

**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 MOTION TO COMPEL COMPLETE RESPONSES TO ITS REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Pursuant to section 1.325(a)(2) of the Commission's rules, the Bureau is required to file a motion to compel more complete responses to its document requests within five business days of receiving the response.<sup>1</sup> Since Entertainment Media Trust, Dennis Watkins, Trustee (EMT) filed its response to the Bureau's document requests on September 9, 2019, the Bureau is required to file a motion to compel no later than today, September 16, 2019. The Bureau acknowledges that the Presiding Judge recently issued an *Order* temporarily relieving EMT of the obligation to respond to the Bureau's pending interrogatories, the document requests served by Petitioner Mark Kern, and "any similar requests filed in the interim" until such time as the Presiding Judge rules on EMT's request for a stay of the proceedings.<sup>2</sup> Since the Bureau's documents requests were filed on August 20, 2019, however, it is not clear whether the language of the Presiding Judge's recent *Order* applies to the Bureau's requests for documents. In order to preserve the Bureau's positions on EMT's incomplete document production, the Chief, Enforcement Bureau (Bureau), by her attorneys, hereby files this motion to compel.

### **Background**

2. As the Presiding Judge is aware, the Enforcement Bureau (Bureau) served its first sets of discovery requests on EMT on August 20, 2019.<sup>3</sup> EMT's responses and objections to the Bureau's first set of requests for documents were due on August 30, 2019.<sup>4</sup> Instead of meeting this deadline, EMT filed a motion for extension of time on that very day seeking until September

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<sup>1</sup> See 47 CFR § 1.325(a)(2).

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

<sup>3</sup> See Enforcement Bureau's First Request for Production of Documents to Entertainment Media Trust, Dennis J. Watkins, Trustee (Aug. 20, 2019) (Bureau's First Requests); Enforcement Bureau's First Set of Interrogatories to Entertainment Media Trust, Dennis J. Watkins, Trustee (Aug. 20, 2019).

<sup>4</sup> See 47 CFR § 1.325(a)(2).

(continued....)

13, 2019 to provide its responses.<sup>5</sup> By *Order*, FCC 19M-08, the Presiding Judge granted EMT additional time to respond to the Bureau's document requests by extending the due date from August 30, 2019 until September 9, 2019.<sup>6</sup> On that day, however, EMT provided incomplete responses to the Bureau's requests.

3. In view of the Presiding Judge's instruction that the parties make a good faith effort to resolve discovery disputes before bringing any issue to her attention,<sup>7</sup> counsel for the Bureau 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 as they had not yet spoken with the Bankruptcy Trustee, were not in a position to address the discovery disputes. Later that evening, EMT filed a motion to stay the proceedings or, in the alternative, an indefinite extension of time.<sup>8</sup> 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 Bankruptcy Trustee as to what they could do and when.<sup>9</sup>

#### **EMT's Responses to the Bureau's Requests for Documents Are Incomplete**

4. As detailed below, EMT's September 9, 2019 responses to the Bureau's first set of document requests are deficient in numerous respects. First, in response to Request Nos. 22, 23, 24, 27, 29, 30, 32 and 65, EMT responded that "[n]o documents responsive to [this request]

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<sup>5</sup> EMT's Motion for Extension of Time (Aug. 30, 2019).

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

<sup>7</sup> See *Order*, FCC 19M-05 (ALJ, rel. July 11, 2019), at 2. See also Certification of Good-Faith Effort to Resolve Conflict, attached hereto as Exhibit A.

<sup>8</sup> See Motion for Stay of Proceedings or in the Alternative Extension of Time (Sept. 11, 2019).

<sup>9</sup> Email from Davina Sashkin to Pamela Kane, dated September 12, 2019, attached hereto as Exhibit B.

(continued....)

are available at this time. EMT pledges to produce such documents as soon as they may be obtained.”<sup>10</sup> EMT did not provide any further information as to why the documents requested were not available “at this time” or when EMT would be in a position to produce them. The Bureau questions why it is that EMT did not have the requested documents available, especially after the Presiding Judge granted it an additional 10 days beyond the original time allowed by the Commission’s rules. It would not appear from the scope of these requests that any of these documents would have been in the possession of Paul Lauber, who was apparently out of the country until September 2, 2019. The Bureau requests, therefore, that the Presiding Judge compel EMT to produce the following requested documents or confirm that no such documents exist:

- documents identifying all payments made from Insane to EMT in accordance with Schedule A of the Local Programming and Marketing Agreement made as of July 1, 2018 between EMT and Insane (the 2018 LPMA) (Request No. 22);
- documents identifying all costs incurred by EMT in association with the operation of the Stations (Request No. 23);
- documents identifying all income made by EMT and/or EMT #2 (Request No. 24);
- documents identifying all payments made by EMT and/or EMT #2 to Insane (Request No. 27);
- documents demonstrating who pays and has paid each of the Operating Costs, as that term is used in Schedule A to the 2018 LPMA (Request No. 29);
- documents demonstrating who pays and has paid “for any repairs or capital improvements necessary for the Programmed Stations to continue licenses operations” as that phrase is used in Schedule A to the 2018 LPMA (Request No. 30);
- documents sufficient to show all monthly lease installment invoices from EMT to Entercom and the payments made thereto (Request No. 32); and
- documents sufficient to substantiate EMT’s assertion in its response to the Media Bureau’s May 17, 2019 Letter of Inquiry (EMT LOI) that EMT’s current beneficiary,

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<sup>10</sup> Responses of Entertainment Media Trust, Dennis J. Watkins, Trustee to Request for Production of Documents (Sept. 9, 2019) (EMT’s Responses) at Responses to Request Nos. 22, 23, 24, 27, 29, 30, 32 and 65.

Katrina Sanders, loaned EMT funds for Station operating expenses, for a total of approximately \$25,000.00 (Request No. 65.)

5. Second, in response to Requests No. 9, 11, and 12, EMT provided documents which state they contained enclosures or attachments. EMT did not include those enclosures or attachments as part of its production.<sup>11</sup> The Bureau specifically instructed EMT to “produce entire documents, including attachments, enclosures, cover letter, memoranda, and appendices.”<sup>12</sup> EMT did not provide any objection to this instruction. The Bureau requests, therefore, that the Presiding Judge compel EMT to review its production and produce entire documents, including attachments, enclosures, etc.

6. Third, the Bureau requested that EMT provide “written communications between Watkins and “other individuals (including Romanik) regarding whether to purchase a translator for Station WQQW.”<sup>13</sup> EMT’s response does not indicate whether it has any such documents in its possession, custody and control. The Bureau therefore requests that the Presiding Judge compel EMT to supplement its response to this Request.

#### **EMT’s Privilege Log Fails to Identify Sufficient Detail**

7. In response to Request Nos. 4, 5 and 21, EMT indicates that it has responsive documents that it did not produce because they are covered by the attorney work product or attorney-client privilege.<sup>14</sup> The privilege log that EMT filed, however, fails to provide sufficient detail to establish the basis for why these documents were withheld. For example, in response to

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<sup>11</sup> See, e.g., each of the letters from Paul Lauber that EMT produced as Response to Request 9; the numerous cover letters from Anthony Lepore to the Commission that EMT produced as part of its Response to Request 11; and the July 8, 2011 letter from Anthony Lepore to Diane Law-Hsu that EMT produced as part of its Response to Request 12.

<sup>12</sup> See Bureau’s First Requests at Instruction c.

<sup>13</sup> See Bureau’s First Requests at Request No. 71.

<sup>14</sup> See EMT’s Responses to Request Nos. 4, 5, and 21.

(continued....)

the Bureau's Request No. 4, EMT withheld a document it described as a "Draft Assignment of Beneficial Interest, prepared by Anthony Lepore on June 16, 2016."<sup>15</sup> EMT did not indicate who this document was sent to, the type of privilege asserted, or the basis therefor. The same holds true for the documents identified on the privilege log under "Request #5."<sup>16</sup> Simply because a document may have been prepared by an attorney does not mean it necessarily falls within a protected privilege.

8. The documents identified on the privilege log under "Request #21" similarly fail to indicate the type of privilege asserted, or the basis therefor. In addition, EMT indicates that the responsive documents consist of a series of email correspondence between Mr. Lepore and Donald Lynch, Terry Fox and Ray Brammer. EMT has not identified who Mr. Lynch is, but it has previously identified Mr. Fox and Mr. Brammer as employees of Insane Broadcasting Company (Insane).<sup>17</sup> Since EMT has previously admitted that Mr. Lepore does not and has not represented Insane,<sup>18</sup> the Bureau does not see how any of these communications fall within either the attorney work product or attorney-client privilege.

9. Accordingly, the Bureau requests that the Presiding Judge compel EMT to supplement its privilege log and identify for each of the documents listed under Request #4 and #5 who the document was sent to, the type of privilege asserted, and the basis for the asserted privilege. In addition, as the documents listed under Request #21 appear to have been sent to third-parties, the Bureau requests that Presiding Judge compel EMT to produce those documents or explain the basis of their privilege.

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<sup>15</sup> See EMT's Privilege Log (Sept. 10, 2019).

<sup>16</sup> See *id.*

<sup>17</sup> See EMT's Responses to May 17, 2018 FCC Letter of Inquiry (LOI), Letter from Davina Sashkin, Fletcher, Health & Hildreth, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated July 2, 2018, at Answer 11, which EMT produced as part of its Response to Request 13.

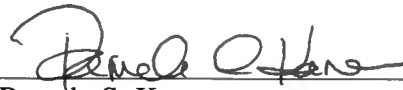
<sup>18</sup> See EMT's Response to Request for Admissions (July 31, 2019) at Response to Request Nos. 84 and 85.

### **Conclusion**

10. For the foregoing reasons, the Bureau respectfully requests that the Presiding Judge grant the relief the Bureau has requested.

Respectfully submitted,

Rosemary C. Harold  
Chief, Enforcement Bureau



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September 16, 2019

## **EXHIBIT A**



## **CERTIFICATION OF GOOD-FAITH EFFORT TO RESOLVE CONFLICT**

1. In *Order*, FCC 19M-05, the Presiding Judge ordered the parties to include a certification that the parties made a good faith effort to resolve disputes encountered during the discovery phase of this proceeding before seeking relief from the Presiding Judge.<sup>18</sup>

2. In accordance with this direction, the Bureau hereby certifies that its counsel contacted EMT's counsel to meet and confer concerning the numerous deficiencies in EMT's September 9, 2019 response to the Bureau's first set of document requests and in EMT's privilege log that accompanied this response. During this conference call on September 11, 2019, EMT's counsel informed Bureau counsel that EMT had filed for bankruptcy protection, and as they had not yet spoken with the Bankruptcy Trustee, were not in a position to address the discovery disputes. EMT's counsel 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 Bankruptcy Trustee as to what they could do and when. EMT's counsel did not provide any timeline as to when they would know what they could do and when. It did not appear that additional conversations with EMT's counsel before the deadline proscribed by the Commission's rules to file a motion to compel would prove fruitful.

3. The Bureau hereby certifies that it made a good-faith effort to resolve the discovery disputes it had with EMT's September 9, 2019 response to the Bureau's first set of document requests and EMT's privilege log that accompanied this response.

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<sup>18</sup> See *Order*, FCC 19M-05 (ALJ, rel. July 11, 2019), at 2.

Respectfully submitted,

Rosemary C. Harold  
Chief, Enforcement Bureau



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September 16, 2019

## **EXHIBIT B**

## Pamela Kane

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**From:** Davina S. Sashkin <sashkin@fhhlaw.com>  
**Sent:** Thursday, September 12, 2019 1:30 PM  
**To:** Pamela Kane  
**Cc:** Jeffrey Gee; Kirk, Robert; Liberman, Howard; Anthony Lepore; Seth Williams  
**Subject:** Re: EMT Update - Trustee

At this time, we are unable to proceed with further responses to the document production requests. We expect to confer with the Chapter 7 Trustee today it tomorrow about next steps, and will have a better sense then if what we can do and when.

Davina

Sent from my iPhone

On Sep 12, 2019, at 11:35 AM, Pamela Kane <[Pamela.Kane@fcc.gov](mailto:Pamela.Kane@fcc.gov)> wrote:

Davina: Please confirm whether, in light of EMT's motion for a stay of the case and/or an extension of time to respond to pending discovery obligations, EMT has any intent to supplement its responses to the Bureau's document requests. If not, we do not believe it makes sense to hold another conference call to meet and confer on the outstanding deficiencies.

Thank you,

Pam

**From:** Davina S. Sashkin <[sashkin@fhhlaw.com](mailto:sashkin@fhhlaw.com)>  
**Sent:** Wednesday, September 11, 2019 5:29 PM  
**To:** Pamela Kane <[Pamela.Kane@fcc.gov](mailto:Pamela.Kane@fcc.gov)>; Jeffrey Gee <[Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov)>; Kirk, Robert <[RKirk@wbklaw.com](mailto:RKirk@wbklaw.com)>  
**Cc:** Liberman, Howard <[HLiberman@wbklaw.com](mailto:HLiberman@wbklaw.com)>; Anthony Lepore <[anthony@radiotvlaw.net](mailto:anthony@radiotvlaw.net)>; Seth Williams <[williams@fhhlaw.com](mailto:williams@fhhlaw.com)>  
**Subject:** EMT Update - Trustee  
**Importance:** High

Pam, Jeff, and Bob:

I just got off the phone with Donald Samson, the Chapter 7 Trustee. He had literally just learned of his designation by the court less than an hour before my call and had not yet reviewed the case. I have briefed him on our situation and advised that time is of the essence. He requested and I have now sent him the orders from the Judge Halprin in this proceeding, which Mr. Samson indicates he will review and then schedule a follow-up call to discuss next steps either tomorrow morning or Friday morning.

Please let me know if you have questions.

Davina

**Davina S. Sashkin, Esq.**  
Member

Fletcher, Heald & Hildreth, PLC

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Licensed in Virginia

**CERTIFICATE OF SERVICE**

Pamela S. Kane certifies that she has, on this 16th day of September, 2019, sent copies of the foregoing "ENFORCEMENT BUREAU'S MOTION TO COMPEL COMPLETE RESPONSES TO ITS REQUESTS FOR PRODUCTION OF DOCUMENTS" 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  
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Federal Communications Commission  
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Pamela S. Kane