

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

In the Matter of	)	
	)	
ENTERTAINMENT MEDIA TRUST,	)	MB Docket No. 19-156
DENNIS J. WATKINS, TRUSTEE	)	
	)	
Applications to Renew License:	)	
	)	
KFTK(AM) (formerly WQQX(AM)), East St.	)	Facility ID No. 72815
Louis, Illinois	)	File No: BR-20120709ACP
	)	
WQQW(AM), Highland, Illinois	)	Facility ID No. 90598
	)	File No. BR-20120709AC0
	)	
KZQZ(AM), St. Louis, Missouri	)	Facility ID No. 72391
	)	File No. BR-20120921AAW
	)	
KQQZ(AM), DeSoto, Missouri	)	Facility ID No. 5281
	)	File No. BR-20120921ABA
	)	
Application for Consent to Assignment of	)	
Licenses:	)	
	)	
KFTK(AM) (formerly WQQX(AM)), East St.	)	Facility ID No. 72815
Louis, Illinois	)	File No: BAL-20160919ADH
	)	
WQQW(AM), Highland, Illinois	)	Facility ID No. 90598
	)	File No. BAL-20160919ADI
	)	
KZQZ(AM), St. Louis, Missouri	)	Facility ID No. 72391
	)	File No. BAL-20160919ADJ
	)	
KQQZ(AM), DeSoto, Missouri	)	Facility ID No. 5281
	)	File No. BAL-0160919ADK
	)	
Application for Permit to Construct New	)	Facility ID No. 200438
Station:	)	File Nos. BNPFT-20170726AEF
	)	BNPFT-20180314AAO
W275CS, Highland, Illinois	)	

To: Marlene H. Dortch, Secretary  
Attn: Administrative Law Judge Jane Hinckley Halprin

## ENFORCEMENT BUREAU'S OCTOBER 2019 STATUS REPORT

1. Pursuant to *Order*, FCC 19M-05, the Chief, Enforcement Bureau (Bureau), through her attorneys, hereby respectfully submits its October 2019 Status Report in the above-captioned matter.

### Discovery Matters

2. Until September 12, 2019, the Bureau had been actively engaged in the discovery process in this case. On August 20, 2019, the Bureau served its first set of document requests and its first set of interrogatories on Entertainment Media Trust, Dennis Watkins, Trustee (EMT). EMT did not file a timely response to either, but instead requested (on the date its responses were due) two-week extensions. The Presiding Judge gave EMT until September 9, 2019 to respond to the Bureau's document requests and until September 12, 2019 to respond to the Bureau's first set of interrogatories.<sup>1</sup>

3. On September 9, 2019, EMT provided incomplete responses to the Bureau's document requests. Bureau counsel contacted EMT's counsel to meet and confer concerning the numerous deficiencies in EMT's response and in its accompanying privilege log. During this conference call on September 11, 2019, EMT's counsel informed Bureau counsel that EMT had just filed for bankruptcy protection and was not in a position to address the discovery disputes. Counsel for EMT later told Bureau counsel that they were "unable to proceed with further responses to the document production requests" until they received further instructions from the Chapter 7 Trustee as to what they could do and when. In order to preserve its rights to obtain complete responses to its first set of document requests, the Bureau filed a motion to compel.<sup>2</sup> Neither EMT nor the Chapter 7 Trustee filed a response to this motion.

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<sup>1</sup> See *Order*, FCC 19M-08 (ALJ, rel. Sept. 6, 2019), at 3, para. 5.

<sup>2</sup> See Enforcement Bureau's Motion to Compel Complete Responses to Its Requests for Production of Documents (Sept. 16, 2019).

4. The night before its responses to the Bureau's first set of interrogatories were due, EMT filed a motion to stay the instant proceeding or, in the alternative, an indefinite extension of time, relying on its petition for bankruptcy protection.<sup>3</sup> On September 12, 2019, the Presiding Judge issued an order temporarily relieving EMT of the responsibility "to respond to the pending Bureau interrogatories, the Kern document production request, and any similar requests filed in the interim."<sup>4</sup>

5. As a result, the discovery process is currently at a stand-still.

#### **EMT's Motion to Stay the Proceedings**

6. As noted above, on the evening before its delayed responses to the Bureau's first set of interrogatories were due, EMT filed a motion to stay this proceeding. EMT asserted, without citing to any legal support or precedent, that a stay is warranted simply because EMT filed for Chapter 7 bankruptcy protection and because it will be filing, at some undefined time in the future, a petition for extraordinary relief in accordance with the *Second Thursday* doctrine for as yet unidentified transactions. Both the Bureau and Petitioner Mark Kern separately opposed EMT's motion on multiple grounds, including: (a) the instant hearing is not subject to the automatic stay provisions set forth in section 362(a) of the Bankruptcy Code because it falls under the section 362(b)(4) exception; (b) EMT did not acknowledge, let alone meet, the four-part test the Commission applies in considering a request for a stay; (c) EMT did not provide any basis for seeking relief under the *Second Thursday* doctrine; and (d) the bankruptcy proceeding does not address all issues designated for hearing.<sup>5</sup>

7. On September 16, 2019, the Chapter 7 Trustee – who is not a party to this

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<sup>3</sup> See Motion for Stay of Proceedings or in the Alternative Extension of Time (Sept. 11, 2019).

<sup>4</sup> Order, FCC 19M-09 (ALJ, rel. Sept. 12, 2019), at 2, para. 2.

<sup>5</sup> See Enforcement Bureau's Opposition to EMT's Motion for Stay of Proceedings or in The Alternative Extension of Time (Sept. 17, 2019); Kern Opposition to Motion for Stay of Proceedings or in The Alternative Extension of Time (Sept. 16, 2019).

proceeding and has not moved to intervene to become one – filed a motion for leave to file a reply in support of EMT’s motion.<sup>6</sup> The Presiding Judge granted his request,<sup>7</sup> and on September 23, 2019, the Chapter 7 Trustee filed his reply (Reply).<sup>8</sup>

8. It appears from this Reply that the Chapter 7 Trustee fundamentally misunderstands that the Commission, and not the Bankruptcy Court, has exclusive authority to determine whether the licenses at issue can be considered assets of the bankruptcy estate and, if so, to whom and under what conditions, they may be transferred (*i.e.*, liquidated). He also appears to misunderstand the purpose of this hearing proceeding, erroneously mischaracterizing it as a “forfeiture” action, rather than as an exercise of the Commission’s fundamental and exclusive regulatory authority to determine EMT’s fitness to hold a Commission license. In addition, he ignores the Commission’s long-standing *Jefferson Radio* policy and fails to demonstrate (a) how EMT could meet the *Second Thursday* requirements; (b) why the section 362(b)(4) exception to the automatic stay is inapplicable; and (c) that EMT meets the four-part test for a stay. The Bureau and Petitioner Mark Kern separately responded to the Reply.<sup>9</sup>

### **Bankruptcy-Related Matters**

9. On September 20, 2019, the Chapter 7 Trustee filed an emergency motion to enforce the automatic stay in the U.S. Bankruptcy Court for the Southern District of Illinois, where EMT filed for bankruptcy protection. He attached a copy of that motion to his Reply at Exhibit A. On September 23, 2019, the Bankruptcy Court scheduled a hearing to be held on

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<sup>6</sup> See Motion for Leave to File Reply to Oppositions (Sept. 16, 2019). Pursuant to Commission rules, any person or entity not named in the order designating a matter for hearing must first file a petition to intervene setting forth, *inter alia*, the interest of the petitioner in the proceeding and how such petitioner’s participation will assist the Commission in the determination of the issues in question in the hearing. See 47 CFR § 1.223.

<sup>7</sup> Order, FCC 19M-10 (ALJ, rel. Sept. 18, 2019). The Presiding Judge also granted the Bureau and Petitioner Mark Kern the opportunity to file a response to the Chapter 7 Trustee’s reply. See *id.* at 3, para. 3.

<sup>8</sup> See Reply to Oppositions (Sept. 23, 2019).

<sup>9</sup> See Enforcement Bureau’s Response to Chapter 7 Trustee’s Reply to Oppositions (Sept. 26, 2019) (Bureau’s Response); Response to Trustee’s Reply to Oppositions to EMT Motion for Stay (Sept. 27, 2019).

October 1, 2019 to hear the Chapter 7 Trustee's motion.<sup>10</sup> The Court also ordered the parties to submit authority on the issues raised in the motion by September 27, 2019.<sup>11</sup>

10. The Commission's interests are represented in the bankruptcy proceeding by the U.S. Attorney's Office for the Southern District of Illinois. The United States' response to the Chapter 7 Trustee's emergency motion is filed herewith as Exhibit A (without exhibits).<sup>12</sup> The Chapter 7 Trustee's submission, in which he persists in refusing to acknowledge the Commission's exclusive authority over its licensing process and the *Jefferson Radio* policy, and continues to mischaracterize the Commission's hearing proceeding as one designed to advance an alleged (and unsubstantiated) pecuniary interest, is filed herewith as Exhibit B.

11. At the October 1, 2019 hearing, the Bankruptcy Court did not rule on the Chapter 7 Trustee's emergency motion. Instead, it ordered the parties to submit reply briefs within seven days.<sup>13</sup>

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<sup>10</sup> See Exhibit B to the Bureau's Response.

<sup>11</sup> See *id.*

<sup>12</sup> This United States' pleading attached three exhibits, each of which are already available to the Presiding Judge. Exhibit A is a copy of the Hearing Designation Order and Notice of Opportunity for Hearing designating this case for hearing. Exhibit B is a copy of EMT's motion to stay the proceeding. Exhibit C is a copy of *Order*, FCC 19M-09 (ALJ, rel. Sept. 12, 2019).

<sup>13</sup> See Exhibit C filed herewith.

Respectfully submitted,

Rosemary C. Harold  
Chief, Enforcement Bureau



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October 1, 2019

## CERTIFICATE OF SERVICES

Pamela S. Kane certifies that she has on this 1st day of October, 2019, sent copies of the foregoing "ENFORCEMENT BUREAU'S OCTOBER 2019 STATUS REPORT" via email to:


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Pamela S. Kane

## **EXHIBIT A**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

IN PROCEEDINGS  
UNDER CHAPTER 7

ENTERTAINMENT MEDIA TRUST

Case No. 19-31224

Debtor.

**RESPONSE OF THE UNITED STATES OF AMERICA TO THE  
EMERGENCY MOTION TO ENFORCE THE AUTOMATIC STAY OR, IN  
THE ALTERNATIVE, TO ISSUE A STAY ORDER (DOC. 9)**

The United States of America, on behalf of the Federal Communications Commission (the “Commission” or the “FCC”), by and through its undersigned counsel, hereby responds (the “Response”) to the *Emergency Motion to Enforce the Automatic Stay or, in the Alternative, to Issue a Stay Order* (Doc. 9) (the “Emergency Motion”) filed by Donald M. Samson, trustee (the “Chapter 7 Trustee”), and in support of this Response, the United States respectfully represents as follows:

**Preliminary Statement**

1. Entertainment Media Trust (the “Debtor”) is a defendant in a proceeding pending before an FCC Administrative Law Judge (“ALJ”) to address alleged violations of FCC rules and to determine whether the Debtor is qualified to remain an FCC licensee. On the eve of the deadline to respond to interrogatories, the Debtor filed a Chapter 7 bankruptcy petition. The petition identifies few creditors, primarily legal counsel in the administrative proceeding before the FCC,

and appears to be merely an attempt to circumvent the FCC's exercise of its exclusive regulatory authority. The Emergency Motion filed by the Chapter 7 Trustee seeks to employ the automatic stay (Section 362 of the Bankruptcy Code) against the FCC to halt the proceeding before the ALJ. Yet the Emergency Motion ignores Section 362(b)(4), which clearly provides an exception allowing the FCC to proceed and ultimately reach a determination as to the Debtor's alleged rule violations and qualifications to be a licensee. The Emergency Motion, both with respect to the automatic stay and the alternative request for a stay, is contrary to the express provisions of the Bankruptcy Code and established precedent and should be denied.

### **Background**

2. The FCC is charged by Congress with regulating wire and radio communications, with exclusive jurisdiction over granting or approving the transfer or assignment of spectrum licenses. *See* 47 U.S.C. §§ 151, et seq., in particular 301, 303, 308-309, 310(d) (as amended, the "Communications Act").

3. The Debtor currently owns four AM radio broadcast licenses, KFTK(AM), WQQW(AM), KZQZ(AM), and KQQZ(AM) (the "Stations") and holds associated broadcast licenses that are issued and regulated by the FCC (the "Licenses"). In 2012, the Debtor filed renewal applications for each of the Licenses. On November 12, 2012, a local resident and listener of the Stations filed a petition

to deny the renewal of the Licenses based on alleged violations of the FCC's ownership rules and associated misrepresentations to the FCC. Subsequently, the FCC commenced an investigation into the allegations in the petition.

4. On June 5, 2019, the FCC's Media Bureau released a Hearing Designation Order and Notice of Opportunity for Hearing (the "HDO"), which is attached hereto as Exhibit A. The HDO initiated a hearing proceeding (the "Hearing Proceeding") before the ALJ at the FCC to determine whether the Debtor had violated "the Communications Act of 1934, as amended (Act) and/or the rules and regulations (Rules) of the Federal Communications Commission (Commission) and, as a consequence, whether EMT's captioned applications for license renewal should be denied, those station licenses accordingly cancelled, and applications to construct a new FM translator station to retransmit one of the stations should be dismissed." HDO, at ¶ 1. Among other things, the Commission's investigation, which is based on alleged non-pecuniary statutory and rule violations, had found material questions of fact as to whether the Debtor had made an undisclosed and unlawful *de facto* transfer of control of the Stations, engaged in misrepresentations and/or lack of candor in communications with the Commission, and/or frustrated the proper application of the Commission's rules on attributable interests. *Id.* at ¶ 4.

5. On September 6, 2019, the ALJ, responding to a request for extension of an earlier deadline filed on the final day, entered an order in the Hearing

Proceeding directing the Debtor to respond to interrogatories on or before September 12, 2019.

6. On September 11, 2019 (the “Petition Date”), the Debtor filed its petition (Doc. 1) (the “Petition”) pursuant to Chapter 7 of the Bankruptcy Code commencing the above-captioned bankruptcy case. On that same day the Chapter 7 Trustee was appointed. *See* Doc. 2.

7. In the Petition, the Debtor identifies only four creditors. One creditor is listed as having an undisputed \$0.00 claim. The remaining creditors are the FCC and the two law firms who are representing the Debtor in the Hearing Proceeding. The Debtor’s total outstanding liabilities are listed as \$106,620.77. The Debtor concurrently identifies over \$2,000,000.00 in assets. In its Amended Schedule A/B (Doc. 10), the Debtor identifies assets of \$15,950 in accounts receivable, \$400,000.00 in real property and broadcasting equipment, and the Licenses, valued at \$1,600,000.00.

8. On the Petition Date, the Debtor also filed a Motion for Stay of Proceedings or in the Alternative for Extension of Time in the Hearing Proceeding, attached hereto as Exhibit B. The Administrative Law Judge has not yet ruled on that motion.<sup>1</sup>

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<sup>1</sup> On September 12, 2019, the ALJ issued an Order, attached hereto as Exhibit C, indicating she would issue a ruling in response to the motion after other parties had an opportunity to respond.

9. On September 20, the Chapter 7 Trustee filed the Emergency Motion, seeking to apply the automatic stay, or in the alternative obtain an order staying the Hearing Proceeding in order to seek a sale of the Debtor's assets, including the Licenses. Those Licenses cannot be sold or transferred without prior FCC regulatory approval.

10. For the reasons below, the Emergency Motion is fundamentally flawed and should be denied.

### **Argument**

#### **I. Pursuant to Section 362(b)(4) the Automatic Stay Does Not Apply**

11. As a threshold matter, the automatic stay does not apply to the Hearing Proceeding. Section 362(b)(4) of the Bankruptcy Code provides that “[t]he filing of a petition ... does not operate as a stay-- under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit ... to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power. ...”

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Such responses, a Reply by the Chapter 7 Trustee, and responses to that Reply have since been filed.

12. “The analysis is basic: section 362(b)(4) excepts a governmental unit enforcing a police or regulatory power and section 362(b)(5) excepts a governmental unit enforcing a judgment other than a money judgment.” *NLRB v. P\*I\*E Nationwide, Inc.*, 923 F.2d 506, 512 (7th Cir. 1991).<sup>2</sup> The FCC is plainly a governmental unit under the Bankruptcy Code.<sup>3</sup> The FCC regulates the Licenses pursuant to its authority under the Communications Act, §§ 151, *et seq.*, in particular 301, 303, 308-9, 310(d). *See also United States v. Southwestern Cable Co.*, 392 U.S. 157, 168 (1968) (“The Commission was expected to serve as the ‘single Government agency’ with ‘unified jurisdiction’ and ‘regulatory power over all forms of electrical communication, whether by telephone, telegraph, cable, or radio.’”) (citations omitted). Consequently, the Hearing Proceeding, which seeks to determine 1) whether the Debtor has violated the FCC’s rules or regulations and 2) whether it remains qualified to be a licensee, is explicitly exempted from the automatic stay by the plain language of the Bankruptcy Code.

13. “Two tests are commonly used to determine whether a governmental action falls within the § 362(b)(4) exception to application of the Automatic Stay

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<sup>2</sup> In 1998, sections 362(b)(4) and (5) were essentially consolidated into the modern version of section 362(b)(4).

<sup>3</sup> “The term ‘governmental unit’ means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.” 11 U.S.C. § 102(27).

Provision: (1) the ‘pecuniary purpose’ test; and (2) the ‘public policy’ test.” *FTC v. Trudeau*, 2013 WL 12212736, at \*2 (N.D. Ill. Apr. 26, 2013).

14. For the pecuniary interest inquiry, “courts focus on whether the governmental proceeding relates primarily to the protection of the government’s pecuniary interest in the debtor’s property, and not to matters of public safety [or public policy].” *Id.* (citations omitted). Through the Hearing Proceeding, the FCC is determining whether the Debtor has violated the Communications Act’s requirements regarding accurate identification of the party in control of a license; this is not a dispute over regulatory fees or monetary penalties owed to the FCC. *See* HDO, at ¶ 4. The inquiry is one fundamental to the integrity of the FCC’s regulation of spectrum through the issuance of licenses to qualified applicants: can a particular licensee be trusted to comply with the FCC’s rules and be honest and straightforward in its representations to the Commission? Given the severity of the potential consequences, existing licensees enjoy substantial procedural protections when their integrity is brought into question. Hearing Designation Orders are not issued lightly or frequently, and not until after preliminary investigations have demonstrated the existence of material questions of fact. *See, e.g.,* HDO, at ¶¶ 29-31.

15. “Under the public policy test, courts must distinguish between proceedings that adjudicate private rights and those that effectuate public policy. Matters that effectuate public policy are excepted from the stay.” *Trudeau*, 2013

WL 12212736, at \*2 (citations omitted). Here, the FCC is not adjudicating private rights, but rather determining whether the Debtor violated the standards of conduct without which the structure of regulation established by Congress based on licensing spectrum to qualified applicants would be rendered ineffective.

16. Courts have previously determined that FCC proceedings fit within Section 362(b)(4)'s exception to the automatic stay. See, e.g., *In re FCC*, 217 F.3d 125, 138 n.8 (2d Cir. 2000); *In re FiberTower Network Services Corp.*, 482 B.R. 169, 180 (Bankr. N.D. Tex. 2012).

17. *In re Emerald Casino* provides a particularly apt analogy to the instant situation. 2003 WL 23147946 (N.D. Ill. Dec. 24, 2003), *aff'd Vill. of Rosemont v. Jaffe*, 482 F.3d 926 (7th Cir. 2007). In that case, the District Court affirmed the bankruptcy court's decision that Section 362(b)(4) allowed the Illinois Gaming Board (the "IGB") to continue with license-revocation proceedings against the casino operator debtor. *Emerald Casino*, 2003 WL 23147946 at \*1. Prior to bankruptcy, the IGB issued a complaint commencing a license revocation proceeding before an administrative law judge. *Id.* at \*2. The allegations of misconduct by the instant debtor are remarkably similar to those leveled against the Emerald Casino debtors: among other things, the *Emerald Casino* debtor allegedly provided false information to the IGB and failed to disclose transfers of ownership. *Id.* The Court determined that the license revocation proceeding was an exercise of



the IGB's regulatory authority and was not motivated by a pecuniary interest. Thus Section 362(b)(4) applied and the license revocation proceeding was not stayed.

18. Moreover, the Court determined that Section 362(b)(4) applied even though it would result in a significant diminishment of estate resources. "The State's conduct in this case will result in a dramatic depletion of the debtor's estate, but Congress has expressly provided for that result when the State—as it does in this case—exercises its regulatory and police power." *Id.* at \*9.

19. The Seventh Circuit affirmed the District Court, and further explained that Section 362(b)(4) "establishes that even though Emerald's license is for some purposes 'property of the estate,' see 11 U.S.C. § 541, the Code forbids the bankruptcy court from interfering with the government's police and regulatory powers." *Vill. of Rosemont*, 482 F.3d at 938. *See also Board of Governors of Federal Reserve System v. MCorp Financial, Inc.*, 502 U.S. 32, 40 (1991) ("It is possible, of course, that the Board proceedings, like many other enforcement actions, may conclude with the entry of an order that will affect the Bankruptcy Court's control over the property of the estate, but that possibility cannot be sufficient to justify the operation of the stay against an enforcement proceeding that is expressly exempted by § 362(b)(4). To adopt such a characterization of enforcement proceedings would be to render subsection (b)(4)'s exception almost meaningless.")

20. Finally, the fact that this case was filed as a Chapter 7 is irrelevant to the application of Section 362(b)(4). This section does not differentiate between Chapter 11 and Chapter 7 cases. *See In re Hicks*, 582 B.R. 6, 12 (Bankr. N.D. Ill. 2018)(“§ 362(b)(4), which is in Chapter 3 of the Bankruptcy Code[,] applies, ‘in a case under Chapter 7, 11, 12 or 13 of this title.’”) (quoting 11 U.S.C. § 103(a)). A chapter 7 liquidation does not provide any basis for the automatic stay to apply to the Hearing Proceeding.

21. For the foregoing reasons the Court should find that Section 362(b)(4) applies to the Hearing Proceeding and deny the Emergency Motion.

**II. The Trustee’s Request in the Alternative for a Stay is Both Substantively and Procedurally Flawed.**

22. The Emergency Motion appears to ask the Court to grant a stay even if the regulatory exception applies and there is no automatic stay, although it states no standard and makes no argument in support of that request. The purpose of the regulatory exception is to draw a line between the bankruptcy case and the appropriate exercise of regulatory authority. The exception guards against abuse of the bankruptcy system to inappropriately circumvent regulatory policies and procedures. The ALJ, with appeal to the FCC, is the appropriate tribunal to decide whether a stay is appropriate in the proceeding pending before it. For the Bankruptcy Court to order a stay of a proceeding that falls within the Section 362(b)(4) exception would contradict the judgment Congress made in fashioning the exception and

would invite inappropriate use of bankruptcy proceedings to circumvent regulatory process. *Cf. MCorp Financial, Inc.*, 502 U.S. at 40 (disagreeing with debtor who argued that courts must scrutinize “whether the proposed exercise of police or regulatory power is legitimate” in deciding whether section 362(b)(4) applies “because it conflicts with the broad discretion Congress has expressly granted many administrative entities and because it is inconsistent with the limited authority Congress has vested in bankruptcy courts.”).

23. The Trustee’s alternative request lacks a sound procedural foundation. For example, a request for a stay of a matter excepted from the automatic stay may be a request for injunctive relief. *See Emerald Casino*, 2003 WL 23147946 at \* 10 (“Under [11 U.S.C. § 105(a)], a court has the power to enjoin proceedings that are excepted from the automatic stay.”) However, such injunctive relief can be requested only through an adversary proceeding. “Under [Federal Rule of Bankruptcy Procedure] 7001, an injunction requires an adversary proceeding.” *Matter of Zale Corp.*, 62 F.3d 746, 762 (5th Cir. 1995); *see also In re Innovative Comm’n Co., LLC*, 2008 WL 2354907, at \* 3 (D.V.I. June 3, 2008). Furthermore, “[i]n order to initiate an adversary proceeding, a party seeking equitable relief must file a complaint and serve each affected party.” *Zale Corp.*, 62 F.3d at 763. *See also In re B & F*

*Associates, Inc.*, 55 B.R. 19, 20 (Bankr. D. Colo. 1985).<sup>4</sup> The Chapter 7 Trustee has taken none of the necessary actions to put its request for injunctive relief before the Court.

**III. The Circumstances of This Case Suggest The Very Type of Regulatory Circumvention the 362(b)(4) Exception was Designed to Prevent.**

24. There is no legitimate basis for a stay in these proceedings because the Debtor is essentially seeking to circumvent the FCC process by filing the bankruptcy.

25. Chapter 7 proceedings are not intended to resolve a two-party dispute already pending in another forum. The bankruptcy court in *In re American Telecom* dismissed a Chapter 7 bankruptcy case where the matter presented no bankruptcy-law concerns and had been filed merely to take advantage of the automatic stay and to avoid having to post an appeal-bond. 304 B.R. 867 (Bankr. N.D.Ill. 2004). In that case, as in the instant one, the debtor's only creditors were the other party to the litigation and the law firm representing the debtor in the non-bankruptcy litigation. *Id.* at 868-869. *See, also, In re Ripley & Hill, P.A.*, 176 B.R. 596 (Bankr. M. D. Fla. 1994)(dismissing Chapter 7 case where there was only one creditor, who was currently engaged in litigation with the debtor in another court).

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<sup>4</sup> A request for injunctive relief by motion must be denied. *See Matter of Perkins*, 902 F.2d 1254, 1258 (7th Cir. 1990)(holding that a matter identified in Rule 7001 "commenced by motion rather than by complaint will be dismissed").

26. This bankruptcy case involves only the FCC, the Debtor, the law firms representing the Debtor before the FCC and this Court. It was filed on the eve of discovery deadlines in apparently the only other legal proceeding in which the Debtor is involved. This case appears to have been filed for the sole purpose of interfering with the ongoing administrative proceeding so that the defendants in that proceeding can sell the Licenses before the ALJ determines whether they are qualified licensees — a result contrary to fundamental FCC precedent and policy unless the FCC determines that a narrow exception is appropriate to protect the public interest. The FCC is the only tribunal authorized by Congress to make that judgment, and the ongoing administrative proceeding is the appropriate forum for addressing that issue. The ALJ, with appeal to the FCC, can control the proceeding and fashion relief, if any, consistent with Commission precedent weighing the public interest under the policies of the Communications Act. No legitimate bankruptcy purpose would be served by granting the Emergency Motion; accordingly, it should be denied.

**IV. The FCC's Exclusive Jurisdiction to Approve Transfers of its Licenses Reinforces the Importance of the 362(b)(4) Exception.**

27. Any sale of the Licenses will ultimately require FCC approval. *See* 47 U.S.C. §§ 301, 310(d); *see also TerreStar Networks, Inc.*, 457 B.R. 254, 262 (Bankr. S.D.N.Y. 2011) (“Congress has granted the FCC the authority to regulate the use of

the public airwaves in the United States, which includes the exclusive right to grant a license to use the airwaves and to approve any transfer of a license by a licensee.”).

28. Prior to approving the transfer of the Licenses, the FCC must first resolve any outstanding questions regarding the Debtor’s basic qualifications to hold the Licenses. *See Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964) (affirming the deferral of consideration of the assignment of a license until the FCC considered whether transferor had forfeited the license). One reason for this policy is to prevent an unqualified licensee from escaping the economic consequences of (and diminishing the deterrent to) its misconduct by selling the licenses and enjoying the proceeds before its right to hold the licenses can be determined.

29. Although the FCC has developed certain narrow exceptions to the policy of *Jefferson Radio*, the creation and application of such exceptions is peculiarly within the expertise and jurisdiction of the FCC in the exercise of its exclusive jurisdiction over spectrum licenses.<sup>5</sup> The appropriate forum to argue for any such exception, or for any stay of proceedings related to such an argument, is in the ongoing administrative proceeding. Any action by the Bankruptcy Court to interrupt or delay that proceeding would only prolong and increase the time and expenses that Debtors claim they are seeking to reduce.

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<sup>5</sup> *See, e.g., In re Application of Second Thursday Corp. (WWGM)*; Memorandum Opinion and Order, 22 FCC 2d 515 (FCC 1970), recon. granted in part, Memorandum Opinion and Order, 25 FCC 2d 112 (1970).

WHEREFORE, for the foregoing reasons, the United States respectfully requests that the Court enter an order (i) denying the Emergency Motion and (ii) granting such other relief as is just and necessary.

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United States Attorney

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**Certificate of Service**

I certify that I served a copy of the foregoing

**RESPONSE OF THE UNITED STATES OF AMERICA TO THE  
EMERGENCY MOTION TO ENFORCE THE AUTOMATIC STAY OR, IN  
THE ALTERNATIVE, TO ISSUE A STAY ORDER (DOC. 9)**

on the following by operation of the Court's electronic filing system or by regular, first class United States mail, postage fully pre-paid, on September 27, 2019 at the addresses below:

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\_\_\_\_/s/ *Adam E. Hanna*

## **EXHIBIT B**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

In Re:	)	
	)	
ENTERTAINMENT MEDIA TRUST,	)	Chapter 7 Proceeding
	)	
Debtor.	)	Case No. 19-31224
	)	
<hr style="width: 45%; margin-left: 0;"/>		
	)	
DONALD M. SAMSON, Trustee,	)	
	)	
Movant,	)	
	)	
v.	)	
	)	
THE FEDERAL COMMUNICATIONS	)	
COMMISSION,	)	
	)	
Respondent.	)	

**MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION TO ENFORCE  
THE AUTOMATIC STAY OR IN THE ALTERNATIVE ISSUE A STAY ORDER**

COMES NOW Donald M. Samson, in his capacity as Chapter 7 Trustee for Debtor Entertainment Media Trust, by and through the undersigned counsel, and respectfully submits the following Memorandum of Law in Support of Emergency Motion to Enforce the Automatic Stay or In the Alternative Issue a Stay Order (the “Memorandum of Law”).

**INTRODUCTION AND BACKGROUND FACTS**

On September 11, 2019 (the “Petition Date”), Debtor Entertainment Media Trust (“Debtor”) commenced a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code” or “Code”), in the United States Bankruptcy Court for the Southern District of Illinois (the “Court”). Donald M. Samson is the duly appointed Chapter 7 Trustee (the “Trustee”) in Debtor’s bankruptcy case.

On the Petition Date, Debtor filed its Schedule B and in answer to Question No. 62 listed the following assets: FCC Broadcast [*sic.*] Licenses– KFTK (Facility ID #72815); KQQZ (Facility ID #5281); KZQZ (Facility ID #72391); and WQQW (Facility ID #90598), with a collective value of \$2,000,000. [Doc. 1 p. 8 ¶ 62]. Thereafter, on September 23, 2019, Debtor filed an Amended Schedule B and in answer to Question No. 62 disclosed the following assets: FCC Broadcast Licenses– KFTK (Facility ID #72815); KQQZ (Facility ID #5281); KZQZ (Facility ID #72391); WQQW (Facility ID #90598); and CP Application for W275CS, with a collective value of \$1,600,000 (the FCC Licenses set forth in the Amended Schedule B are collectively referred to as the “Broadcast Licenses”). [Doc. 10 p. 3 ¶ 62]. The Broadcast Licenses are held by Debtor, which operates four local radio stations under authorization granted by the FCC.

Trustee’s investigation of Debtor’s assets and financial affairs revealed that in 2012 Debtor applied to the Federal Communications Commission (the “FCC”) to renew the Broadcast Licenses. As of the Petition Date and as of September 27, 2019, the Broadcast Licenses are valid and have not been terminated by operation of law nor by the order of any court or administrative agency. In Debtor’s Statement of Financial Affairs [Doc. 1 p. 17 ¶ 7.1], Debtor disclosed that a matter was recently initiated by the Enforcement Bureau of the FCC and is currently pending before the FCC under MB No. 19-956, seeking to effectuate the liquidation of the Broadcast Licenses despite and in flagrant disregard for the existence of the automatic stay.

It is Trustee’s position that the Broadcast Licenses constitute property of the bankruptcy estate and that cancellation of the Broadcast Licenses would deprive the estate of its most valuable assets. In addition, Trustee believes that there exists a market for the Broadcast Licenses, and to date Trustee has been contacted by three prospective buyers expressing an interest in their transfer, purchase or assignment.

On September 20, 2019, Trustee filed his Emergency Motion to Enforce the Automatic Stay or In the Alternative Issue a Stay Order (the “Motion”). [Doc. 9]. By this Motion, Trustee requested that the Court enter an order enforcing the automatic stay as to the pending FCC proceedings involving the Debtor, or in the alternative, should the Court determine that the automatic stay does not apply, the Motion seeks the entry of an order staying the FCC proceedings for a period of time deemed reasonable by the Court to allow for an orderly sale of the Broadcast Licenses by Trustee. It should be noted that the Enforcement Bureau of the FCC has continued to prosecute its liquidation proceedings before the FCC.

On September 23, 2019, this Court entered its Order [Doc. 12] setting the Motion and any response by the FCC for hearing on October 1, 2019 at 9:00 a.m., and further ordered that the Trustee and FCC shall submit legal authority with respect to the issues raised in the Motion on or before September 27, 2019. This Memorandum of Law is offered in support of the Motion and in response to the Court’s Order of September 23, 2019.

### **LEGAL ARGUMENT**

The Bankruptcy Code broadly defines property of the bankruptcy estate as “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). Accordingly, given that the Debtor possessed an interest in the Broadcast Licenses on the Petition Date, they are clearly “property of the estate.” In fact, as the bankruptcy schedules reflect, the Broadcast Licenses constitute the most valuable assets of the bankruptcy estate. As such, the Broadcast Licenses are subject to the automatic stay, this Court’s exclusive jurisdiction, and may not be cancelled or revoked absent an order of this Court. And as set forth in further detail herein below, the actual cancellation or revocation of the Broadcast Licenses does not fall within the exception to the automatic stay found in Section 362(b)(4) of the Code.

The Court is, therefore, fully within its jurisdiction and power to grant the relief requested by the Trustee, thus preserving value for the Debtor's estate and creditors. In the alternative, to the extent that the Court finds that the automatic stay is not applicable, the Court should enter an order staying the pending FCC proceedings for a reasonable period of time to allow for an orderly sale of the Broadcast Licenses by the Trustee.<sup>1</sup>

**A. The Broadcast Licenses Constitute Property of The Bankruptcy Estate.**

As previously stated, the Broadcast Licenses are clearly property of the estate under the broad definition found in Section 541 of the Bankruptcy Code. The scope of Section 541 "includes property of all descriptions, tangible and intangible, as well as causes of action." *Ramsey v. Dowden (In re Central Arkansas Broadcasting Co.)*, 68 F.3d 213, 214 (8th Cir. 1995) (quoting *Whetzal v. Alderson*, 32 F.3d 1302, 1303 (8<sup>th</sup> Cir. 1994)). As stated in *U.S. v. Whiting Pools, Inc.*, 462 U.S. 198 (1983), Congress intended Section 541 to be construed broadly to encompass all conceivable interests of the debtor in property, wherever located and by whomever held:

[A] reorganization effort would have small chance of success, however, if property essential to running the business were excluded from the estate. Thus, to facilitate the rehabilitation of the debtor's business, all the debtor's property must be included in the reorganization estate . . . . Both the congressional goal of encouraging reorganizations and Congress' choice of methods to protect secured creditors suggest that Congress intended a broad range of property to be included in the estate.

*Id.* at 203-204 (citations omitted). Although an FCC license may not convey a property right in the traditional sense, most courts addressing the issue have squarely held that FCC licenses are property of the estate within the purview of Section 541. *See, e.g., In re Central Arkansas*

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<sup>1</sup> While the instant relief sought has been brought by motion, Trustee reserves all rights to file an adversary proceeding and seek a temporary restraining order followed by a preliminary injunction to prevent the revocation of the Broadcast Licenses to the extent the Court deems such action to be more appropriate under the circumstances.

*Broadcasting Co.*, 68 F.3d at 214 (interest of debtor in FCC license was considered property of the estate); *see also In re Atlantic Bus. & Comm. Dev. Corp.*, 994 F.2d 1069 (3d Cir. 1993); *In re Tak Comm., Inc.*, 985 F.2d 916 (7th Cir. 1993); *In re PBR Comm. Systems, Inc.* 172 B.R. 132, 134 (Bankr.S.D. Fla. 1994); *In re Ridgley Comm., Inc.* 139 B.R. 374, 376 (Bankr.D. Md. 1992); *Matter of Fugazy Express, Inc.*, 114 B.R. 865, 870-71 (Bankr.S.D.N.Y. 1990), *aff'd by*, 124 B.R. 421 (S.D. N.Y. 1991); and *In re Smith*, 94 B.R. 220 (Bankr.M.D. Ga. 1988).

While Trustee will acknowledge that Debtor may not “own” the Broadcast Licenses, they are still of considerable value to the estate as such licenses can be transferred to third parties subject to FCC approval. As the court recognized in *In re Tak Communications*, “the holder of a broadcasting license may sell its hard assets and transfer its license to a third party by filing an application with the FCC to transfer the license and obtaining FCC approval. This permits a licensee to obtain market value for the station as a going concern (physical assets and license).” *In re Tak Comm., Inc.*, 985 F.2d at 572.

The Eighth Circuit considered the issue of a bankruptcy estate’s property interest in such a license at length in *In re Central Arkansas Broadcasting Co.* The court determined that even though the transfer of a radio broadcast license was ultimately subject to the approval of the FCC, and despite the fact that it was intangible in nature, the license nonetheless qualified as property of the bankruptcy estate. *In re Central Arkansas Broadcasting Co.*, 68 F.3d at 214. Likewise, given that Debtor possessed an interest in the Broadcast Licenses on the Petition Date, even though ultimately subject to approval of the FCC with respect to their transfer, Trustee submits that the Broadcast Licenses are property of the bankruptcy estate of significant value.

**B. As Property of the Estate, the Broadcast Licenses are Subject to This Court’s Jurisdiction and the Automatic Stay.**

The automatic stay under Section 362(a) of the Bankruptcy Code is one of the

“fundamental protections afforded to debtors by the bankruptcy laws.” *In re Caesars Entertainment Operating Co., Inc.*, 540 B.R. 637, 642 (N.D. Ill. 2015). The stay provides a “statutory injunction against efforts outside of bankruptcy to collect debts from a debtor who is under the protection of the bankruptcy court.” *Id.*

At least one court dealing with the applicability of the automatic stay to FCC licenses has stated that:

[The automatic stay] also ensures that contractual and State or Federal law, rights and remedies such as acceleration, forfeiture, imposition of judgment liens and foreclosure will be precluded, held in abeyance or in some cases “cured” and thereby reversed, in order that the ultimate objective of reorganization in Chapter 11 or Chapter 13 for the benefit of all creditors will not be thwarted by the action of a single creditor.

*In re NextWave Personal Comms. Inc.*, 244 B.R. 253, 266 (Bankr.S.D. N.Y. 2000) (citation omitted).

The automatic stay is to be broadly construed. *See, e.g.*, 11 U.S.C. § 362(a)(3) (staying “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate”) (emphasis added); *see also Delpit v. Commissioner of Internal Revenue Service*, 18 F.3d 768, 771 (9th Cir. 1994) (“Section 362 ‘is exceedingly broad in scope’ and ‘should apply to almost any type of formal or informal action against the debtor or the property of the estate’”) (quoting COLLIER ON BANKRUPTCY). Congressional intent reflects the same, as stated by another court:

The automatic stay is a crucial provision of bankruptcy law. It prevents disparate actions against debtors and protects creditors in a manner consistent with the bankruptcy goal of equal treatment. . . . This equitable treatment requires that all creditors, both public and private, be subject to the automatic stay. . . . Recognizing this, [C]ongress used broad language which prohibits “all entities,” 11 U.S.C. § 362(a), including all “governmental unit[s],” 11 U.S.C. § 101(14), from moving against a debtor’s property during the pendency of the bankruptcy proceedings.

*Lincoln Savings Bank v. Suffolk County Treasurer (Parr Meadows Racing Assoc., Inc.)*, 880 F.2d



1540, 1545 (2nd Cir. 1989) (citing H.R.Rep. No. 595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 342, reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 5963, 6299) (internal citations omitted).

The automatic stay applies to both governmental units and the property interests created by the same. Indeed, “all creditors, both public and private, [are] subject to the automatic stay.” *Id.* This mandate has been extended to the FCC. *See Matter of Fugazy Express, Inc.*, 114 B.R. at 872–73 (“at the time of the filing the License was property of the Debtor’s estate and had remained so. The FCC was subject to the automatic stay and precluded from rendering any administrative cancellation of the License once the Debtor filed a petition in bankruptcy . . . . Thus, the License remained property of the estate, even though administratively it became subject to cancellation”).

Administrative licensing cancellations or revocations are also subject to the automatic stay. *See In re North*, 128 B.R. 592, 599-600 (Bankr.D. Vt. 1991) (suspension of debtor-chiropractor’s license for non-payment of taxes pursuant to pre-petition order, which suspension was to go into effect post-petition, was stayed by operation of section 362 because it was an attempt to recover pre-petition monetary obligation); *In re Nejberger*, 120 B.R. 21, 24 (E.D.Pa. 1990) (enforcement of regulatory board’s pre- petition order after post-petition expiration of grace period barred by automatic stay), *aff’d*, 934 F.2d 1300 (3d Cir. 1990).

License revocation proceedings are specifically encompassed by Section 362(a)(1). As the court in *In re North* found: “11 U.S.C. § 362(a)(1)’s legislative history states in part: . . . ‘[t]he scope of this paragraph is broad. All proceedings are stayed, including . . . license revocation, administrative and judicial proceedings.’” *In re North*, 128 B.R. at 597, n. 13 (citing H.R. Rep. No. 595, 95th Cong., 1st Sess., 340 (1977); S. Rep. No. 989, 95th Cong., 2nd Sess. 50 (1978)); *see also In re Nat’l Cattle Cong., Inc.*, 179 B.R. 588, 597–98 (Bankr.N.D. Iowa

1995) (requiring agency to seek relief from automatic stay before it revoked racing license because “revocation constitutes maximum control . . . as the act destroys any value this property has to the estate”).

Moreover, even if the Broadcast Licenses are subject to “automatic termination,” such “automatic” action was stayed upon the filing of the Debtor’s voluntary chapter 7 petition. *See Matter of Fugazy Express, Inc.*, 114 B.R. at 873 (“[t]he Defendant’s present contention that the license was forfeited upon Debtor’s cessation of business, and thus somehow metaphysically evaporated from the estate, is without merit”); *In re Hoffman*, 65 B.R. 985, 988 (D. R.I. 1986) (“governmental units cannot, merely by invoking the nominal exercise of their police or regulatory powers, circumvent the prophylaxis afforded . . . by federal bankruptcy law”); *In re Burgess*, 234 B.R. 793, 799 (D.Nev. 1999) (action to revoke license violates Section 362). In sum, the automatic stay clearly prevents the government, in this case the FCC, from revoking or otherwise impairing Debtor’s interest in the Broadcast Licenses without relief from this Court to take such action.

**C. Section 362(b)(4) is Inapplicable In this Case.**

Section 362(a) of the Code casts a wide net, implementing a stay applicable to “all entities,” which would include the FCC. Congress recognized that under a select set of circumstances, however, the automatic stay might frustrate certain types of legitimate government action necessary to protect the public. Accordingly, under section 362(b)(4) of the Bankruptcy Code, a governmental unit is provided a limited, narrow exception to the operation of the automatic stay in order to allow it to exercise its “police or regulatory power.” Congressional intent suggests that the exception be confined as follows:

[Section 362(b)(4)] is intended to be given a *narrow construction* in order to permit governmental units to pursue actions to *protect the public health and safety* and not to apply to actions by a governmental unit to protect a pecuniary interest in property

of the debtor or property of the estate.

124 Cong. Rec. H11089, *reprinted in* 1978 U.S.C.C.A.N. 6436, 6444-45 (emphasis added); 11 U.S.C. § 362(b)(4); *see also Matter of Fugazy Express*, 114 B.R. at 873 (the FCC was stayed from canceling a broadcast license without first obtaining relief from automatic stay since public health or safety not implicated); and *In re University Medical Center*, 973 F.2d 1065, 1075, n. 11 (3d Cir. 1992) (Section 362(b)(4) is not “intended to permit government agencies to enforce contractual rights against a debtor without first seeking relief from the automatic stay”).

The limited “police or regulatory” exception is inapplicable to the FCC’s proposed action in the instant case because the exception applies only “where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such law.” S.Rep. No. 95-989, 95th Cong., 2d Sess. 52 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5838; H.R.Rep. No. 95-595, 95th Cong., 2d Sess. 343 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6299. Section 362(b)(4) exempts from the automatic stay the “enforcement of laws affecting health, welfare, morals, and safety, *but not regulatory laws that directly conflict with the control of the res or property by the bankruptcy court.*” *Universal Life Church, Inc. v. United States (In re Universal Life Church)*, 128 F.3d 1294, 1297 (9th Cir. 1997) (emphasis added; citation omitted); *In re William Tell II, Inc.*, 38 B.R. 327, 329 (N.D. Ill. 1983) (quoting *State of Missouri v. United States Bankruptcy Court*, 647 F.2d 768, 776 (8th Cir. 1981), *cert. denied*, 454 U.S. 1162 (1982)).

Fundamental to the Section 362(b)(4) exception is the underlying policy of “prevent[ing] the bankruptcy court from becoming a haven for wrongdoers.” *Halo Wireless, Inc. v. Alenco Comm., Inc. (In the Matter of Halo Wireless, Inc.)*, 684 F.3d 581, 597 (5th Cir. 2012). The Section 362(b)(4) exception “helps to ensure that debtors do not use a declaration of bankruptcy

to avoid the consequences of their actions that threaten the public interest.” *Id.* at 588.

Here, the Trustee is seeking to maximize the value of the estate for the benefit of its creditors, not threaten the public interest by his actions. More importantly, a termination or liquidation of the Broadcast Licenses by the FCC would not be pursuant to its police or regulatory powers, as those powers are construed under Section 362(b)(4). “[N]ot every agency action against a debtor can be characterized as one that enforces ‘police or regulatory power.’” *Eddleman v. U.S. Dept. of Labor*, 923 F.2d 782, 791 (10th Cir. 1991). To determine whether a government action meets the “police or regulatory” exception to the bankruptcy code’s automatic stay, courts will typically employ one of two tests: a “pecuniary purpose test” and a “public policy test.” *In re Shannon*, 590 B.R. 467, 492–493 (Bankr.N.D. Ill. 2018); *Halo Wireless*, 684 F.3d at 588; and *NextWave*, 244 B.R. at 274.

Under the pecuniary purpose test, “section 362(b)(4) will not except the automatic stay where government action relates primarily to the protection of the government’s pecuniary interest in the debtor’s property pursued solely to advance a pecuniary interest of the governmental unit.” *NextWave*, 244 B.R. at 274 (internal quotation marks omitted). The public policy test requires reviewing courts to “distinguish between proceedings that adjudicate private rights and those that effectuate public policy. Those proceedings that effectuate public policy are excepted from the stay.” *In re Shannon*, 590 B.R. at 492–493.

The FCC has a direct financial interest in the Broadcast Licenses being cancelled; the FCC will most likely take them back into its spectrum inventory and resell them to private entities via auction. *See generally* 47 U.S.C. § 309(j)(1) (noting that the FCC shall resolve mutually exclusive applications for spectrum licenses via competitive bidding). Under the Federal Communications Act, the principal method by which the FCC “disposes” of spectrum

licenses is via an auction sale process. 47 U.S.C. § 309(j). If, however, the FCC decides to reassign the Broadcast Licenses by a method *other than* an auction, then the FCC must explain how and why it is in the public interest to do so. *See* 47 U.S.C. § 309(j)(6)(E) (allowing the FCC, where consistent with the public interest, to use a variety of methods to avoid the instances of mutual exclusivity that require the assignment of spectrum licenses via auction). Thus, the FCC’s motive for cancellation (or refusing to grant a license extension or waiver to the Trustee) is unquestionably pecuniary: by taking the Licenses back into its spectrum inventory, the FCC can and— and most likely will— auction them off to the highest bidder, thus increasing/enhancing the public treasury to the detriment of the creditors of the bankruptcy estate.

Were the FCC truly interested in the “public interest” and seeing services provided to the public as soon as possible, the FCC would grant the extension or limited waiver of the deadline requested by the Trustee. Otherwise, the Broadcast Licenses will lie fallow in the FCC’s spectrum inventory, likely for several years, until an auction occurs. Thereafter, it is unknown how long it would take to institute service under the re-auctioned Broadcast Licenses.

**D. Injunctive Relief Is Appropriate to Preserve Value of the Bankruptcy Estate.**

Pursuant to section 105(a) of the Bankruptcy Code, this Court has broad power to issue an injunction to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” In the Seventh Circuit, to obtain an injunction under Section 105(a), it is not required that the traditional elements for injunctive relief be satisfied. *See In re Caesars Entertainment Operating Co., Inc.*, 561 B.R. 441 (Bankr.N.D. Ill. 2016). So long as the litigation at issue would “defeat or impair the bankruptcy court’s jurisdiction over the case before it, the debtor need show only that (1) there is a likelihood of success on the

merits . . . and (2) the injunction would serve the public interest.” *Id.* at 450 (internal citations omitted). Courts have found that “likelihood of success” in the bankruptcy context means the likelihood of a successful reorganization. *Id.* Under these circumstances, courts have concluded that there is no need to show irreparable harm or an inadequate remedy at law. *Id.* (citing *Fisher v. Apostolou*, 155 F.3d 876, 882 (7th Cir. 1998)).

In the instant case, Trustee submits that maximizing the value of the property of the estate for creditors is in keeping with this principle, as sales can also be illustrative of a “successful” bankruptcy case for creditors. Trustee’s Motion states that Trustee has already had received inquiries by potential purchasers expressing interest in the Broadcast Licenses, so this supports the likelihood of success. As demonstrated by the Schedule B and Amended Schedule B filed by the Debtor, the Broadcast Licenses appear to have a value of at least \$1,600,000.00.

These facts also are intertwined with the next requirement, that the injunction would serve the public interest. Courts have found that, in the bankruptcy context, the relevant public interest is the promotion of successful reorganizations, “since reorganizations preserve value for creditors and ultimately the public.” *In re Caesars Entertainment*, 561 B.R. at 453. Again, maximizing the value of the Broadcast Licenses through an orderly sale process promotes the public interest by maximizing the return to creditors.

Further, to the extent necessary, the other general criteria for injunctive relief are present in the instant case. Trustee has demonstrated *an irreparable injury* in that the Broadcast Licenses are the most valuable assets of this estate and their removal would eliminate such assets for administration. Additionally, the *balance of equities* tilts in the Trustee’s favor as well, since the Trustee is only seeking to preserve estate property and not infringe upon the FCC’s adjudicatory functions or regulatory authority. The FCC’s assertions to the contrary, Trustee is not asking

this Court to weigh in on the potential assignment or award of the Broadcast Licenses to a third party. Trustee merely seeks enforcement of the automatic stay to allow time for an eventual transfer to occur, so that the bankruptcy estate may benefit from the same. The requested injunction will only temporarily delay the FCC's actions in the event that a sale cannot be consummated in the time granted by this Court.

Finally, it strikes Trustee as unusual that the initial application to renew the Broadcast Licenses was filed by Debtor in 2012, and yet the FCC waited until the commencement of the instant bankruptcy case to take action in a forum outside of the Bankruptcy Court to liquidate such licenses. The fact that the FCC is a government entity does not thereby relieve it from its obligation to secure relief from the automatic stay prior to taking action against an asset of the estate. The actions of the FCC as outlined herein above are in flagrant disregard of the jurisdiction of this Bankruptcy Court.

### **CONCLUSION**

For all of the foregoing reasons, this Court should (i) enter an order enforcing the automatic stay as to the pending FCC proceedings involving the Debtor, or in the alternative, should the Court determine that the automatic stay does not apply, (ii) enter an order staying the FCC proceedings for a period of time deemed reasonable by the Court to allow for an orderly sale of the Broadcast Licenses, and (iii) grant such other and further relief as may be just under the circumstances.

WHEREFORE, Donald M. Samson, in his capacity as Chapter 7 Trustee for Entertainment Media Trust, prays that this Court enter its Order enforcing the automatic stay as to the pending FCC proceedings involving the Debtor, or in the alternative should the Court determine that the automatic stay does not apply, enter its Order staying the FCC proceedings for a period of time

deemed reasonable by the Court to allow for an orderly sale of the Broadcast Licenses, and grant such other and further relief as may be just under the circumstances.

Respectfully submitted,

By: /s/ Robert E. Eggmann  
One of their Attorneys

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ATTORNEYS FOR DONALD M. SAMSON, TRUSTEE



**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 27<sup>th</sup> day of September, 2019, a copy of the foregoing document, Memorandum of Law in Support of Emergency Motion to Enforce the Automatic Stay or in the Alternative Issue a Stay Order, was served upon the following either electronically or by first class mail, postage prepaid:

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/s/ Robert E. Eggmann

## **EXHIBIT C**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DONALD SAMSON, TRUSTEE FOR ENTERTAINMENT  
MEDIA TRUST

vs

CASE NO 19-31224

CHAPTER: 7

UNITED STATES OF AMERICA

DATE: October 1, 2019

PLACE: East St Louis

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**PRESENT:** Honorable Laura K. Grandy, US Bankruptcy Judge

**COUNSEL FOR PLAINTIFF:** Donald Samson  
Robert Eggmann

Appears

Appears

**COUNSEL FOR DEFENDANT:** Adam Hanna

Appears

**PROCEEDINGS:** Emergency Motion to Enforce the Automatic Stay or in the Alternative Issue a Stay  
Order with Objection

**MINUTES OF COURT:**

Case is called for hearing on the Emergency Motion to Enforce the Automatic Stay or in the Alternative Issue a Stay filed by trustee Donald Samson with Objection filed by interested party United States of America. J.D. Graham appears as attorney for debtor. Davina Sashkin appears telephonically as special counsel to the trustee. Pursuant to statements made in open court, the Motion and Objection are continued generally. The parties are granted 7 days to file their responsive briefs. Failure to file their briefs within the time allotted may result in this Court taking any other action deemed appropriate, which may include granting or denying the relief sought.

Donna Beyersdorfer  
Clerk of Bankruptcy Court

By: /s/Tim Foley  
Deputy Clerk

NOTE: THESE WRITTEN MINUTES ARE A CLERICAL ENTRY OF THE COURT PROCEEDINGS FOR RECORD KEEPING PURPOSES ONLY. THEY ARE NOT AND SHOULD NOT BE CONSTRUED AS THE ORDER OF THE COURT, WHICH WAS ORALLY DELIVERED. CONSULT THE TRANSCRIPT OF PROCEEDINGS FOR THE ACTUAL ORDER.