

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	MB Docket No. 19-156
)	
ENTERTAINMENT MEDIA TRUST,)	
DENNIS J. WATKINS, TRUSTEE)	
)	
Applications to Renew License:)	
)	
KFTK(AM) (formerly WQQX(AM)),	)	Facility ID No. 72815
East St. Louis, Illinois	)	File No. BR-20120709ACP
)	
WQQW(AM), Highland, Illinois	)	Facility ID No. 90598
	)	File No. BR-20120709ACO
)	
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)),	)	Facility ID No. 72815
East St. 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-20160919ADK
)	
Application for Permit to Construct New Station:)	
)	
W275CS, Highland, Illinois	)	Facility ID No. 200438
	)	File Nos. BNPFT-20170726AEF
	)	BNPFT-20180314AAO

ORDER

Issued: January 13, 2020

Released: January 13, 2020

1. On September 11, 2019, the licensee of the radio stations that are the subject of this hearing proceeding, Entertainment Media Trust, Dennis J. Watkins, Trustee (EMT), sought Chapter 7 Bankruptcy protection in the Southern District of Illinois.¹ The Bankruptcy Court appointed Donald M. Samson as Trustee in Bankruptcy. On October 11, 2019, an involuntary transfer of control of the licenses to Trustee Samson was granted by the Media Bureau, which is the customary procedure when a licensee files for bankruptcy.² On October 16, 2019, EMT moved to voluntarily dismiss the bankruptcy action.³ To facilitate the resumption of discovery in this proceeding, the Presiding Judge ordered a prehearing teleconference for November 14, 2019,⁴ and on November 13, Trustee Samson indicated to the bankruptcy court that he had reached an agreement with EMT that would terminate the bankruptcy proceeding.⁵

2. During the November 14 teleconference, the Presiding Judge joined the Trustee in Bankruptcy as a party to this proceeding because he held legal control of the subject stations, and ordered the resumption of discovery under revised deadlines.⁶ On November 19, the attorneys who had been representing EMT and the Trustee in Bankruptcy notified the Presiding Judge of their withdrawal from representation of EMT. As a result, the Presiding Judge ordered a prehearing conference for December 5 to be held at FCC Headquarters and ordered that Dennis J. Watkins, as Trustee of EMT, be present.⁷ Neither Mr. Watkins nor any representative of EMT attended the conference or otherwise acknowledged the order of the Presiding Judge. Discovery deadlines were again extended and the Presiding Judge ordered that an appearance be entered by an EMT representative on or before December 20, 2019.⁸ The Enforcement Bureau, Petitioner Mark Kern, and Trustee in Bankruptcy Samson subsequently reached an agreement relieving Mr. Samson of the obligation to respond to certain outstanding discovery requests.⁹ On December 11, 2019, EMT's bankruptcy case was dismissed.¹⁰ Control of the licenses was transferred from the Trustee in Bankruptcy back to EMT on January 10, 2020.¹¹

¹ *Entertainment Media Trust, Debtor, Donald M. Samson, Trustee v. Federal Communications Commission*, Case No. 19-31224, Bankr. S.D. Ill. (filed Sept. 11, 2019).

² File No. BTC-20190916AAA, granted Oct. 11, 2019, by the Chief, Audio Division, Media Bureau.

³ Motion for Voluntary Dismissal, *Entertainment Media Trust, Debtor, Donald M. Samson, Trustee v. Federal Communications Commission*, Case No. 19-31224-lkg, Bankr. S.D. Ill. (filed Oct. 16, 2019).

⁴ *Entertainment Media Trust*, MB Docket No. 19-156, Order, 19M-13 (ALJ Nov. 5, 2019).

⁵ Donald M. Samson, Trustee, Application to Approve Stipulation for Dismissal, *Entertainment Media Trust, Debtor, Donald M. Samson, Trustee v. Federal Communications Commission*, Case No. 19-31224, Bankr. S.D. Ill. (filed Nov. 13, 2019).

⁶ *Entertainment Media Trust*, MB Docket No. 19-156, Order, 19M-14 (ALJ Nov. 18, 2019).

⁷ *Entertainment Media Trust*, MB Docket No. 19-156, Order, 19M-15 (ALJ Nov. 25, 2019).

⁸ *Entertainment Media Trust*, MB Docket No. 19-156, Order, 19M-16 (ALJ Dec. 10, 2019).

⁹ *Id.* at para. 4.

¹⁰ *Entertainment Media Trust, Debtor, Donald M. Samson, Trustee v. Federal Communications Commission*, Case No. 19-31224, Bankr. S.D. Ill., Agreed Order (Dec. 11, 2019).

¹¹ File No. BTC-20191211AAF, granted Jan. 10, 2020, by the Chief, Audio Division, Media Bureau.

3. In light of the dismissal of the bankruptcy petition, Trustee Samson filed a motion to withdraw as a party from this proceeding on December 13, 2019.¹² Petitioner Kern filed an opposition to the Trustee's motion on December 16, arguing that Trustee Samson should not be permitted to withdraw until he has satisfied Petitioner Kern's discovery requests.¹³ Specifically, Petitioner Kern takes issue with Trustee Samson's contention that Document Requests 1 – 4 are overly broad and burdensome. To the contrary, he submits, details regarding why EMT filed for bankruptcy and who directed decisions related to the bankruptcy matter are relevant to the issues designated for hearing in this proceeding. Petitioner Kern also notes that Trustee Samson failed to provide a privilege log of items he claims are subject to attorney-client privilege.¹⁴

4. Petitioner Kern's Document Requests 1 – 4 sought the following from Trustee Samson:
- (1) All written communications regarding the EMT bankruptcy, including documents relating to the payment of attorney's fees;
 - (2) All documents relating to the payment of attorney's fees in the EMT bankruptcy proceeding;
 - (3) All written communications regarding the above-captioned hearing, including documents relating to the payment of attorney's fees; and
 - (4) All documents regarding the above-captioned hearing, including documents relating to the payment of attorney's fees.¹⁵

Trustee Samson, contending that these requests were overly broad and beyond the scope of this proceeding, and that some of the documents are subject to attorney-client privilege, in response produced copies of the Stipulation for Dismissal filed in the bankruptcy proceeding (along with cover emails) and

¹² Motion to Withdraw Donald M. Samson as a Party (filed Dec. 13, 2019).

¹³ The discovery agreement referenced above among the Enforcement Bureau, Petitioner Kern, and Trustee Samson relieved the Trustee of his obligation to respond to discovery directed at EMT but did not include discovery requests that Petitioner Kern had addressed to Trustee Samson. *See* Mark Kern, First Request for Production of Documents to Donald M. Samson, Trustee (filed Nov. 20, 2019); Mark Kern, First Set of Interrogatories to Donald M. Samson, Trustee (filed Nov. 20, 2019); Donald M. Samson, Answer to First Request for Production of Documents (filed Dec. 2, 2019); Donald M. Samson, Answer to First Set of Interrogatories (filed Dec. 4, 2019); Mark Kern, Petitioner's Motion to Compel Complete Responses to its Requests for Production of Documents (filed Dec. 9, 2019); Donald M. Samson, Opposition to Petitioner's Motion to Compel Complete Responses to its Request for Production of Documents (filed Dec. 13, 2010).

¹⁴ Petitioner's Opposition to Motion to Withdraw (filed Dec. 16, 2019). The Enforcement Bureau also filed an Opposition, arguing that the Trustee must remain a party until the Media Bureau grants the application to transfer the licenses from Trustee Samson back to EMT. Enforcement Bureau's Opposition to Chapter 7 Trustee's Motion to Withdraw (filed Dec. 19, 2019). The Presiding Judge agrees and therefore did not act on the Trustee's motion until after that transfer occurred.

¹⁵ Mark A. Kern, First Request for Production of Documents to Donald M. Samson, Trustee (filed Nov. 20, 2019). Petitioner Kern also sought all written communications with Robert Romanik, all documents received from Robert Romanik, and copies of any checks or electronic transfers received by the Trustee, including any received from Robert Romanik. Trustee Samson indicated that there have been no written communications between him and Robert Romanik, that he has received no documents from Robert Romanik, and that he has not received any checks or electronic transfers in his role as Trustee. Donald M. Samson, Answer to First Request for Production of Documents (filed Dec. 2, 2019).

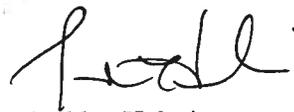
his application to the Bankruptcy Court that he act as attorney for the bankruptcy estate. With respect to the documents subject to attorney-client privilege, Trustee Samson argued that production of a privilege log “would be unduly burdensome and offer little in the way of useful information relevant to the continuation of this proceeding.”¹⁶

5. The information that Petitioner Kern seeks from Trustee Samson in his Motion to Compel aims to inform the question at the heart of this proceeding, which is who actually is and has been in control of the licenses. Petitioner Kern raises valid criticisms of the manner in which the Trustee responded to his discovery requests. Nonetheless, while detailed inquiry concerning the conduct of the bankruptcy proceeding could prove illuminating, it is not necessary to retain Trustee Samson as a party for that to be explored. Trustee Samson was appointed by the Bankruptcy Court to administer the orderly disposition of the bankruptcy estate. He sought and was granted control of EMT’s licenses in good faith consistent with his duty to preserve the assets of the estate for its creditors. EMT’s subsequent decision to seek dismissal of its bankruptcy petition had the unexpected consequence of putting Trustee Samson at odds with the licensee in the bankruptcy proceeding at the same time that he had responsibility for prosecuting this case on EMT’s behalf, including responding to discovery requests. Now that the bankruptcy matter has been dismissed and control of the licenses has been transferred back to EMT, there is no reason to continue Trustee Samson’s involvement as a party to this matter and he is accordingly relieved of party status. Thus, Trustee Samson no longer has an obligation to act on behalf of EMT in this proceeding and no longer is subject to discovery procedures applicable to a party. Like any other person who may have information relevant to a hearing proceeding, however, he may be required to produce that information consistent with Commission rules that set forth procedures by which information or documents relevant to a hearing proceeding can be obtained from a non-party.¹⁷ Petitioner Kern and other parties, if they so choose, may seek information or documents from him through those procedures.

6. Accordingly, IT IS ORDERED that the Motion to Withdraw Donald M. Samson as a Party, filed December 13, 2019, IS GRANTED.

7. IT IS FURTHER ORDERED that Petitioner’s Motion to Compel Complete Responses to its Requests for Production of Documents, filed December 9, 2019, by Petitioner Mark Kern IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin
Administrative Law Judge

¹⁶ *Id.* at 5.

¹⁷ *See, e.g.*, 47 CFR §§ 1.315-18, 1.331-40.