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June 15, 2005

Our File No. 20670-00100-61

BY HAND

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204-C
Washington, DC 20554

**Reference: Quetzal Bilingual Communications, Inc.
325-NEW-20050406-00008**

Dear Madam Secretary:

Handed to you herewith are an original and four (4) copies of an Opposition to Petition to Deny.

Should you have any questions, please communicate with the undersigned.

Respectfully submitted,

QUETZAL BILINGUAL COMMUNICATIONS, INC.

By: 

Henry A. Solomon
Its Attorney

HAS:ar
Enclosure

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

In re Application of)
)
QUETZAL BILINGUAL)
COMMUNICATIONS,) 325-NEW-20050406-00008
INC.)
)
For Section 325(c) Permit to deliver)
programming to Station XHBCE-FM, Class C1)
Tecate, B.C., Mexico)

To: Secretary
For: Chief, International Bureau

OPPOSITION TO PETITION TO DENY

Quetzal Bilingual Communications, Inc. (“Quetzal”), by its attorneys, opposes the Petition to Deny (the “Petition”), lodged May 16, 2005, by Lazer Broadcasting Corporation (“Lazer”), Citicasters Licenses, L.P. (“Citicasters”), and Emmis Communications Corporation (“Emmis”)¹ (Lazer, Citicasters and Emmis, collectively referred to as the “Petitioners”).

I. PETITIONERS LACK STANDING

Section 309(d) (1) of the Communications Act, 47 U.S.C. § 309(d) (1), permits any “party in interest” to file a petition to deny an application. In general, to prove standing a petitioner must allege sufficient facts to demonstrate that grant of the application would cause petitioner to suffer a direct injury.² *F.C.C. v. Sanders Bros. Radio Station*, 309 U.S. 470, 476-77

¹ Other undisclosed licensees also were involved in this matter. See Pet. 4: “To verify the facts regarding Quetzal’s illegal cross-border operations, Lazer, with the assistance of Citicasters, Emmis *and others*, commissioned...a field inspection” (emphasis supplied). Mr. Saxberg declares that his “field inspection” was commissioned by Lazer alone.

² See *Los Angeles Cellular Tel. Co.*, 13 FCC Rcd 4601, 4603-04 ¶3 (CWD 1998), citing *American Tel. Corp.*, 9 FCC Rcd 3993, 3995 (1994), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Warth v. Selden*, 422 U.S. 490, 508 (1975).

(1940). In other words, a petitioner must establish a causal link between the claimed financial injury and the challenged action.³

Lazer's sales representative⁴ alleges that XHBCE is causing "interference" to his employer's station KXRS, Hemet, California. No empirical data are offered to support his claim which, under the circumstances, would not be justiciable at the FCC. Significantly, Joel T. Saxberg, Lazer's consultant, has not asserted that KXRS is experiencing interference from XHBCE's current or proposed operations.⁵ Quetzal, of course, is incapable of causing interference to KXRS because (a) it neither engages nor proposes to engage in FM broadcasting, and (b) it is not supplying programming to XHBCE at the station's C1 site—a site that has *not* been activated. XHBCE's *proposed* C1 operation has, in any event, been coordinated under international agreements. As such, XHBCE is obligated to protect KXRS's signal.⁶ Quetzal is relaying U.S. programming to XHBCE pursuant to Quetzal's Class B STA. However, Lazer has not offered measurements or other credible information to suggest that XHBCE's signal is interfering with KXRS in geographic areas where that station is entitled to protection.

Citicasters's standing claim is equally porous. Its engineer fails to verify that he read the Petition, but claims that his employer's KIOZ (FM), San Diego, "competes for advertising revenues with XHBCE." Pet. Exh. 2. The Petition claims (p. 2) that KIOZ (FM) competes with XHBCE "as a result of operation of that station from Quetzal's studio in Chula Vista, California." First, XHBCE is not "operated" from Chula Vista. It is a Mexican station operated by personnel in Mexico. Second, if XHBCE is "competing" with KIOZ (FM), Citicasters clearly

³ See *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 490, 508 (1975).

⁴ Declaration of Armando Gutierrez, Pet. Exh. 1.

⁵ The technical showing prepared by Joel T. Saxberg will be discussed below. See, e.g., p. 5 of Mr. Saxberg's "Report on Findings of Field Investigation of Radio Facilities."

⁶ All § 325 (c) Permits are conditioned on the requirement that that foreign stations comply "with applicable treaties and related provisions concerning electrical interference to U.S. Broadcast Stations."

lacks standing because XHBCE is licensed by the SCT, not the FCC. Third, as previously noted, Quetzal cannot compete with KIOZ, because Quetzal will not be providing a broadcast service. Finally, as a matter of law neither competition nor prospective competition confers standing absent a verified allegation that a petitioner “is likely to be injured by issuance of a license.” *Sanders Bros.*, at 476-77. Citicasters has no “concrete economic interest sufficient to confer standing.” *Mount Wilson FM Broadcasters, Inc. v. F.C.C.*, 884 F.2d 1462, 1465, n. 6 (D.C. Cir. 1989).⁷

Emmis also appears to have signed on to the Petition. *It does not allege that any of its stations (which it declines to identify) will be affected by a grant to Quetzal.* The Petition (p. 2) simply claims that Emmis is “participating” in this litigation as a “private attorney general,” but no officer of *Emmis* professes such status. Nor has Emmis tendered an affidavit or declaration, or affirmed that someone (anyone) at that company read and approved the Petition. Emmis’s standing claim is spurious.

The Petition should be treated as an informal objection and dismissed or denied.

II. PRELIMINARY STATEMENT

The Saxberg Report. Petitioners’ technical allegations are enumerated in Exhibit 3 to the Petition, the May 2005 report of “Joel T. Saxberg, Consulting Radio Engineer” (the “Saxberg Report”).⁸ Quetzal will show that the Saxberg Report is rife with errors and omissions.⁹

⁷ *Mt. Wilson* also held that potential future interference does not confer standing. 448 F.2d at 1465.

⁸ “Report on Findings of Field Investigation of Radio Facilities of XHBCE-FM, XESS (AM), XESDD (AM) & XEKTT (AM) All Located in Baja California North, Mexico.” The Petition declares that Saxberg’s field investigation was commissioned by Lazer, Citicasters and Emmis. Pet. 4. Curiously, the Saxberg Report states just the opposite on its second page; *i.e.*, that the report was “prepared for Lazer Broadcasting Corporation.”

⁹ For example, Saxberg does not disclose when he overflew the sites that are the subjects of his field investigation. He does not authenticate the photographs included in the Saxberg Report or claim to have taken the pictures. *See* Rules 901 & 1010(2), Federal Rules of Evidence. Nor does Saxberg, who is not a Mexican national, disclose whether he received a license from the *Instituto Nacional de Migracion en B.C.*, to work in Mexico. Finally, although Mr. Saxberg states that he is a Consulting Radio Engineer, there is no seal on the Saxberg Report

Quetzal's STA. Since early April, 2005, Quetzal has been supplying programming from Chula Vista to XHBCE, which is broadcasting on Channel 289B (105.7 MHz) from a site known as Cerro Grande, Matamoros, B.C. The Class B operation was coordinated under the 1992 FM Broadcasting Agreement between Mexico and the United States.¹⁰

Quetzal's Proposed C1 Operation. Quetzal's captioned application seeks authority under § 325(c) to relay programming from Chula Vista to XHBCE at Cerro Bola where it will operate with 8.2 kW ERP.¹¹ The C1 operation also was coordinated.

The Morton Report. Quetzal is principally relying on **Exhibit 1** hereto, the Engineering Report by Lawrence L. Morton, P.E. (the "Morton Report"), to counter the Saxberg Report.¹²

III. RESPONSE TO PETITION TO DENY

A. Quetzal is Supplying Programming to XHBCE's Transmitter Site at Cerro Grande.¹³

The Saxberg Report (p. 4) declares that "there is no physical evidence to suggest that a transmitter was ever built" at XHBCE's Class B STA site. To prove a negative, Mr. Saxberg submits an aerial photograph of a portion of Cerro Grande. No transmitter is visible.

Photographs do not always tell the whole story. Mr. Saxberg's photograph is deceptive.

indicating that Mr. Saxberg has complied with California's Rules for Professional Engineers and Land Surveyors; *i.e.*, that he is certificated as a Professional Engineer, Registered Professional Engineer or Licensed Professional Engineer. Mr. Saxberg operates from offices in Arcadia, California.

¹⁰ The FCC granted Quetzal an STA for cross-border operations on April 1, 2005. Frequency coordination was completed on May 21, 2004.

¹¹ See May 6, 2005 "assignment letter," from Sr. Jorge Rodriguez Castaneda, the SCT's Director General to Kathryn O'Brien of the International Bureau. This letter was filed with the Bureau and an English translation was provided.

¹² **Exhibit 2** is a copy of a May 19, 2005 permit issued by Mexico's *Subdirector de Control Migratorio, del Instituto Nacional de Migracion en B.C.*, to Mr. Morton. Aliens must obtain a permit to work in Mexico.

¹³ The Saxberg Report incorrectly identifies the Class B site as "Matamoros Jaramillo." Elsewhere, the site has been referred to as "Matamoros Jaramillo, B.N." (FCC letter of May 21, 2004, to SCT confirming coordination) and "Cerro Grande, Matamoros, B.C." (SCT Class B 50 kW license issued November 11, 2004). In fact, the two sites identified in those official communications are identical. Their identical coordinates appear in the FCC's letter and on the license. The site will be referred to hereinafter as the "Class B Site."

“Site 1” in the Saxberg Report is a photograph of two hills (*cerros*) separated by a ravine or *arroyo*. In fact, XHBCE is operational at Cerro Grande and its site was within the Mr. Saxberg’s visual field. *He could not have overlooked the installation if he tried. The recently-constructed road leading to the site is conspicuously visible at the middle-upper right-hand portion of his photograph.* Mr. Saxberg had to have seen the road; his apparent “blindness” bespeaks a troubling lack of candor. Morton Statement, pp. 9-16. *See especially Figs. 5 & 6.*

The Saxberg Report next alleges that when Mr. Saxberg over-flew the patch of airspace identified as “Site 1” he did not detect XHBCE’s signal or view any power lines. Mr. Saxberg does not reveal either the date, time or length of his flyover. Quetzal has learned that the flight in a rented helicopter occurred on Wednesday, May 11, 2005, and that the aircraft cleared Tijuana Customs late that morning. Power lines are not visible at the Class B Site because XHBCE relies on a diesel generator to run its transmitter. *See Figs. 7 & 8, of the Morton Report.*

Exhibit 3 hereto is the Declaration of Oscar Eguia. Mr. Eguia declares that he and his assistant were performing emergency maintenance on XHBCE’s generator during the late morning and early afternoon of May 11, 2005. It so happens that XHBCE’s transmissions were interrupted on several occasions because the maintenance crew had to disable the generator.¹⁴ Consequently, if Mr. Saxberg flew by the Class B Site about midday on May 11, it is unsurprising that he did not detect a signal: During that entire time period XHBCE was operating intermittently with its 20-watt exciter. It should be noted that the Class B Site is a temporary location for XHBCE, since the station intends to move to the Class C1 Site.

Regarding coordinates, a licensed surveyor plotted the coordinates of the Class B Site late last month. The site survey revealed that the actual Class B Site was built at a location 179.9

¹⁴ Mr. Eguias indicates that the generator has not been a reliable power source, pointing out that it has malfunctioned in the past and has had to be restarted manually.

meters (approximately 590 feet) from the site specified on the SCT license. The coordinate matter is addressed in detail at pages 13 & 16 of the Morton Report. The variations, Mr. Morton affirms, result in “no measurable impact to KXRS (FM)...” *Id.* at 16.

B. XHBCE is Not Broadcasting From the Class C1 Site (Cerro Bola).

The Saxberg Report (pp. 5 & 6) next claims that Mr. Saxberg flew over “Site 2” XHBCE’s Class C1 transmitter site also known as “Cerro Bola” (hereafter the “Class C1 Site”), The Class C1 Site is approximately 10 miles from the Class B Site.¹⁵ Unlike Mr. Morton, *Mr. Saxberg did not conduct a field inspection at the Class C1 Site: He conducted an aerial glance.*

Had Mr. Saxberg landed and conducted a proper field inspection he would have quickly discovered the absence of audio processing equipment and associated wiring. Until this equipment is installed, XHBCE cannot broadcast programming. *See* Morton Report, pp. 16-20.

During his fly-by Mr. Saxberg also should have observed the lack of auxiliary antennas or other equipment capable of receiving and downloading programming from Chula Vista, California.¹⁶ Morton Report, p. 17. Nevertheless, Mr. Saxberg insists that XHBCE is broadcasting from the Class C1 Site, alleging at page 5 of his report that the station’s operational status was “confirmed by signal strength measurements” taken from the air. This contention is refuted at pages 16 and 17 of the Morton Report.

Since XHBCE is not broadcasting from its Class C1 Site, it cannot be interfering with the reception of Lazer’s Hemet FM. Moreover, although Petitioners would have the FCC believe the

¹⁵ At page 2 of his report, Mr. Saxberg refers to “Cerro Bola” twice in the last sentence of the opening paragraph. It appears that the first reference is in error and was intended to refer to the Class B Site, 10 miles distant.

¹⁶ This equipment is currently deployed at the Class B Site.

opposite, they fail to offer a shred of evidence suggesting that XHBCE intends to violate the technical strictures on its SCT license.¹⁷

Finally, the Saxberg Report (p.6) proffers photographs of two antennas at the Class C1 Site. The 8-bay antenna depicted on the right belongs to XHBCE.¹⁸ The Petition (p.5) notes that the antenna is “far larger than would be required for the authorized maximum ERP of 8.2 kW, but which would accommodate [XHBCE’s] original 50 kW operation authorized by the SCT.” In fact, the SCT originally licensed XHBCE to operate with a maximum ERP of 50 kW at its Class C1 Site. It was not until April 15, 2005, that the SCT ordered XHBCE to operate with a maximum ERP of 8.2 kW. Thus, the 8-bay antenna contemplated at the Class C1 Site was acquired in contemplation of a 50 kW operation and was installed before XHBCE received the SCT’s April 15 order.¹⁹

Petitioners would have the Commission imply that Quetzal will violate § 325(c) by supplying programming to a 50 kW FM operation at the Class C1 Site. No such implication is permissible under § 309(d) (1) or justifiable. Petitioners utterly fail to raise a question of fact, let alone one that is substantial and material.

C. PSN is Operating a Non-Licensed Microwave System Under Part 15 of the Rules.

The Morton Report (pp. 26-28) and **Exhibit 4** hereto, the Declaration of Marco Antonio Villar, verify that Quetzal affiliate Pacific Spanish Network, Inc. (“PSN”), has been operating a Part 15 spread spectrum microwave system for which no FCC license is required, between Chula Vista and Mexico since late March, 2005. *See also* Morton Report, Figs 27 & 28. Petitioners’

¹⁷ Being duly licensed and having undergone international frequency coordination, XHBCE is free to commence operations at the Class C1 Site *at any time*.

¹⁸ The antenna on the left belongs to an unrelated FM station operating on 95.3 MHz.

¹⁹ XHBCE’s license was issued on November 11, 2004, and specified a 50 kW operation at Cerro Grande, Matamoros, B.C. Quetzal amended its captioned C1 application as soon as it learned of the SCT’s order directing XHBCE to operate at no more than 8.2 kW ERP.

unverified allegation at page 8 that there is an “illegal [microwave] facility” in place is unverified, inaccurate, and should be stricken.²⁰

D. The AM Stations Served by Quetzal.

(1) XEKTT-AM (1700 kHz) and the “Tijuana Airport Site.” Curiously, the Saxberg Report (pp. 7 & 8) comments on the absence of a 1700 kHz operation by XEKTT at the “Tijuana Airport Site.” However, Mr. Saxberg’s own photographs at page 8 show that the site is unconstructed.²¹

(2) XEKTT-AM’s Operation at “Site 4”-Cerro Jaramillo. The Saxberg Report (p. 6) refers to Site 4 as “Cerro Jaramillo” and states that there are two towers of “grossly unequal height” at that location. It points out that XEKTT’s license calls for two towers of equal height.

Quetzal first assures the Commission that it is supplying programming from Chula Vista to XESS’s 620 kHz transmitter *at Puerto Nuevo, and nowhere else. See photo at page 11 of the Saxberg Report and subsection (3) below.*

Nevertheless, Mr. Saxberg insists that he conducted “signal strength readings” purporting to show that one of the towers is being used to radiate XESS’s signal on 620 kHz. Saxberg Report at 9. The Morton Report refutes this conclusion by demonstrating that Mr. Saxberg’s investigative technique, a “fly-over inspection,” is flawed. Morton Report, p. 3. There is no truth to Mr. Saxberg’s statement. The taller tower is, as Mr. Morton points out, “available for rent.” *Id.* & Figs. 1 & 2.

The shorter tower in the photograph was constructed to accommodate XEKTT’s 1700 kHz operation. It is being used *exclusively* for that purpose, and directionalization is

²⁰ On June 6, 2005, the FCC granted PSN’s application for Private Operational Fixed facilities between Chula Vista and Mexico. That facility was placed in operation earlier this month.

²¹ Nor has Quetzal applied for a permit to supply programming to that location.

accomplished with a slant wire. Slant wires are permitted in Mexico and the FCC has been informed of this fact by the SCT's General Director. This matter is addressed in **Exhibit 5**, hereto, the Declaration of Oscar Rivera.²² *See also* Morton Report, pp. 5-6, wherein Mr. Morton discusses the efficacy of slant wires.

(3) XESS-AM's and XESDD-AM's Operations at "Site 5"--Puerto Nuevo. AM stations XESDD (1030 kHz) and XESS (620 kHz), broadcast from Puerto Nuevo, B.C., where they too operate directionally at reduced power utilizing slant wires as set forth in the Morton Report, pp. 21-22. Mr. Saxberg's claim that he only detected a 620 MHz signal at the site is refuted by Mr. Morton who was on the ground and who listened to both stations during his inspection.

IV. CONCLUSION

The Petition is long on aggressive rhetoric, but lacking in specific allegations of fact. It fails to establish that any of the three *disclosed* Petitioners is a bona fide party in interest. Nor do Petitioners advance specific allegations of fact sufficient to raise *prima facie* substantial and material questions of fact regarding Quetzal's captioned Class C1 application or its current service to XHBCE at the station's Class B Site. Quetzal is aware that Petitioners are fearful of new FM competition from XHBCE's proposed C1 operation at Cerro Bola, and that fear, not any craving to vindicate the public interest, is the driving force behind their Petition against Quetzal.

²² The procedures that are being followed in Mexico with respect to the slant wire installations are analogous to the procedures that can be adopted by U.S. permittees. *See* 47 C.F.R. § 73.1615 (Operation during modification of facilities). Indeed, under that regulation, the permittee of a directional station may temporarily operate in a nondirectional mode. § 73.1615 (b)(3).

The Petition should be dismissed or denied in its entirety. The captioned application should be granted forthwith.

Respectfully submitted,

**QUETZAL BILINGUAL COMMUNICATIONS,
INC.**

By: 

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June 15, 2005

EXHIBIT 1

ENGINEERING STATEMENT

This engineering statement was prepared on behalf of Quetzal Bilingual Communications, Inc. (“Quetzal”) in opposition to a Petition to Deny (“Petition”) filed May 16, 2005, by Lazer Broadcasting Corporation, Citicasters Licenses, L.P., and Emmis Communications Corporation, jointly referred to as “Petitioners.” The Petition was filed against an application by Quetzal for Section 325(c) permission to deliver programming to station XHBCE-FM on Channel 289C1 (105.7 MHz.) at Tecate, Baja California North, Mexico, FCC File No. 325-NEW-20050406-00008 (“Application”).

I am a consulting engineer and have been in private fulltime practice for 32 years. I am very familiar with the FCC rules and applicable bilateral agreements with countries adjacent to the U.S., including Mexico. My qualifications include being a Registered Professional Engineer (Electrical), licensed by the State of California, Registration No. E 012560, and a full member of the Association of Federal Communications Consulting Engineers (AFCCE).

PRELIMINARY DISCUSSION

In the Petition, reference is made to an Engineering Report and accompanying photos, which purport to substantiate the claims of Petitioner. The Engineering Report was prepared by Mr. Joel T. Saxberg, Consulting Radio Engineer, Arcadia, California, and is entitled *Report on Findings of Field Investigations of Radio Facilities XHBCE-FM, XESS(AM), XESDD(AM) & XEKTT(AM) All Located in Baja California North, Mexico*, dated May 13, 2005, and attached to the Petition as Exhibit 3 (“Saxberg Report”).

Mr. Saxberg asserts that he made an aerial inspection of the transmitter sites of the aforementioned stations during the first two weeks of May 2005.¹ The Saxberg Report speaks of visits to five separate sites related to the four stations. (Mr. Saxberg speaks of a fifth site, Tijuana Airport, and calls it Site 3, but no such site exists so I have not addressed it.²)

The Petition is directed at the Quetzal Section 325(c) Application, which asks only for permission to deliver programming to one specific station, XHBCE-FM on Channel 289C1 at a transmitter site known as Cerro Bola.

On May 20, 2005, I undertook an investigative trip to the four transmitter sites referenced in the Saxberg Report. Those sites are in use by XHBCE-FM, XESS, XESDD and XEKTT, with one exception: Cerra Bola, which is still under construction. Prior to my trip on May 19, 2005, I

¹ Saxberg Report, Page 2, Paragraph 2.

² Saxberg Report, Table on Page 3.

obtained the requisite permit from the Mexican government to visit Mexico in connection with commercial activities.

At approximately 9:00AM, I departed Brown Field in San Diego, California, aboard a chartered helicopter bound for Mexico. The helicopter was piloted by Mr. Ivor Shier of Corporate Helicopters of San Diego. At about 9:15AM, the helicopter landed at Tijuana Airport in compliance with Mexican customs requirements. After obtaining Mexican customs clearance, the helicopter departed Tijuana bound for four Mexican transmitter sites. In sequential order, the sites visited were Matamoros Jaramillo (AM station XEKTT operating on 1700 kHz), Cerro Grande (XHBCE-FM currently operating on Channel 289B), Cerro Bola (XHBCE-FM authorized to operate on Channel 289C1 and still under construction), and Puerto Nuevo (diplexed operations of XESS on 620 kHz and XESDD on 1030 kHz). All photographs presented within this report were taken by me using a Canon EOS-1Ds digital 11.4-megapixel SLR camera.

The operator of the stations in question cooperated fully with my investigative inspections of the four transmitter sites, and permitted access to all transmitter buildings, towers, generators, etc. As such, my investigations were not impeded by lack of operator cooperation.

In Mexico, the controlling agency over communications matters is the Secretaria de Comunicaciones y Transportes ("SCT"), which is equivalent to the Federal Communications Commission ("FCC") in the United States. Thus, the technical operating parameters for the stations are specified and regulated by the SCT.

The Saxberg Report contains numerous errors with regard to particular site references, photographs, etc. My descriptions that follow will clarify and provide the technical parameters for the stations licensed by the SCT.

TRANSMITTER SITE AT MATAMOROS JARAMILLO **XEKTT - 1700 kHz**

Mr. Saxberg refers to a photograph entitled *Site 4 – Cerro Jaramillo*³, which shows two unequal height towers installed on a flattened parcel of land atop a mountain peak. The Saxberg Report states Mr. Saxberg expected to find a two-tower directional antenna array with equal-height towers to be in use by XEKTT on 1700 kHz. The Saxberg Report, upon noting the "grossly unequal height," concludes that this circumstance reflects "unauthorized tower construction and therefore unauthorized operation of XEKTT."⁴

Formalized scientific and engineering conclusions must be based on absolute hard facts, derived from a logical step-by-step process that leads to a scientifically verifiable conclusion. Verifiable means that, anyone who might seek to repeat the process, will also reach the same conclusion. This is, at its core, the basis upon which all scientific knowledge is derived. By Mr. Saxberg's own words on Page 2 of the Saxberg Report, he "conducted only an "aerial inspection."

³ Saxberg Report, Photograph atop Page 10.

⁴ Saxberg Report, Page 9, Paragraph 2.

Conclusions drawn from a fly-over inspection are suspect since no ground inspection was conducted, nor was access to the transmitter building available from which actual operational parameters could have been determined. Mr. Saxberg declares that his "aerial inspection" was the sum total of his efforts to investigate the aforementioned sites. Apparently he never landed on the ground in a single instance to explore further what might not be apparent from an aerial view.

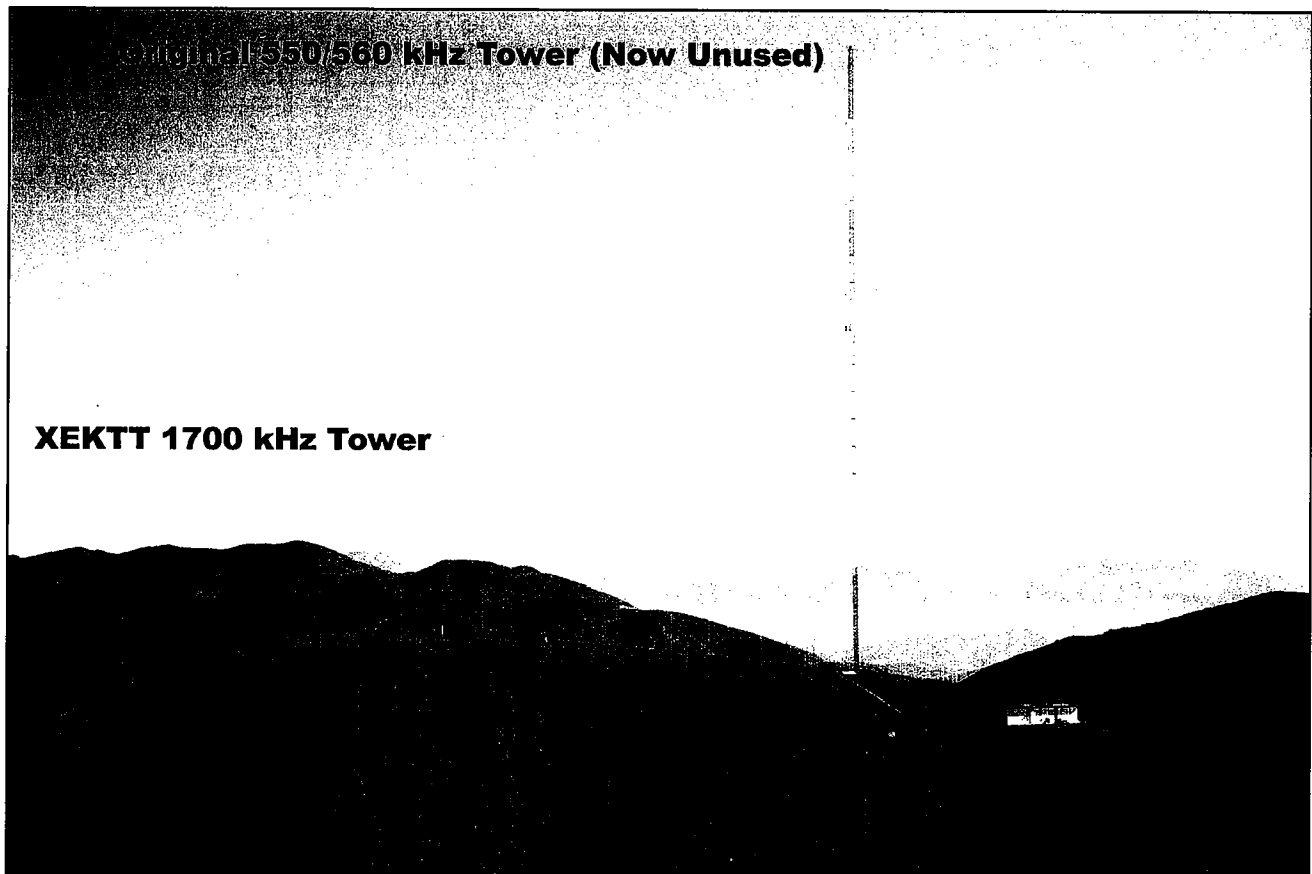
During my inspection, my helicopter landed at each and every site, admittance to the transmitter buildings was allowed by the operator, and my observations are based on my inspections.

At Matamoros Jaramillo I observed a single Harris Broadcast Products solid-state transmitter, Model No. DX 25U. This transmitter was operating on 1700 kHz and was broadcasting a signal of XEKTU. I observed that the transmitter output meter read 10 kW at the time of my inspection, which corresponds with the authorized power for XEKTU.

XEKTU was originally authorized to operate on 550 kHz using a single, nondirectional antenna system at 20 kW. A tall tower was constructed along with its related transmission facility in order to operate XEKTU. XEKTU's frequency was then changed by the SCT to operate on 560 kHz, so the transmitter and antenna tuning unit were modified to accommodate the change in frequency. Ultimately, negotiations between the U.S. and Mexican governments resulted in XEKTU being assigned the expanded band frequency of 1700 kHz. This current XEKTU authorization specifies a daytime 10 kW nondirectional operation, and 10 kW directional operation at night.

At the time of the final frequency change to 1700 kHz., a much shorter tower was constructed at the Matamoros Jaramillo transmitter site in order to operate on 1700 kHz. The original tall tower was of a grounded base, folded unipole feed system, and has been left in existence since its initial construction. That tower is unused now, and is available for rent.

Figure 1 shows an aerial photograph of the Matamoros Jaramillo transmitter site, including the two unequal height towers, and transmitter building.



**Figure 1
Matamoros Jaramillo Transmitter Site and Existing Two Towers**

The antenna coupling unit (“ACU”) once in use for 550 and 560 kHz has been removed completely, and there are no remaining electrical connections to the taller tower that could permit its use at any frequency. Figure 2 is a photograph taken near the base of the tall tower. The concrete pad once held a metal weatherproof enclosure housing the ACU for 550 and then 560 kHz. The taller tower has no electrical connections and is unable to operate without an ACU.

The original underground PVC pipe that held the 550/560 kHz Heliac cable has been used for the new transmission line that provides R.F. power to the 1700 kHz tower. The photograph in Figure 2 shows the Heliac transmission line leaving the PVC pipe, headed over the ground surface to the shorter tower across the plateau.

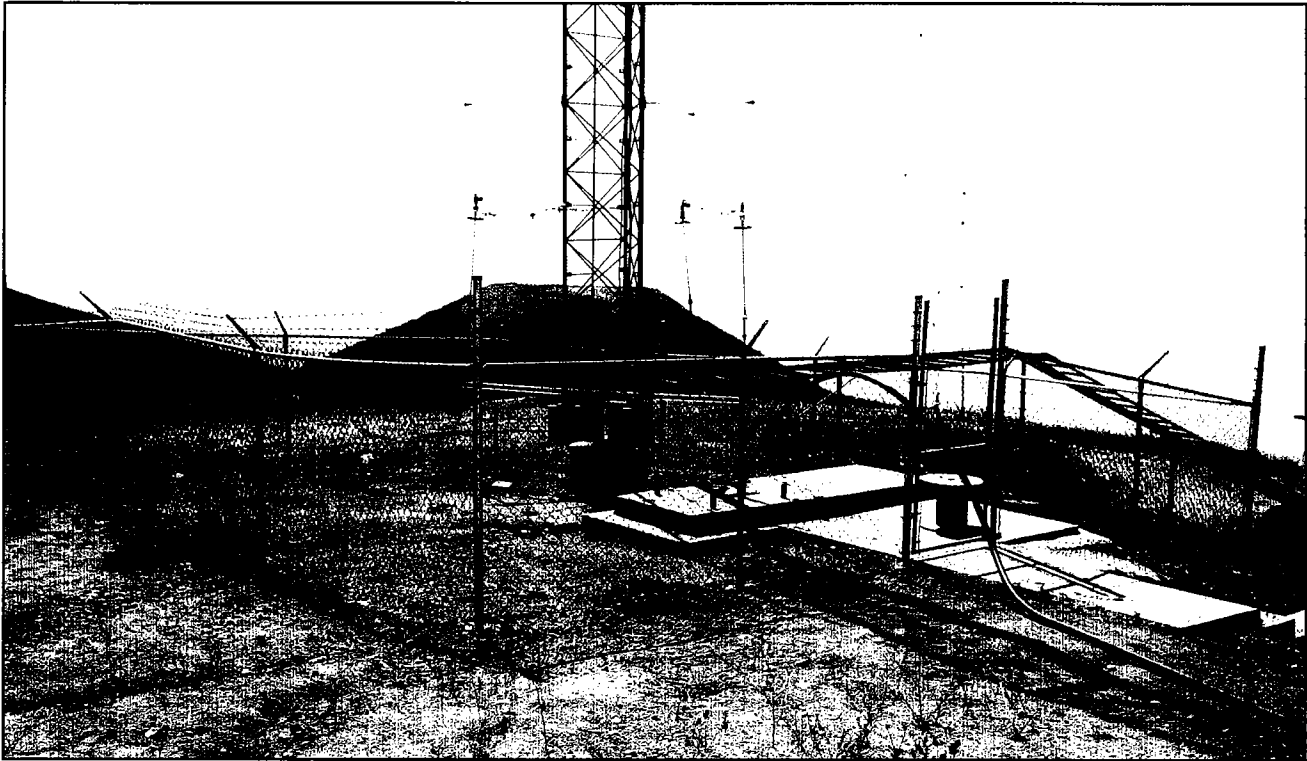


Figure 2
Base of Tall, Unused Tower at Matamoros Jaramillo

The height of the shorter tower corresponds with that specified by the SCT in the license to operate at 1700 kHz. This new tower is a base insulated, series fed, uniform cross-sectional, triangular tower. At its base is a weatherproof housing containing the matching network components, which are fed from the ground level Heliac cable.

The international coordination for XEKTT contained theoretical operating parameters for a two-tower directional antenna system. However, in Mexico, it is becoming more common for directional stations to employ a slant wire parasitic radiator that is tuned to produce a desired radiation pattern. The slant wire arrangement typically includes a conductor attached to or insulated from the vertical tower, sloping downward toward the ground, and terminating in a tuning network at ground level.

I personally visited a slant wire installation outside of Mexico City two years ago, and carefully studied the antenna proof of performance for that system. Indeed, the proof reflected a highly cardioidal pattern that was based on many field strength measurements in several azimuthal directions. Simply put, the parasitic slant wire system was producing the radiation pattern that would otherwise have required a two-tower conventional directional antenna system.

The SCT considers alternative antenna types, such as slant wire directional antennas, yet its directional antenna proof of performance requirements mirror those of the FCC. In fact, the core technical rules of the SCT reflect, in most cases, a literal translation of the technical rules of Part 73 in the FCC's rules, the main differences being more relaxed contour protection requirements.

Because the prevailing U.S.-Mexico bilateral agreement mandates that directional antenna parameters be specified on the basis of conventional multi-tower, vertical radiators, the SCT is forced to submit for consideration to the U.S., theoretical parameters that produce a directional *radiation pattern* that is expected to be achieved using the slant wire approach. The pattern, not the number of towers in a directional configuration is critical.

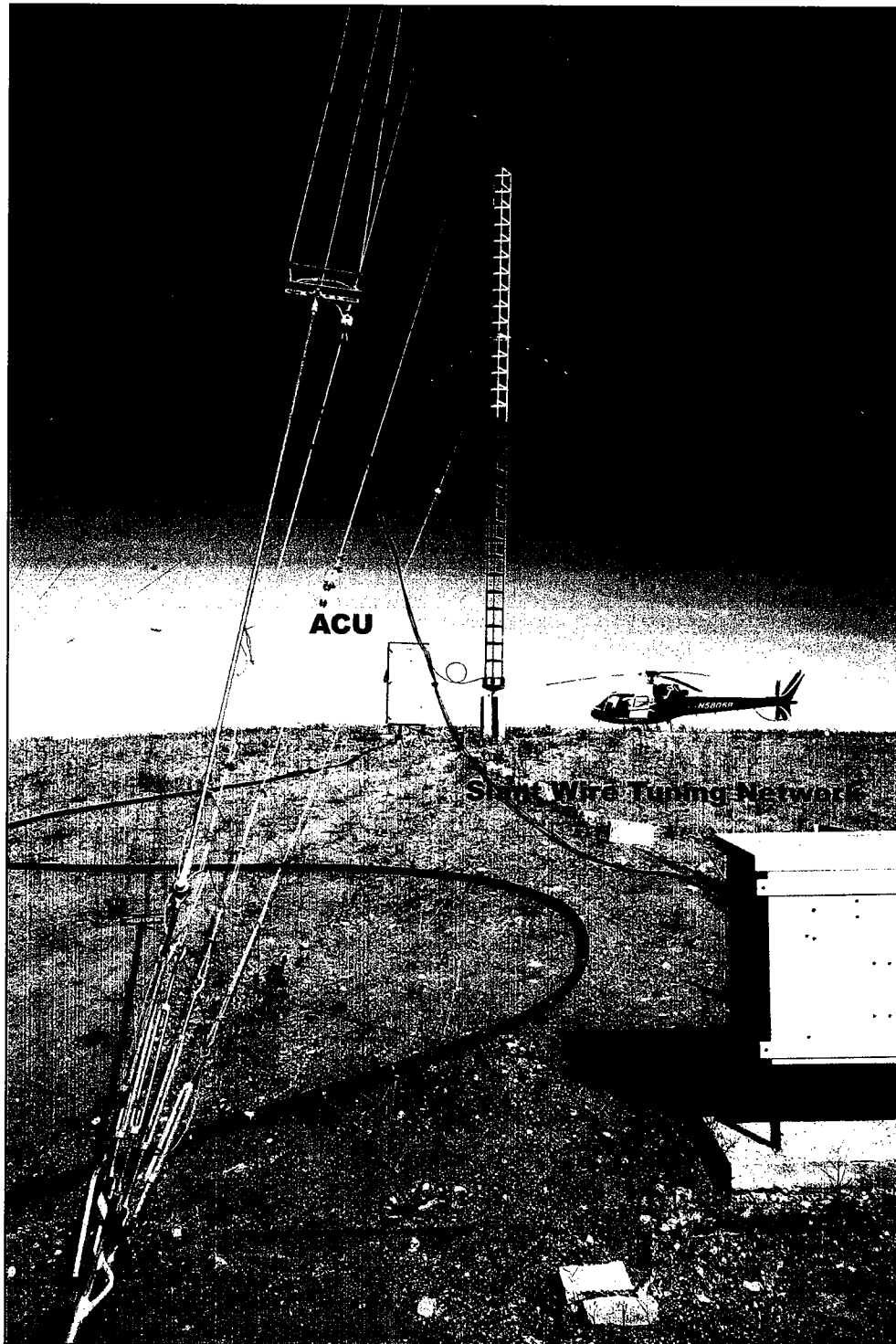
Several years ago I had a conversation with a high-ranking FCC engineering official. As a result of that conversation, I came to understand why the FCC is reluctant to adopt a more creative approach to the realization of directionality of AM antenna systems. At its core, the problem lies with the FCC's database abilities, which are designed only to accept traditional multi-tower configurations. Simply put, the FCC database would need to be revised in order to accommodate unique antenna systems that fall outside the traditional multi-tower model.

XEKT must comply with the standards of the SCT in order to be approved. And, as earlier stated, those directional antenna proof of performance requirements are just as demanding as those of the FCC applicable to domestic stations in the U.S. In the end, what is really agreed upon between the U.S. and Mexico is a directional antenna *pattern*, not the technical details of how that pattern is achieved. The theoretical technical parameters are simply a vehicle convenient to the process of bilateral communication because the derived mathematical equations governing theoretical radiation patterns produced by simple vertical radiators are fully understood and accepted by both governments.

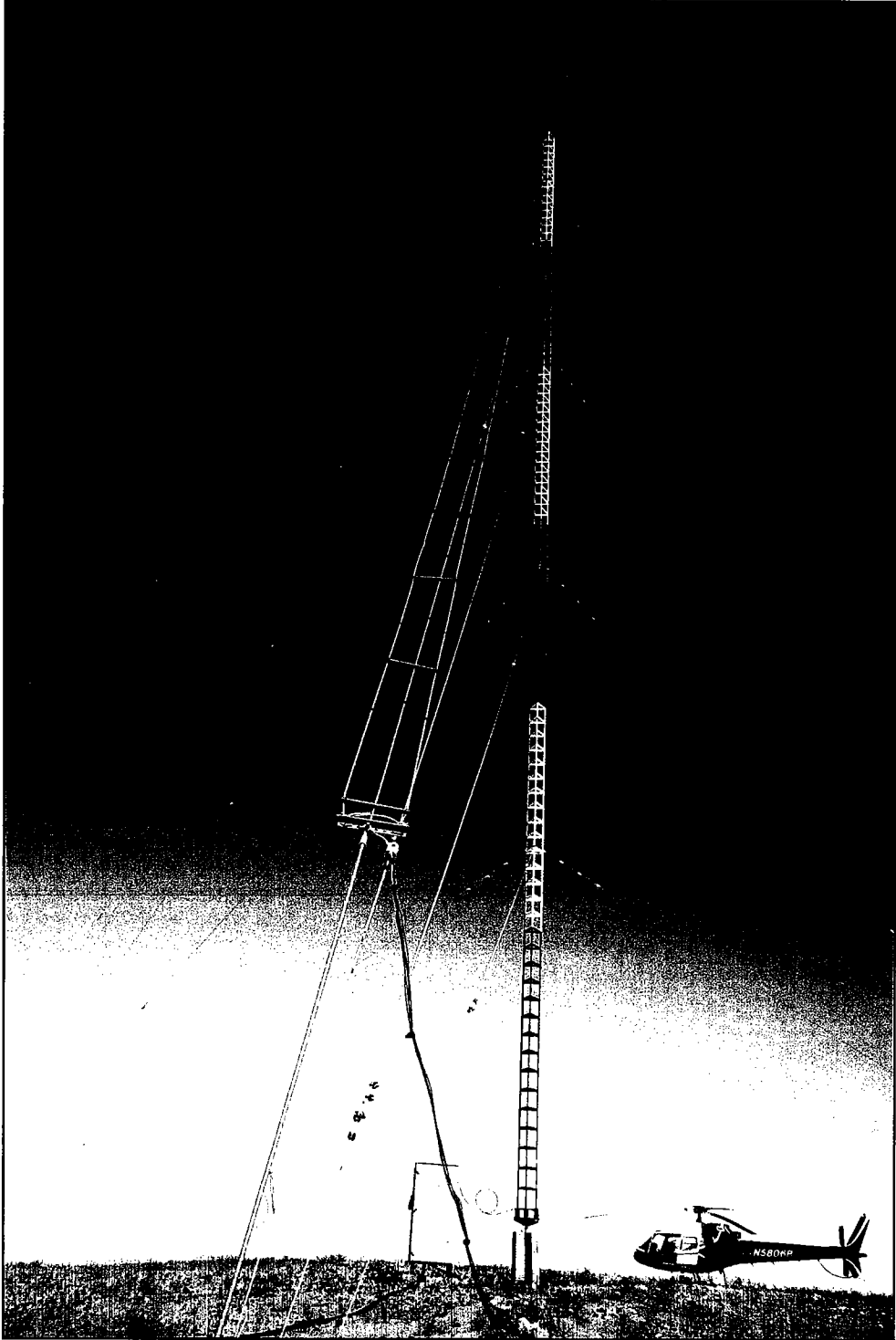
Figure 3 is a photograph of the XEKT vertical tower, ACU, bottom portion of the slant wire, and the accompanying tuning network for the slant wire. Also visible is the transmission line, which originates above ground through the PVC pipe protruding near the base of the unused, tall tower.

The photograph depicted in Figure 4 shows the entire slant wire and its attachment point to the conventional vertical, base-insulated tower. The vertical tower is actively driven by the Heliac transmission line observable on the ground, and matched to the tower base by the ACU network within the housing at the tower base.

In sum, I observed that XEKT is broadcasting from the shorter of the two towers at Matamoros Jaramillo, that the taller tower at the site is disconnected and inoperative, and that XEKT is directionalizing by means of a slant wire configuration.



**Figure 3
XEKTT Tower Base, ACU, and Slant Wire Termination
Into Tuning Network**



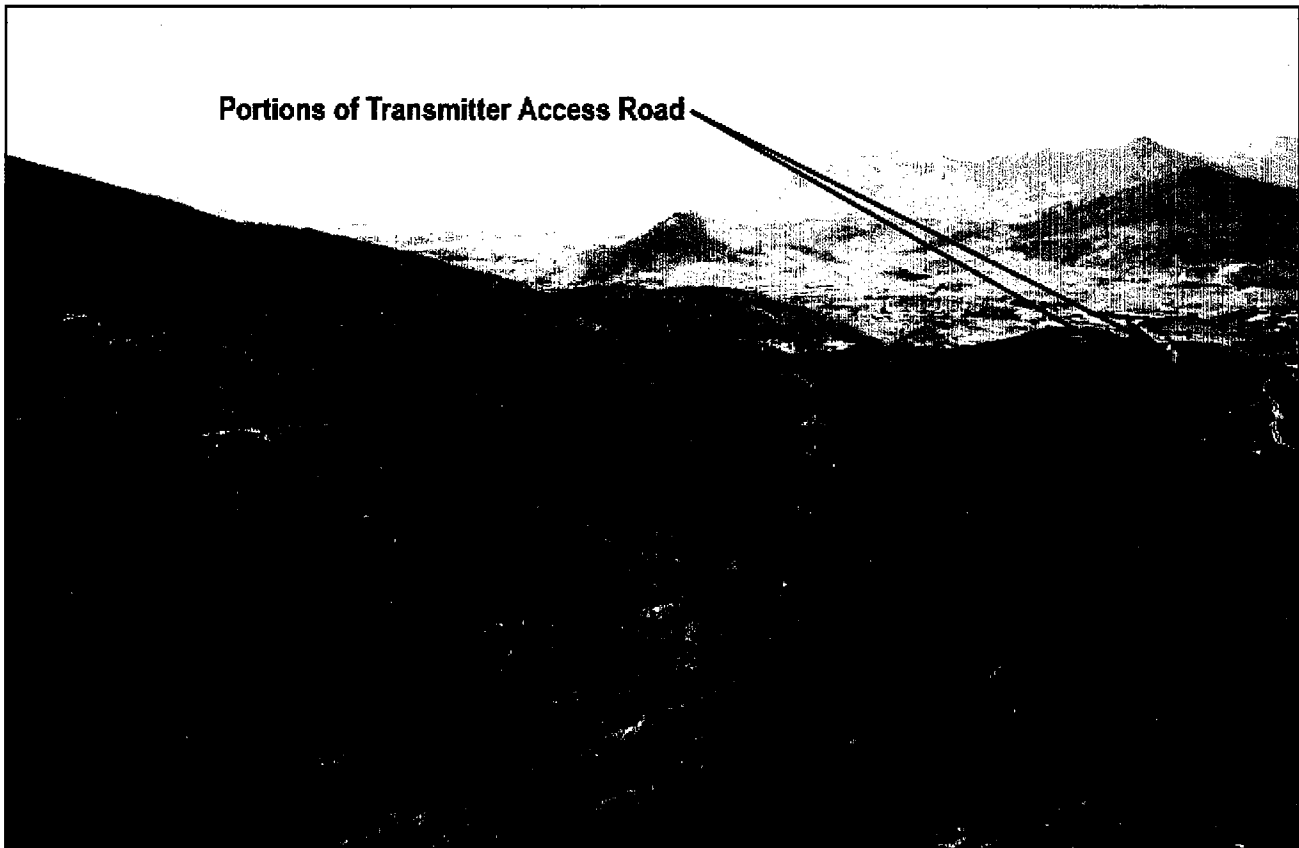
**Figure 4
XEKTT Vertical Radiator and
Slant Wire Parasitic Tuned Element**

**TRANSMITTER SITE AT CERRO GRANDE
XHBCE-FM - Channel 289B**

The Saxberg Report refers to the transmitter site of XHBCE-FM on Channel 289B as being at Matamoros Jaramillo.⁵ First, XHBCE-FM has at this time two authorized transmitter sites. The first site, Cerro Grande, is in operation presently on Channel 289B, as the FCC is well aware. The second site is authorized and properly coordinated between the U.S. and Mexico for Channel 289C1. This site is known as Cerro Bola, which is currently under construction and nearly ready for operation.

Mr. Saxberg continues on the following page by supplying a photograph entitled *SITE 1 - MATAMOROS JARAMILLO, 105.7 MHZ Authorized Class "B" location is in foreground of this ravine.*, which shows nothing but an empty ravine. A reproduction of the photograph is shown in Figure 5. However, one extremely important element has been added: a label directing attention to two areas where portions of the transmitter access road are plainly visible.

⁵Saxberg Report, Page 3, *Results of Field Survey, Site 1 - Matamoros Jaramillo.*



**Figure 5
Photograph from Page 4 of Saxberg Report
Showing Two Portions of XHBCE-FM Class B Transmitter Access Road**

Mr. Saxberg is in error in his reference to Matamoros Jaramillo; XHBCE-FM is authorized to operate as a Class B station on Channel 289 (105.7 MHz) from a site 12.05 kilometers southeast of Matamoros Jaramillo called Cerro Grande. The station has been operating from that location since November 2004.

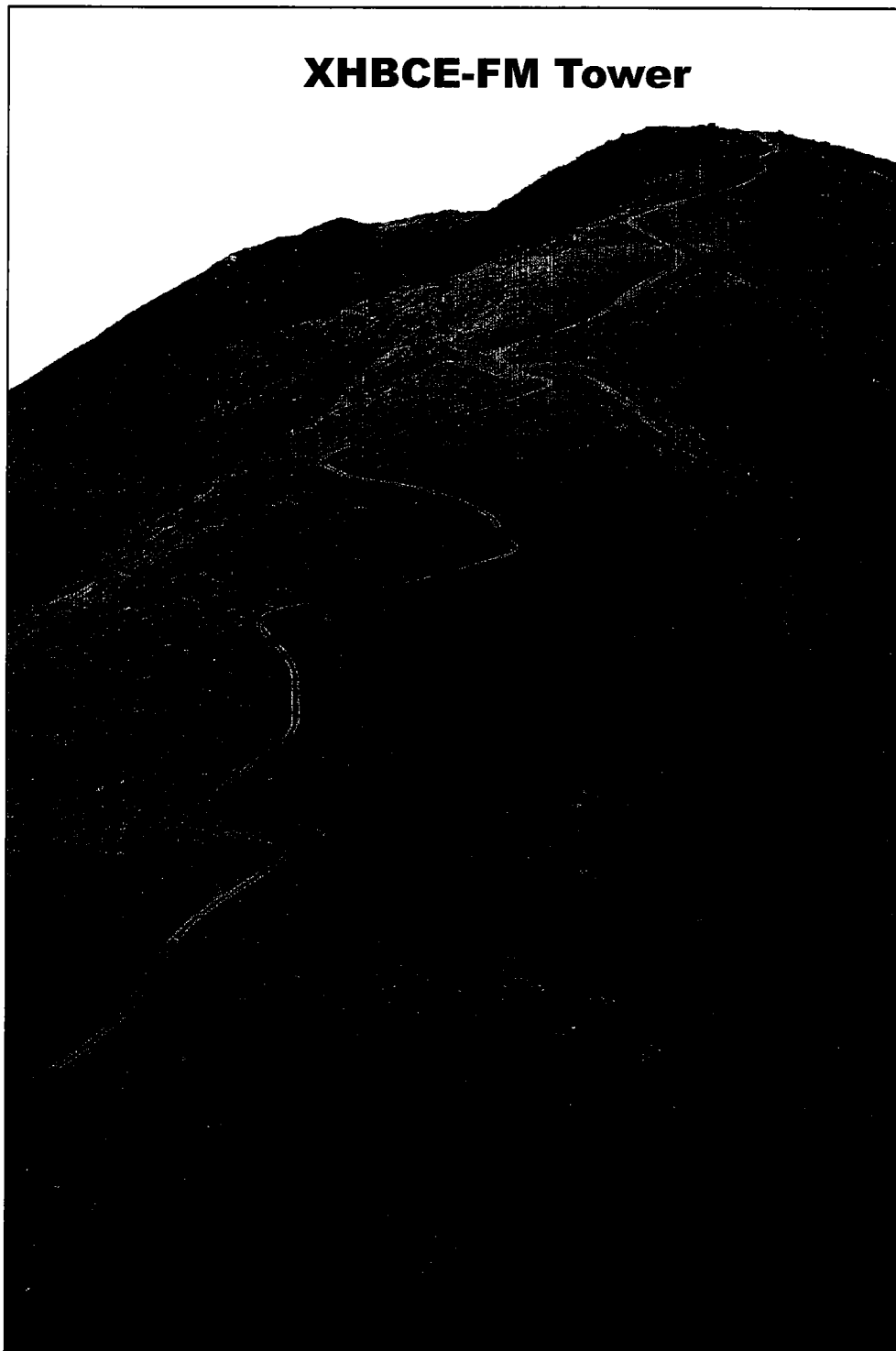
More disconcerting, however, is Mr. Saxberg's statement concerning his "search" for a transmitter site. He asserts on Page 3 of his statement, that "There were no power lines, no roads, no trails. An aeronautical search of the area for XHBCE's transmitter came up empty-handed and my receiver failed to pick up any meaningful signal on 105.7 MHz."

As Mr. Saxberg states, there is a ravine shown in his photograph. However, what Mr. Saxberg fails to show or to mention is that the ravine in the picture is located immediately west of the XHBCE-FM Class B transmitter site at Cerro Grande. Cerro Grande is the top of the hill rising from the ravine on the right side of his photograph. In fact, his own photograph shows plainly two places on the right (east) side where the transmitter access road is visible.

Because of its immediate proximity to the ravine, it would have been impossible to miss the XHBCE-FM transmitter site at Cerro Grande because it is much higher than the depicted ravine, and the pilot of the aircraft would have been ever-presently aware of its location as he flew over and around the area.⁶

Figure 6 is an aerial photograph taken by me showing the dirt access road leading up to the top of Cerro Grande, and at the peak is the XHBCE-FM tower. Figure 7 is a closer view of the XHBCE-FM transmitter shack, power generator, auxiliary fuel tank and tower, which supports a four-bay directional antenna system.

⁶I am licensed by the Federal Aviation Administration (FAA) as a private pilot and have also an instrument rating. Therefore, I am very familiar with the visual requirements pertaining to all aircraft in flight. The conditions under which Mr. Saxberg took his photographs are considered to be Visual Flight Reference (VFR), which means that the pilot is responsible for the safety of the aircraft, its occupants, and persons and property on the ground around his flight path based on visual observations from the cockpit.



**Figure 6
Access Road to Cerro Grande
Class B Operating Site of XHBCE-FM**

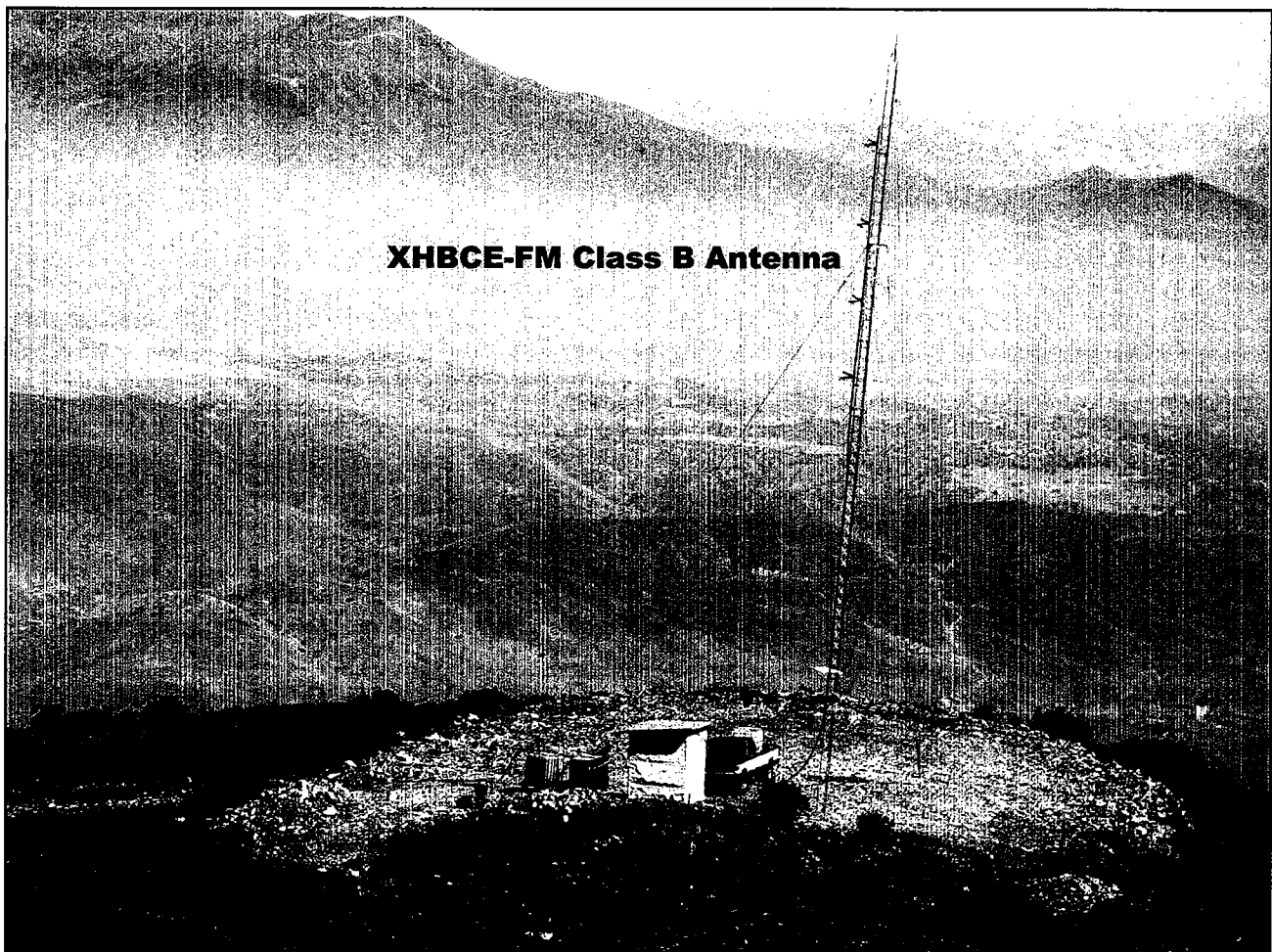


Figure 7
Peak of Cerro Grande Transmitter Site
of XHBCE-FM Class B Operating Facility

In order to verify the precise location of XHBCE-FM's transmitter site at Cerro Grande, a precision survey was conducted by Ing. J. Miguel Bojorquez Rangel. Ing. Rangel is a licensed professional land surveyor/engineer in Mexico, License No. 1157. According to SCT records, the XHBCE-FM operation is located at Latitude 32° 26' 50" North, and Longitude 116° 43' 55" West. The survey was conducted at the base of the tower by Ing. Rangel, who concluded that the true and accurate coordinates of the tower at Cerro Grande, as constructed, are 32° 26' 51" North Latitude, and 116° 43' 48.2" West Longitude. All coordinates are referenced to the North American Datum of 1927 (NAD-27).

Therefore, the operational XHBCE-FM Class B transmitter site is 179.9 meters (590 feet) east, northeast from the authorized site.

The Saxberg Report represents that he received no meaningful signal on 105.7 MHz. On the date of Mr. Saxberg's aerial inspection, May 11, 2005, XHBCE-FM was experiencing intermittent failures of its power generating set.⁷ Thus, it is not surprising that Mr. Saxberg failed to receive a meaningful signal on 105.7 MHz at the time of his fly-over inspection.

The generator set is a Whisperwatt Diesel Powered AC Generator, Model No. DCA-25SSIU, manufactured by MQ Power Corporation, based in Carson, California. The generator is rated to provide 25 kVA three-phase (0.8 PF), and 14.4 kW single-phase (1.0 PF) power, and features a 17.2-gallon self-contained fuel tank.

Cerro Grande does not have primary utility service, so the generator is relied upon to provide a sole source of AC power for the transmitter and associated equipment. The generator's self-contained fuel tank has insufficient capacity to power the transmitter for lengthy periods of full-time operation, so an additional fuel tank was also installed at the site to increase the operating duration of the generator. During my inspection, the generator was operating and producing AC power, as Figure 8 shows.

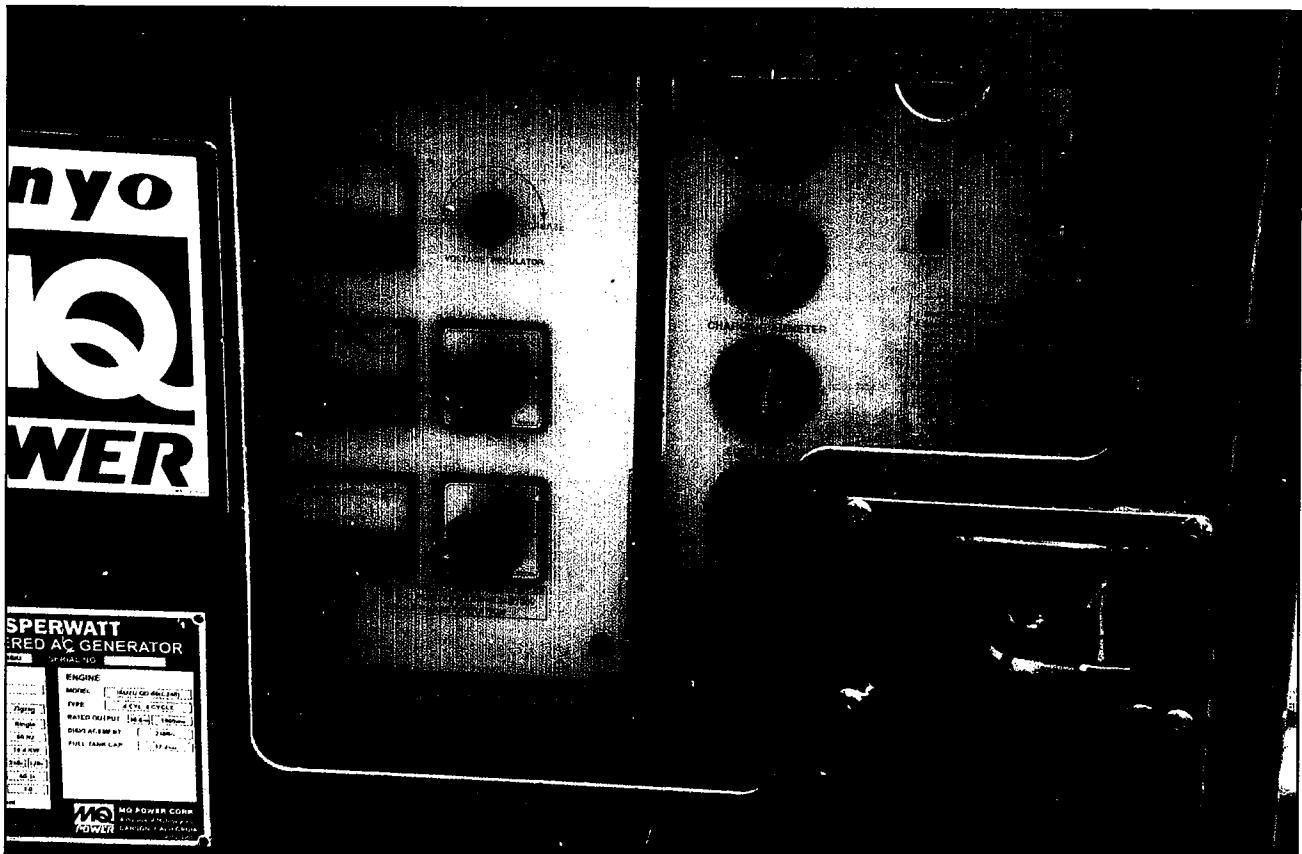


Figure 8
Operating Generator at Cerro Grande Class B Site

⁷See Exhibit 3, Declaration of Oscar Eguia.

During my visit to the Cerro Grande site, I noted that the transmitter was operating and producing an output power of approximately 0.95 kW, according to the front panel mounted forward power meter. I observed also that the local modulation monitor was reflecting programming material that was being broadcast by the transmitter via the four-bay directional antenna system. Figure 9 depicts a closer view of the four-bay antenna, and the reflectors used to directionalize the signal are easily seen.

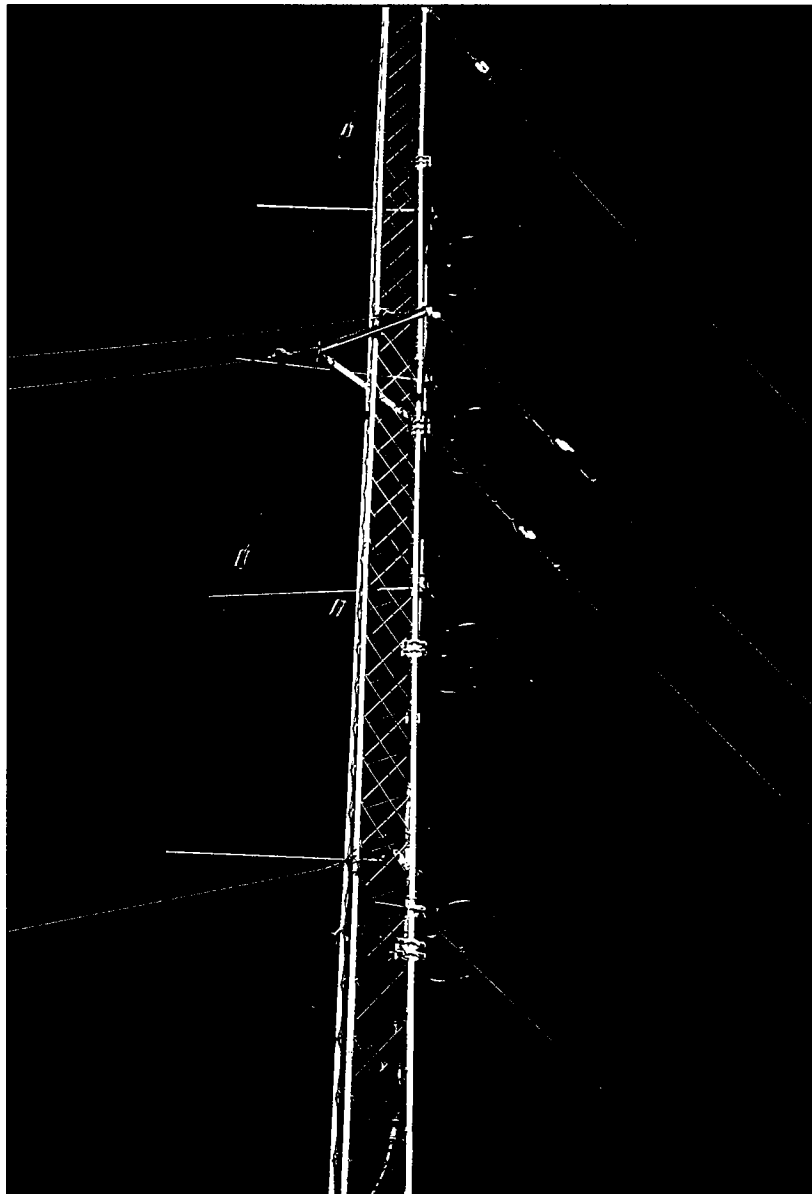


Figure 9
XHBCE-FM Class B Directional Antenna

When Channel 289B was coordinated between the FCC and SCT, a radiation limitation was imposed on the use of the channel. The limit, 10 kW ERP at 246.4 meters HAAT (or equivalent) along an azimuth of 352.6 degrees, was intended to insure protection to KXRS(FM) on Channel 289A at Hemet, California. Therefore, the reason a directional antenna was installed.

Due to the geographic relationship between XHBCE-FM and KXRS(FM), the geographic coordinate differences equate to extremely minor changes to the two stations' separation and bearings. In fact, the actual (surveyed) site of XHBCE-FM is but a mere 7.7 meters closer to KXRS(FM), and the azimuthal relationship changes by less than one-tenth of one degree. Consequently, there is absolutely no measurable impact to KXRS(FM) caused by the XHBCE-FM site location error.

As previously stated, I observed the XHBCE-FM transmitter to be producing about 0.95 kW into the transmission line, which feeds a four-bay directional antenna system. I noted also that the general orientation of the antenna was in a roughly northerly direction, indicating that the antenna installation was likely correctly performed. So it is not possible that this combination could possibly produce an effective radiated power in excess of the limit toward KXRS(FM) and would not do so even if the antenna was producing a nondirectional radiation pattern.

It must be emphasized that the XHBCE-FM facility will be moved from Cerro Grande to Cerro Bola as soon as construction at the later site is finished and the FCC has granted Quetzal permission under Section 325(c) to deliver programming to Cerro Bola. At that time, the facility at Cerro Grande will be deactivated and fulltime service will begin from Cerro Bola.

TRANSMITTER SITE AT CERRO BOLA **XHBCE-FM - Channel 289C1**

Cerro Bola is the XHBCE-FM Class C1 authorized site. From my inspection of that site, which is 16.03 kilometers south, southeast of Cerro Grande, I discovered that considerable progress in the construction of the facility had already been made.

I observed a new transmitter building, transmitter, tower, power generator, and eight-bay directional antenna mounted on the tower. The Heliac transmission line from the antenna was connected to a R.F. switch inside the building. At the time of my inspection, the transmitter was routed through the switch to a dummy load, and the transmitter was not operating.

The building also houses an equipment rack containing a Bird wattmeter, Belar modulation monitor, and two Nikon STL receivers. The rack equipment has been partially wired and the R.F. portion of the installation is finished except, perhaps for final transmitter tuning. All but one of the remaining rack spaces were covered with blank panels. The conspicuous unused opening in the rack is intended for an audio processor, which has not yet been received from the manufacturer.

Close examination of the rear of the rack revealed that no audio wiring had been installed yet to connect to the processor. Also noted was an absence of R.F. connections to the STL receivers. This is not surprising because I did not observe any STL receiving antennas mounted on the outside of the building or on the tower. Consequently, at the time of my visit on May 20, 2005, it would have been impossible to activate the transmission facility with anything beyond an unmodulated carrier.

It is inconceivable that Mr. Saxberg could state that he found “a complete operating XHBCE transmission plant as confirmed by signal strength readings in fly-by measurements.”⁸ A completely operational facility also includes a STL receiving antenna, associated coaxial cabling, and wiring to route audio to the transmitter exciter. Mr. Saxberg states himself that he conducted aerial inspections of the sites, thus suggesting that he never landed in the helicopter, never entered the transmitter sites on the ground, and never viewed any of the equipment within the transmitter buildings.

The fact that he heard XHBCE-FM operating during his fly-by of Cerro Bola is not unsurprising, for it is quite possible that Mr. Eguia could have reactivated the generator at Cerro Grande making XHBCE-FM operational again from a site 16 kilometers away. The XHBCE-FM signal from its Class B facility should be very strong at Cerro Bola, especially so when received from a well elevated location such as a helicopter.

Thus, his claim that XHBCE-FM was operating at the Cerro Bola site is based entirely on a giant leap of faith, without any facts to substantiate that conclusion.

Figures 10, 11 and 12 show the overall Cerro Bola communications site, XHBCE-FM eight-bay directional antenna system, and equipment rack containing the aforementioned equipment.

⁸Saxberg Report, Page 5, Paragraph 1.

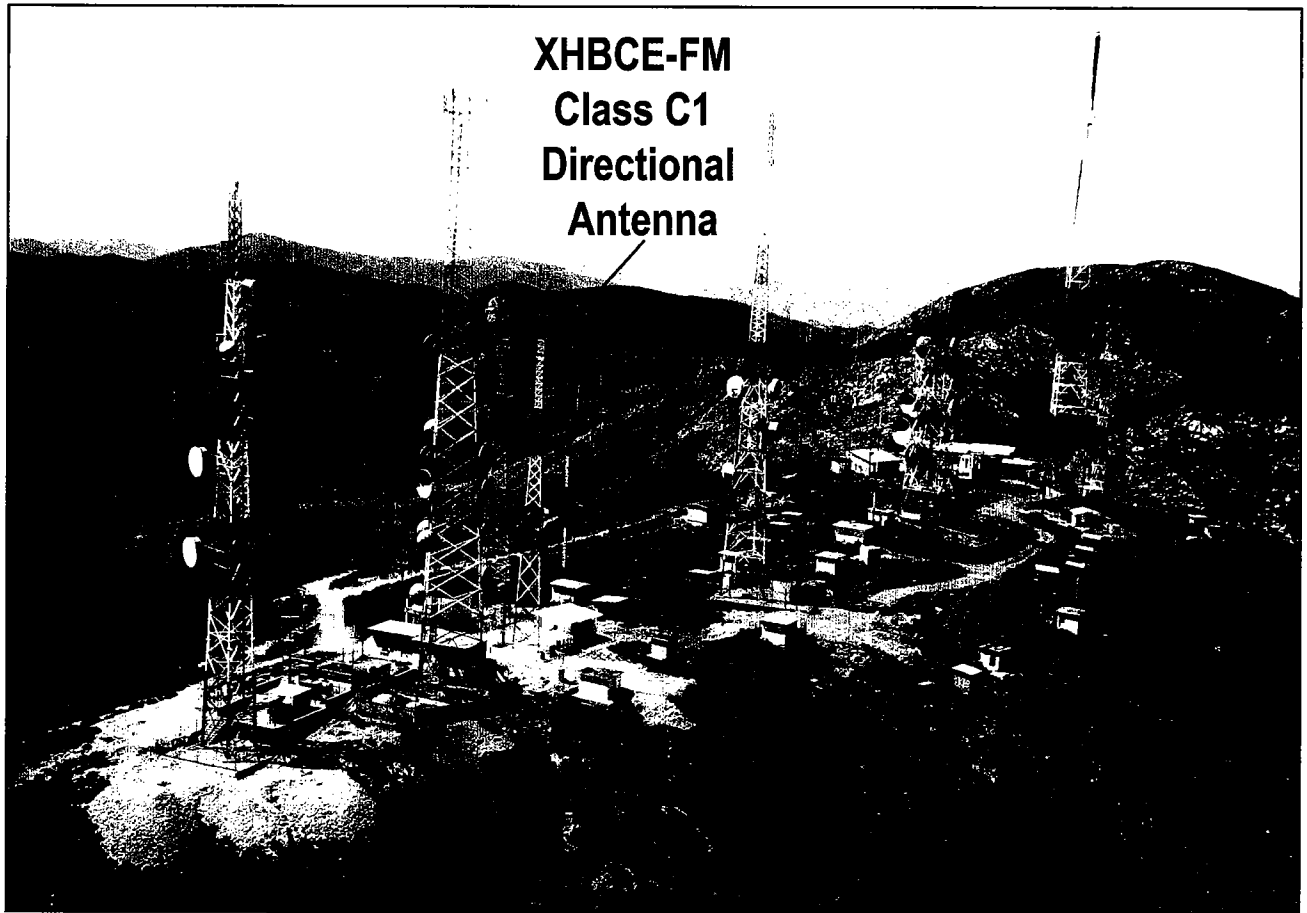


Figure 10
Cerro Bola Communications Site and XHBCE-FM Directional Antenna



**Figure 11
XHBCE-FM Directional Antenna at Cerro Bola**

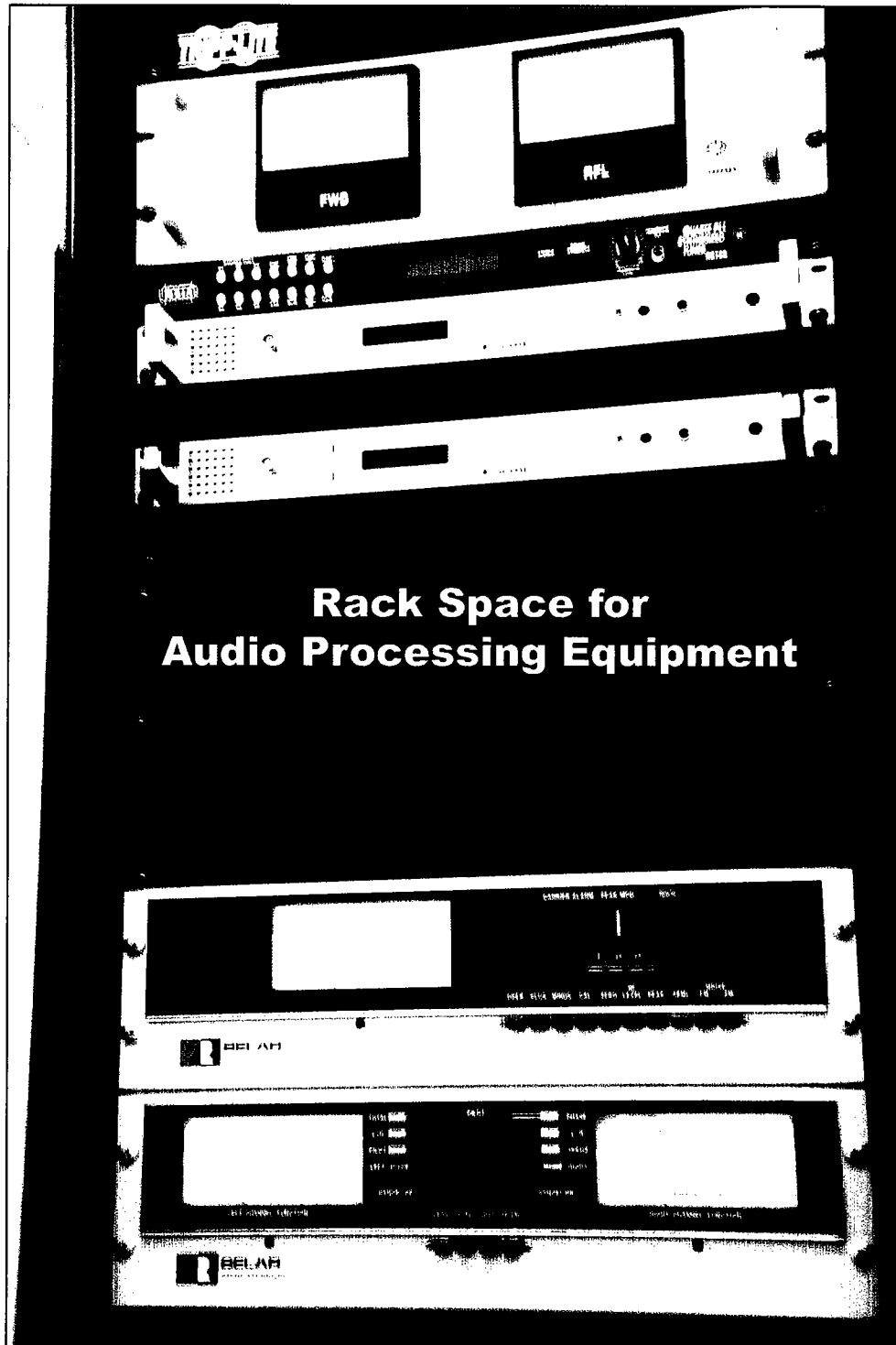


Figure 12
XHBCE-FM Equipment Rack
at Cerro Bola Class C1 Site

TRANSMITTER SITE AT PUERTO NUEVO
XESS - 620 kHz, XESDD - 1030 kHz

Stations XESS and XESDD are licensed to operate on 620 and 1030 kHz, respectively, from a site at Puerto Nuevo. The SCT has authorized use of a diplexed antenna at this location with a directional antenna operating at 5 kW fulltime for both stations.

Mr. Saxberg “inspected” this AM site from the air. My flight landed and I personally observed the installation. My findings follow.

Puerto Nuevo is located on a barren parcel of land on the beach. What was found upon my inspection was a single vertical radiator, R.F. networks for diplexing and matching the 620 and 1030 kHz signals into the loads presented by the conventional based-insulated vertical tower. Also found was a slant wire parasitic radiator attached at its top to the tower, and terminated in a metal weatherproof enclosure containing a passive tuning network. The housing appeared to be well grounded by connections to a copper strap and ground radials emanating from the vertical tower.

I was informed by the station engineer, Mr. Oscar Eguia, that XESS and XESDD are operating at reduced power while adjustments are underway to the slant wire directional antenna system. Upon entering the transmitter building I observed two solid-state AM transmitters, each operating with an output power of 1.5 kW instead of their licensed value of 5 kW. This confirms what Mr. Eguia stated about operating at reduced power while the antenna system is being adjusted. Overall, the system is essentially identical to the one already in use by XEKTT on 1700 kHz at Matamoros Jaramillo.

In my opinion, the installation, as were those at Matamoros Jaramillo and Cerro Bola, was done in an extremely professional and well-planned manner, and as well done as any I have witnessed at the transmitter sites of AM stations in the U.S.

My conclusion is quite contrary to the “aerial inspection” done by Mr. Saxberg. The Saxberg Report claims that he “was surprised to find by signal strength readings that Cerro Jaramillo – XEKTT’s transmitter site – also being used to radiate XESS’ signal on 620 kHz.”⁹ Mr. Saxberg made clear on Page 2 of his report that he was using a Yaesu communications receiver to monitor *relative* incoming signal strengths.

His observations concerning finding *signal strength readings* on 620 kHz while at Cerro Jaramillo as an *indication* that XESS was actually operating at this site are completely illogical. After all, a relative field strength indication, as Mr. Saxberg said he noted, is not an indication of the *absolute* field strength level. The term *relative* is absolutely meaningless unless compared to something else, and Mr. Saxberg makes no mention of the reference against which he made this conclusion.

⁹Saxberg Report, Page 9, Paragraph 3.

The Saxberg Report later refers to “Site 5 - PUERTO NUEVO” and the expectation of finding two transmitters there with XESS and XESDD operating into a diplexed directional antenna array. The report furthers that what Mr. Saxberg “found at Puerto Nuevo was a single tower radiating the signal of XESDD alone (1030 kHz). Thus, the radiation from this site would be non-directional and in gross violation.”¹⁰

If the intent was to provide a series of relative field indications on his Yaesu receiver, Mr. Saxberg should have stated so directly, and given readings relative to a baseline reference level. He did not do so. As such, no meaning can be placed upon his observations concerning the locations of the sources of the signal he was detecting on his receiver.

The Saxberg Report implies that XESS is operating not at the Puerto Nuevo site, but at the XEKT transmitter site many kilometers away. My inspection found *one* AM transmitter in the XEKT transmitter building at Matamoros Jaramillo, and it was producing a modulated carrier on 1700 kHz. At the Puerto Nuevo site, I found *two* AM transmitters generating signals on 620 and 1030 kHz, both modulated with program content. What is contained within a closed and locked building most certainly cannot be ascertained from “fly-by” or “aerial inspection” observations. Mr. Saxberg never landed at any of the sites, never entered transmitter buildings, nor did he ever so much as allude to the fact that he saw *any* specific transmission equipment at all.

The following figures 13, 14 and 15 show factual findings at the Puerto Nuevo transmitter site of XESS and XESDD.

¹⁰Saxberg Report, Page 10, Last Paragraph.

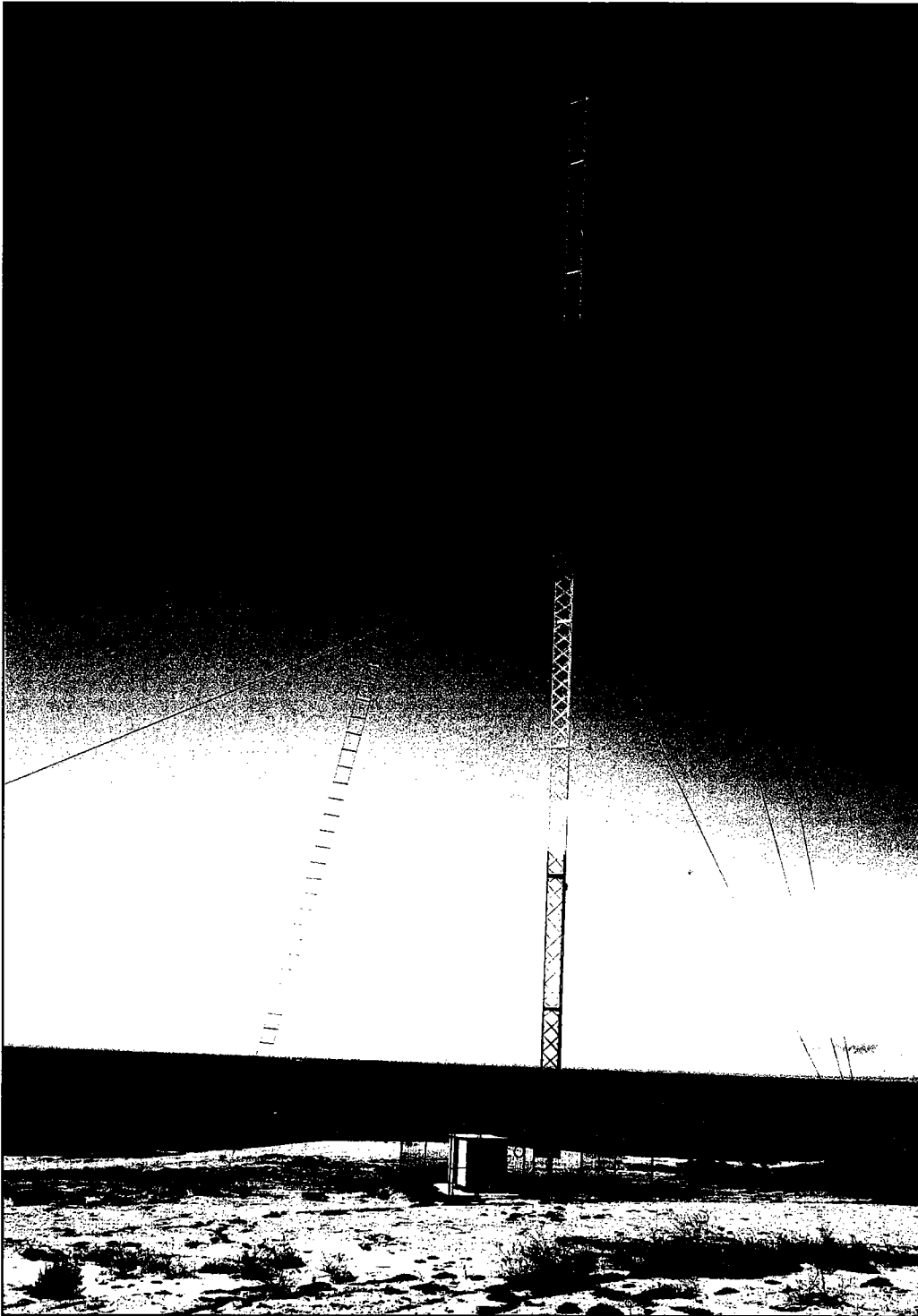


Figure 13
XESS and XESDD Vertical Radiator and Slant Wire Directional System
at Puerto Nuevo



Figure 14
XESS and XESDD Diplexing and Matching Networks
at Puerto Nuevo Transmitter Site

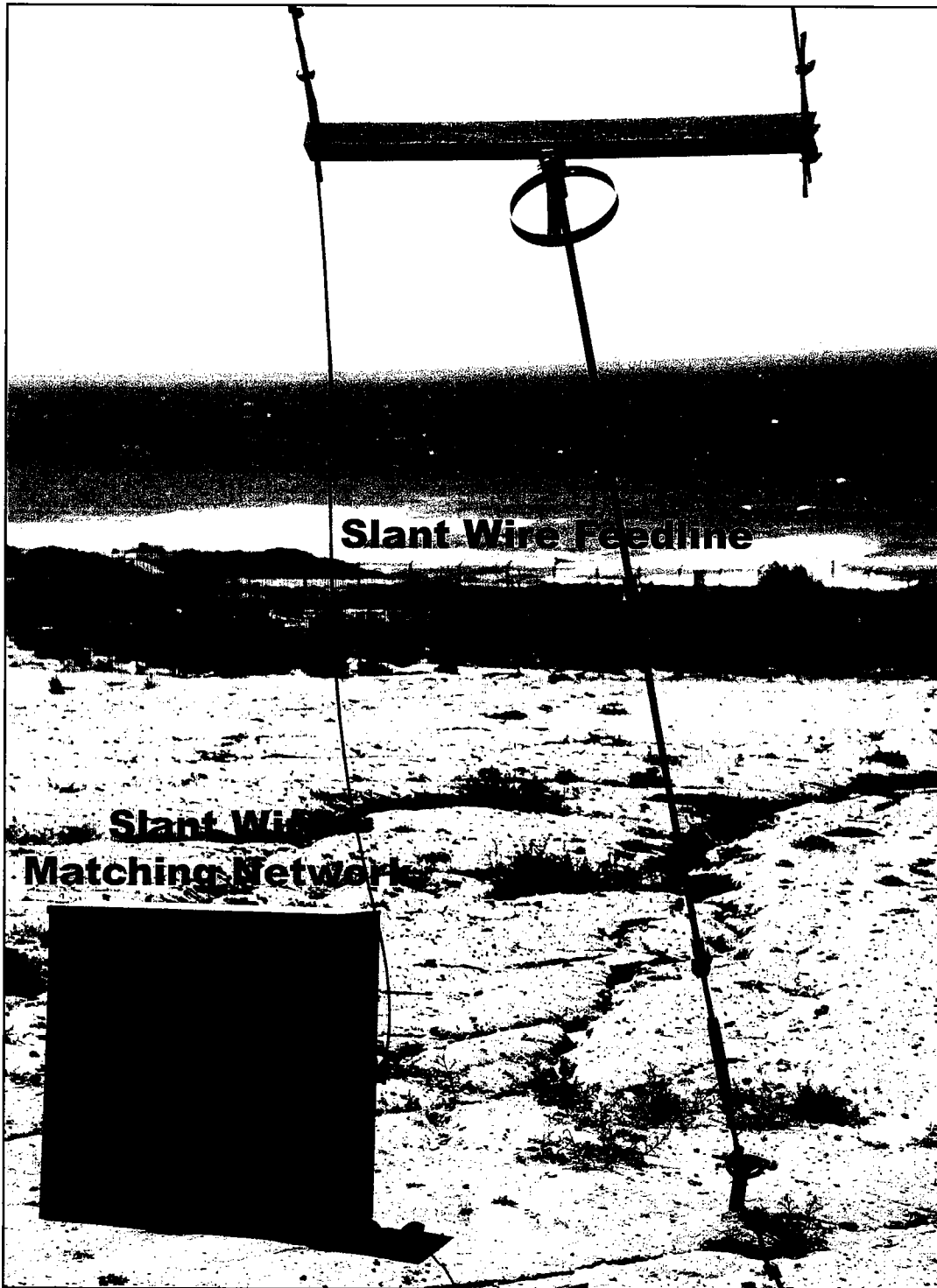


Figure 15
XESS and XESDD Slant Wire
Tuning/Matching Network at Puerto Nuevo Site

**PROGRAM ORIENTATION FROM CHULA VISTA
Part 15 Spread Spectrum Transmission**

Earlier this year, Quetzal's affiliate Pacific Spanish Network in Chula Vista, California, relied upon the advice of an equipment supplier, Mundo Telecomunicaciones ("MT"), and installed and began STL operation on 22,473.5 MHz. Upon notification that operation on this band is subject to prior approval of the FCC, the operator terminated the microwave link and disconnected the coaxial cables associated with the rooftop antenna pending approval by the Wireless Telecommunications Bureau, FCC.

In the interim, MT provided and installed FCC certified equipment based on spread spectrum technology for which no license is required. Meanwhile, a formal application was filed with the FCC for the original 22,473.5 MHz band. On June 6, 2005, the Wireless Telecommunications Bureau approved that microwave link application.

On the day of my transmitter site inspection, I visited afterward the Chula Vista studios and programming origination point. What I found was an inoperative microwave transmitter, manufactured by Nera, and the rear panel R.F. connections to the antenna were completely removed and dangling in the back of the rack cabinet. Also in the rack was a carrier-class, broadband wireless multiplexer and spread spectrum transmitter, Model No. AirMux-200, manufactured by RAD Data Communications in Tel Aviv, Israel.

Figure 16 is a photograph taken by me, which shows the rear of Nera microwave transmitter as I found it during my inspection. Noteworthy is the clear fact that the transmitter is not connected to its R.F. output connectors. Combined with my observation that the transmitter was turned off, the figure demonstrates that the 22 GHz transmitter was not connected to any type of antenna, so it could not have been in operation.

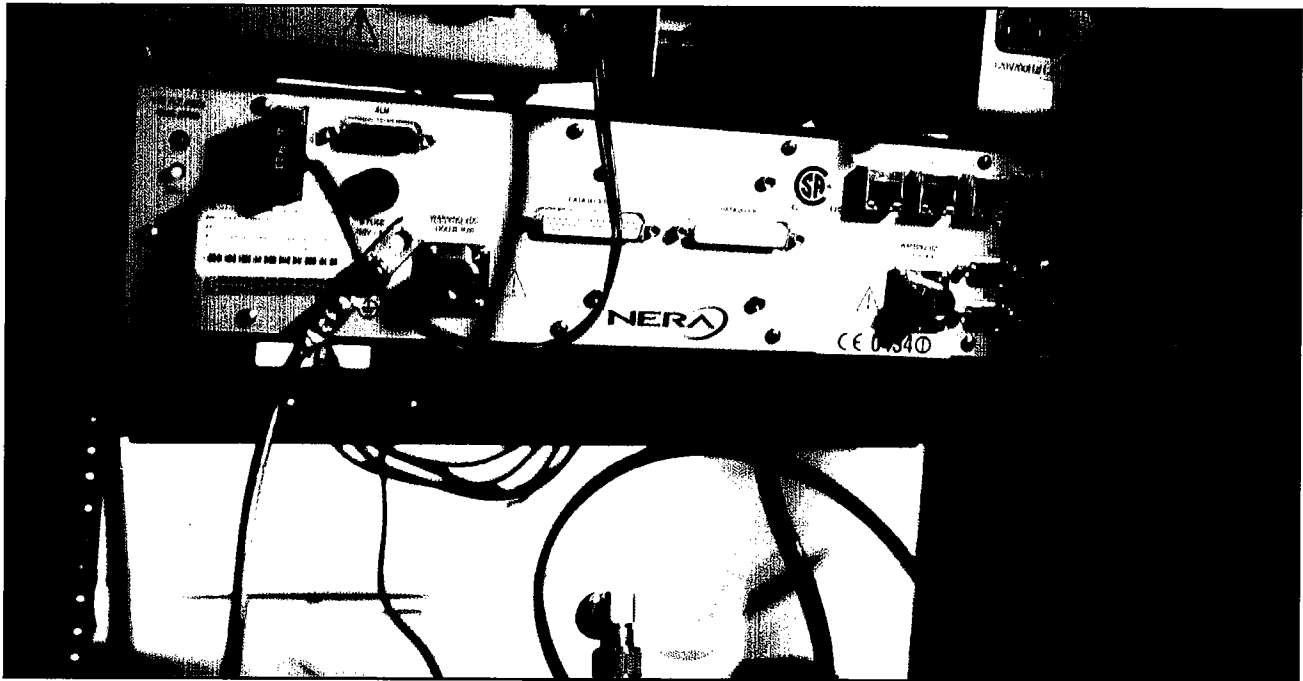


Figure 16
Rear View of Nera 22,473.5 MHz Point-to-Point Microwave Transmitter

I visited the rooftop location at Chula Vista and found a single parabolic transmitting antenna that had originally been connected to the 22,473.5 MHz transmitters. Mounted on an adjacent rooftop pole was a plastic encapsulated flat panel antenna that was connected to the spread spectrum transmitter one floor below. The highly directional panel antenna is an MTI Wireless Edge Ltd., Model No. MT-486001, manufactured in Rosh Ha'ayin, Israel.

