

### **Exhibit 3**

#### ***Representation by Atty. Hopengarten is Proper***

Some citizens have questioned whether it is proper for Atty. Fred Hopengarten to appear before a Storey County tribunal in this case.

An order of Larry R. Hicks, United States District Judge, approved my appearance in this case, dated January 27, 2009.

The Nevada Rules of Professional Conduct include Rule 5.5 which reads, in relevant part:

(b) Exceptions. A lawyer who is not admitted in this jurisdiction, but who is admitted and in good standing in another jurisdiction of the United States, does not engage in the unauthorized practice of law in this jurisdiction when:

(1) The lawyer is authorized to appear before a tribunal in this jurisdiction by law or order of the tribunal or is preparing for a proceeding in which the lawyer reasonably expects to be so authorized;

...

(6) The lawyer is representing a client, on an occasional basis and not as part of a regular or repetitive course of practice in this jurisdiction, in areas governed primarily by federal law, . . .

Source: <http://www.leg.state.nv.us/courtrules/rpc.html>

#### Exhibit 4

### ***The Proposed Antennas are Not Commonly and Universally Found in Factory or Industrial Areas***

Much has been made of FCC Order on Reconsideration DA 00-2468, “In the Matter of Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures, and Amendment of Section 97.15 of the Commission’s Rules Governing the Amateur Radio Service, RM-8763” (“DA 00-2468”) (Released November 15, 2000). In particular, one paragraph deserves close examination:

8. We take this opportunity to amplify upon the meaning of ‘reasonable accommodation’ of amateur communications in the context of local land use and zoning regulations. The Commission adopted a limited preemption policy for amateur communications because **there is a strong federal interest in promoting amateur communications. We do not believe that a zoning regulation that provides extreme or excessive prohibition of amateur communications could be deemed to be a reasonable accommodation.** For example, we believe that a regulation that would restrict amateur communications using small dish antennas, antennas that do not present any safety or health hazard, or antennas that are similar to those normally permitted for viewing television, either locally or by satellite, is not a reasonable accommodation or the minimum practicable regulation. On the other hand, we recognize that **a local community that wants to preserve residential areas as livable neighborhoods may adopt zoning regulations that forbid the construction and installation in a residential neighborhood of the type of antenna that is commonly and universally associated with those that one finds in a factory area or an industrialized complex.** Although such a regulation could constrain amateur communications, we do not view it as failing to provide reasonable accommodation to amateur communications.

<http://www.fcc.gov/Bureaus/Wireless/Orders/2000/da002468.doc> (last visited April 2, 2011) (Emphasis supplied.)

### **The County May Not Deny Completely**

Opponents to the proposed project have pounced on some loose language in old court rulings such as “as long as a city has considered the application, made factual findings, and attempted to negotiate a compromise with the applicant, a city may deny the antenna permit.” *Howard v. Burlingame*, 937 F.2d 1376, 1380 (9<sup>th</sup> Cir. 1991). Those opponents failed to recognize the impact of DA 00-2468, where, in the language quoted above, the FCC Order holds that: “[T]here is a strong federal interest in promoting amateur communications. We do not believe that a zoning regulation that provides . . . prohibition of amateur communications could be deemed a reasonable accommodation.” The FCC has thus made plain that denial of outdoor antennas cannot meet the requirements of 47 CFR §97.15(b).

### **The County May Adopt Zoning Regulations, But Hasn’t Or The Applicant Has Not Proposed Anything Forbidden**

DA 00-2468 does hold that “a community may adopt zoning regulations that forbid the construction and installation in a residential neighborhood of the type of antenna that is commonly and universally associated with those that one finds in a factory area or an industrialized complex.” But no such regulation has been adopted here.

The County may not decide, in the absence of a properly adopted zoning regulation, that something is forbidden.

**The Proposal is for Antennas Commonly Found in Residential Areas**

While a community may forbid antennas “commonly and universally associated with those that one finds in a factory area or an industrialized complex,” every antenna proposed in this case is commonly – typically – almost universally – found in residential areas.

What types of antennas does one find “commonly and universally” “in a factory or an industrialized area”? Here are some antenna installations in factory or industrialized areas, from which conclusions will be drawn.



*Large parabolic dish uplink*



*Cable TV headend with several dishes and tower*







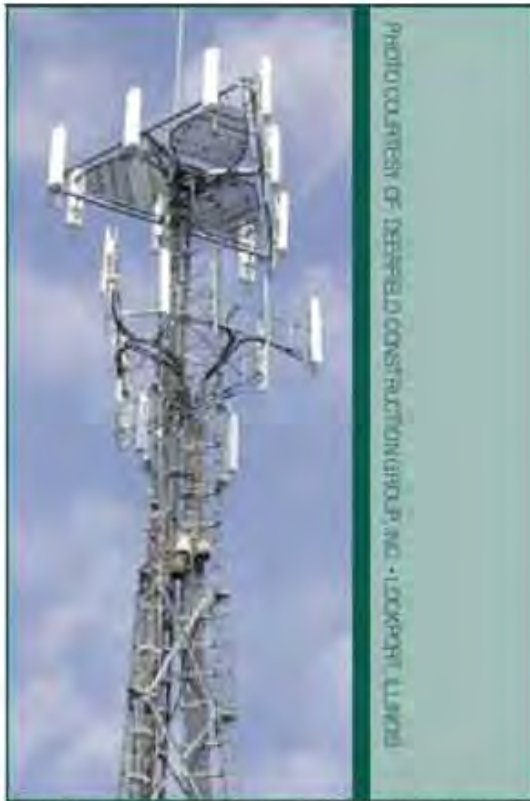
*Satellite TV dish farm*



*Large microwave dishes for broadband relay. Note that whip antennas are found in both residential and industrialized areas.*



<i>FM radio and TV antennas, with microwave dishes</i>	<i>Microwave horn and covered dish</i>
	
<p><i>A weather radar antenna in radome on a wide- stance self-supporting tower.</i></p>	<p><i>Weather radar in radome on A- frame lattice tower.</i></p>



*Platform mounted, sectorized, cellular telephone antennas. The wide-stance lattice tower is necessary to hold the platform and many feedlines (one per sector).*



*Platform mounted, sectorized, cellular telephone antennas. The fat monopole depicted is necessary to hold the platform.*