

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Applications of )

Juan Alberto Ayala and Elohim Group )  
Corporation )

NAL/Acct. No. MB-201741410007  
FRN: 0017503137

For Consent to Assign Construction Permit for and )  
License to Cover FM Translator Station W228DF, )  
Four Corners, Florida )

Facility ID No. 156373  
File No. BPAFT-20161207ABD, BLFT-  
20170320AAH

**ORDER**

**Adopted: May 4, 2017**

**Released: May 5, 2017**

By the Acting Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Juan Alberto Ayala (Ayala), who holds a construction permit (Permit)<sup>1</sup> for unbuilt FM Translator Station W228DF, Four Corners, Florida (Translator), seeks to assign the Permit to Elohim Group Corporation,<sup>2</sup> and has filed a covering license for the Translator.<sup>3</sup>

2. The Consent Decree resolves issues arising from the Bureau's review of an Informal Objection submitted by Manuel Arroyo (First Arroyo Objection),<sup>4</sup> a "Petition for Revocation of Construction Permit and Informal Objection" filed by Clear Channel Broadcasting Licenses, Inc. (CCBL Petition),<sup>5</sup> and a "Petition for Revocation of Construction Permit and Informal Objection" filed by JVC

<sup>1</sup> Ayala filed the initial short-form application for the Permit on March 17, 2003, and the long-form application for the Permit on August 13, 2013. See File Nos. BNPFT-20030317HFT (Short-Form Application) and BNPFT-20130813ABK (Long-Form Application). Neither application was opposed, and the Bureau granted both on March 20, 2014. Ayala subsequently filed an application to modify the Permit on April 16, 2015, which the Bureau granted on October 23, 2015. See File No. BMPFT-20150416AAR (First Modification Application).

<sup>2</sup> File No. BAPFT-20161207ABD.

<sup>3</sup> File No. BLFT-20170320AAH (License Application).

<sup>4</sup> The First Arroyo Objection sought the dismissal of an application to modify the construction permit for the Translator. See File No. BMPFT-20151113AAB (Second Modification Application). The Second Modification Application has been dismissed and we will accordingly dismiss the Arroyo Objection as moot. See *Broadcast Actions*, Public Notice, Report No. 48665 (MB Feb. 5, 2016).

<sup>5</sup> The CCBL Petition seeks the revocation of the Permit, as modified by the First Modification Application, and the dismissal of an additional application to modify the Permit. See File No. BMPFT-20160209ABW (Third Modification Application). The CCBL Petition was filed on February 19, 2016 and, despite being styled as a "Petition for Revocation," is in effect a petition for reconsideration of the grant of the Long-Form Application and the First Modification Application. A petitioner cannot avoid filing deadlines by calling its petition something other than a petition for reconsideration when it, in effect, seeks reconsideration or review. See *Holy Family Oratory of St. Philip Neri*, Memorandum Opinion and Order, 29 FCC Rcd 13273, 13274, para. 5 (2014) (affirming Bureau dismissal of pleading styled "Emergency Petition to Rescind Construction Permit Grant" as an untimely petition for reconsideration); *Davina Sashkin, Esq.*, Letter Order, 27 FCC Rcd 2920, 2922 (MB 2012) ("Accepting such

Media of Florida, LLC (JVC Petition),<sup>6</sup> specifically whether Ayala violated Section 1.17(a)(1) of the Rules<sup>7</sup> by certifying that he had obtained consent to rebroadcast stations pursuant to Section 74.1284(b) of the Rules.<sup>8</sup> The Consent Decree also resolves issues arising from the Informal Objection filed by Arroyo against the License Application (Second Arroyo Objection).<sup>9</sup>

3. We have negotiated the attached Consent Decree, which provides for Ayala to make a civil penalty payment to the United States Treasury in the amount of thirty thousand dollars (\$30,000). A copy of the Consent Decree is attached hereto and incorporated by reference.

4. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's consideration of potential violations of the Rules.

5. We find that the License Application is grantable under the standard of Section 319(c) of the Communications Act of 1934, as amended.<sup>10</sup> Under Section 319(c), Ayala is entitled to a presumption that the Section 309(e) public interest determination made during the construction permit proceeding continues in effect if the permittee has satisfied the terms and conditions of the construction permit, unless circumstances have arisen that would make operation of the station against the public interest.<sup>11</sup>

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pleadings as a means to reopen long-final Commission actions would undercut the goals of administrative efficiency and finality that underlie the statutory limits on seeking reconsideration as well as fundamental fairness to the litigants involved.”). We will thus treat the CCBL Petition as a petition for reconsideration. The Long-Form Application was granted on March 20, 2014, and public notice was given on March 25, 2014. *See Broadcast Actions*, Public Notice, Report No. 48203 (MB Mar. 25, 2014). The First Modification Application was granted on October 23, 2015, and public notice was given on October 28, 2015. *Broadcast Actions*, Public Notice, Report No. 48600 (MB Oct. 28, 2015). Any petition for reconsideration of the grant of the Long-Form Application, therefore, was due on April 24, 2014, and any petition for reconsideration of the First Modification Application was due on November 27, 2015, 30 days after the issuance of the respective public notices. *See* 47 CFR § 1.4(b)(4) (“If the full text of an action document is not to be released by the Commission, but a descriptive document entitled “Public Notice” describing the action is released, the date on which the descriptive “Public Notice” is released.”). We will thus dismiss the CCBL Petition in part as untimely pursuant to Section 405 of the Communications Act of 1934, as amended, and Section 1.106 of the FCC's Rules (Rules). *See* 47 U.S.C. § 405(a), 47 CFR § 1.106(f). The staff has already granted the CCBL Petition in part as it pertained to the Third Modification Application. *See Juan Alberto Ayala*, Ref 1800B3-JDB (MB Apr. 19, 2016).

<sup>6</sup> The JVC Petition, filed on July 14, 2016, also seeks the revocation of the Permit and dismissal of an application to modify the construction permit for the Translator. *See* File No. BMPFT-20160706ABR (Fourth Modification Application). The JVC Petition is also in effect an untimely petition for reconsideration of the Long-Form Application for the reasons stated above. *See* n.5 *supra*. It is also moot with regard to the Fourth Modification Application, which was dismissed on August 2, 2016. *See Broadcast Actions*, Public Notice, Report No. 48792 (MB Aug 5, 2016). We will thus dismiss the JVC Petition in part as untimely and in part as moot.

<sup>7</sup> 47 CFR § 1.17(a).

<sup>8</sup> 47 CFR § 74.1284(b).

<sup>9</sup> The Second Arroyo Objection was filed on March 28, 2017. Ayala filed an Opposition on April 14, 2017.

<sup>10</sup> 47 U.S.C. § 319(c).

<sup>11</sup> 47 U.S.C. § 319(c) (requiring the Commission to issue a license where a construction permit has been granted and it appears that the terms of such permit have been met, and “that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest . . .”); *Focus Cable of Oakland, Inc.*, Memorandum Opinion

6. Under this stringent standard, Arroyo's challenge to the operation and licensing of the Translator on the basis that it was not constructed according to the Permit fails. The showing made by Ayala in response to the Second Arroyo Objection, which Arroyo has not challenged, indicates that the Translator was properly constructed prior to the expiration of the Permit, and was temporarily removed and then promptly reinstalled. Ayala acknowledges in the Consent Decree that he violated Section 1.65 of the Rules by failing to update the License Application to report these matters and accepts the sanction set forth in the Consent Decree in order to resolve that violation. Accordingly, we will deny the Informal Objection.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>12</sup> and by the authority delegated by Sections 0.61 and 0.283 of the FCC's Rules,<sup>13</sup> the Consent Decree attached hereto IS ADOPTED.

8. IT IS FURTHER ORDERED that the investigation by the Media Bureau of the matters noted above IS TERMINATED.

9. IT IS FURTHER ORDERED that the Informal Objection filed by Manuel Arroyo on December 15, 2015, IS DISMISSED as moot; that the "Petition for Revocation of Construction Permit and Informal Objection" filed by Clear Channel Broadcasting Licenses, Inc., on February 19, 2016, IS DISMISSED AS UNTIMELY to the extent indicated above; and that the "Petition for Revocation of Construction Permit and Informal Objection" filed by JVC Media of Florida, LLC, on July 14, 2016, IS DISMISSED AS UNTIMELY to the extent indicated above and IS DISMISSED AS MOOT to the extent indicated above.

10. IT IS FURTHER ORDERED that the Informal Objection filed by Manuel Arroyo on March 28, 2017, IS DENIED.

11. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Juan Alberto Ayala, 121 S. Wick Drive, Cedar Hill, TX 75104, to Elohim Group Corporation, 15305 Dallas Parkway, Suite 300, Addison, TX 75001, to their counsel, Dan J. Alpert, Esq., The Law Office of Dan J. Alpert, 2120 N. 21<sup>st</sup> Road, Arlington, VA 22201, to counsel for Clear Channel Broadcasting Licenses, Inc., Marissa G. Repp, Esq., Repp Law Firm, 1629 K Street N.W., Suite 300, Washington, DC 20006, to counsel for Manuel Arroyo, Richard J. Hayes, Jr., Esq., 27 Water's Edge Drive, Lincolnville, ME 04849, and to counsel for JVC Media of Florida, LLC, Francisco R. Montero, Esq., and Ashley Ludlow, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION



Michelle M. Carey  
Acting Chief, Media Bureau

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and Order, 65 FCC 2d 35, 39-40, para. 11 (1977); *see also Meyer Broad. Co.*, Memorandum Opinion and Order, 65 FCC 2d 438, 441, para. 9 (1977).

<sup>12</sup> 47 U.S.C. § 4(i).

<sup>13</sup> 47 CFR §§ 0.61, 0.283.

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by and among: (a) the Media Bureau of the Federal Communications Commission; (b) Juan Alberto Ayala, permittee of FM Translator Station W228DF, Four Corners, Florida; and (c) for purposes of Paragraph 19, Elohim Group Corporation.

**II. Definitions**

2. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §§151 *et seq.*;
  - (b) "Assignment Application" means the pending application to assign the permit for FM Translator Station W228DF, Four Corners, Florida, from Juan Alberto Ayala to Elohim Group Corporation (File No. BAPFT-20161207ABD);
  - (c) "Ayala" means Juan Alberto Ayala, permittee of FM Translator Station W228DF;
  - (d) "Bureau" means the Media Bureau of the Federal Communications Commission;
  - (e) "Commission" or "FCC" means the Federal Communications Commission;
  - (f) "Effective Date" means the date on which the Bureau releases the Order;
  - (g) "Elohim" means Elohim Group Corporation, proposed assignee of the construction permit for FM Translator Station W228DF, Four Corners, Florida;
  - (h) "False Certification Rule" means Section 1.17(a) of the FCC's Rules, 47 CFR § 1.17(a);
  - (i) "Investigation" means the Bureau's investigation of Ayala's violations of the False Certification Rule;
  - (j) "License Application" means the pending covering license application for FM Translator W228DF (File No. BLFT-20170320AAH);
  - (k) "Order" means an order of the Bureau adopting this Consent Decree;
  - (l) "Parties" means Ayala and the Bureau, as well as Elohim for purposes of Paragraph 17;
  - (m) "Rules" means the FCC's regulations set forth in Title 47 of the Code of Federal Regulations;
  - (n) "Translator" means unbuilt FM Translator Station W228DF (Facility ID No. 156373), the permit for which is held by Juan Alberto Ayala; and

- (o) "Violations" means the violations of the False Certification Rule and Section 1.65 of the Rules.

### III. Background

3. Section 74.1284(b) of the Rules states that "[t]he 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."<sup>1</sup> FCC Form 349, the application for authority to construct or make changes in an FM translator, requires applicants to identify the station they propose to rebroadcast<sup>2</sup> and to certify that they have obtained written permission for such rebroadcasting from the licensee of that station.<sup>3</sup> Section 1.17(a) of the Rules provides that no person may "(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and (2) material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading."<sup>4</sup>

4. In March 2003, Ayala filed a short-form FCC Form 349 application for a new FM translator station at Vineland, Florida (Short-Form Application).<sup>5</sup> In the Short-Form Application, Ayala stated that the Translator would rebroadcast Station WUSF(FM), Tampa, Florida, and certified that he had obtained written consent from the licensee of WUSF to rebroadcast the station.<sup>6</sup> On July 12, 2013, Ayala amended the Short-Form Application to specify that the Translator would rebroadcast Station WPOZ(FM), Union Park, Florida (Amended Short-Form Application), which is licensed to Central Florida Educational Foundation, Inc. (CFEF), and certified that he had obtained written consent from CFEF to rebroadcast the station.<sup>7</sup>

5. On August 13, 2013, Ayala filed a long-form FCC Form 349 application (Long-Form Application), again stating that the Translator would rebroadcast WPOZ and certifying he had obtained consent to do so.<sup>8</sup> The Bureau granted the unopposed Short-Form Application and Long-Form Application on March 20, 2014.<sup>9</sup> Ayala then filed an application to modify the Permit on April 16, 2015 (First Modification Application), stating that the Translator would rebroadcast Station WOCL(FM), Deland, Florida, which is licensed to CBS Radio Stations, Inc. (CBS), and again certified that he had

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<sup>1</sup> 47 CFR § 74.1284(b)

<sup>2</sup> FCC Form 349 at Section III, Question 2.

<sup>3</sup> *Id.* at Section II, Question 5. ("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).

<sup>4</sup> 47 C.F.R. § 1.17(a).

<sup>5</sup> File No. BNPFT-20030317HFT

<sup>6</sup> *Id.* at Section III, Question 2, and Section II, Question 5.

<sup>7</sup> Amended Short-Form Application at Section III, Question 2, and Section II, Question 5.

<sup>8</sup> File No. BNPFT-20130813ABK at Section III, Question 2, and Section II, Question 5.

<sup>9</sup> *Broadcast Actions*, Public Notice, Report No. 48203 (MB Mar. 25, 2014).

obtained consent from CBS to do so.<sup>10</sup> Ayala amended the First Modification Application on May 19, 2015 (First Amendment), and again on October 5, 2015 (Second Amendment), each time stating that the Translator would rebroadcast WOCL and certifying that he had obtained consent from CBS to do so.<sup>11</sup> No objection was filed against the First Modification Application, and the Bureau granted it on October 23, 2015.<sup>12</sup>

6. On November 13, 2015, Ayala filed a second application to modify the Permit (Second Modification Application), and again stated that the Translator would rebroadcast WOCL. Ayala certified that he had obtained written consent from CBS to do so.<sup>13</sup> On December 15, 2015, Manuel Arroyo (Arroyo) filed an Informal Objection to the Second Modification Application in which he argues that the Second Modification Application should be denied because Ayala did not obtain consent to rebroadcast WOCL, and further argues that Ayala did not obtain consent to rebroadcast WPOZ.<sup>14</sup> Ayala did not file an opposition to the Arroyo Objection. The Bureau dismissed the Second Modification Application at Ayala's request on February 2, 2016.<sup>15</sup>

7. Ayala filed a third application to modify the Permit on February 9, 2016 (Third Modification Application), in which he stated that the Translator would rebroadcast Station WMGF(FM), Mount Dora, Florida, which is licensed to Clear Channel Broadcasting Licenses, Inc. (CCBL), and certified that he had obtained consent from CCBL to rebroadcast WMGF.<sup>16</sup> On February 19, 2016, CCBL filed a pleading styled "Petition for Revocation of Construction Permit and Informal Objection" (CCBL Petition), seeking revocation of the Permit, as modified by the First Modification Application, and dismissal of the Third Modification Application on the grounds that Ayala never obtained consent to rebroadcast WMGF.<sup>17</sup> Ayala did not file an opposition to the CCBL Objection. On April, 19, 2016, the Bureau granted the CCBL Petition to the extent it sought dismissal of the Third Modification Application, but took no action on it with regard to the Permit.<sup>18</sup>

8. Ayala filed a fourth application to modify the Permit on July 6, 2016 (Fourth Modification Application), in which he stated that the Translator would rebroadcast Station WOTW(FM), Windermere, Florida, which is licensed to JVC Media of Florida, LLC (JVC), and certified that he had obtained consent to rebroadcast the station.<sup>19</sup> On July 14, 2016, JVC filed a pleading styled "Petition for Revocation of Construction Permit and Informal Objection" (JVC Petition), seeking revocation of the

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<sup>10</sup> File No. BMPFT-20150416AAR.

<sup>11</sup> First Amendment at Section III, Question 2, and Section II, Question 5, and Second Amendment at Section III, Question 2, and Section II, Question 5.

<sup>12</sup> *Broadcast Actions*, Public Notice, Report No. 48600 (MB Oct. 28, 2015).

<sup>13</sup> File No. BMPFT-20151113AAB at Section III, Question 2, and Section II, Question 5.

<sup>14</sup> Arroyo Objection at 2. Arroyo provides letters and affidavits from James S. Hoge of CFEF and Matthew Agnesi of CBS in which they state that Ayala did not have authority to rebroadcast their respective stations. *Id.* at Letters from Matthew Agnesi and James Hoge and Affidavits of Matthew Agnesi and James Hoge.

<sup>15</sup> *Broadcast Actions*, Public Notice, Report No. 48665 (MB Feb. 5, 2016) (Dismissed 2/2/2016 per applicant's request-no letter sent.).

<sup>16</sup> File No. BMPFT-20160209ABW at Section III, Question 2, and Section II, Question 5.

<sup>17</sup> CCBL Petition at 4. CCBL provides a copy of a declaration of Jeff Littlejohn, Executive Vice President—Engineering & Systems Integration of CCBL in support of this argument. *Id.* at Attach. B.

<sup>18</sup> *Juan Alberto Ayala*, Ref 1800B3-JDB (MB Apr. 19, 2016).

<sup>19</sup> File No. BMPFT-20160706ABR at Section III, Question 2, and Section II, Question 5.

Permit, as modified by the First Modification Application, and objecting to the Fourth Modification Application on the basis that Ayala did not obtain consent to rebroadcast WOTW.<sup>20</sup> Ayala did not file an opposition to the JVC Petition. The Fourth Modification Application was dismissed at Ayala's request on August 2, 2016.<sup>21</sup>

9. Ayala filed a fifth application to modify the Permit on October 12, 2016 (Fifth Modification Application), again stating that the Translator would rebroadcast WOTW and certifying that he had obtained written consent to rebroadcast that station from JVC.<sup>22</sup> No objection was filed to the Fifth Modification Application, and the Bureau granted it on October 27, 2016.<sup>23</sup> On December 7, 2016, Ayala filed the Assignment Application for consent to assign the Permit to Elohim, and on March 20, 2017, filed the License Application, to which Arroyo filed an Informal Objection on March 28, 2017.

10. The Second Arroyo Objection alleges that the Translator was not built according to the terms of the Permit as modified.<sup>24</sup> Specifically, the objection argues that the antenna for the Translator was built on a pole 15 feet off the ground, rather than at the 117 meter height stated in the Permit.<sup>25</sup> The objection further argues that the Translator is not rebroadcasting WOTW, but instead is broadcasting its own programming.<sup>26</sup> The objection is supported by an engineering statement of Louis Mueller, who conducted an inspection of the Translator's transmitter site on March 22, 2017.<sup>27</sup>

11. In the Opposition, Ayala argues that the Translator was in fact properly constructed between March 17 and 18, 2017, before the Permit expired.<sup>28</sup> Ayala provides a Declaration of Ernesto Sanchez in support of this argument (Sanchez Declaration).<sup>29</sup> Sanchez states he supervised the installation of the antenna on the tower, and further explains that on Monday, March 20, he was informed that the transmission line was not properly painted as required by the Federal Aviation Administration.<sup>30</sup> Accordingly, in order to prevent the tower owner from being fined, on March 21, he had the antenna and cables removed from the tower, reinstalled the antenna above the transmitter shelter, and continued testing the antenna with pre-recorded Spanish music.<sup>31</sup> Sanchez states that the antenna and cables were reinstalled between April 3 and April 4, 2017, and the Translator is now rebroadcasting WOTW.<sup>32</sup>

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<sup>20</sup> JVC Petition at 3. JVC provides a Declaration of John Caracciolo in support of this argument. *Id.* at Attach. C.

<sup>21</sup> *See Broadcast Actions*, Public Notice, Report No. 48792 (MB Aug. 5, 2016) ("Dismissed 8/2/2016 per applicant's request-no letter sent.").

<sup>22</sup> File No. BMPFT-20161012AAX at Section III, Question 2, and Section II, Question 5.

<sup>23</sup> *See Broadcast Actions*, Public Notice, Report No. 48852 (MB Nov. 1, 2016).

<sup>24</sup> Ayala filed a fifth application to modify the Permit on October 12, 2016. No objection was received against this application, and the Bureau granted it on October 27, 2016.

<sup>25</sup> Second Arroyo Objection at 3.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> *Id.* at Exh. 3.

<sup>28</sup> Opposition at 1-2.

<sup>29</sup> *Id.* at Attach. 1.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*



12. Because of the issues identified in the Bureau's investigation, the Parties have agreed to enter into this Consent Decree, to which both Ayala and the Bureau intend to be legally bound.

#### IV. Agreement

13. The Parties acknowledge that any proceeding that might result from Ayala's violations of the False Certification Rule referred above, would be time consuming and require substantial expenditure of public and private resources. In order to conserve such resources and to resolve the matter, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

14. Ayala and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. Both Ayala and the Bureau each represent and warrant that their signatory is duly authorized to enter into this Consent Decree on their behalf. Ayala agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree.

15. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Ayala and the Bureau concerning the Violations regarding the Translator, as discussed herein.

16. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees that it will not use the Violations in any action against Ayala, provided that Ayala satisfies all of his obligations under this Consent Decree. In the event that Ayala fails to satisfy any of his obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each of the Violations, and/or the violation of this Consent Decree.

17. Ayala hereby stipulates that he violated the False Certification Rule as described above in the following applications: (a) the short-form application for a construction permit for a new FM translator station, File No. BNPFT-20030317HFT; (b) the long-form application for a construction permit for a new FM translator station, File No. BNPFT-20130813ABK; (c) the application to modify the construction permit for FM Translator Station W228DF, File No. BMPFT-20150416AAR; (d) the application to modify the construction permit for FM Translator Station W228DF, File No. BMPFT-20151113AAB; (e) the application to modify the construction permit for FM Translator Station W228DF, File No. BMPFT-20160209ABW; (f) the application to modify the construction permit for FM Translator Station W228DF, BMPFT-20160706ABR. Ayala further represents that the Translator was timely constructed according to the terms of the construction permit issued to him (File Nos. BNPFT-20030317THF, BNPFT-20130818ABK), as modified (File No. BMPT-20161012AAX), and is presently operating at the facilities described therein, but Ayala acknowledges that he failed to submit relevant information concerning the status of the Translator as required by Section 1.65 of the Rules.<sup>33</sup>

18. The Bureau will grant the pending Assignment Application (File No. BAPFT-20161207ABD) and the License Application (File No. BLFT-20170320AAH) after the Effective Date, provided that there are no issues other than the Violations that would preclude the grant of the Assignment Application or the License Application.

19. The Bureau has agreed to accept and Ayala has agreed to make a civil penalty payment to the United States Treasury in the amount of Thirty Thousand Dollars (\$30,000) from the proceeds of Ayala's sale of the Translator to Elohim. Ayala agrees that the civil penalty will be paid on the same day as the closing of the transaction for the Translator. In the event such payment is not made on the closing date, or in the event the closing does not occur within ten days of the Effective Date, Ayala and Elohim

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<sup>33</sup> 47 CFR § 1.65.



consent to the Bureau's rescission of the grant of the Assignment Application and the License Application.

20. Ayala will also send electronic notification of payment to Alexander Sanjenis at Alexander.Sanjenis@fcc.gov and Michael Wagner at Michael.Wagner@fcc.gov on the date said payment is made. Such payment will be made, without further protest or recourse to a *trial de novo*, by a check or similar instrument, wire transfer or credit card and must include the NAL Account Number and FRN referenced in the caption to the Order. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2- GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

21. Ayala agrees that he is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent Ayala fails to satisfy any condition, in the absence of Commission alteration of the condition or Rule, he will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, designation of the matter for hearing, letters of admonishment, or forfeitures.

22. The Consent Decree will be binding on Ayala's heirs and assigns.

23. Ayala waives any and all rights that he may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided that the Order adopts the Consent Decree without change, addition or modification.

24. Ayala waives any claims that he may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 CFR § 1.1501 et seq., relating to the matters discussed in this Consent Decree.

25. Ayala and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided that the Order adopts the Consent Decree without change, addition, or modification.

26. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Order, none of the Parties shall contest the continuing validity of the Consent Decree or the Order. Ayala and the Bureau further agree that they will waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and that they will consent to a judgment incorporating the terms of this Consent Decree.

27. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

28. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

**MEDIA BUREAU  
FEDERAL COMMUNICATIONS COMMISSION**

By: \_\_\_\_\_

Michelle M. Carey, Acting Chief

Date: \_\_\_\_\_

**JUAN ALBERTO AYALA**

By: \_\_\_\_\_

Juan Alberto Ayala

Date: \_\_\_\_\_

**ELOHIM GROUP CORPORATION**

By: \_\_\_\_\_

Joel Juarez (for the purposes of Paragraph 19)

Date: \_\_\_\_\_