

Before the  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Matter of: )  
)  
Canyon Area Residents for the Environment )  
Lookout Mountain Digital Television Tower )  
Installation; Golden, Colorado )  
Petition for Reconsideration of the )  
Advisory Council on Historic Preservation )

ET Docket No. 99-267  
DA 99-1211

To: The Commission  
ATTN: FCC Secretary Maglia Salas, Dr. Robert Cleveland, Chairman William Kennard

**ERGOTEC'S REPLY TO THE REPLY COMMENTS OF:  
LAKE CEDAR GROUP LLC, AND  
THE NATIONAL ASSOCIATION OF BROADCASTERS  
REGARDING PETITION FOR RECONSIDERATION FILED BY:  
ADVISORY COUNCIL ON HISTORIC PRESERVATION**

While reading the comments of the Lake Cedar Group (LCG) and National Association of Broadcasters (NAB), the haunting thought their statements conjured was one associated with the *Wise Ruling* of Solomon (1 Kings, 3:16-28). In this story two women shared a house. Each conceived a male child, born three days apart. One night, the baby of one woman became ill and died. While the other lady slept, the unfortunate woman placed the dead infant in the lady's bed and took her life baby. In the morning, the victimized lady was horrified to find her baby dead. She examined the boy and exclaimed, "This is not my child!" The culprit replied, "Yes it is. Your child is dead; mine lives!" The women took the matter to King Solomon, and continued their argument before him. Having heard enough, King Solomon said to his guards, "Fetch me a sword! Cut the living child in half. Give each woman a half of his body." With deep compassion, the true mother approached the King and begged him, "Please, my lord, give her the living child. Do not kill him." Inspired by divine wisdom, King Solomon placed the living child in the arms of his mother. This story parallels the desire of the people on Lookout Mountain to regain their right to live in their once safe and pleasant environment. Innumerable times they besieged the government to protect them: "Please do not kill our children, our people; the environment." The only response from industry is, in essence: "Do not stand in the way of progress!" The *Wise Ruling* is also the crux of the Petition for Reconsideration of the Advisory Council on Historic Preservation (ACHP): "Please, do not kill our American Heritage. Let it live for future generations. Let historic sites and memorabilia live to benefit humankind!" The National Historic Preservation Act (NHPA) was enacted to ensure compliance.

**COMMENTS OF LAKE CEDAR GROUP LLC (LGC).** Members of LCG question Ergotec's understanding of *Federalism* (footnote 3). Obviously LCG did not see the attachments filed with the comments of Ergotec; i.e., President Clinton's *Memorandum of August 10, 1995* which, among other things, stipulates protection of historic monuments and buildings. Thereafter (May 1998), the President issued Executive Order (EO) 13083 titled *Federalism* (also attached to Ergotec's comments). The purpose of EO 13083 was to preempt the rule of immediate authorities, and deprive citizens of the liberties afforded State and Local governments under the US Constitution,

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as outlined in the 10<sup>th</sup> Amendment. After some thought, President Clinton suspended Executive Order 13083 (*Washington Post*; August 2, 1998). The *Post* article was also attached to Ergotec's comments. *Federalism* occurs when a central government (e.g., Federal), and its constituent agencies (e.g., the FCC) distribute power among themselves at the expense of sub-government bodies (e.g., State and Local). The will of Congress and the FCC (a congressional agency) is being forced on the State and Local government, and the people, of Lookout Mountain. This is Federalism; the mandate of Congress, through the FCC, to proliferate technology at whatever cost. The FCC may *wish* to roll out DTV by November 1999. But the Constitution does **not authorize** the FCC to impose its will on the State and Local government and the people of Lookout Mountain, or any other community. This fact is respected in the Telecommunications Act of 1996 (Telecom Act): Part 704, Section 332(c)(7)(A), "...*nothing in this Act shall limit or affect the authority of State or local government ... over decisions regarding the placement, construction, and modification of wireless facilities.*" Progress must not supersede this division of power. The American right to protect one's life, property, and the pursuit of happiness is strongly guarded by 47 CFR, Sec. 1.1307 as it is in the US Constitution.

LCG references 47 CFR Sec. 1.1307(a)(4). This section protects historic sites from intrusion. LCG states: "... *the National Association of Broadcasters and BellSouth concurs with LCG that the Commission's existing environmental processing guidelines take into account potential effects on historic properties and, therefore, comply with the requirements of NHPA.*" If true, the ACHP would not be objecting to the proposed LCG digital television (DTV) tower. The FCC is the caretaker of the electromagnetic spectrum and issuer of radio frequency (RF) communications licenses. FCC is not an environmental agency.

Sec. 1.1307(a) through (d) is very explicit as to what must be protected from trespass. Even the wording of its bolded title conveys the intention of this rule: "**Sec. 1.1307 -- Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.**" Members of LCG (e.g., Twenver; Fox TV) filed an Engineering Data form (FCC 301) with the Commission. An "X" was placed in the "yes" [true] box of item 2, which states: "*The proposed facility will not have a significant environmental impact, including the exposure of workers or the general public to levels of RF radiation exceeding the applicable health and safety guidelines, and therefore will not come within 47 CFR Section 1.1307.*" In none of the references LCG provided in its comments can one find the term "antenna farm(s);" actual or implied. And even if it was in the said documents, how does the Commission earn the right to preempt its own rules that were approved by the Office of Management and Budget and/or the General Accounting Office? Further, since Section 1.1307 is specific in its mandate to protect historic sites, the environment, and humanity how does the Commission justify overriding the federal protection of our national treasures? Wherever one turns on Lookout Mountain, one sees the Nation's preserved history; Boettcher Mansion, Lariat Trail, Lookout Mountain Park, Buffalo Bill's Grave, and so much more of America's past. The National Park Service, the Advisory Council on Historic Preservation, Jefferson County historians, and Lookout residents strive to conserve this environment for the pleasure of present and future generations of the United States and worldwide visitors. By mandate and logic, the Commission has no right to permit the destruction of this Lookout Mountain cultural oasis. To do so will open floodgates for the telecom and broadcast industry to violate historic sites nationwide. In these troubled and distressful times, people need a place like Lookout Mountain where they can regroup, relax, meditate, and just be.

As outlined in 47 CFR Sec. 1.1307(a)(4), Lookout Mountain has sites, buildings, and structures that are *significant in American history, architecture, archeology, engineering and culture. Some historical sites are listed, or are eligible for listing in the National Register of Historic Places.* LCG

is aware of this and that such areas require an Environmental Assessment, and possibly an Environmental Impact Statement (EIS). However, LCG then says, "It is not required to submit an EA to the FCC for consideration, because of the Commission's long-standing policy exempting facilities to be constructed on 'antenna farms' from the environmental processing requirement." How can such a blatant incongruity be sanctioned by the Commission? LCG references 47 CFR Sec. 1.1306, and the National Environmental Policy Act (NEPA) which is enforced by the President's Council on Environmental Quality (CEQ). The chairperson of NEPA reports environmental issues to the President, and he to Congress. At FCC, the applicant generally determines whether an EA and subsequent EIS is conducted. Applicants insure such studies are not performed by marking item 2 "yes" [true] on form FCC 301. In fact, the CEQ has no record of any EIS ever being performed by the Commission or any carrier they license. When applicants indicate no EA is required, the FCC concurs.

According to the National Environmental Policy Act of 1969 (Public Law 91-190, 1 January 1970), an EIS must be conducted anytime an "undertaking affects or has the potential of affecting the environment and living things (which includes humans). In such cases, it is incumbent on the applicant to involve all the agencies whose areas of responsibility might be affected by the proposed structure. The work of the CEQ is specified in Title I, Section 101. It states:

**Sec. 101**

(a) The Congress, recognizing the profound impact of man's activity on the interrelationships of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the crucial importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is in the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned private and public organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national security, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Has LCG notified all the parties that are likely to be affected by DTV RF emissions? In order to perform a *bona fide* EIS, all agencies, including the FCC and CEQ, must examine the potential environmental impact of all devices proposed for the, perpetually active, LCG microwave broadcast DTV and telecom site. Otherwise, the NEPA requirements cannot be satisfied. For instance:

- Since rock will be extracted from the side of Lookout Mountain to house the huge equipment building for devices that support DTV and telecom antennae, did LCG involve the Bureau of Mines which oversees rock formations and mining operations in the Rocky Mountains?
- Has the US Geological Survey (USGS) been asked to evaluate whether the ultra-high radio frequency (RF) waves emitted from DTV and several other wireless antennae, destined to be installed on the tower, will cause electromagnetic interference (EMI) in other sensitive electronic instruments and systems in the area?
- The arcing, pulsing, and continuous RF waves cutting through air normally generates ozone. Strong winds blowing through the Rocky Mountains produce electricity. The air density at 7730 feet above mean sea level (AMSL), the probable overall reach of the proposed DTV tower considering its elevation on the mountain, is known to be 12 psi. Has the Environmental Protection Agency (EPA), the staunchest supporter of the NEPA, been asked to evaluate the total and/or net effect of DTV ultra high RF waves on air quality?
- Food and Drug Administration (FDA) regulates medical devices. Certain kinds of medical telemetry devices (e.g., wireless cardiac monitors) function at a portion of the spectrum used for TV broadcasting. DTV is within those broadcast bands. Did the FDA participate in determining whether an EA was required at the proposed site?
- Federal Aviation Administration (FAA) is proposing to use global positioning systems (GPS) in the instrument landing gear of aircraft. The air traffic at nearby Denver Airport is quite heavy. Was the FAA asked to calculate the effect of DTV and telecom RF emissions on aircraft GPS flight gear?
- Were officials at military bases in the Rocky Mountains, the contaminated Rocky Flats facility, the National Park Service, or the Historic Conservation Association asked to evaluate the impact of DTV and other wireless RF emissions from LCG antennae on their area of responsibility?

**Antenna Farm.** An *antenna farm* refers to an area which, by accident or design, is acquired for the sole purpose of installing broadcast and other communications devices. The sudden or gradual addition of receiving and transmitting devices, within such an area, constitutes an antenna farm. Historic sites existed on Lookout since at least the 1800s, and people lived there before the proliferation of broadcast, radar, and telecom media. But the presence of humans has not stopped industry from increasing the number of microwave devices on Lookout Mountain. LCG and FCC merely say, "Lookout Mountain is an established *antenna farm*. Regardless of the people and living creatures under the microwave towers, no EA or EIS is necessary." The high-tech industry motto seems to be: Destroy the people and American heritage, but let industry have its way and prosper.

**NEPA.** The NEPA reflects the compassion of public officials, of a bygone era, for their fellow Americans. What image will future generations conjure when they learn about the grief public servants of past generations exacted on their loved ones? If *no EA is required [on Lookout Mountain and elsewhere] because the FCC has a long-standing policy of exempting antenna farms [from such rigor]*, Americans have a real problem. A reasoning mind can fathom why several hundred antennae, planted in the Lookout Mountain predominantly residential and historic area, is a legitimate reason for conducting an EA and EIS. The FCC's categorical exclusion of Lookout from such studies because Lookout, a reputed *antenna farm* despite its human population, is anti-environmental; anti-anti-human; and anti-democratic.

**COMMENTS OF NATIONAL ASSOCIATION OF BROADCASTERS (NAB).** On 20 May 1996, the FCC released the **Fifth Further Notice of Proposed Rule Making (FCC 96-207)**. The forerunner of this proposal was Docket 87-268: *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*. To address the issue of inevitable electromagnetic interference (EMI) between the soon to be introduced ultra high frequency digital televisions and old existing analog sets, the Commission established the Advanced Television Systems Committee (ATSC; 1993). The committee had 54 members from relevant disciplines: the television and electronics industry, academia, trade associations. The National Association of Broadcasters was one of the ATSC members. The ATSC discussed compliance with the Telecom Act of 1996, masking devices to prevent EMI, and the public's perception of a technology that would require antennae on towers slated to be over 2000 feet tall. It is presumed that Docket FCC 96-207 was never released for public comment. But the FCC did release MM 97-182 and later FCC 97-296 titled, *Proposed Rulemaking of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement, and Construction of Broadcast Station Transmission Facilities [High Definition Digital TV (DTV)]*. The negative response from State and Local governments, pilots, airline trade associations, attorneys general, legislators, citizens, and others interested parties nationwide was a resounding "No!" This is what industry calls the *NIMBY syndrome*. Like the reply comments of NAB, the broadcast and telecom industry is generally detached from public sentiment. The mass media continues building communications facilities and collecting money. They do not live under the towers they erect in communities nationwide.

**CONCLUSION.** In its Reply Comments, the NAB refers to "*alleged EMI; mere assertions of adverse impact on historic sites; complaining commentors*". NAB insists broadcasters need not conduct an EIS due to a presumed impact on historic sites or cultural resources, because DTV systems will have "no adverse effects on historic properties." How can the NAB coldly dismiss public concern? When the ATSC met in 1997 with respect to FCC 96-207, members discussed the inevitable effects of EMI on other electronic systems. EMI was a worrisome issue then and now. Has the quest for sophisticated and faster technology eroded the reasoning minds and civility of industry and public servants?

By the nomenclature, **digital television**, one might assume DTV is simply a glorified television receiver that presents vivid and entertaining pictures. True, in part. But more than that DTV was created to be the *super daddy of the information highway*. DTV will be merged with computers. Thus a person can use DTV to watch football games in a car, bus, train, airplane; anywhere. They can also process letters, balance checkbooks; access remote databases, communicate via email, surf the internet, receive and transmit voice messages, and so on. In other words, DTV will link people at home, business, and leisure to global points via microwave towers and fiber optic cables, now being laid underground and/or strung on electric poles nationwide. Fiber optic enables pictures and data to travel at the speed of light (186,000 miles per second). To achieve this supreme goal, analog television will be upgraded to digital. Thus Twenver KTVD, Channel 19 (analog; RF 500-506 MHz), will become Channel 20 (digital; RF 506-512 MHz). Fox KDVR, Channel 31 (analog; RF 572-578 MHz), becomes Channel 32 (digital; RF 578-584 MHz).

LCG reiterates that by eliminating antennas and enhancing the DTV tower they will reduce RF emissions. This is a mystery. By upgrading to digital they are actually increasing the frequency, and thereby the operating and effective radiated power of the systems. Pictures cannot travel in space. They piggyback on a ultra high RF wave, and travel to and from the ionosphere. Since DTV frequencies will be transporting pictures (video) and audio to DTV receivers, as well as wireless telecom services, how can all this RF activity translate to reduced emissions?

What will the probable long-term biological effect be in children, and adults, living in this super high frequency RF environment for several years? NAB argues that the pictures submitted by the Lookout Mountain group, CARE, are not to scale; unclear and therefore unusable. In view of the all-encompassing plans of the government and industry for DTV, will clear and properly engineered quality pictures from anyone really make a difference? The major concern is to safeguard the life of people, the environment, our American Heritage. We cannot cut these innate gifts in half with ultra high RF pollution, and live.



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cc: President William Clinton  
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**[Addresses as noted on Reply Comments of the NAB and the Lake Cedar Group]**