Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of **DETERMINATION OF ROYALTY RATES FOR DIGITAL PERFORMANCE IN SOUND RECORDINGS AND EPHEMERAL RECORDINGS (*WEB IV*)**	**Docket No. 14-CRB-0001-WR (2016-2020)**

REBUTTAL TESTIMONY OF JON D. PEDERSEN, SR.
SENIOR VICE PRESIDENT AND CFO, RADIO MARKETS, iHEARTMEDIA, INC.

1. I am Senior Vice President and Chief Financial Officer of the Radio Markets business at iHeartMedia, Inc. I submit this statement in support of iHeartMedia's rebuttal case in the above-captioned proceeding.

BACKGROUND AND QUALIFICATIONS

2. I have served as Senior Vice President and CFO – Radio Markets at iHeartMedia since March 17, 2014. Before working at iHeartMedia, I was Chief Financial Officer at Snap Interactive, Inc., and Senior Vice President and Controller at Warner Music Group. Before that, I was Chief Financial Officer at WestLB Securities Inc., a Vice President at Goldman, Sachs & Co., and a Senior Accountant at Price Waterhouse LLP.

3. I have a B.S. in Accounting from the University of Connecticut and an M.B.A. from Columbia Business School. I have worked in finance, accounting, and controllership roles for more than 20 years.

4. In my current role at iHeartMedia, I have financial responsibility for the radio markets and iHeartRadio businesses, including budget, forecast, accounting, and operations

responsibilities. I also manage iHeartMedia's shared service center, including credit, collections, general accounting, and accounts payable departments.

SOUNDEXCHANGE'S ONE-SIZE-FITS-ALL REVENUE DEFINITION IS UNWORKABLE

5. I understand that SoundExchange, Inc. has proposed that webcasters pay SoundExchange the greater of 55% of their "Attributable Revenue" or a per-play rate. I have reviewed SoundExchange's proposed definition of "Attributable Revenue." I have also reviewed the revenue definition submitted by Pandora Media, Inc.

6. In my experience in the music industry, there is no one-size-fits-all definition of revenue that could apply sensibly to all webcasters. Rather, consistent with the direct-licensing agreements that iHeartMedia has reached with various record labels, revenue definitions must be tailored to both the webcaster and the record label involved. That is because each webcaster offers a different menu of services and monetizes those services in different ways. For example, iHeartMedia offers hundreds of simulcast streams; determining revenue attributable to simulcast streams themselves, as opposed to their terrestrial analogs, is especially difficult. Services also vary widely in how much they independently invest in products and technologies that complement pure webcasting. As explained below, iHeartMedia invests particularly heavily in disc jockeys ("DJs") and member-station content. Well-tailored revenue sharing agreements respect these investments by carving them out from the applicable revenue definitions.

7. These accounting difficulties are compounded by the fact that each webcaster has its own accounting practices, which would render the application of a one-size-fits-all revenue definition yet more difficult. Because many digital media companies – including webcasters and SoundExchange – began as smaller businesses within, or as joint ventures between, larger traditional media companies, often at small scale, they perform much of the accounting work

manually. As these businesses grew, accounting methods did not always transition to standard, industry-wide practices, causing fragmentation. As a result, because accounting practices vary so widely among webcasters, an industry-wide revenue definition is misguided.

8. SoundExchange, in contrast, has proposed a uniform, industry-wide revenue definition that would apply to all commercial statutory licensees, whether they offer only simulcast services, only non-interactive custom webcasting services, or a combination of the two. Pandora has also proposed such an industry-wide revenue definition. As I explain below, by reference to both accounting principles and iHeartMedia's direct licensing agreements, such a one-size-fits-all definition is neither workable nor desirable.

9. First, SoundExchange's proposed definition calls for many revenue streams to be allocated through a "Fair Method of Allocation" in accordance with Generally Accepted Accounting Principles ("GAAP"). But there is no GAAP or general accounting rule that provides for a "Fair Method of Allocation" in the circumstances in which SoundExchange seeks to apply such a rule, and SoundExchange cites no such rule. To the extent GAAP contains such revenue recognition requirements, they govern preparation of financial statements, not allocation of revenue streams.

10. For example, SoundExchange has proposed that such a GAAP method be used to allocate "bundled" revenue from both simulcast and terrestrial broadcasts to each of those categories. Proposed Rates and Terms of SoundExchange, Inc., Attachment ("SX Prop. Regs.") § 380.3(d)(v)-(vi). [[[redacted]

[redacted]]] In my experience in accounting and finance, any attempt to allocate revenues between those two categories would be inherently arbitrary and would lead to intractable disputes about its application.

11. Similarly, SoundExchange has proposed that licensees use this "Fair Method of Allocation" to allocate revenue streams from products that are "bundled" with a webcasting service. *Id*. For example, SoundExchange's proposal would force iHeartMedia to share banner advertising revenue from iHeartMedia's member stations' home pages, which listeners often visit for information about DJs, promotions, or events – and which *do not allow users to listen to music*. In short, SoundExchange wants a share of revenue it does nothing to earn. This absurd result is exacerbated by the fact that there is no generally accepted accounting principle that would govern such allocation, [[[redacted]]]. SoundExchange's proposal gives no details about the "Fair Method of Allocation" to be used, and its rule would likely lead to extensive disputes between SoundExchange and various webcasters about its implementation.

12. To illustrate the fact that iHeartMedia, as a willing buyer, would not agree to a blanket revenue definition that, for example, does not account separately for custom and simulcast revenues, [[[redacted]

[redacted]]]

13. Pandora also proposes a one-size-fits-all revenue definition, albeit one that would be shared at a much lower rate than SoundExchange's proposal calls for. Pandora's definition conflicts with SoundExchange's definition in a number of ways. For example, unlike SoundExchange's proposal, Pandora's excludes all advertising commissions. Proposed Rates and Terms of Pandora Media, Inc., Attachment § 380.2. Although Pandora's proposed revenue definition is more limited, it nevertheless illustrates the difficulties implicated by an industry-wide revenue definition. It simply defines "revenue" as all "money earned" by a licensee "derived . . . from making" transmissions subject to licensing and royalty payments under 17 U.S.C. § 114(d)(2). *Id.* Although Pandora proposes that accounting questions be resolved by reference to GAAP, as noted above, GAAP leaves unanswered many questions about the assignment of revenue. In short, the inconsistencies between Pandora's and SoundExchange's proposed revenue definitions demonstrate how elusive an industry-wide revenue definition is.

SOUNDEXCHANGE'S PROPOSAL IGNORES THE INDEPENDENT VALUE OF iHEARTMEDIA'S INVESTMENTS IN RADIO PERSONALITIES

14. SoundExchange's proposed revenue definition is also overly broad, as it seeks to include within "Attributable Revenue" a portion of revenue streams that are not appropriately attributable to the playing of sound recordings covered by the statutory license.

15. SoundExchange's revenue definition completely ignores the non-music components of iHeartMedia's simulcast service by treating all simulcast revenues as subject to its revenue share. *See* SX Prop. Regs. at 5-6. This is a significant oversight, [[[redacted]

[redacted]]] Because those stations make no use of the labels' music, there is no reason the labels should be permitted to share their revenues.

16. This problem extends to music-formatted stations as well. Unlike custom stations, iHeartMedia's simulcast and terrestrial "music" stations feature a wide variety of non-music content that consumers value. For example, iHeartMedia expends considerable funds and energy to recruit and promote radio personalities, such as Ryan Seacrest, Elvis Duran, Steve Harvey, Sean "Hollywood" Hamilton, Mario Lopez, Delilah, Keith Sweat, and Nikki Sixx. iHeartMedia is willing to spend those resources to recruit and develop on-air talent because its radio personalities are, in fact, key drivers of listenership and revenue. Indeed, some talk radio hosts (such as Glenn Beck) play no music at all; others (such as Dan Patrick) play only snippets of music during transitions between segments.

17. [[[redacted]]] SoundExchange's proposal, however, makes no attempt to account for the independent value of the non-music content of iHeartMedia's simulcast stations, and therefore unjustifiably seeks a portion of revenue not properly attributable to music.

18. SoundExchange's proposal is overbroad in other respects. For example, SoundExchange's proposal ignores the revenue generated by web traffic and related advertising

impressions attributable not to simulcast listening but to visitors viewing blog posts, photos, personality updates, and other web content.

19. If adopted, SoundExchange's proposed revenue definition would discourage iHeartMedia from investing in these products and technologies, which stand alongside its broadcast and webcasting businesses. Such investments, while related to music broadly, should not be subject to revenue sharing, because they reflect iHeartMedia's efforts to enhance listener experience beyond what is provided merely by the music played on webcasts or terrestrial radio.

SOUNDEXCHANGE'S REVENUE DEFINITION IS INCONSISTENT WITH IHEARTMEDIA'S DIRECT DEALS IN MULTIPLE RESPECTS

20. [[[redacted]]]

21. [[[redacted]]] Because of how expansive SoundExchange's proposal is, iHeartMedia would not agree to such a proposal.

22. For example, [[[redacted]]] SoundExchange's proposal provides no deduction for advertising agency expenses. [[[redacted]

[redacted]]] SoundExchange's proposal treats all such promotions as revenue to be shared.

23. SoundExchange's proposal also treats all simulcast revenue alike, even though simulcast stations vary widely in their formats. [[[redacted]]]

SOUNDEXCHANGE'S PROPOSAL TO REDUCE THE PAYMENT SCHEDULE FROM 45 DAYS TO 30 DAYS IS UNWORKABLE

24. In addition to proposing to more than double the work that every statutory licensee must perform each month to calculate the amount due to SoundExchange – by adding a percentage-of-revenue calculation to the statutory license – SoundExchange has also proposed to reduce by one-third the time that statutory licensees have to complete that work, from 45 days to 30 days. As it stands, iHeartMedia pays SoundExchange at least 15 days before it receives payments from advertisers, who tender payments on a 60-day (or longer) schedule. Even if SoundExchange were simply proposing to maintain the current, per-play rate structure, that reduction of time would be impractical; with the additional work that SoundExchange proposes under its new rate structure, statutory licensees should, if anything, get *more* time, not less.

25. [[[redacted]]]

26. [[[redacted]

[redacted]]]

27. [[[redacted]]]

28. [[[redacted]]]

29. [[[redacted]]]

30. [[[redacted]

[redacted]]] Despite these facts, SoundExchange proposes not only to establish an industry-wide 30-day payment window and to increase substantially the work that statutory licensees must do in that time with its flawed revenue definition, but also to maintain the existing 1.5% per-month late payment charge. SX Prop. Regs. § 380.4(c), (e).

CONCLUSION

31. SoundExchange's proposal ignores the difficulties presented by an industry-wide revenue definition. In this inflexible way, It proposes to share revenue fairly attributable to iHeartMedia's investments in radio personalities and web content. Further, SoundExchange proposes to accelerate an already-harried payment schedule. None of these aspects of SoundExchange's proposal accord with what iHeartMedia would agree to in a direct licensing agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Jon D. Pedersen, Sr.	2/22/15 Date

Exhibit A

PUBLIC

Exhibit A: Comparison of Revenue Definitions

Term	SoundExchange	Warner Agreement	Independent Agreements[1]
Custom ads	Included without limitation. SX Prop. Reg. § 380.3(d)(1)(ii) ("*Gross Revenue* means all amounts paid, payable, credited, or creditable to Licensee, received or receivable by or on behalf of Licensee, or recognized by Licensee as revenue under [GAAP] or Licensee's past practices, from all sources in connection with the provision of a Service in the United States.").	[[[redacted]]]	[[[redacted]]]
Standard ads	Included without limitation. SX Prop. Reg. § 380.3(d)(1)(ii)(B) (same).	[[[redacted]]]	[[[redacted]]]
Simulcast ads	Included without limitation. SX Prop. Reg. § 380.3(d)(1)(ii)(B) (same).	[[[redacted]]]	[[[redacted]]]
Non-audio ads	Included without limitation. SX Prop. Reg. § 380.3(d)(1)(ii)(B) (same).	[[[redacted]]]	[[[redacted]]]

[1] As described in the written direct testimony of Steven Cutler, iHeartMedia agreed to direct licensing agreements with 27 independent record labels. Those agreements share similar, but not identical, revenue definitions. For the sake of brevity, iHeartMedia has included citations only to its direct licensing agreement with Dualtone Music Group, Inc., which was attached to Mr. Cutler's testimony as Exhibit L.

[2] [[[redacted]]]

[3] [[[redacted]]]

Term	SoundExchange	Warner Agreement	Independent Agreements[1]
Value of data and software	Included without limitation. SX Prop. Reg. § 380.3(d)(1)(ii)(D), (F) (defining gross revenue to include, "without limitation," "[r]evenue from any software" and "[r]evenue generated by the use or exploitation of data gathered or generated from the Service").	[[[redacted]]]	[[[redacted]]]
Barter	Included at fair market value without limitation. SX Prop. Reg. § 380.3(d)(1)(ii)(E) (including the "[f]air market value of any non-cash consideration, including, without limitation, any barter arrangement with any customers, vendors or business partners").	[[[redacted]]]	[[[redacted]]]
Bundled revenue	Allocated by "Fair Method" under United States generally accepted accounting principles. SX Prop. Reg. § 380.3(d)(1)(v)(A) ("Where the Service is Bundled with other products or services that do not involve the Service, Non-Attributable Revenue shall mean the portion of Adjusted Revenue attributable to such other products or services that do not involve the Service. Such revenues shall be calculated through a Fair Method of Allocation.").	[[[redacted]]]	[[[redacted]]]

Term	**SoundExchange**	**Warner Agreement**	**Independent Agreements**[1]
Commissions	No exclusion or deduction allowed. *See* SX Prop. Reg. § 380.3(d)(1)(iii), (iv), (v) (not excluding such fees from Attributable Revenue).	[[[redacted]]]	[[[redacted]]]
Frustration	Governed by United States generally accepted accounting principles. SX Prop. Reg. § 380.3(d)(1)(ii) (calling for accounting in accord with GAAP).	[[[redacted]]]	[[[redacted]]]