

**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 REPLY IN FURTHER SUPPORT  
OF REQUEST FOR A PREHEARING CONFERENCE**

1. On October 29, 2019, the Enforcement Bureau (Bureau) and Petitioner Mark Kern (Kern) jointly requested a prehearing conference to address the status of this proceeding and to discuss the viability of the case schedule previously established by the Presiding Judge.<sup>1</sup> The Chapter 7 Trustee (who has not yet been granted party status) opposed the Bureau's and Kern's joint request, arguing that the Presiding Judge should "refrain from scheduling any prehearing conference" until the Bankruptcy Court rules on EMT's motion to voluntarily dismiss its bankruptcy petition and the Chapter 7 Trustee's motion to enforce an automatic stay of this proceeding.<sup>2</sup> For the following reasons, the Chief, Enforcement Bureau, through her attorneys, respectfully renews its request that the Presiding Judge schedule a prehearing conference at the earliest possible time.

2. The Chapter 7 Trustee's filing represents nothing more than the latest in a string of baseless requests designed to delay this proceeding indefinitely. Nearly two months ago, with numerous discovery requests outstanding, EMT filed a motion to stay this proceeding, or in the alternative, an "indefinite extension of time for all pending discovery requests."<sup>3</sup> The Presiding Judge concluded that neither EMT nor the Chapter 7 Trustee (who was given leave to file a reply in support of EMT's motion) "provided sufficient justification to support a long-term stay of this hearing proceeding."<sup>4</sup> As a result, she ruled that after the Commission's Media Bureau granted the then-pending application for involuntary assignment of the licenses at issue from EMT to the Chapter 7 Trustee, and the Chapter 7 Trustee filed for leave to intervene as a party in this

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<sup>1</sup> See Joint Motion For a Prehearing Conference (Oct. 29, 2019) (Joint Motion).

<sup>2</sup> Opposition to Joint Motion for a Prehearing Conference (Nov. 4, 2019) at 2, para. 2 (Opposition).

<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-11 (ALJ, rel. Oct. 4, 2019), at 8, para. 15.

proceeding, she would issue an additional Order to “address discovery issues and related matters as well as the continued viability of the timeline previously established for completion of this proceeding.”<sup>5</sup>

3. Nevertheless, in his petition for leave to intervene as a party, the Chapter 7 Trustee sought to delay this proceeding by requesting “an abeyance of discovery” until he identifies and selects a successful bidder for EMT’s assets, contracts with that bidder with the approval of the Bankruptcy Court, and files an application with the Media Bureau for consent to the assignment of the licenses at issue pursuant to the *Second Thursday* exception to the *Jefferson Radio* policy.<sup>6</sup> The Bureau opposed this request as baseless.<sup>7</sup>

4. Now, in his most recent filing, the Chapter 7 Trustee again seeks to put this proceeding on hold without providing any justification. Particularly egregious is his suggestion that the Presiding Judge should wait to even schedule a prehearing conference until the Bankruptcy Court rules on his emergency motion to enforce the automatic stay of our proceeding.<sup>8</sup> However, the Presiding Judge had already been made aware of the Chapter 7 Trustee’s emergency motion pending in the Bankruptcy Court at the time she denied EMT’s motion to stay and concluded that this case should proceed.<sup>9</sup> The pendency of the Chapter 7 Trustee’s motion in the bankruptcy proceeding, therefore, provides no basis to suspend the instant case.<sup>10</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> See Petition for Leave to Intervene (Oct. 15, 2019) at 2-3, paras. 4 and 5.

<sup>7</sup> See Enforcement Bureau’s Response to Chapter 7 Trustee’s Petition For Leave to Intervene (Oct. 18, 2019), at 3-5, paras. 6-8.

<sup>8</sup> See Opposition at 2, para. 2.

<sup>9</sup> Indeed, the Chapter 7 Trustee not only mentioned this motion in his Reply to the Bureau’s and Kern’s oppositions to EMT’s Motion to Stay, but provide the Presiding Judge with a copy at Exhibit A. See Reply to Oppositions (Sept. 29, 2019) and Exhibit A, thereto.

<sup>10</sup> Notably, the docket in the bankruptcy proceeding indicates that the current deadline to review this motion is not until November 22, 2019.

5. The Chapter 7 Trustee's additional argument that this case should not proceed until the Bankruptcy Court rules on EMT's voluntary motion to dismiss its bankruptcy petition is similarly meritless. Regardless of the Bankruptcy Court's ruling on EMT's motion to dismiss, the result in this proceeding is the same – this case moves forward. If the Bankruptcy Court grants EMT's motion, and EMT is no longer in bankruptcy, there will be no basis for it to avoid this proceeding by pursuing a *Second Thursday* exception to the *Jefferson Radio* policy.<sup>11</sup> If the Bankruptcy Court denies EMT's motion – and the bankruptcy case continues – then nothing has changed from when the Presiding Judge first ruled in October that this case should proceed. Thus, as above, the fact that there is a pending motion before the Bankruptcy Court offers no basis to delay this case.

### Conclusion

6. In *Order*, FCC 19M-11, the Presiding Judge concluded that merely the existence of EMT's bankruptcy case (and the pendency of motions therein) does not warrant suspension of the instant hearing proceeding. Rather, in order to suspend this proceeding, EMT (or the Chapter 7 Trustee) must meet the four-factor *Virginia Petroleum Jobbers* test for imposing a stay.<sup>12</sup> Despite this clear instruction from the Presiding Judge, the Chapter 7 Trustee has used every opportunity – including the submission of EMT's October case status report – to advocate for an indefinite delay of this proceeding based solely on the fact that there is a concurrent bankruptcy case. This behavior borders on abuse of process and should not be allowed to continue.

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<sup>11</sup> EMT's filing of its motion to dismiss the bankruptcy case – and its apparent decision to move forward with the Commission's hearing proceeding – puts it at odds with the interests of the Chapter 7 Trustee. Not only has the Chapter 7 Trustee opposed EMT's motion to dismiss in the Bankruptcy Court, *see In re Entertainment Media Trust*, BK 19-31224, Amended Objection to Debtor's Motion to Dismiss (Doc. No. 50) (Oct. 18, 2019), but, as is evident in his filings before the Presiding Judge, he seeks to delay moving forward with the hearing proceeding. EMT's counsel of record in the hearing proceeding appears to also represent the Chapter 7 Trustee in this same proceeding. Even under Rule 1.7 of the District of Columbia Rules of Professional Responsibility, arguably the most liberal of the nation's mandatory attorney conflict of interest rules, this dual representation appears to raise a conflict that should be addressed.

<sup>12</sup> *See, Order*, FCC 19M-11, at 5-8, paras. 10-14.

7. For the reasons articulated above, and those raised in its Joint Motion, the Bureau respectfully requests that the Presiding Judge schedule a prehearing conference at the earliest possible time to move this case forward.

Respectfully submitted,

Rosemary C. Harold  
Chief, Enforcement Bureau



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November 5, 2019

**CERTIFICATE OF SERVICE**

Pamela S. Kane certifies that she has on this 5th day of November, 2019, sent copies of the foregoing "ENFORCEMENT BUREAU'S REPLY IN FURTHER SUPPORT OF REQUEST FOR A PREHEARING CONFERENCE" via email to:

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