

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Docket No. 99 -

In the Matter of)
)
Canyon Area Residents for the Environment)
Request for Review of Action Taken Under)
Delegated Authority on a Petition for)
An Environmental Impact Statement)

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS
IN SUPPORT OF LAKE CEDAR GROUP'S PETITION
FOR EXPEDITED SPECIAL RELIEF AND
DECLARATORY RULING

Lake Cedar Group LLC ("LCG") has filed a petition with the Commission asking for expedited special relief and a declaratory ruling. In it, they ask the FCC to preempt the unreasonable zoning decision by the Jefferson County, Colorado Board of Commissioners that is preventing many Denver, Colorado broadcast stations from being on-air with DTV. The National Association of Broadcasters ("NAB")¹ hereby submits these comments strongly supporting LCG and its effort to have the Commission preempt this arbitrary decision, one which is in fact preventing many broadcast stations from meeting their FCC-mandated DTV requirements and frustrating the federally directed roll-out of DTV.

To effectuate the implementation of DTV and the congressionally-directed December 31, 2006 deadline for the return of broadcasters' analog spectrum, the Commission directed an

¹ The NAB is a non-profit incorporated association of television and radio stations and networks which serves and represents the American broadcast industry.

aggressive timetable for the construction of broadcasters' DTV facilities.² Part of that plan is that each affiliate of the four major networks in the 11th - 30th largest markets must build its DTV facilities and be on-air by November 1, 1999, with the remaining commercial stations broadcasting in DTV by May 1, 2002, and non-commercial stations on-air a year after that.³ It is to these deadlines that LCG's member stations are held accountable.⁴

In order to build their DTV facilities as directed, LCG broadcasters applied for a rezoning review from the Board of County Commissioners in Jefferson County, Colorado. Their request was straight-forward; they wanted to erect a broadcast tower in an existing antenna farm sited on their own property. The proposed tower would not only be the same height as existing towers, but would also enable the dismantling of four other towers in the near future, thus improving the skyline. Yet after hours of oral testimony and hundreds of pages of written testimony before the Board, the three County Commissioners quashed the rezoning request, with their decision supported only by a one-page, conclusory County Resolution⁵.

These three elected officials, clearly bowing to political pressure from a small cabal of intransigent activists, have effectively stopped the federally mandated DTV transition in a top-20

² See Fifth Report and Order, Advanced Television Systems and Their Impact on the Existing Television Broadcast Services, 12 FCC Rod 12809, para. 54 (1997) ("*Fifth Report and Order*").

³ See 47 C.F.R. § 73.624(d)(1)(ii) - (iv).

⁴ LCG is made up of five stations (three of which are network affiliates amenable to the November 1, 1999 deadline, which has already passed) serving the Denver DMA. According to Broadcasting & Cable Yearbook 1999-B, 174, the Denver DMA is the 18th largest market in the

⁵ Petition of Lake Cedar Group LLC for Expedited Special Relief and Declaratory Ruling at 12.

media market. In April, Chairman Kennard proudly announced that "the DTV train is rolling out of the station, and broadcasters are climbing aboard."⁶ Unfortunately, it appears that the train has derailed in Denver.

The implications of the Jefferson County Commissioners' actions cut deeply: the future of digital television in Denver is in grave danger and the FCC's authority has been called into

to consider the purchase of digital television sets. The nationwide availability of DTV signals is the catalyst needed to spark public acceptance of DTV. The FCC simply cannot allow local officials to neglect, nullify, and subvert federal laws and policies at their own discretion, for their own (political) ends. If this local action stands, then the Congressional/FCC plan creating a nationwide digital television service will have been thwarted for the benefit of a handful of dissidents. Not only would this become a case of the tail wagging the dog, but a case of the tail wagging the dog to death.

As it stands now, the Denver broadcast market, with over three million viewers in four states, is being held hostage by a vocal minority in a political battle. Because of these local squabbles, consumers in Denver will not receive the DTV signals the federal government intended them to have.

Only a strong and clear signal from the Commission in this situation will send a message, not only to the Jefferson County Commissioners, but to other localities who may be considering obstruction of DTV broadcast towers, of needed zoning variances, or of other local approvals. It

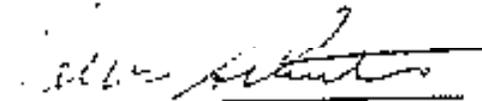
⁶ FCC Press Release, April 30, 1999, *Statement of FCC Chairman William Kennard, DTV Implementation Rules Effective May 1st*.

was precisely to avoid situations such as that presented here that NAB filed its petition in 1997⁷ and its later comments asking the FCC to preempt and proscribe local actions conflicting with federal policy and regulations with regard to DTV and other broadcast transmission facilities.⁸

The road to the transition to digital television has been long, costly, and arduous. Millions of man-hours and over a billion of dollars have gone into the transition thus far, and the finish line is not yet in sight. The Commission cannot allow provincial politics to undermine the future of the broadcast industry. The Commission has, thus far, been a stalwart and impassioned advocate for the nationwide establishment of a digital television service. By acting on NAB's more general petition and on LCG's petition for special relief here, the FCC will send a message not only to the broadcast community, but to the American public at large: the Federal Communications Commission is resolute, in earnest, and unequivocal in its support of DTV.

Respectfully submitted,

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November 9, 1999

⁷ Petition for Further Notice of Proposed Rule Making, MM Docket No. 87-268, May 30, 1997, filed jointly by The National Association of Broadcasters and The Association for Maximum Service Television.

⁸ Comments of The National Association of Broadcasters and The Association for Maximum Service Television, filed in MM Docket No. 97-182, October 30, 1997.

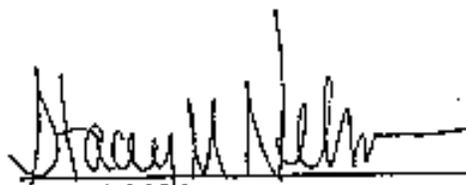
CERTIFICATE OF SERVICE

I, Stacey M. Nelson, Legal Secretary for the National Association of Broadcasters, hereby certifies that a true and correct copy of the foregoing Comments of the National Association of Broadcasters was sent this 12th day of November, 1999, by first-class mail, postage prepaid, to the following:

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