

156373

ORIGINAL

Rab

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

Received & Inspected

DEC 15 2015

FCC Mail Room

In Re: Matter of:

**Application of
Juan Alberto Ayala
Orlando, Florida**

Facility ID No. 156373
FCC File No. BMPFT-20151113AAB

TO: Secretary, Federal Communications Commission
Attention: Chief, Audio Division, Media Bureau

Informal Objection

Comes Now, Manuel Arroyo, an individual and a resident of Casselberry, Florida, through counsel, with an Informal Objection to the minor modification application of Juan Alberto Ayala for FM translator station W228DF FCC Facility ID No. 156373 (BMPFT-20151113AAB) at Orlando, Florida.

On November 12, 2015, Juan Alberto Ayala ("Ayala") submitted to the FCC an application to modify the facilities of translator W228DF at Orlando, Florida. Among other things, Ayala seeks to relocate the transmitter and antenna of the facility to a new location. This would be the third minor modification application submitted by Ayala pertaining to this translator. Previous minor modification applications were submitted in 2013 and 2015.¹ Ayala filed his original application for this facility in the 2003 translator filing window.²

In each and every one of his applications, Ayala certified, in Section II, Question 5, that that he had written authority from the licensee(s) of the station(s) whose programs are to be retransmitted. His original 2003 application, BNPFT-20030317HFT, certified that he had written authority to rebroadcast the

¹ See BNPFT - 20130813ABK and BMPFT - 20150416AAR.

² See BNPFT-20030331HFT

programming of WPOZ(FM), Union Park, Florida. Later, in 2013, Ayala again certified that he had written authority from WPOZ to rebroadcast its programming. In a minor modification application submitted in April, 2014, Ayala changed his “input station” to WOCL(FM), Deland, Florida. In that application, Ayala certified that he had written authority from WOCL(FM) to rebroadcast its programming. In his current application, listed as “accepted for filing”, Mr. Ayala continues to certify that he has written authority from WOCL to rebroadcast its programming.

It appears that Mr. Ayala never had written authorization from either WPOZ or WOCL to rebroadcast its programming. Letters from Matthew Agnesi, Director of Engineering and I.T at CBS Radio Orlando, licensee of WOCL, and James S. Hoge, President and General Manager of WPOZ, state unequivocally that Ayala did not have, at any time, written or oral authorization to rebroadcast the signal of either station. Copies of those letters are attached to this Informal Objection as Exhibit One. Affidavits of Mr. Agnesi and Mr. Hoge are also provided herein in Exhibit Two.

Section 74.1284(b) of the Commission’s Rules (47 C.F.R. 74.1284) states, as follows:

The licensee of an FM translator shall not rebroadcast the programs of any AM or FM broadcast station or other FM translator without obtaining prior consent of the primary station whose programs are proposed to be retransmitted. The Commission shall be notified of the call letters of each station rebroadcast and the licensee of the FM translator shall certify that written consent has been received from the licensee of the station whose programs are retransmitted.

Question 5 of Section II of FCC form 349 asks: For applicants proposing translator rebroadcasts that are not the licensee of the primary station, the applicant certifies that written authority has been obtained from the licensee of the station whose programs are to be retransmitted. **IF NO, this application is unacceptable for filing.** (Emphasis in original).

Based on the information supplied by Ayala in his four applications, including the pending application, it is clear that he certified four times, once in each application, that he had the written authority of each licensee whose programming he proposed to retransmit. Based on the testimony of Mr. Agnesi and Mr. Hoge, it now appears that Ayala never had any authority to propose to rebroadcast the programming of either WPOZ or WOCL. The certifications of Mr. Ayala, in each of his applications, appear to have been false when made and continue to be false as evidenced by his pending application. Accordingly, the application of Mr. Ayala should be dismissed because he falsely certified his application; not once but four times. As stated, in “**bold**” on FCC Form 349, the application should not be accepted for filing and should be dismissed.

This false certification is not a violation in a vacuum. The false certification affects whether or not Ayala may file a minor modification application for a fill-in facility or a non-fill-in facility. The transmitter power available for a fill-in facility can be as much as 250 watts. A non-fill-in facility might be as low as 10 watts. The difference in population served can be huge when operating in a highly populated urban area such as Orlando, Florida. The market value of the translator is affected proportionately. Obviously, a higher-powered translator is worth more than a lower-powered facility. The distinction between fill-in and non-fill in status also affects the flexibility of the translator as it moves from one location to another. With 250 watts available, overlaps to pre-existing contours, a requirement in filing a minor modification application, are much easier to accomplish. With only 10 watts, the required overlap may not be achieved without a series of “hops” which are now prohibited by Commission policy.

We can speculate as to possible motivation for his alleged false certifications but the fact remains that the certifications appear to be false. A statement from Consulting Engineer, Jeremy Ruck, is provided in Exhibit Three to this Informal Objection. In that engineering statement, Mr. Ruck demonstrates that

Mr. Ayala's minor modification applications, processed as higher-powered fill-in applications, were necessary in order to permit Ayala to successfully relocate to Orlando and not run afoul of Commission rules or policies. Mr. Ruck also shows in his statement that, in the absence of fill-in status, Ayala's minor modification applications could not have been granted because the required overlap between the existing facility and the proposed facilities would not have been achieved causing those applications to be un-grantable. Ayala's proposals would have amounted to "major" changes which are not permissible outside of a filing window. Furthermore, when the Ayala applications are correctly considered as non-fill-in facilities, it becomes clear that the parameters on both the pending application and the current construction permit represent a major change to both the initial short-form and initial long-form parameters. Of course, one does not need to reach for the engineering analysis of this Informal Objection in order to conclude that Ayala falsely certified he had the written authority for his proposed rebroadcasts but it helps to understand the possible motivation.

Motive, however, may be inferred. The Commission, in *Order to Show Cause, Notice of Opportunity for Hearing and Hearing Designation Order*, in the Matter of Terry Keith Hammond, KBKH(FM), Shamrock, Texas (EB-03-IH-0130, (File No. BRH-20050401AAA), stated in paragraph 14 that: "The trait of truthfulness is a key element of character qualifications necessary to operate a broadcast station in the public interest. Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission. Misrepresentation is a false statement of fact made with intent to deceive. Lack of candor is concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive. Intent can be shown in many ways. If a licensee knowingly makes a false statement, that is sufficient proof of intent to deceive. Intent to deceive can also be inferred when one has a clear motive to deceive. Moreover, intent can be found when the surrounding circumstances clearly show the existence of intent to deceive, even if there is no direct evidence of a

motive. The Commission may revoke the license of a licensee who deliberately makes misrepresentations or lacks candor in dealing with the agency because he or she lacks the basic character qualifications to hold the license.

At paragraph 21, the Commission concluded that, "...consequently, a false statement in a broadcast application, even in the absence of evidence of intent to deceive, may constitute a violation of section 73.1015."

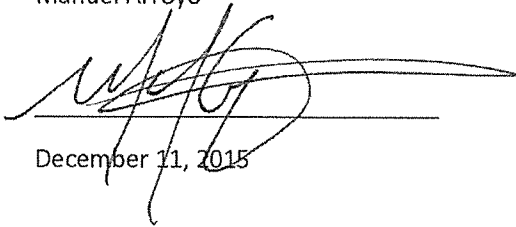
The Commission should return Ayala's pending application as unacceptable for filing as warned in Question 5, Section II of FCC Form 349 because he apparently did not have the written consent of the licensees whose programming he intended to rebroadcast, and he apparently knew this. Furthermore, the Commission should seriously consider whether Ayala is fit to be a Commission licensee given that he has allegedly falsely certified, in all four of his applications, that he had the written consent of both WOCL or WPOZ to rebroadcast their programming. It clearly appears that he did not. Mr. Ayala's false certification, if true, amounts to a material misrepresentation of facts with intent to deceive. Additionally, Mr. Ayala can also be said to have lacked candor in his application as he knowingly concealed a situation he knew to be untrue, namely that he did not have written authorization from either WOCL or WPOZ to rebroadcast its programming. At the very least, Ayala was certainly not "fully informative" regarding his application.

As stated in the *Hammond* case, above, intent to deceive may be inferred from the surrounding circumstances but may also be inferred from the fact that the licensee certified his application knowing it to be false. If a licensee knowingly makes a false statement, that is sufficient proof of intent to deceive.

The Commission should consider whether Mr. Ayala is fit to be a Commission licensee, whether he deliberately deceived the Commission in his application and should determine whether or not Mr. Ayala can be relied upon, in the future, to be honest with the Commission concerning all of his representations.

Respectfully submitted,

Manuel Arroyo

A handwritten signature in black ink, appearing to read 'M. Arroyo', is written over a horizontal line. The signature is stylized and cursive.

December 11, 2015

Richard J. Hayes, Jr.

Attorney at Law

27 Water's Edge Drive

Lincolnton, ME 04849

207-236-3333

Fccl;aw@rjhayes.com

**Letters from
Matthew Agnesi and James Hoge**



December 8, 2015

Federal Communications Commission
445 12th St. SW
Washington, DC 20554

RE: W228DF FCC ID #156373

To Whom It May Concern:

The above referenced facility has not been authorized to re-broadcast WPOZ, FCC ID #9876, Channel 202C, Union Park, FL analog or HD multicast signal for translator use at any time. No one from the licensee of W228DF has contacted anyone in our organization in 2003 or since in regards to the possible re-broadcast of one of our main analog or HD multicast channels of any of our stations.

Please contact me if you have any further questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'James S. Hoge'.

James S. Hoge
President and General Manager
WPOZ/WMYZ/WHYZ/WDOZ
Central Florida Educational Foundation, Inc.



To Whom it May Concern,

No one has authorized to re-broadcast any WOCL-FM Analog or HD Multicast signal for translator use at this time. We currently have an HD1, HD2 and HD3, all of which are running CBS originated programming. There are no plans to change this or add any additional multicast channels. No one has ever been in contact with me regarding the possible re broadcast of one of our Main Analog or HD Multicast Channels on WOCL.

Please feel free to contact me with any further questions or concerns.

A handwritten signature in black ink, appearing to read "Matthew Agnesi".

Matthew Agnesi
Director of Engineering and I.T.
CBS Radio Orlando
407-919-1000

CBS Radio Orlando


1800 Pembroke Drive, Suite 400, Orlando, FL 32810 • 407.919.1000 • Fax: 407.919.1138

**Affidavits of
Matthew Agnesi and James Hoge**

Affidavit of Matthew Agnesi

I, Matthew Agnesi, hereby state, under penalty of perjury, as follows:

1. I am the Director of Engineering and I.T. of CBS Radio Orlando, licensee of WOCL(FM), DeLand, Florida.
2. I wrote the letter (attached in Exhibit Two hereto), which states that no one associated with Juan Ayala's application has ever been authorized to re-broadcast any of the programming of WOCL on Ayala's translator.
3. That letter states facts which are true, complete and correct according to my information, knowledge and belief and I make these statements under penalty of perjury.



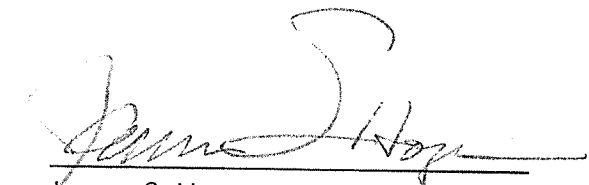
Matthew Agnesi
Director of Engineering and IT
CBS Radio Orlando - Licensee of WOCL

Dated: December 11, 2015

Affidavit of James S. Hoge

I, James S. Hoge, hereby state, under penalty of perjury, as follows:

1. I am the general manager and President of Central Florida Educational Foundation, licensee of WPOZ(FM), Union Park, Florida.
2. I wrote the letter dated December 8, 2015 (attached in Exhibit Two hereto), which states that no one associated with Juan Ayala's application has ever been authorized to re-broadcast any of the programming of WPOZ on Ayala's translator.
3. That letter states facts which are true, complete and correct according to my information, knowledge and belief and I make these statements under penalty of perjury.



James S. Hoge
President and General Manager
Central Florida Educational Foundation
Licensee of WPOZ

Dated: December 11, 2015

**Engineering Statement
of Jeremy Ruck**

ENGINEERING STATEMENT

The following engineering statement and attached exhibits have been prepared for **Manuel Arroyo** ("Arroyo"), an individual and resident of Casselberry, Florida and are in support of his Informal Objection in the matter of the Application of Juan Alberto Ayala ("Ayala") under FCC File No. BMPFT-20151113AAB. The Facility ID associated with the facility in question is 15637, and currently bears a callsign of W228DF.

An authorization for W228DF was originally requested during the 2003 FM translator window. The initial application was assigned FCC File No. BPFT-20030317HFT. This application was assigned to MX Group 86. On July 15, 2013 during the settlement window, Ayala amended the pending application to resolve the initial mutual exclusivity. The Commission then identified this application as a singleton for which a long-form application could be filed.

The long-form application for the facility was assigned FCC File No. BNPFT-20130813ABK. This application was granted on March 20, 2014 as the original construction permit for the facility. Ayala then sought to modify the construction permit by filing an application to modify. This application to modify was apparently amended twice with the grant of the construction permit occurring on October 23, 2015. An additional modification application under FCC File No. BMPFT-20151113AAB has been subsequently filed, and is currently accepted for filing.

Exhibit E-1 is a map, which illustrates the 60 dBu contour from each of these applications as filed with the Commission. The contours are color coded for ease of identification. Although the

JEREMY RUCK & ASSOCIATES, INC.

P.O. Box 415
221 S. 1st Avenue
Canton, IL 61520

Tel: 309.647.1200
Fax: 855.332.9537
jeremyruck.com

callsign of the facility has changed with changes in channel of operation, the current callsign of W228DF is utilized for token identification on the map.

Each of these contours is predicated on the facility operating as a fill-in translator. The four different site locations, for the seven different applications, are all located east of the Mississippi River. Therefore, as a non fill-in translator, the power and center of radiation elevation would be based on the table in Section 74.1235(b)(1) of the Commission's Rules. The following table lists the facility, associated height information, and related effective radiated power values.¹ As it demonstrates, the nearly all of the applications submitted would have a vastly different maximum effective radiated power if the fill-in situation was eliminated.

Facility	Color	HAAT	Radial	ERP Filed	Non Fill-In ERP Limit
Initial Application	Black	89.5	150	250 Watts	80 Watts
20030317HFT AMD	Aqua	69.2	150	38 Watts	38 Watts
20130813ABK Long-Form	Magenta	69.2	150	28 Watts	38 Watts
20150416AAR Initial App	Orange	69.2	150	200 Watts	38 Watts
20150416AAR 1st AMD	Red	69.2	150	180 Watts	38 Watts
20150416AAR 2nd AMD/CP	Green	110.1	300	250 Watts	19 Watts
20151113AAB App	Blue	73.0	0 & 330	200 Watts	38 Watts

Exhibit E-2 illustrates the resulting contours from the changes made according to the table. In the case of the current application 60 dBu contour, the ERP was reduced to 80 Watts, and the directional characteristics removed. This represents a largest possible footprint for the pending application depending on whether a directional antenna is utilized or not.² For the remainder of the facilities, the application already specified a non-directional antenna, or the HAAT fell in such a range that the MERP for a non-directional antenna is identical to the permissible maximum ERP for a directional antenna.

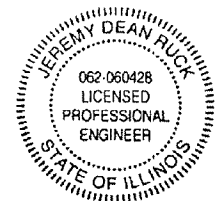
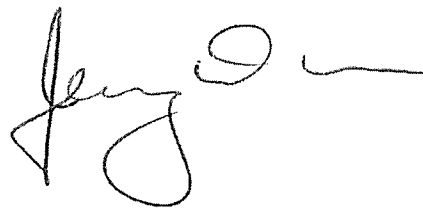
¹ HAAT values are based on the maximum HAAT on a 12-radial sample of the NED 3-second linearly interpolated terrain database.

² See MERP and directional antennas in Section 74.1235.

As Exhibit E-2 demonstrates when the various applications are correctly considered as non fill-in translators, there is overlap between the currently pending application and current construction permit. However, there is no overlap between either of these, and any other of the applications especially the initial short-form or initial long-form applications.

In fact, as Exhibit E-3 demonstrates, the original short-form submission, which is indicated by the black contour, when considered as a maximum non fill-in translator, has no overlap with the initial long-form facility when considered as a maximized non fill-in translator. Thus, the initial long-form application was a major change to the initial long-form application. Furthermore, it is respectfully submitted that the parameters on both the pending application and the current construction permit represent a major change to *both* the initial short-form and initial long-form parameters.

The preceding statement and attached exhibits have been prepared by me, or under my direction, and are true and accurate to the best of my belief and knowledge.



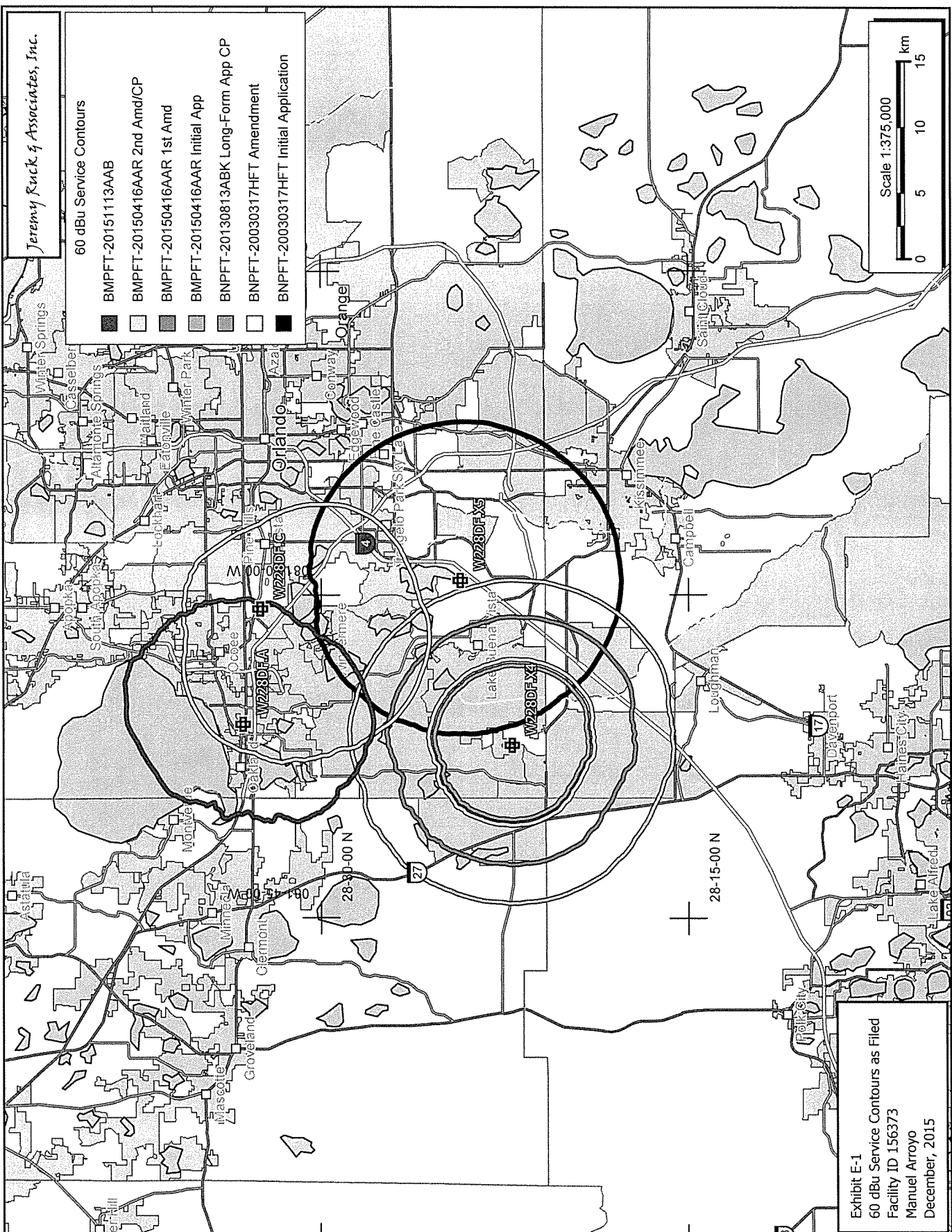
Above signature is digitized copy of actual signature
License Expires November 30, 2017

Jeremy D. Ruck, PE
December 11, 2015

JEREMY RUCK & ASSOCIATES, INC.

P.O. Box 415
221 S. 1st Avenue
Canton, IL 61520

Tel: 309.647.1200
Fax: 855.332.9537
jeremyruck.com



Jeremy Ruck & Associates, Inc.

- 60 dBu Service Contours
- BMPFT-20151113AAB
 - BMPFT-20150416AAR 2nd Amd/CP
 - BMPFT-20150416AAR 1st Amd
 - BMPFT-20150416AAR Initial App
 - BNPFT-20130813ABK Long-Form App CP
 - BNPFT-20030317HFT Amendment
 - BNPFT-20030317HFT Initial Application

Scale 1:375,000

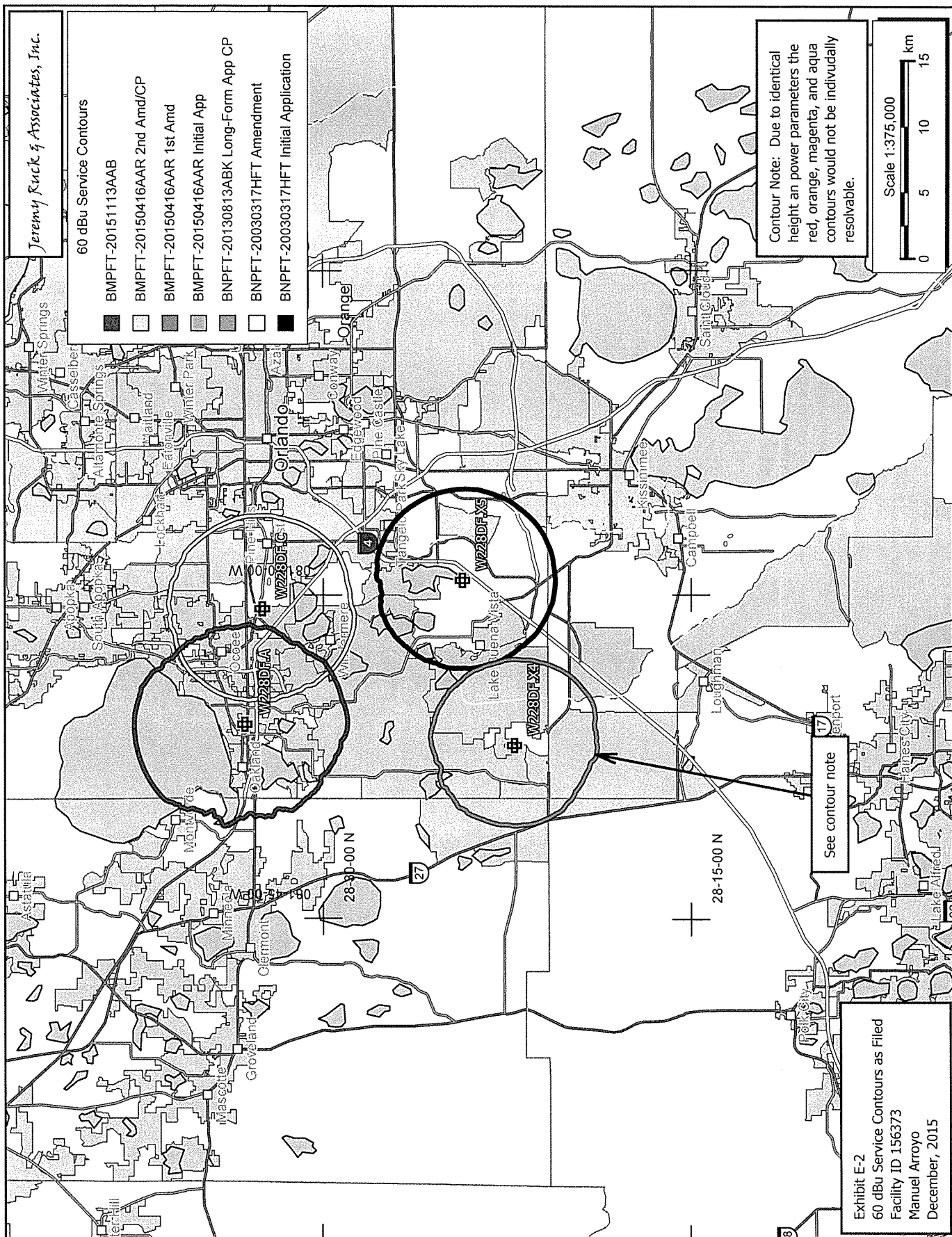
0 5 10 15 km

Exhibit E-1
 60 dBu Service Contours as Filed
 Facility ID 156373
 Manuel Arroyo
 December, 2015

Jeremy Ruck & Associates, Inc.

60 dBu Service Contours

- BMPFT-20151113AAB
- BMPFT-20150416AAR 2nd Amd/CP
- BMPFT-20150416AAR 1st Amd
- BMPFT-20150416AAR Initial App
- BNPFT-20130813ABK Long-Form App CP
- BNPFT-20030317HFT Amendment
- BNPFT-20030317HFT Initial Application

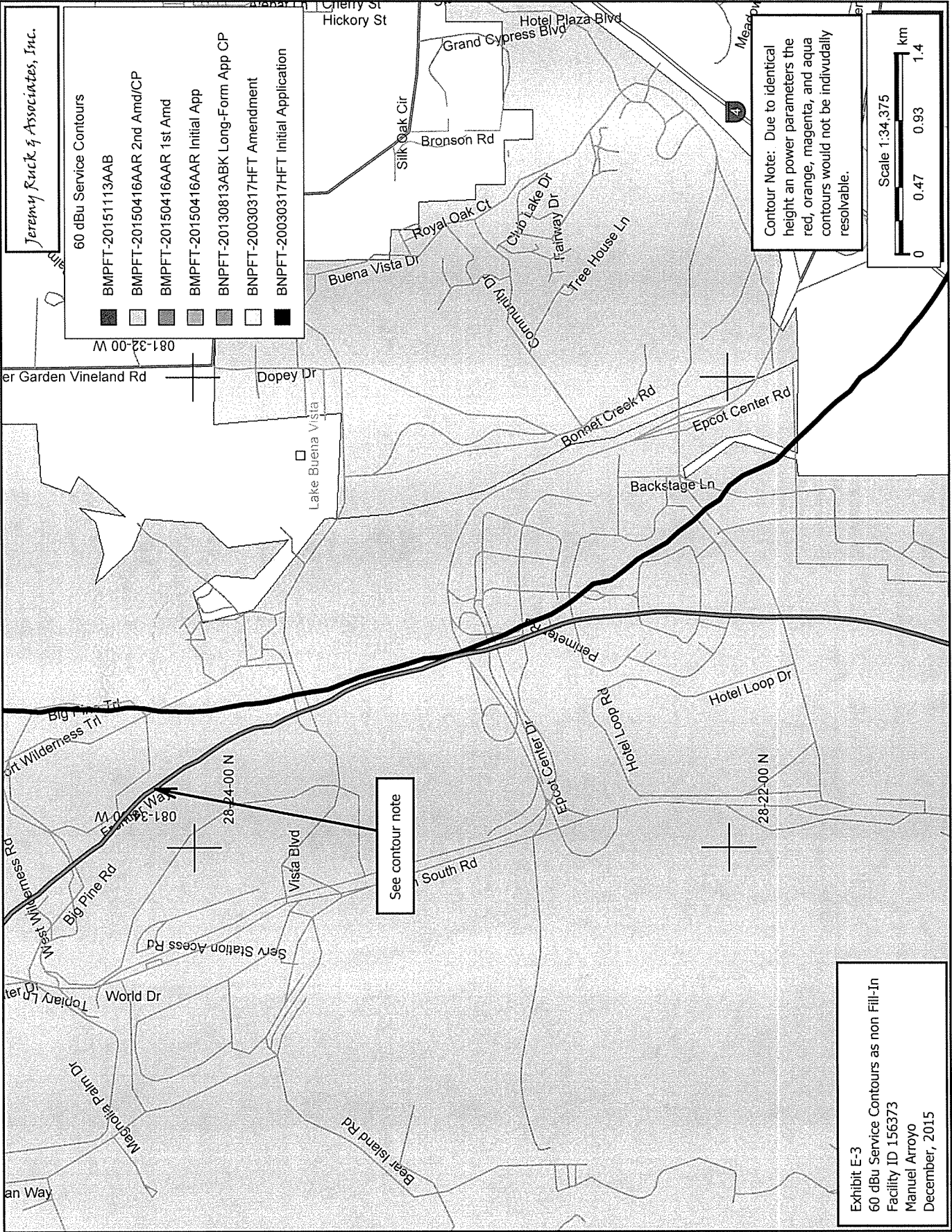


Contour Note: Due to identical height an power parameters the red, orange, magenta, and aqua contours would not be individually resolvable.

Scale 1:375,000
0 5 10 15 km

See contour note

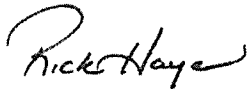
Exhibit E-2
60 dBu Service Contours as Filed
Facility ID 156373
Manuel Arroyo
December, 2015



Certificate of Service

I, Richard J. Hayes, Jr., hereby certify that, on this 14th day of December, 2015, did cause to be sent via first-class mail, postage pre-paid, a copy of this Informal Objection, to the following:

Juan Alberto Ayala
13155 Noel Road – Suite 900
Dallas, TX 75240

A handwritten signature in cursive script that reads "Richard Hayes". The signature is written in black ink and is positioned above a horizontal line.

Richard J. Hayes, Jr.