Pro Tem

Chuck Baroch

Bill McKee

Ed Ramstetter

Dave Shuey

Brian Starling

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 28th day of January, 1999.

Jan C. Schenck
Mayor

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 28th day of January, A.D., 1999.

(SEAL)

ATTEST:

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

City of Golden

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

November 11, 1999

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

Dear Senator Allard:

We understand that Lake Cedar Group has asked the Federal Communications Commission to preempt the recent decision of the Jefferson County Commissioners to deny the rezoning request for the new broadcast tower on Lookout Mountain.

We want you to know that the entire Golden City Council is 100% in support of the County Commissioners' decision. We are very impressed with the fair and thorough process by which they reached that decision, and we believe that federal agencies have no business interfering in local land use matters. The proposal by Lake Cedar Group would have significant impact on Golden citizens and Golden businesses. We all signed the enclosed letter urging the Board of County Commissioners to reject Lake Cedar Group's application, and this letter was only one small part of many hours of testimony and exhibits considered by our Commissioners.

We are unanimously requesting your support and active intervention so that the FCC will continue to defer the decision to the Jefferson County Commissioners. This decision should be made in Golden, the county seat, and not Washington D.C., and we appreciate your help to make that happen.

Sincerely,

GOLDEN CITY COUNCIL

Jan C. Schenck, Mayor

Webb Aldrich

Chuck Baroch

Carol Johnson

Bill McKee

Ed Ramstetter

L. Brian Starling

cc: Jefferson County Commissioners
Colorado Municipal League

City of Golden

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

November 11, 1999

The Honorable Ben Nighthorse Campbell
United States Senator
380 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Campbell:

We understand that Lake Cedar Group has asked the Federal Communications Commission to preempt the recent decision of the Jefferson County Commissioners to deny the rezoning request for the new broadcast tower on Lookout Mountain.

We want you to know that the entire Golden City Council is 100% in support of the County Commissioners' decision. We are very impressed with the fair and thorough process by which they reached that decision, and we believe that federal agencies have no business interfering in local land use matters. The proposal by Lake Cedar Group would have significant impact on Golden citizens and Golden businesses. We all signed the enclosed letter urging the Board of County Commissioners to reject Lake Cedar Group's application, and this letter was only one small part of many hours of testimony and exhibits considered by our Commissioners.

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Sincerely,

GOLDEN CITY COUNCIL

Jan C. Schenck, Mayor

Webb Aldrich

Chuck Baroch

Carol Johnson

Bill McKee

Ed Ramstetter

L. Brian Starling

cc: Jefferson County Commissioners
Colorado Municipal League

City of Golden

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

November 11, 1999

The Honorable Tom Tancredo
United States Representative
1123 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Tancredo:

We understand that Lake Cedar Group has asked the Federal Communications Commission to preempt the recent decision of the Jefferson County Commissioners to deny the rezoning request for the new broadcast tower on Lookout Mountain.

We want you to know that the entire Golden City Council is 100% in support of the County Commissioners' decision. We are very impressed with the fair and thorough process by which they reached that decision, and we believe that federal agencies have no business interfering in local land use matters. The proposal by Lake Cedar Group would have significant impact on Golden citizens and Golden businesses. We all signed the enclosed letter urging the Board of County Commissioners to reject Lake Cedar Group's application, and this letter was only one small part of many hours of testimony and exhibits considered by our Commissioners.

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Sincerely,

GOLDEN CITY COUNCIL

Jan C. Schenck, Mayor

Webb Aldrich

Chuck Baroch

Carol Johnson

Bill McKee

Ed Ramstetter

L. Brian Starling

cc: Jefferson County Commissioners
Colorado Municipal League

City of Golden

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

November 11, 1999

The Honorable Mark Udall
United States Representative
128 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Udall:

We understand that Lake Cedar Group has asked the Federal Communications Commission to preempt the recent decision of the Jefferson County Commissioners to deny the rezoning request for the new broadcast tower on Lookout Mountain.

We want you to know that the entire Golden City Council is 100% in support of the County Commissioners' decision. We are very impressed with the fair and thorough process by which they reached that decision, and we believe that federal agencies have no business interfering in local land use matters. The proposal by Lake Cedar Group would have significant impact on Golden citizens and Golden businesses. We all signed the enclosed letter urging the Board of County Commissioners to reject Lake Cedar Group's application, and this letter was only one small part of many hours of testimony and exhibits considered by our Commissioners.

We are unanimously requesting your support and active intervention so that the FCC will continue to defer the decision to the Jefferson County Commissioners. This decision should be made in Golden, the county seat, and not Washington D.C., and we appreciate your help to make that happen.

Sincerely,

GOLDEN CITY COUNCIL

Jan C. Schenck, Mayor

Webb Aldrich

Chuck Baroch

Carol Johnson

Bill McKee

Ed Ramstetter

L. Brian Starling

cc: Jefferson County Commissioners
Colorado Municipal League

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.

Sincerely,

GOLDEN CITY COUNCIL

Jan Schenck, Mayor

Webb Aldrich

Chuck Baroch

Carol Johnson

Bill McKee

Ed Ramstetter

Brian Starling

911 TENTH STREET, GOLDEN, COLORADO 80401
(303) 384-8000

Appendix BB
Public Comments of majority of Colorado Delegation

Congress of the United States

Washington, DC 20515

May 9, 2000

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street NW
Washington, DC 22054

Dear Chairman Kennard,

This letter is intended as a public comment to Docket DA00-764 on the petition for preemption filed by the Lake Cedar Group, LLC (LCG) on the siting of broadcast facilities on Lookout Mountain near Denver, Colorado.

As you know, the Jefferson County Board of Commissioners denied an application by LCG to rezone land on Lookout Mountain from residential and agricultural zoning to planned development zoning in order to construct a telecommunications tower and support facilities.

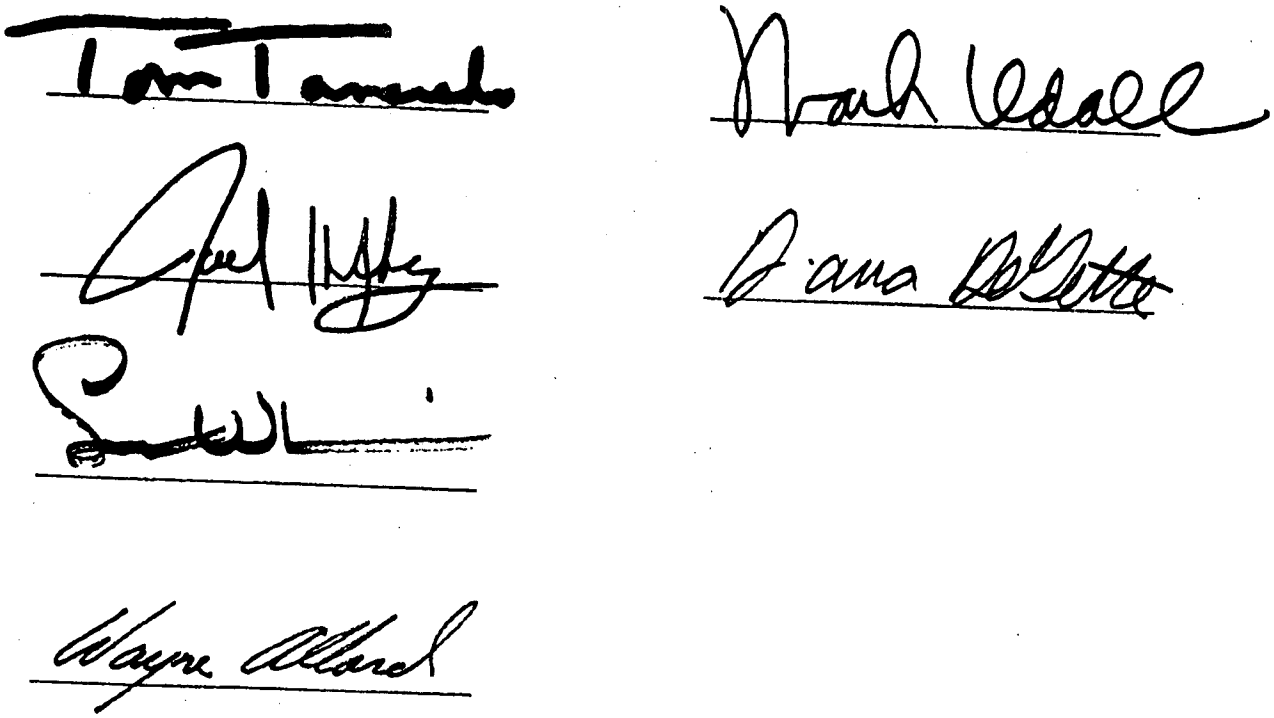
The Jefferson County Board of Commissioners spent several months holding hearings, accepting public comments, and reviewing documentation submitted by all parties involved before arriving at their decision to deny this application. The State of Colorado has an appellate process in place for LCG to judicially appeal the Board's decision. LCG has utilized that process and will receive a decision on its appeal in the next several months.

The Colorado General Assembly recently passed Senate Joint Resolution 31, which supports the power of local government to make land-use decisions and supports the state judicial processes, as the legislature's public comment on this matter. We share the concerns of our state legislators and encourage the Federal Communications Commission to show deference to local government land use decision-making and our state's judicial processes.

The Telecommunications Act of 1996 provided directions to the FCC for implementing digital television. Under FCC rules developed in accordance with the Act, Denver metro area television stations were required to provide a digital signal by last November. We know that the federal mandate for digital television has no direct relationship to tower siting issues, which are primarily issues that should be decided locally. We also know that if the Jefferson County Board of Commissioners' decision is allowed to stand, the Denver television broadcasters are still bound by federal mandate to transmit digital television. Therefore, we support efforts by all interested parties to agree upon a solution that will take into account needs of area viewers as well as the interests of residents living near proposed sites.

Thank you for your consideration of these comments, and for conducting the Commission's deliberations in an open and public manner. We look forward to your response to our concerns.

Sincerely,



Appendix CC

Industrial Communications and Electronics, Inc v Town of Falmouth, USDC Maine May 9, 2000, Civil Nos. 98-397-P-H and 99-96-P-H

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

INDUSTRIAL COMMUNICATIONS AND ELECTRONICS, INC.,	)	
PLAINTIFF	)	
v.	)	CIVIL NOS. 98-397-P-H AND 99-96-P-H
TOWN OF FALMOUTH, ET AL.,	)	
DEFENDANTS	)	

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

These two lawsuits arise out of the Falmouth Zoning Board's denials of conditional use permits and variances to Industrial Communications and Electronics, Inc. ("ICE") for a transmission tower. ICE claims that Falmouth has violated the Telecommunications Act of 1996 (the "Act"), 47 U.S.C.A. § 332(c)(7)(B) (1999), by failing to base its decisions upon substantial evidence contained in a written record; prohibiting or effectively prohibiting personal wireless service facilities in Falmouth; and unreasonably discriminating among providers of functionally equivalent services. The Falmouth defendants' motions for summary judgment on all Counts of the two Complaints are GRANTED and ICE's motion for summary judgment on the substantial evidence claim is DENIED.

I. UNDISPUTED FACTUAL BACKGROUND

A. ICE's Plan to Provide Specialized Mobile Radio Services to Portland

Since 1990, Falmouth has had a special section of its zoning ordinance devoted to transmission towers.[1] Under Falmouth's ordinance, transmission towers are permitted as a conditional use in the Farm and Forest District as long as the tower base sits at least 400' above sea level. Town of Falmouth's Zoning and Site Plan Review Ordinance ("ordinance") §§ 3.2, 5.33(a) (1990).

On September 15, 1997, ICE purchased from Richard Berry approximately 2.35 acres of land (the "site") located off Hardy Road in the Farm and Forest District. At the time, there were two equipment shelters and four communications towers—two guyed towers of approximately 110 feet (the "110' towers"), one tower of fifty feet (the "50' tower"), and one tower of 170 feet (the "170' tower")—on the site. There are four other towers on adjacent lots. All of the towers in the area were constructed before the tower portion of the ordinance was adopted in 1990. From the date of the purchase, ICE broadcast a community repeater service[2] and maintained collocated[3] antennas for a paging service on the 170' Tower. ICE chose the site for various reasons, including its pre-existing use as a communications tower facility, its coverage patterns, and its availability.

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[1] See Appendix A for the entire section.

[2] "Community repeater" is "a commercial radio system that uses a single pair of frequencies for multiple users." Watson Dep. at 36.

[3] "Collocation" or "co-location" occurs when companies agree to place their antennas on the same tower.

In October and December 1997, the Federal Communication Commission ("FCC") licensed ICE to provide specialized mobile radio services ("SMRS")[4] at a number of channels on the 900 MHz frequency band in the Boston Major Trading Area ("MTA"), which includes the State of Maine. According to FCC regulations, ICE must operate a sufficient number of base stations to provide coverage to at least one-third of the population of the Boston MTA within three years, and at least two-thirds of the Boston MTA population in five years, or else it will forfeit a significant portion of its license. See 47 C.F.R. § 90.665(c) & (d) (2000).

Before purchasing the site, ICE did not prepare a written analysis concerning the size, height, and strength of the existing towers or the demographics of the greater Portland market, or the existing competition. It did not perform a structural analysis of the towers, although it did perform a visual inspection. When ICE purchased the Hardy Road site, it also purchased Berry's equipment and FCC license to provide SMRS in the 800 MHz frequency band which, at that time, was being broadcast from a tower Berry owned at 351 Blackstrap Road. ICE planned to move the 800 MHz operation to its Hardy Road site. Fenton Dep. at 14.[5] At or about the time ICE purchased the Hardy Road site, ICE's President, David Fenton, Jr., knew that ICE would need a new tower because the existing towers

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[4] Unlike personal communications services or cellular services, a SMRS system serves one geographic area from one tower and does not pass off customers from one tower to another as customers travel.

[5] Although the record is unclear on whether ICE followed through with its plan, it seems that the 800 MHz system remained at the Blackstrap tower until after the January 1998 ice storm.

would not support the number of antennas needed to add the 900 MHz system to an 800 MHz system. Fenton Dep. at 23-24, 27-28.

In January 1998, a severe ice storm struck the area and damaged the 170' tower, toppling approximately one-third of the tower. After the storm, ICE mounted its paging service antennas and community repeater antennas on one of the undamaged towers. In February or March 1998, ICE attached four antennas to the damaged tower for 900 MHz SMRS. While these antennas emit a maintenance signal strong enough to "protect" ICE's FCC 900 MHz licenses, they are not strong enough for commercial use. During the spring of 1998, ICE sold to Nextel, as part of a nationwide deal, its right to use the 800 MHz frequency, the 800 MHz frequency equipment at the Blackstrap tower location, and its customer list for 800 MHz SMRS. After the ice storm and at Nextel's request, ICE attached two antennas to the damaged tower in order to preserve Nextel's 800 MHz licenses. While these antennas did not operate commercially, they could be made commercially operable.

B. The First Application

On May 15, 1998, ICE applied to the Falmouth Zoning Board for permission to remove all four towers and replace them with one 200' tower that would use some of the supports (guy wire anchors and base) of one of the existing towers. ICE requested a conditional use permit, relying upon a safety provision (§ 5.33(g)) of the zoning ordinance. ICE later amended its application to request a variance

for undue hardship if the Board decided to deny the conditional use permit.[6] The Board denied both requests and issued written findings of fact and reasons for its decision. In essence, the Board decided that the safety provision did not permit the new tower because (1) the safety provision permits necessary "structural alterations," whereas the proposed structure was not an "alteration" but a new tower; (2) there was no evidence that the existing towers were not in compliance with safety regulations; and (3) the new tower would violate the setback requirement (§ 5.33(b))[7] unless a variance were granted. The Board concluded that a variance should not be granted because ICE failed to prove three of the necessary elements of a variance—that it could not make a reasonable return on its property, that its need for a variance was due to the unique nature of the property, and that ICE did not create its own hardship.

C. The Second Application

ICE submitted a second application for a conditional use permit on January 4, 1999. This time ICE proposed to tear down the four towers and rebuild the 170' tower, claiming a permissible expansion of a grandfathered non-conforming use under section 6.2(c)[8] and alternatively requesting a variance. However, ICE planned to build the 170' tower not where it currently existed, but

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[6] A conditional use permit may be granted after an applicant demonstrates that the proposed use will meet the specific requirements for such a use under the ordinance, will be compatible with the general character of the neighborhood, will not have a significant detrimental effect on adjoining property, will not result in significant hazards to traffic, will not result in significant fire danger or flood damage and will not overburden existing public services and facilities. See Ordinance § 8.3 (1990).

[7] See Appendix A.

[8] See Appendix A.

"approximately" on the site of one of the 110' towers. The Board rejected ICE's proposal, concluding that (1) the proposed 170' tower was a new tower, not an alteration; (2) ICE still did not demonstrate that the existing towers were not safety compliant; (3) the 170' tower was not a permitted expansion of a grandfathered use; and (4) ICE failed the same variance requirements as in its earlier application.

II. DISCUSSION

The Telecommunications Act of 1996 (the "Act"), 47 U.S.C.A. §§ 151 et seq. (1996), was designed to "encourage the rapid deployment of new telecommunications technology." Reno v. American Civil Liberties Union, 521 U.S 844, 857 (1997). The specific provision involved in this case, 47 U.S.C.A. § 332(c)(7), "is a deliberate compromise between two competing aims—to facilitate nationally the growth of wireless telephone service and to maintain substantial local control over siting of towers." Town of Amherst v. Omnipoint Communications Enterprises, Inc., 173 F.3d 9, 13 (1999).

A. Count III: Were the Zoning Board Decisions Based Upon Substantial Evidence?

The Act requires that any decision denying "a request to place, construct or modify personal wireless service facilities shall be in writing[9] and supported by substantial evidence contained in a written record." 47 U.S.C.A. § 332(c)(7)(B)(iii) (1999). The parties do not dispute what was in the written record before the Board. They do dispute the significance of various parts of the record and the

[9] In Count III of the Complaint (Civil No. 99-96-P-H), ICE alleges that the Board failed to issue a written decision as required under the Act. However, that Complaint was filed only two days after the Board's decision. ICE later received the Board's written findings and conclusions and no longer asserts that the Board failed the "written" decision requirement.

permissibility of the Board's interpretation of the relevant ordinance provisions. This seems to be a purely state law issue that belongs in state courts. Nevertheless, Congress has directed that federal courts become involved. 47 U.S.C.A. § 332(c)(7)(B)(v) (1999).

According to the First Circuit, substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Penobscot Air Servs., Ltd. v. Federal Aviation Admin., 164 F.3d 713, 718 (1st Cir. 1999), cited in Amherst, 173 F.3d at 16. While the reviewing court must take into account contradictory evidence in the record, "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." Penobscot, 164 F.3d at 718. The "substantial evidence" test "gives the agency the benefit of the doubt, since it requires not the degree of evidence which satisfies the court that the requisite fact exists, but merely the degree that could satisfy a reasonable factfinder." Id.

(1) Was Either Proposal a "Structural Alteration" Entitled to a Conditional Use Permit Under Section 5.33(g)?

Falmouth's zoning ordinance provides that "*structural alterations* that may be necessary to increase the loading capacity or to bring a tower into compliance shall require conditional use approval of the Board." § 5.33(g) (emphasis added).[10] The Board ruled that ICE's proposals were not "structural alterations" permitted

[10] I do not resolve whether the Board incorrectly decided that ICE's proposals did not increase loading capacity or improve safety because I find that there is substantial evidence to support the Board's conclusions that ICE's proposals were not "structural alterations" under the ordinance.

under section 5.33(g), but rather proposals to replace an existing tower with a new tower. See Decision (I) at 3 ¶ 16; 5. (Pl.'s Ex. M); Decision (II) at 6 (Pl.'s Ex. AA).

The parties' primary disagreement in evaluating the two proposals concerns the meaning of "structural alterations" in section 5.33(g).[11] The Board says that ICE each time proposed a new tower, whereas ICE maintains that its proposals were only structural alterations.[12] The Act mandates that a reviewing court conduct a 'substantial evidence' review of the zoning board's decision, but it is silent on how much deference that court should give to the zoning board's interpretation of a zoning ordinance.[13] In Maine, the construction of a zoning ordinance is a question

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[11] ICE also argued that a grandfathering provision of the original ordinance exempted all its towers. The provision in question, however, section 5 of the 1990 Transmission Tower Amendments, specifies that section 5.33 applies "to all transmission towers for which a building permit has not been issued as of the date of the enactment; except that Section 5.33(g) shall apply to all transmission towers in the Town of Falmouth existing on or after the date of enactment." Agenda, Falmouth Town Council Regular Meeting Apr. 23, 1990 at 128 (Pl.'s Ex. A). Since these towers are subject to section 5.33(g) and since I conclude that substantial evidence supports the Board's decision that ICE's proposals are not "structural alterations" permitted by section 5.33(g), section 5 does not assist ICE on this issue.

The Board also argues that section 5 is merely a rule of construction rather than a substantive provision of the ordinance. See Defs.' Opp'n to Pl.'s Summ. J. Mot. at 7. The history of the ordinance indicates that the Board is correct. Prior to 1990, Falmouth had a moratorium on new tower construction pending the establishment of a new ordinance to address citizens' concerns. See Agenda, Falmouth Town Council Regular Meeting Nov. 21, 1989 at 291 (Defs.' Opp'n Mem. at Attach. A). During the public hearing on the ordinance amendment, the Town Attorney explained that section 5 was designed to clarify that the provisions of the new ordinance applied to those towers waiting for a building permit during the moratorium. See Minutes of Public Hearing on Apr. 9, 1990 at 101 (Defs.' Opp'n Mem. at Attach. A). Without this provision, Maine's grandfathering statute, 1 M.R.S.A. § 302, would have applied, and any tower permit applications pending would not have been required to comply with the new ordinance amendment. See 1 M.R.S.A. § 302 (1999).

[12] ICE seems to recognize now that the original proposal in the first application was in fact a new tower. Pl.'s Reply at 2.

[13] Traditionally, municipal zoning decisions have been afforded substantial (continued...)