

**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 OPPOSITION TO EMT'S MULTIPLE MOTIONS FOR EXTENSION OF TIME**

1. Consistent with the Presiding Judge's clear instructions to proceed with the discovery process expeditiously, the Enforcement Bureau (Bureau) served its first sets of discovery requests on Entertainment Media Trust, Dennis Watkins, Trustee (EMT) on August 20, 2019.<sup>1</sup> Pursuant to section 1.325 of the Commission's rules, EMT's responses and objections to the Bureau's first set of requests for documents were due on August 30, 2019.<sup>2</sup> Instead of meeting this August 30th deadline, EMT filed a motion for extension of time on that very day seeking "a minimum of two additional weeks to respond."<sup>3</sup> Pursuant to section 1.323 of the Commission's rules, EMT's responses and objections to the Bureau's first set of interrogatories were due on September 3, 2019.<sup>4</sup> Instead of meeting this September 3rd deadline, EMT filed a second motion for extension of time on the day its responses were due, again seeking "a minimum of two additional weeks to respond."<sup>5</sup> The Chief, Enforcement Bureau (Bureau), by her attorneys, opposes both of EMT's motions.

### **Background**

2. EMT's counsel contacted the Bureau on August 12, 2019 to raise the possibility of resolving the above-captioned matter without proceeding to an evidentiary hearing before the Presiding Judge. When these discussions first began, EMT asked the Bureau whether it would agree to stay discovery while those discussions proceeded. The Bureau refused to agree to any such stay as unwarranted and premature. At that point, EMT had provided responses to the

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<sup>1</sup> See Enforcement Bureau's First Request for Production of Documents to Entertainment Media Trust, Dennis J. Watkins, Trustee (Aug. 20, 2019); Enforcement Bureau's First Set of Interrogatories to Entertainment Media Trust, Dennis J. Watkins, Trustee (Aug. 20, 2019).

<sup>2</sup> See 47 CFR § 1.325(a)(2).

<sup>3</sup> EMT's Motion for Extension of Time (Aug. 30, 2019) at 2, para. 2. (Motion).

<sup>4</sup> See 47 CFR § 1.323(b).

<sup>5</sup> EMT's Motion for Extension of Time (Sept. 3, 2019) at 2, para. 2. (Second Motion).

Bureau's requests for admission, but those responses had failed to substantially narrow the questions of fact in this case. More discovery was plainly needed. Accordingly, a week later – on August 20, 2019 – the Bureau served its first set of document requests and its first set of interrogatories on EMT.<sup>6</sup>

3. EMT had ample opportunity to raise any concerns it may have had with responding to the Bureau's discovery requests at any point prior to the deadlines proscribed by the Commission's rules. Indeed, EMT concedes in its motions that discussions continued with the Bureau in this time-frame, with the most recent conversation occurring on August 28, 2019. Nevertheless, EMT stayed silent about the Bureau's discovery requests, choosing instead to wait until the date its responses and objections were due to seek two-week extensions from the Presiding Judge. As discussed in detail below, EMT has failed to present any legitimate basis for these eleventh-hour extension requests.

### **Opposition**

4. In support of both motions, EMT first suggests that it needs additional time to respond to the Bureau's first set of discovery requests so that it may pursue "options" for more quickly resolving this matter.<sup>7</sup> EMT does not identify what "options" it may pursue or whether (and when) it even intends to follow through with such options. Moreover, EMT fails to explain why it cannot provide the discovery responses to which the Bureau and other parties are entitled at the same time it investigates possible options for resolving the above-captioned matter.

5. Second, EMT relies on the fact that it scheduled a meeting for September 3, 2019 "with potential counsel regarding a possible bankruptcy filing" as a reason why additional time is

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<sup>6</sup> See *supra* n.1.

<sup>7</sup> See Motion at 2, para. 3(a); Second Motion at 2, para. 3(a).

warranted.<sup>8</sup> Yet, the fact that EMT is scheduled to meet with “**potential**” counsel regarding a “**possible**” bankruptcy filing and the mere speculation that EMT may file for bankruptcy at some undefined point in the future provides no reason to delay this proceeding further. EMT may ultimately decide not to engage this particular counsel or, more importantly, not to file for bankruptcy protection. Only one thing is clear at this point – EMT has not filed for bankruptcy.

6. In addition, EMT appears to suggest that it should have additional time to respond to the Bureau’s discovery requests because “a bankruptcy filing by EMT” would automatically result in a stay of this proceeding.<sup>9</sup> This is incorrect. If, at some point in the future, EMT were to file for bankruptcy protection, it would have to demonstrate to the Presiding Judge (over the possible objections of the Bureau and Petitioner Mark Kern) why a stay was warranted at that time. Notably, in the last matter before the Commission in which a licensee in hearing filed for bankruptcy, the case (and discovery) continued for many months before a stay was granted, and only after the licensee provided sufficient information on which the then-Presiding Judge could assess the licensee’s request.<sup>10</sup>

7. Third, EMT asserts that Paul Lauber, who purportedly prepared the 2012 Restated Trust Instrument and the EMT #2 documents, was out of the country until Monday, September 2, 2019.<sup>11</sup> Although this would appear to be a reasonable basis upon which to request an extension for the limited number of document requests and interrogatories directed to documents in Mr. Lauber’s possession and/or information known by Mr. Lauber, EMT fails to explain why Mr. Lauber’s absence precludes it from timely providing documents or information in response to the

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<sup>8</sup> See Motion at 2, para. 3(b); Second Motion at 2, para. 3(b).

<sup>9</sup> See *supra* n.8.

<sup>10</sup> See the matter of *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011). See also *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (1958) (setting forth four-factor test traditionally applied in assessing a request for a stay); *Brunson Commc’ns, Inc. v. RCN Telecom Servs., Inc.*, 15 FCC Rcd 12883, 12883-84 (CSB 2000) (same).

<sup>11</sup> See Motion at 2-3, para. 3(c); Second Motion at 2-3, para. 3(c).

remainder of the Bureau's document requests and interrogatories. Had EMT approached the Bureau **before** it filed its motions for extension, the parties might have been able to agree to a limited extension for the small number of requests impacted by Mr. Lauber's schedule. At this point, however, it would appear that Mr. Lauber is back in the country and can assist EMT in responding to those requests for which his knowledge and documents are purportedly required without further delay.

8. In support of its motion for an extension to respond to the Bureau's first set of interrogatories, EMT also suggests that the Bureau engaged in an abuse of process by propounding a large number of interrogatories and then requiring that they be answered within fourteen (14) days.<sup>12</sup> EMT appears to suggest that the Bureau purposefully propounded this number of interrogatories with only a short time frame to respond for the sole purpose of causing "EMT to produce incomplete responses."<sup>13</sup> EMT's accusations against the Bureau are not only unfounded but are inappropriate and unprofessional.

9. The only apparent "support" EMT relies on for its baseless assertion against the Bureau is the numerical limits on interrogatories and the lengthier time for response set forth in the Federal Rules of Civil Procedure. Whether the Federal Rules of Civil Procedure provide for discovery limits or different response periods is immaterial. Hearings before a Commission administrative law judge are not governed by the Federal Rules of Civil Procedure. Rather, EMT must recognize that it is subject to the Commission's own rules governing hearings and that section 1.323 of those rules does not contain any limits on the number of interrogatories that any party may serve on any other party.<sup>14</sup> Moreover, despite EMT's absurd suggestion that the Bureau dictated the timing of when EMT's responses to these interrogatories were due, that

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<sup>12</sup> See Second Motion at 3, para. 3(d).

<sup>13</sup> *Id.*

<sup>14</sup> See 47 CFR § 1.323.

deadline is compelled by the Commission's rules.<sup>15</sup> It is not up to the whim of the Bureau or any other party.

10. Moreover, despite the fact that the Bureau and EMT had been in continuous discussions before EMT's discovery responses were due, EMT never approached the Bureau with concerns about meeting the deadlines set forth in the Commission's rules. Instead, EMT waited until the very day each of its responses to the Bureau's properly served discovery requests were due to seek an extension – in essence granting itself the very extensions it now seeks. Such gamesmanship should not be tolerated.

11. Indeed, the Bureau is concerned that this is not the first time that EMT has asked for additional time to respond to the Bureau's legitimate discovery requests. Rather, there appears to be an emerging pattern of EMT seeking extensions of time to meet its obligations in this case. EMT first asked for a five-day extension to respond to the Bureau's Requests for Admissions and now it has asked for two-week extensions to respond to both the Bureau's document requests and its interrogatories. Despite EMT's assertion that the relief it requests "does not prejudice any party," delays of this kind necessarily impede the Bureau's and other parties' ability to serve additional discovery requests on EMT and non-parties, and to take timely depositions that rely on such responses. Furthermore, these continuous delays are disruptive to the procedural schedule that was discussed at length at the pre-hearing conference and memorialized in the Presiding Judge's July 11, 2019 *Order*<sup>16</sup> and are plainly at odds with the Presiding Judge's expectation that the parties proceed expeditiously in this case.

12. For these reasons, the Bureau respectfully requests that the Presiding Judge deny both of EMT's motions for extension of time.

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<sup>15</sup> See 47 CFR § 1.323(b).

<sup>16</sup> See *Order*, FCC 19M-05 (ALJ, rel. Jul. 11, 2019).

Respectfully submitted,

Rosemary C. Harold  
Chief, Enforcement Bureau

/s/ Pamela S. Kane

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Pamela S. Kane  
Special Counsel  
Investigations and Hearings Division  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street, SW, Room 4-C330  
Washington, D.C. 20554  
(202) 418-1420

Jeffrey Gee  
Division Chief  
Investigations and Hearings Division  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street, SW, Room 4-C330  
Washington, D.C. 20554  
(202) 418-1420

September 4, 2019

**CERTIFICATE OF SERVICE**

Pamela S. Kane certifies that she has, on this 4th day of September, 2019, sent copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO EMT'S MULTIPLE MOTIONS FOR EXTENSION OF TIME" via email to:

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

John B. Adams  
Office of the Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Anthony Lepore, Esq.  
Radiotvlaw Associates, LLC  
4101 Albermarle St., NW #324  
Washington, D.C. 20016-2151  
[anthony@radiotvlaw.net](mailto:anthony@radiotvlaw.net)  
(Co-counsel for Entertainment Media Trust)

Davina S. Sashkin, Esq.  
Fletcher, Heald & Hildreth, LLC  
1300 North 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, VA 22209  
[sashkin@fhhlaw.com](mailto:sashkin@fhhlaw.com)  
(Co-counsel for Entertainment Media Trust)

Howard M. Liberman  
Robert G. Kirk  
Wilkinson Barker Knauer, LLP  
1800 M Street, NW Suite 800N  
Washington, D.C. 20036  
[HLiberman@wbklaw.com](mailto:HLiberman@wbklaw.com)  
[RKirk@wbklaw.com](mailto:RKirk@wbklaw.com)  
(Counsel for Mark A. Kern)

/s/ Pamela S. Kane

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Pamela S. Kane