

**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 RESPONSE TO  
CHAPTER 7 TRUSTEE'S OCTOBER 1, 2019 PLEADING**

1. In *Order*, FCC 19M-05, the Presiding Judge directed the parties to file status reports on the first Tuesday of every month, commencing August 6, 2019.<sup>1</sup> On October 1, 2019, the Chapter 7 Trustee, who, as the Enforcement Bureau (Bureau) has previously noted, is not a party to this proceeding (and still has not moved to intervene to become one as required by the Commission's rules), filed, without seeking leave to do so, a document he styled as a "status report."<sup>2</sup> This filing, however, is not a status report. Rather, in substance, it amounts to additional legal argument in support of the motion to stay this proceeding filed by Entertainment Media Trust, Dennis Watkins, Trustee (EMT). Aside from the fact that this is an unauthorized pleading that violates the Presiding Judge's *Order*, FCC 19M-10,<sup>3</sup> it is riddled with mischaracterizations of the record and misstatements of law. The Bureau sees no option but to clarify the record. Accordingly, the Chief, Enforcement Bureau, through her attorneys, respectfully submits this response.

**The Chapter 7 Trustee and the Commission Do Not Share the Same Goal**

2. This filing erroneously suggests that the Chapter 7 Trustee and the Commission share the same "goal" – *i.e.*, that the licenses at issue end up in the hands of an unrelated third-party.<sup>4</sup> This is not accurate. As the Bureau noted in earlier pleadings, the central purpose of this hearing is not to effectuate a pre-determined result that EMT lose the licenses. In fact, nothing

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<sup>1</sup> See *Order*, FCC 19M-05 (ALJ, rel. July 11, 2019), at 2. Entertainment Media Trust, Dennis Watkins, Trustee (EMT) – the named party in this proceeding – did not file a status report on October 1, 2019, as required.

<sup>2</sup> See Letter from Fletcher, Heald & Hildreth filed on behalf of Donald M. Samson (Trustee) (Oct. 1, 2019) (Trustee Filing).

<sup>3</sup> See *Order*, FCC 19M-10 (ALJ, rel. Sept. 18, 2019), at 3, para. 3 ("Further pleadings regarding the EMT Motion for Stay will not be permitted.").

<sup>4</sup> See Trustee Filing at 1.

precludes the Commission from concluding, in light of the evidence adduced in the instant proceeding, that EMT is qualified to hold Commission licenses and that the captioned applications should be *granted*. Thus, the only “goal” of the Commission in the instant proceeding is to exercise its fundamental and exclusive regulatory authority to determine “which entities are entitled to [its] licenses under rules and conditions it has promulgated.”<sup>5</sup>

3. This is of particular importance now that EMT has filed for bankruptcy because only the Commission can determine whether the licenses at issue constitute assets in the bankruptcy estate.<sup>6</sup> This is not the typical bankruptcy case in which a Commission licensee’s rights to transfer a license are not in question. Here, the Hearing Designation Order and Notice of Opportunity for Hearing (HDO) raises substantial and material questions as to whether EMT has the basic qualifications to be a licensee – and thus, whether it has any rights to hold or to assign the licenses at issue.<sup>7</sup> Pursuant to the Commission’s long-standing *Jefferson Radio* policy, these questions must be resolved before any of the licenses can be transferred (*i.e.*, liquidated) because if EMT is not qualified to be a Commission licensee, then by operation of the

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<sup>5</sup> See, e.g., *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 553 (1990), *overruled on other grounds*, *Advanced Constructors, Inc. v. Pena*, 5151 U.S. 200 (1995) (the Commission has “exclusive authority” to determine whether to grant license applications) (internal citations omitted); *In re NextWave Personal Communications, Inc.*, 200 F.3d 43, 54 (2nd Cir. 1999) (concluding that when the Commission makes decisions as to which entities are entitled to its licenses it exercises the full extent of its regulatory capacity); see also *In re FiberTower Network Svcs.*, 482 B.R. 169, 180 (N.D. Texas Oct. 11, 2012) (recognizing that the Commission’s decision regarding “whether or not the Licenses are or should be terminated for non-compliance with the Substantial Service Standard ‘lies within the heart’ of [the Commission’s] police and regulatory power”) (citations omitted).

<sup>6</sup> See *supra* n.5. See also *In re Application of Mid-State Broadcasting Co. (WHLW)*, 61 FCC 2d 196, 200 (1976) (recognizing that a “[a] broadcast license is not a vested property right and licensees undertaking such an investment in time and money must assume, as do all investors, the risk of an unprofitable venture, whether through normal business losses or loss of the license”).

<sup>7</sup> See *Entertainment Media Trust, Dennis J. Watkins, Trustee*, MB Docket 19-156, Hearing Designation Order and Notice of Opportunity for Hearing (MB June 5, 2019) (HDO).

(continued....)

Commission's rules, the pending renewal applications for the licenses at issue are denied, the licenses are cancelled, and EMT has nothing to transfer.<sup>8</sup>

**Questions Designated for Hearing Concerning the Character and Other Basic Qualifications of a Licensee Cannot Be Settled**

4. The Chapter 7 Trustee's filing appears to suggest that "the issues of fundamental character involved in this proceeding" can be settled.<sup>9</sup> It does not rely on any legal authority for this assertion. Instead, it simply states, again without any legal support, that "the Media Bureau routinely settles proceedings involving similar issues of fundamental character."<sup>10</sup> What may occur within the context of the prosecution of a pending application before the Media Bureau (or before any other Commission licensing Bureau), however, is immaterial and irrelevant to this proceeding. Pursuant to the Commission's rules and precedent, parties to an adjudicatory hearing proceeding cannot negotiate a settlement when the issues "involve a party's basic statutory qualifications to hold a license."<sup>11</sup> In other words, once a matter has been designated for hearing on questions of the applicant's qualifications to hold a license, the parties cannot settle that matter.

5. Here, the HDO plainly designated substantial and material questions of fact as to whether EMT has the basic qualifications to be a licensee. In particular, the HDO raises

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<sup>8</sup> See *Jefferson Radio Company v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964).

<sup>9</sup> Trustee Filing at 2.

<sup>10</sup> *Id.*

<sup>11</sup> 47 CFR 1.93(b). See also *In re Applications of La Star Cellular Telephone Company*, 11 FCC Rcd 1059, 1060-61, para. 13 (1996) (refusing to adopt portions of a consent decree in a hearing case to the extent it sought to settle allegations of misrepresentation and lack of candor because "[u]nder 47 C.F.R. § 1.93, a consent decree in a hearing case may not be approved with respect to matters which involve a party's basic statutory qualifications to hold a license") (citation omitted); *In the Matter of Harvest Broadcasting WWNH(AM)*, 31 FCC Rcd 11840, 11843, para. 4 (MB 2016) (recognizing that section 1.93(b) of the Commission rules "provides that, in a case that has been designated for hearing, a consent order may not be negotiated with respect to matters involving a party's basic statutory qualifications"); *In Re Application of Talton Broadcasting Company*, 67 F.C.C.2d 1594 (1978) (concluding that parties cannot settle hearings on renewal applications where there are questions of basic qualifications that require a hearing pursuant to section 309 of the Communications Act of 1934, as amended (Act)).

(continued....)

questions as to whether there has been a *de facto* transfer of control of the licensed stations; and whether Robert S. Romanik is a real-party-in-interest to the captioned applications related to those stations and to the application for a permit to construct FM translator Station W275CS.<sup>12</sup> Such questions, by their very nature, raise ““a basic qualifying issue in which the element of deception is necessarily subsumed.””<sup>13</sup> The HDO also raises questions as to whether EMT engaged in misrepresentation and/or lack of candor in applications and communications with the Commission or otherwise violated section 1.17 of the Commission’s rules.<sup>14</sup> As the Presiding Judge recently recognized, “[i]nherent in that line of inquiry is whether [the licensee], . . . possesses the requisite character qualifications to be a Commission licensee.”<sup>15</sup> As a result, settlement is not an option in this case.

### **The *Second Thursday* Doctrine Is Not A Mechanism for Settlement**

6. As discussed above, where, as here, there are questions as to the basic qualifications and character of a licensee, the Commission’s *Jefferson Radio* policy prohibits the transfer or assignment of any license before those questions are resolved.<sup>16</sup> This holds true regardless of whether EMT has filed for bankruptcy.<sup>17</sup> There is only one exception to this policy – the *Second Thursday* doctrine.

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<sup>12</sup> See HDO at 23, paras. 65(b)-(c)

<sup>13</sup> See *Applications of Tribune Media Company (Transferor) and Sinclair Broadcasting Group, Inc. (Transferee)*, MD Docket No. 17-179, Hearing Designation Order, 33 FCC Rcd 6830, 6831 n.5 (2018) (citations omitted) (*Tribune Media*).

<sup>14</sup> See HDO at 23, para. 65(d).

<sup>15</sup> *Tribune Media, Order*, FCC 19M-01 (ALJ, rel. Mar. 5, 2019), at 3.

<sup>16</sup> See *Jefferson Radio Company v. FCC*, 340 F.2d 781 (D.C. Cir. 1964).

<sup>17</sup> See *In re Application of Capital City Communications, Inc.*, 33 FCC 2d 703, 707, para. 14-15 (1972) (recognizing that that the Commission did not abandon its “basic policy that consent to an assignment or a transfer of a license is contingent upon a finding that the licensee is qualified to receive a renewal” even after adjudication in bankruptcy) (*Capital City*).

(continued....)

7. This doctrine is not, as the Chapter 7 Trustee's filing repeatedly mischaracterizes it, a mechanism for settling the instant hearing proceeding. It does not settle any of the questions, such as EMT's qualifications to be a Commission licensee, that are raised in the HDO. Rather, if granted, *Second Thursday* relief merely allows the licenses to be transferred without first resolving those questions. Moreover, EMT's mere offer "to settle [this matter] via the Commission's *Second Thursday* policy"<sup>18</sup> does not guarantee resolution of this case. The Commission will grant a petition for relief under the *Second Thursday* doctrine only when it is satisfied that (i) the licensee in question is in bankruptcy; (ii) the proposed transaction will benefit innocent creditors; and (iii) "the individuals charged with misconduct will have no part in the proposed operations and will either derive no benefits from favorable action on the applications or only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors."<sup>19</sup> The Commission may also take into consideration whether the bankruptcy would have been filed but for the issuance of the HDO.<sup>20</sup> Neither EMT nor the Chapter 7 Trustee have provided sufficient information to demonstrate that it could meet the Commission's standards for granting *Second Thursday* relief.

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<sup>18</sup> Trustee Filing at 2.

<sup>19</sup> *Second Thursday Corp.*, 22 FCC 2d 515, 516, para. 5 (1970).

<sup>20</sup> See, e.g., *Capital City*, 33 FCC 2d at 709, para. 17 (recognizing that "in adopting the Second Thursday doctrine we did not have in mind a situation where the bankruptcy proceedings were initiated for the primary purpose of preventing the loss which would result to a creditor from termination of the license"). See also *id.* at 708-09, para. 17.

Respectfully submitted,

Rosemary C. Harold  
Chief, Enforcement Bureau



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October 3, 2019

**CERTIFICATE OF SERVICE**

Pamela S. Kane certifies that she has, on this 3rd day of October, 2019, sent copies of the foregoing "ENFORCEMENT BUREAU'S RESPONSE TO CHAPTER 7 TRUSTEE'S OCTOBER 1, 2019 PLEADING" via email to:


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