

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

<i>In re Application of</i>)	
)	
SDK FRANCO LLC)	LMS File No. 0000142847
)	Facility No. 148244
<i>For Renewal of License</i>)	
<i>Station K287BQ, Houston, Texas</i>)	
)	
To: Office of the Secretary)	
Attn: Chief, Audio Division, Media Bureau)	

REPLY TO OPPOSITION TO PETITION TO DENY

Centro Cristiano de Vida Eterna (“CCVE”), by its attorney, hereby submits its Reply to the “Opposition to Petition to Deny” (“Opposition”) filed by SDK Franco, LLC (“SDK Franco”) with regard to the application filed by SDK Franco for renewal of license of Station K287BQ. With respect thereto, the following is stated:

As stated previously, a grant of the application of SDK Franco for renewal of license would be contrary to the Commission’s Rules and policies, and must be denied. In the Petition, it was demonstrated that as detailed in an Informal Objection filed against LMS File No. 0000137405 (the “Modification Application”), SDK Franco had requested facilities that violated the FCC’s FM Translator FM broadcast protection rules (47 C.F.R. § 74.1204); and it proposed operation at a site with facilities already determined to cause interference to a full-service station (Station KTWL(FM)). SDK Franco did not ever respond to the Informal Objection. Rather than even attempt to refute the allegations raised therein, SDK Franco voluntarily dismissed that Modification Application on September 13, 2021.

However, despite the dismissal of that Modification Application, as demonstrated previously and as shown herein, there is absolutely no question that K287BQ **currently** is

operating illegally and is operating with an illegal antenna. As shown previously, and as SDK Franco concedes, at the present time, K287BQ is licensed to operate from its present location with a Scala CL-FM/HRM/50N, 0.5 antenna:

Transmitter Certified for compliance per 74.1250 or verified for compliance per 73.1660 of the Commission's Rules.	Transmitter Output Power 0.012 kW
Antenna Type Directional	Antenna Coordinates (NAD 83) Latitude 29-45-30.8 N Longitude 95-22-3.8 W
Antenna Description SCALA,CL-FM/HRM/50N,0.5	
Major Lobe Directions 115, 215	

Petition at 2. Attached to the Petition was a photograph of the antenna currently being used by SDK Franco/Station K287BQ, at the Wells Fargo Bank Building at a height of 299 meters above ground. As was shown in the Petition, based upon the photograph presented to the FCC, the antenna currently being used is NOT the authorized Scala CL-FM antenna authorized in LMS File No. 0000112935.

In response, SDK Franco incredibly attempts to contest the accuracy of this clear information, and in so doing appears to be engaging in clear misrepresentations to the FCC, which raises even further questions as to SDK Franco's qualifications to remain a Commission licensee. Specifically, SDK Franco states:

CCVE claims that the Station is operating pursuant to the terms of the 2021 Modification Application. As purported proof of this bizarre claim, the Petition states that the photograph attached as Attachment A to Attachment 4 of the Petition is of the ERI antenna allegedly in use by the Station. Such claim is completely and totally false. The photograph of the ERI antenna could have been taken anywhere in the work, including the top of the Wells Fargo Bank Building, where there are approximately 20 other antennas. Attached as Attachment 2 is a photograph, taken by Mr. Omar Romero, a consultant associated with SDK, of the Scale antenna that is in use by the Station. Attached as Attachment 3 is a

Declaration from Mr. Romero confirming such information. Simply stated, SDK presently is operating the Station with a Scala antenna as set forth in the Current Station License.

Opposition at 3-4. In Attachment 3, the aforementioned Omar Romero states: “in August 2021, I took a photo of the Scala antenna that is in use by SDK Franco associated with K287BQ, which is attached to this filing.” Opposition at Attachment 3.

SDK Franco is engaging in misrepresentations to the FCC. Station K287BQ was previously owned by CCVE. Moreover, CCVE continues to lease tower space upon the Wells Fargo Building. Earlier this week, an extensive survey was conducted of the antenna site rooftop. A wide array of photographs from that survey are attached hereto as a part of Attachment 1. From that survey and a review of the photo provided by SDK Franco, the following facts are undeniably true.

SDK’s Franco’s claim that CCVE’s photographs “could have been taken anywhere in the world” (Opposition at 3) is false. Attachment 1 now, even more conclusively, demonstrates that the photographs are taken from the top of the Wells Fargo Bank Building (and not “anywhere in the world”). Moreover, the photographs were taken on September 30, 2021. A photograph of “The Houston Chronicle” is included in the photographs in order to establish the date the photographs were taken.

On September 30, 2021, there was no sign of any “Scala Antenna” at the Wells Fargo Bank Building, and there is no indication that any such antenna is in operation. As noted above, SDK Franco claims use of a Scala Antenna in conjunction with its operation of K287BQ at the Wells Fargo Plaza. However, as demonstrated in Attachment 1, the Scala Antenna shown in SDK Franco’s Opposition quite simply *cannot be found to exist* at the Wells Fargo Bank Building, and therefore *does not, in fact, appear to be in operation* as the Wells Fargo Building Site. None of the “20 other antennas” in operation at the Wells Fargo Building

even remotely resemble either a Scala antenna in general or the particular Scala antenna shown in the SDK Franco photograph. Therefore, *SDK Franco's ongoing claim that the "Scala" antenna exists in the manner shown in its photographs and in use constitutes a misrepresentation to the FCC.*

CCVE has determined that there is absolutely no question as to what antenna IS the antenna being used by SDK Franco in conjunction with K287BQ. On September 30, 2021, a closer examination was made of the antenna previously identified as the SDK Franco/K287BQ antenna currently in operation. As seen in Attachment 1, there is a label affixed to the antenna identifying the antenna as a "SWR FM 10/4.SW.S" Antennas **TUNED TO 105.3 MHz.**¹ "105.3"



¹ Based upon a previous photograph of the K287BQ Antenna, it was believed to be either an ERI FM-100 Antenna or else a Jampro Polarized 2 bay 25 KW antenna – both of which resemble the SWR Antenna. The label, however, now conclusively establishes the Make and Model of the Antenna being used by SDK Franco for K287BQ.

corresponds to Channel 287, the channel used for Station K287BQ. The cables leading from that antenna lead to the transmitter room being leased by SDK Franco. Attachment 1. *All of this evidence leads to the inescapable conclusion that contrary to its claims in the Opposition, SDK Franco's claim that it is using a "Scala Antenna" is a clear, intentional misrepresentation to the FCC, which also has a bearing on its fitness to remain an FCC licensee.*

Finally, even IF the antenna photographed by SDK Franco as presented in its Opposition was being used in conjunction with K287BQ were somehow in use, SDK Franco is operating illegally. As seen above, the only antenna K287BQ has been licensed to operate is a Scala CL-FM/HRM/50N, 0.5 antenna - a 2-bay antenna with 0.5 spacing (approximately 5 feet) spacing between section, and with the lobes of each section pointed at 115° and 215°. *The antenna SDK Franco claims in its own photograph to be utilizing is a 1-bay antenna, which itself also is not the antenna which has been approved by the FCC and which therefore would not even come close to generating the antenna pattern approved by the FCC.*

As stated previously, the FCC's rules are clear. Section 74.1251(b) of the Commission's Rules states in relevant part:

(b) Formal application on FCC Form 349 is required of all permittees and licensees for any of the following changes:

(1) Replacement of the transmitter as a whole, except replacement with a transmitter of identical power rating which has been certificated by the FCC for use by FM translator or FM booster stations, or any change which could result in the electrical characteristics or performance of the station. Upon the installation or modification of the transmitting equipment for which prior FCC authority is not required under the provisions of this paragraph, the licensee shall place in the station records a certification that the new installation complies in all respects with the technical requirements of this part and the terms of the station authorization.

(2) A change in the transmitting antenna system, including the direction of radiation or directive antenna pattern.

47 C.F.R. § 74.1251(b) (emphasis added). Thus, SDK Franco’s unilateral use of its present antenna is contrary to the Commission’s Rules that require approval prior to such use. Moreover, Commission policies are clear: an applicant is not allowed to engage in premature construction. Section 319(a) of the Communication Act of 1934, as amended, states, in pertinent part, that “[n]o license shall be issued under the Authority of this Act for the operation of any station unless a permit for its construction has been granted by the Commission” (47 U.S.C. § 319(a)), and this has been interpreted as providing that pre-authorization installation of radio antennas is strictly prohibited.²

In this case, SDK Franco is guilty of a violation of both rules and policies: it is operating with an antenna that has not been authorized; and (ii) it has engaged in flagrant premature construction of future facilities.

Moreover, as was established in the Petition, operation with a non-compliant antenna does not constitute valid operation. As the United States Court of Appeals affirmed in *Eagle Broadcasting Ltd., v. FCC*, 563 F.3d 543 (D.C. 2016), “the FCC reasonably concluded that an unauthorized transmission counts for nothing.” *Id.* at 553.

SDK Franco has been operating in this manner for well over a year. Under Section 312(g) of the Communications Act (47 U.S.C. § 312(g)), a station's license automatically expires if the station fails to transmit a broadcast signal for any consecutive twelve-month period. It is well established Commission precedent that unauthorized transmission of a broadcast signal does not constitute broadcasting for purposes of Section 312(g) of the Act.³ In *A-O Broadcasting*, the

² *Westinghouse Broadcasting Co., Inc.*, 49 F.C.C.2d 1171, 1173 ¶¶ 12-13 (1974), *Merrimack Valley Communications, Inc.*, 20 F.C.C.2d 161, 163 ¶¶ 8-9 (1969), *rehearing denied*, 21 F.C.C.2d 440 (1970); *Saver Media, Inc.*, 29 FCC Rcd 9345, 9346 ¶ 3 (MB 2014) (\$10,000 forfeiture imposed for premature construction).

³ *See, e.g., A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 608, para. 10 (2008) (“*A-O Broadcasting*”); *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009) (affirming Commission's determination that station's broadcast license had expired pursuant to Section 312(g) of the Act, due to its failure to broadcast at its authorized facilities for one year).

Commission upheld a staff decision which concluded that crediting an unauthorized transmission as sufficient to prevent cancellation under Section 312(g) would be inconsistent with the purpose of the Act. Section 312(g) is meant to encourage the legal transmission of broadcast signals, not unauthorized or illegal operations in violation of Commission Rules⁴ and the Act.⁵ Therefore, since SDK Franco/K287BQ has been operating illegally for an excessive period of time, not only should its renewal be denied, its license for K287BQ should be cancelled pursuant to Section 312(g) of the Communications Act. *Cf.* Opposition at 4 (claiming that there has been “no violation of Section 312(g) of the Commission’s rules”).

Finally, SDK Franco’s repeated assertions that its aberrant operation should somehow be excused because “if the station were operating as CCVE...claims...it is a virtual guarantee that at least one other broadcaster would be lodging complaints of ongoing interference objections at the FCC, complaining of interference” (Opposition at 2) and also that “SDK has not received any complaints of interference from Henderson [the licensee of KTWL(FM)], or any other broadcaster, with respect to the Station’s operations pursuant to the Current Station License” (Opposition at 3), should be rejected. First of all, SDK Franco’s use of an unapproved antenna has now been established, and for the FCC to determine that violation of the rules is occurring is not dependent on whether or not “interference” is being caused as a result of the use of an improper antenna. Second, it should be noted that Roy Henderson (the owner of KTWL(FM)) and SDK Franco have been in negotiations for the sale of KTWL-FM to SDK Franco. CDBS

⁴ See, e.g., 47 C.F.R. § 73.1635 (requiring special temporary authority to operate, for a limited period, at variance from a station’s licensed parameters); 47 C.F.R. § 73.1745(a) (requiring licensees to operate their stations pursuant to the terms contained in their authorizations).

⁵ See 47 U.S.C. § 301 (providing that no person shall transmit radio signals except in accordance with authority granted by the Commission). These principles were affirmed by the United States Court of Appeals in *Eagle Broadcasting Ltd., v. FCC*, 563 F.3d 543 (D.C. 2016) and *Kingdom of God, Inc. v. FCC*, 719 Fed Appx. 19 (D.C. Cir. 2018).

File No. BALH-20200630AAI. Therefore, the fact that “Roy E. Henderson” in particular has not filed complaints against his would-be purchaser (Opposition at 3) is neither surprising, nor relevant.

In short, SDK Franco is engaging in an ongoing violation of the Commission’s rules, and now is engaging in ongoing misrepresentations to the FCC concerning the existence of those violations. Further investigation of the facts and circumstances surrounding that misrepresentation is warranted. Upon consideration of the totality of the facts and circumstances at this time, absolutely so basis exists for grant of the application for renewal of license at this time.

WHEREFORE, it is requested that the application of SDK Franco LLC for renewal of license be denied.

Respectfully submitted,

**CENTRO CRISTIANO DE
VIDA ETERNA**

By: ____/Dan J. Alpert/_____
Dan J. Alpert

Its Attorney

*The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201
703-243-8690*

October 1, 2021

Attachment 1

DECLARATION

I, Hector Guevara, hereby state as follows:

1. On September 13, 2021, SDK Franco, by their attorney Mark B. Denbo, filed an opposition to a Petition concerning the current operation of Station K287BQ. SDK Franco claimed that Station K287BQ is currently operating with a Scala Antenna from the Wells Fargo Plaza. The Opposition was supported by a Declaration was made by Omar Romero under penalty of perjury, which also made that claim. Therefore, on September 30, 2021 at 1 PM in the afternoon I personally went to Wells Fargo Plaza building located on 1000 Louisiana St., Houston, Texas. When I got to the rooftop, I inspected the antennas in use at that site, including in particular the antennas that currently are being used for operation of FM Translator Stations K287BQ and K223CW. Both translators operate from the rooftop of the Wells Fargo Building. I was able to gain access to the roof top of the Wells Fargo Plaza because Centro Cristiano de Vida Eterna has some translators there, and I am a representative for Centro. K287BQ is owned by SDK Franco.

2. On September 30, 2021, I inspected the building rooftop. After doing a survey of all antennas on the rooftop of the Wells Fargo Plaza, I can report under penalty of perjury that I could not find any antenna matching the description that Mr. Romero testified to. More specifically, as a matter of fact, I was not able to locate at all any antenna matching the picture Mr. Romero presented to the FCC. What I was able to find, was the following antennas that appear to be in operation for use with K287BQ and K223CW.

3. Exhibit 1 shows two sets of antennas, one of which has been labeled by me and identified as K223CW, and one which has been labelled by me and identified as K287BQ. As a reference to prove and show the date the pictures were taken, the picture includes a photo of "The Houston Chronicle," which shows on the picture the date of the publication to show and prove that these pictures were taken on September 30, 2021.

4. A close inspection of Exhibit 2 shows a label showing the Make and Model of the Antenna of the Antenna labelled on my pictures as "K287BQ." The Antenna is a two-bay SWR Antenna, Model No. FM10/4 4.9WS. Also, the same label shows that this two-bay antenna is tuned specifically to "105.3 MHz" – which is the frequency of Station K287BQ. To confirm that owner of the Antenna, I decided to follow the coax cable that is hooked up to this Antenna and follow it to see what part of the penthouse it was going into. Insofar as Centro is a tenant of the building, I am familiar with the layout of the rooms being leased out the tenants of the rooftop. In this case, the cables go to the area where SDK Franco has its transmitters for K287BQ and K223CW, which is on the second floor of the penthouse. From this, I conclude that this Antenna is actively in use for Station K287BQ.

5. In order to further establish the accuracy of the photos, Exhibits 3-7 also show the two sets of antenna for K287BQ and K223CW from different views. Exhibit 3 shows the upper portion of the 2-Bay SWR Antenna which I have determined is being used by K287BQ from one different view. Exhibit 4 shows both K287BQ and K223CW antennas facing the west side of the building from where I was standing. Exhibit 5 is a close-in look at the K287BQ antenna SWR

FM10/4 that is tuned to 105.3 MHz. It also again shows the newspaper in reference that this picture was taken on September 30, 2021. Exhibit 6 also shows both sets of antennas for the two translators SDK Franco is operating out of the Wells Fargo Plaza Building. On the far end of the picture you can see the two-bay BKG 77 Nicom antenna for K223CW. In the same Exhibit 6 you can also see the antenna that K287BQ is using is a much bigger antenna than the antenna used for K223CW. That is because it is a SWR Model No. FM10/4. I have attached on Exhibit 9 the Product Specifications for the SWR antenna that K287BQ is actually using. According to the manufacturer, the per-bay power rating for this antenna is 10 kW per bay.

6. Exhibits 7-8 are pictures taken by me while standing in the middle of the penthouse rooftop, facing North and South. These photos were taken to show to the FCC that nowhere on this rooftop there is any antenna similar to the one Mr. Romero is claiming that SDK Franco is using for K287BQ.

7. In conclusion, I can say on September 30, 2021, on the rooftop of the Wells Fargo building, I was not able to find at all any Scala antenna. The antenna actually being used is an SWR Antenna, which has not been approved by the FCC for use by K287BQ. Also, it appears quite clear that contrary to the claims by SDK Franco and Omar Romar, the picture shown by Mr. Romero was not taken on this rooftop with any Scala antenna currently in operation on the rooftop.

I declare under penalty of perjury that the forgoing is true and correct.


Hector Guevara

October 1, 2021

Exhibit 1

K223CW

K287BQ

SPORTS
Rays shut out Astros, delay celebration at Minute Maid.
PAGE C1

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NATION
After 13 years, Britney Spears' father ousted as conservator.
PAGE A4

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Congress at odds before 2 crucial votes

Fate of infrastructure bill, social policy plan could define success of Biden's presidency

By Emily Cochrane
and Jim Tankersley
NEW YORK TIMES

WASHINGTON — As Democrats prepared legislation Wednesday to avert a government shutdown this week, they were desperately trying to salvage President Joe Biden's domestic agenda as conser-

vative-leaning holdouts dug in against an ambitious \$3.5 trillion social safety net and climate bill that carries many of the party's top priorities.

Congressional leaders moved to address the most immediate threat, working to complete a bill to prevent a government funding lapse at midnight Thursday. Yet

after days of intensive negotiations to bridge bitter differences in their party over Biden's two biggest legislative priorities, the president and top Democrats appeared as far as ever from an agreement on their marquee social policy package, which the White House calls the Build Back Better plan.

That, in turn, was imperiling a \$1 trillion bipartisan infrastructure bill that was scheduled for a House vote Thursday.

The fate of the two measures could define the success of Biden's presidency, and the intense negotiations surrounding them have posed a test of his skills as a deal maker, which he highlighted during his campaign for the White House. But after days of personal meetings with lawmakers in the Oval Office and phone calls to key players, Biden remained far short of a deal.

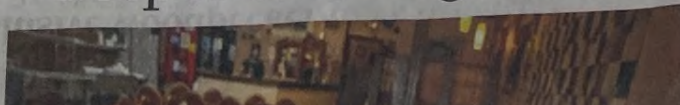
Dramatizing the challenge, Sen. Joe Manchin of West Virgin-

ia, a leading holdout on the social policy bill, issued a statement Wednesday evening reiterating his opposition to the proposal as now constituted, saying it amounted to "fiscal insanity."

"While I am hopeful that common ground can be found that would result in another historic investment in our nation, I cannot — and will not — support trillions in spending or an all-or-nothing approach that ignores the brutal

Congress continues on A9

For Afghans left behind, desperation is growing



Flood insurance likely to be pricier

FEMA's calculations of risk driving increase

By R.A. Schuetz

Exhibit 2

K287BQ

SWR LP. U.S.A.
Systems With Reliability
Ebensburg, Pa. 15931
814-472-5436

P/N: INTERBAY # 2

MODEL: FM10/4 .9W.S.

105.3 MHz

Exhibit 3

K287BQ

K223CW

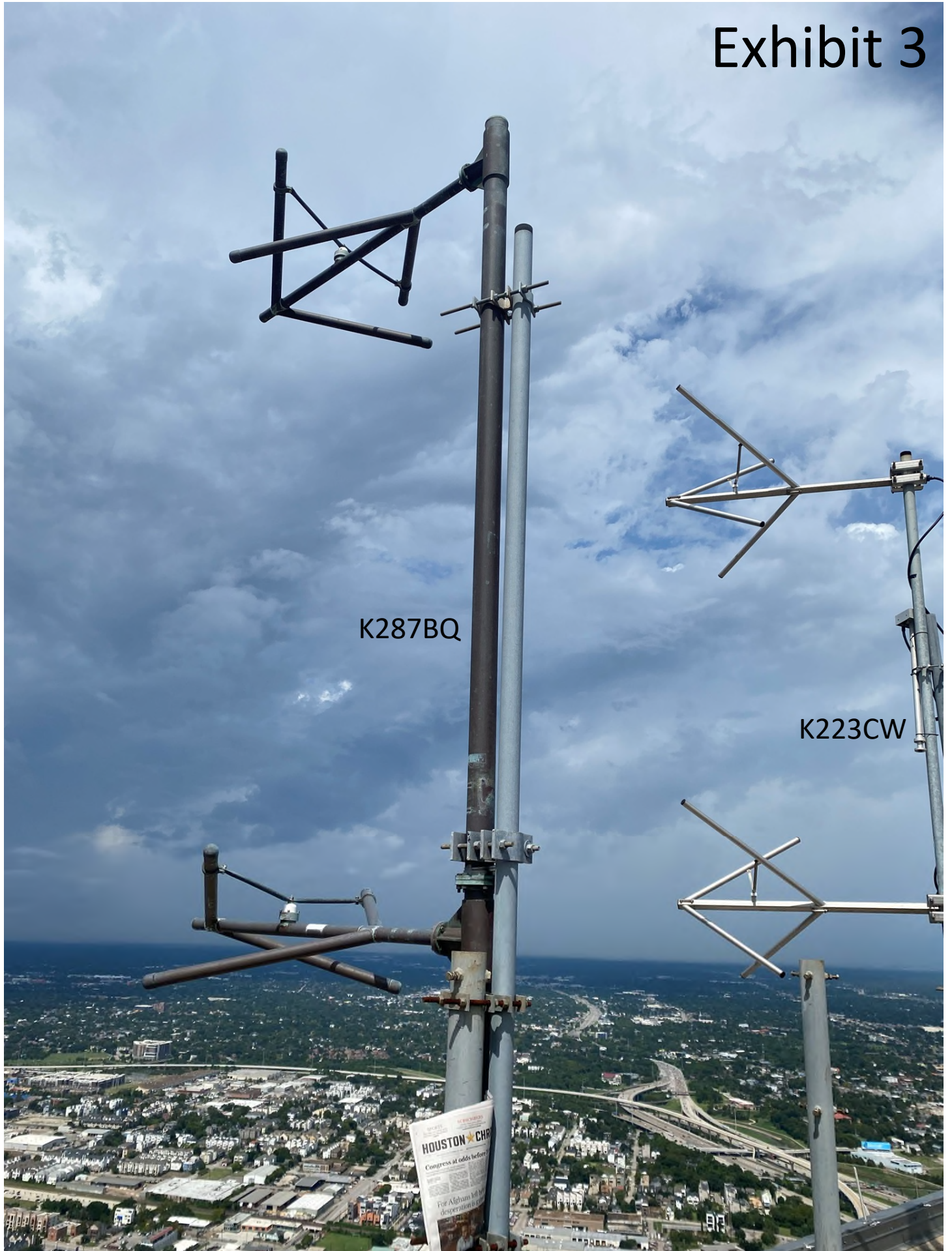


Exhibit 4



Exhibit 5

K287BQ

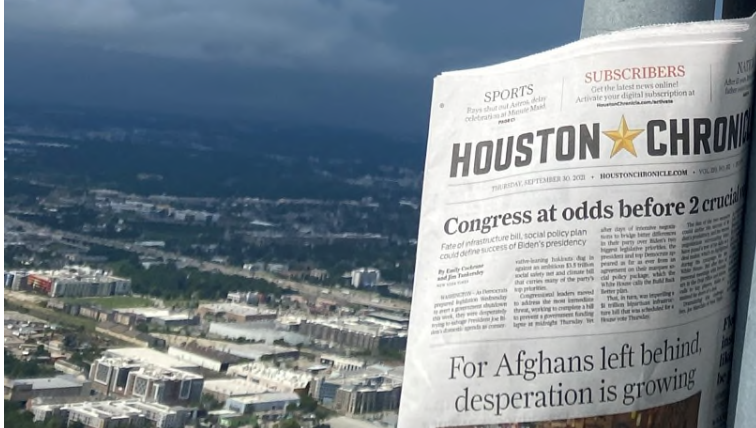


Exhibit 6

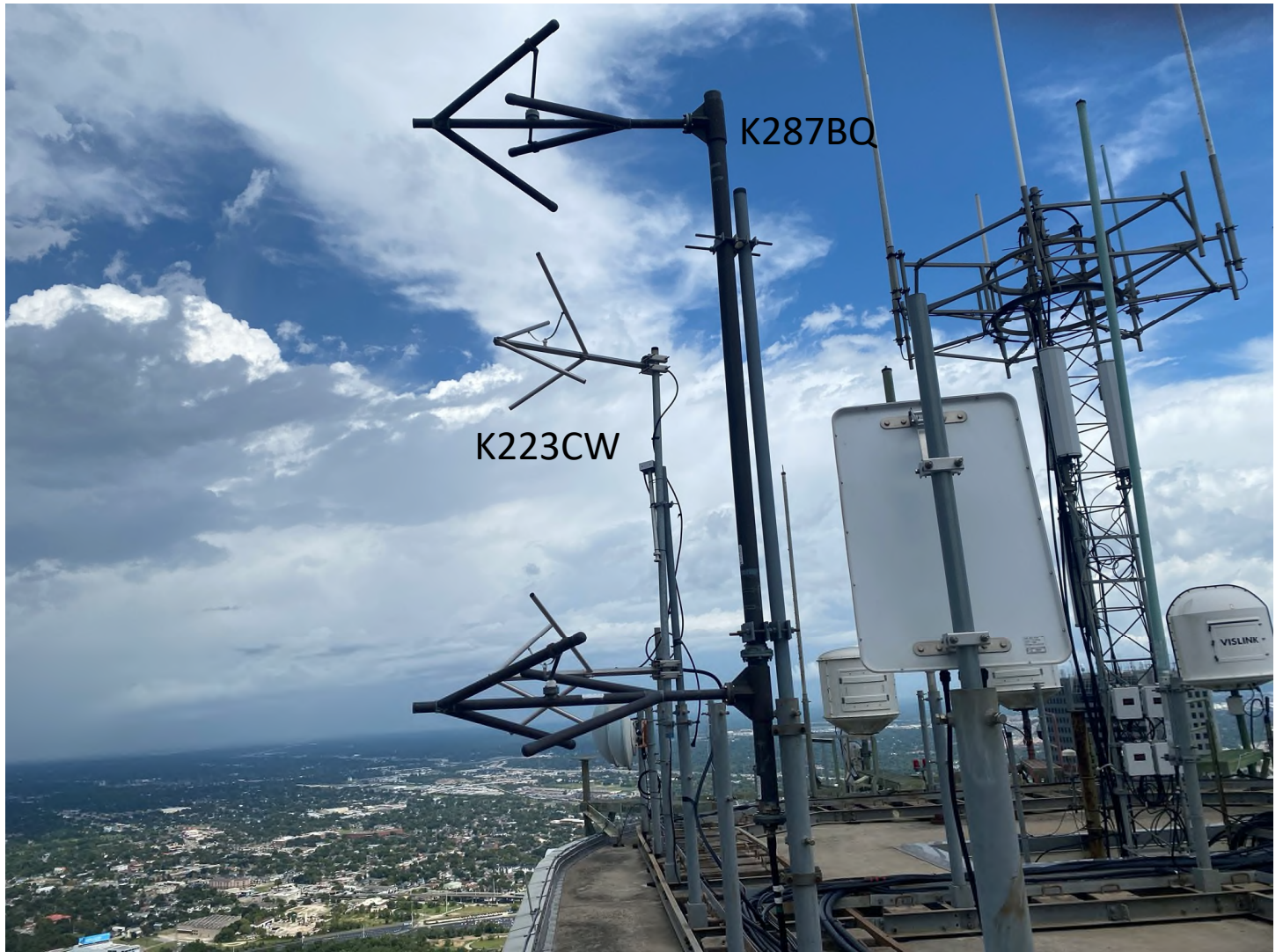


Exhibit 7

Roof top view facing North



Exhibit 8

Roof top view facing South



FM10 SERIES

HIGH POWER FM ANTENNAS

Product Specifications:

Frequency Range	88 – 108 MHz
Polarization	Circular
Power Rating	10 kW per bay
System Input	3 1/8" or 4 1/16" EIA
Circularity	± 2 dB Free Space
VSWR	1.1:1 ± 200 kHz
Bay Dimensions	H 51" / W 38.5" / D 19"

Features:

•**FULL POWER RATING.** Rated at 10 kW per bay with a maximum of 40 kW for four bays or more.

•**EXCELLENT CHOICE FOR MOST CLASS "C" stations.** Provides superior performance for stereo and SCA operations due to its high VSWR rating.

•**RUGGED CONSTRUCTION.** The antenna system is fabricated from rugged, heavy wall copper and naval brass. All joints are tig-welded.

•**PRESSURIZED AND GROUNDED.** The antenna system is pressurized to the feed point of each bay and each bay is DC grounded.

•**BEAM TILT AND/OR NULL FILL OPTIONAL.** Custom vertical patterns are available with center-fed arrays that have an even number of bays.

•**CUSTOM DIRECTIONAL PATTERNS.** FM directional antennas based on the customer's mounting structure, with FCC filing documentation, are available.

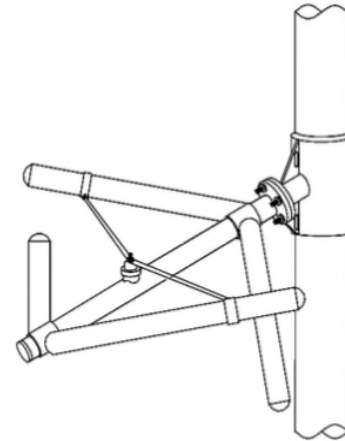
•**WEATHERIZATION (OPTIONAL).** Radomes or electrical deicers available for areas that experience periods of heavy icing and/or snow conditions.

•**STANDARD MOUNTING BRACKETS.** Fits up to 4" tower leg or pipe. Supplied with antenna.

•**WARRANTY.** 2-year limited warranty on defects and workmanship to the original purchaser.

Notes:

1. Power gain figure is for each polarization.
2. Power rating is based on 40 degrees C ambient. Degeneration occurs above 2000 ft.
3. Antenna weight, windload, aperture and dimensions are based on mid-band operation (98.1 MHz).
4. Antennas with 2 or more bays come with input fine-matcher.
5. SWR, Inc. maintains a continuous program of product improvement and therefore reserves the right to change specifications without notice.



Full Wave Spaced Electrical and Mechanical Specifications

Bays	Power Rating (kW)	Power Gain	dB Gain	Net. Weight (lbs)	Windload (lbs)
1	10	0.441	-3.556	25	50
2	20	0.959	-0.182	125	197
3	30	1.495	1.746	200	320
4	40	2.044	3.105	275	445
5	40	2.590	4.133	350	570
6	40	3.160	4.997	425	730
8	40	4.311	6.346	533	855
10	40	5.456	7.369	610	980

Half Wave Spaced Electrical and Mechanical Specifications

Bays	Power Rating (kW)	Power Gain	dB Gain	Net. Weight (lbs)	Windload (lbs)
1	10	0.441	-3.556	25	50
2	20	0.695	-1.580	112	187
3	30	1.012	0.052	173	302
4	40	1.313	1.183	235	398
5	40	1.623	2.103	296	495
6	40	1.924	2.842	358	592
8	40	2.528	4.028	452	688
10	40	3.129	4.954	516	785

3/4 Wave Spaced Electrical and Mechanical Specifications

Bays	Power Rating (kW)	Power Gain	dB Gain	Net. Weight (lbs)	Windload (lbs)
1	10	0.441	-3.556	25	50
2	20	0.935	-0.292	95	167
3	30	1.396	1.449	143	280
4	40	1.845	2.660	200	368
5	40	2.301	3.619	256	475
6	40	2.756	4.403	338	572
8	40	3.664	5.640	422	668
10	40	4.590	6.618	480	760

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that the forgoing “Opposition to Petition to Deny” is being served by First Class Mail to the following:

Mark B. Denbo, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Ave., N.W.
Suite 301
Washington, DC 20016

_____/Dan J. Alpert/_____
Dan J. Alpert