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October 1, 2019

VIA ECFS

Judge Jane Hinckley Halprin
Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Entertainment Media Trust
Status Report
MB Docket No. 19-156**

Dear Judge Halprin:

Donald M. Samson ("Trustee"), court-appointed trustee of Entertainment Media Trust, Dennis J. Watkins, Trustee ("EMT"), by counsel, files this status report regarding the captioned matter.

While Trustee takes exception to some of the editorial characterizations of arguments and tactics, because Ms. Kane of the Enforcement Bureau ("Bureau"), in her status report filed earlier today, ably recited the chronology of filings and orders of the Presiding Judge in this proceeding as well as the relevant filings and orders in the United States Bankruptcy Court for the Southern District of Illinois, Trustee will not do so here.

Trustee emphasizes that his obligation under federal bankruptcy law is to maximize satisfaction of debts owed by EMT to its creditors. Trustee is motivated to resolve the Chapter 7 bankruptcy as quickly as possible, understanding that it is therefore in Trustee's interest to reach expeditious resolution in this proceeding before the FCC.

In the hearing today in the United States Bankruptcy Court for the Southern District of Illinois, the judge commented that it seemed to her that both parties – the FCC and the Trustee – had the same goal and that settlement would be a far more efficient means of resolving the issues than continued litigation at the FCC. Trustee could not agree more.

Prior to filing for bankruptcy protection, EMT approached the Bureau to enter settlement negotiations. The first discussion between undersigned counsel and Ms. Kane and Mr. Gee for the Bureau was amicable. In it, counsel advised the Bureau of EMT's likely intention to seek an exception to the *Jefferson Radio* doctrine under *Second Thursday*, and the Bureau indicated no objection to this approach. However, in its second discussion with counsel, the Bureau struck a

decidedly more hostile posture, refusing the notion of settlement at all and claiming that the issues of fundamental character involved in this proceeding cannot be settled. The Bureau made this claim despite the fact that the Media Bureau routinely settles proceedings involving similar issues of fundamental character. Moreover, counsel made clear to the Bureau in these discussions that EMT intended to seek bankruptcy protection to put itself in a position to settle this matter as soon as possible under the Commission's *Second Thursday* policy. Trustee therefore takes exception to the Bureau's mischaracterization that EMT filed bankruptcy to *subvert* the Commission's processes.

Trustee shares the bankruptcy court's and EMT's pre-bankruptcy opinion that a settlement can both fully address any concerns the Commission has and resolve this matter without unduly wasting the resources of all parties involved. Trustee stands ready to engage in settlement negotiations as soon as the Bureau is prepared to enter such discussions. To date, the Bureau remains unwilling to discuss settlement options.

Trustee believes settlement offers the best path forward because it accomplishes all the parties' goals more quickly and at less cost than any other option. Trustee understands that the Bureau has not prejudged the position it will take upon completion of discovery in this proceeding. However, given the nature of the issues raised by the HDO, the Bureau may well seek forfeiture of the stations' licenses if it believes it has proved all the allegation in the HDO at the conclusion of this proceeding. By offering to settle via the Commission's *Second Thursday* policy, EMT would give up its licenses to an unrelated third party who must satisfy the Commission's character qualifications. Moreover, in this particular situation, a *Second Thursday* resolution better serves the public interest because the Media Bureau is no longer re-auctioning AM licenses. In other words, if this proceeding results in the cancellation or forfeiture of the licenses, these four station licenses will be lost for good. It cannot be in the public interest to silence four radio broadcast stations forever.

Settlement will serve Mr. Kern's interests, too. Kern's apparent goal is to get Bob Romanik off the air. While the content of Romanik's radio show is beyond the scope of this proceeding and Kern's desire to stifle Romanik's speech using the Commission's rules raises serious First Amendment questions, the issues raised in this proceeding present Kern with an opportunity to achieve his goal. Trustee is, therefore, confused by Kern's adamant opposition to the proposal to seek a *Second Thursday* settlement. In recent filings, Kern has suggested that EMT's bankruptcy filing, and thus the requested settlement, is a gambit intended to keep Romanik on the air as long as possible. To the contrary, Chapter 7 bankruptcy demands swift liquidation of the assets to minimize additional debts to the estate, likely pushing Romanik off the air faster.¹ Should this proceeding reach a hearing, however, the matter will not be resolved until late July or August 2020, at the earliest. Thus, Trustee would expect Kern to welcome the opportunity to complete this proceeding long before the middle of next year and with significantly less cost (including cost to

¹ Trustee would note that, while the Commission may bar Mr. Romanik from having an ownership or other attributable interest in a broadcast license, the Commission does not have the authority to bar Romanik from hosting a radio program should another licensee hire Romanik as an employee.

Kern for discovery involving him) than if this matter requires the full range of discovery permitted by the rules.

On September 23, 2019, Trustee filed his Reply to Oppositions filed by the Bureau and Kern regarding Trustee's motion to stay this proceeding. Trustee's response to various discovery requests filed by Kern and the Bureau was temporarily relieved pursuant to the Order entered on September 18, 2019 (FCC 19M-10). Upon resolution of the Motion for Stay filed on September 11, 2019, or a decision by the bankruptcy court of the concomitant Emergency Motion for Stay, Trustee will evaluate, if appropriate, whether to serve discovery on Kern or the Bureau and will abide by any newly established deadlines for replying to outstanding discovery requests.

Should you have any questions regarding this matter, please feel free to contact the undersigned.

RESPECTFULLY SUBMITTED,

_____/s/_____
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