Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of	)	
	)	**Docket No. 2008-2 CRB CD 2000-2003**
Distribution of the 2000, 2001, 2002, and 2003 Cable Royalty Funds	)	

WRITTEN DIRECT STATEMENT OF THE SETTLING PARTIES

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February 2, 2009

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of **Distribution of the** **2000, 2001, 2002, and 2003** **Cable Royalty Funds**	**Docket No. 2008-2 CRB CD 2000-2003**

JOINT MEMORANDUM OF THE SETTLING PARTIES

Pursuant to Section 351.4 of the rules of the Copyright Royalty Judges ("Judges"), 37 C.F.R. § 351.4, and the Order dated November 5, 2008, the Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Public Television Claimants, Music Claimants and Devotional Claimants (collectively, "the Settling Parties") submit the attached written testimony in connection with the above-referenced proceeding to distribute the 2000, 2001, 2002, and 2003 cable royalty funds ("2000-03 Funds"). The purpose of this memorandum is to (1) describe the scope of that proceeding, as narrowed by agreements among the parties; (2) summarize the written testimony of the Settling Parties; and (3) state the claim of the Settling Parties.

SCOPE OF PROCEEDING

The Settling Parties recognize that a contested royalty distribution proceeding is a costly, time-consuming and burdensome undertaking for all involved. Thus, each of the Settling Parties traditionally has worked hard to resolve as many Phase I (and Phase II) controversies as possible in light of a shared understanding of settlement principles that have evolved over a thirty-year period. Where, as here, litigation becomes unavoidable, each of the Settling Parties likewise has worked hard to narrow the issues in dispute with the objective of reducing the costs of litigation and promoting judicial economy. Absent such efforts, the royalty distribution system -- which requires the annual resolution of controversies involving hundreds of copyright owners and more than $100 million -- would be unworkable.

Consistent with the above, the Settling Parties have entered into a confidential, non-precedential settlement regarding the allocation of their collective share of the 2000-03 Funds among themselves. That settlement has resolved all outstanding issues regarding the distribution of the 2000-03 Funds among the Settling Parties, leaving as the sole unresolved Phase I issue the determination of the Canadian Claimants Group's ("Canadians") share of the 2000-03 Funds.

Furthermore, on September 30, 2008 the Settling Parties and the Canadians (collectively, "the Phase I Parties") entered into a "Stipulation of the Phase I Parties Regarding Scope of Proceeding." That stipulation provides:

> 1. The Phase I Parties agree that the sole unresolved issue in the instant proceeding to be submitted to the Judges is the Phase I share that should be awarded to the Canadian Claimants Group from the 2000-03 Funds.
>
> 2. The Phase I Parties will not seek, as a part of this proceeding, to have the Judges determine separate Phase I shares of the 2000-03 Funds for the claimant groups that comprise the Settling Parties, and will instead seek a specific determination only as to the Phase I share to be awarded to the Canadian Claimants Group, with the remaining balance to be awarded to the Settling Parties.

Id. at 1. The Phase I Parties filed a motion on October 1, 2008 requesting the Judges to adopt the stipulation. By Order dated October 15, 2008, the Judges granted the Motion and determined that "the sole issue to be submitted to the Copyright Royalty Judges in this proceeding is the

Phase I share that should be awarded to the Canadian Claimants Group from the 2000-03 Funds." *See also* Order on Motion to Consolidate Proceedings (filed October 31, 2008) (noting that the "only issue remaining in [this] proceeding is the award to CCG" and that this proceeding "can be tried and resolved efficiently").

In a Further Stipulation of the Phase I Parties Regarding Determination of the Canadian Claimants Group's Royalty Share, dated February 2, 2009, the Phase I Parties have clarified that the Judges need to decide only whether the Canadians' share of the 2000-03 Funds should

> (a) be no greater than the CCG's average share awarded in the last litigated Phase I distribution proceeding, the 1998-99 cable royalty distribution proceeding; or (b) be determined by applying the 1998-99 CARP Methodology to data from 2000-2003.

Id. at 2; *see also id.* at 1 (defining "1998-99 CARP Methodology" to mean "the same methodology that the Copyright Arbitration Royalty Panel ('CARP') used to determine the CCG's share" of the 1998-99 cable royalty funds). The Further Stipulation also sets forth the particular percentage awards that the Canadians would receive depending upon which of the above alternatives the Judges choose. By motion filed February 2, 2009, the Phase I Parties have requested the Judges to adopt the Further Stipulation. As explained in that motion, the "Further Stipulation greatly simplifies the case and squarely places the core of the parties' dispute before the Judges." That dispute goes to the heart of the nature and effect of prior precedent in settling royalty disputes.

SUMMARY OF TESTIMONY

Each of the Settling Parties has participated in numerous cable royalty distribution proceedings conducted over a nearly thirty-year period. Throughout that long history, the Settling Parties have taken different positions regarding the cable royalty shares awarded to the

Canadians and the different approaches used to support those awards as well as the awards of the other parties. Given such differences and the certainty that the Settling Parties will be adverse to each other in future distribution proceedings, each of the witnesses is being sponsored only by the particular Settling Parties indicated below. The Settling Parties believe that the testimony of these witnesses supports the overarching position on which all of the Settling Parties agree without reservation -- that the Canadians' share of the 2000-03 cable royalties should be no greater than the average share awarded the Canadians in the last litigated Phase I cable royalty distribution proceeding, *i.e.*, the proceeding in which the Copyright Arbitration Royalty Panel ("CARP") allocated the 1998-99 funds.[1]

The Settling Parties understand that the Canadians will rely upon a so-called "fee-generated" methodology to support an increase in their award over its 1998-99 level; according to the Canadians, the "fees generated" by the carriage of distant Canadian signals was greater in each of the years 2000-03 than in 1998 and 1999. The testimony of the witnesses sponsored by the Settling Parties will show that the Canadians' "fee-generated" methodology does not support the conclusion that there was any increase in the relative market value of distant signal Canadian programming to cable operators between 1998-99, on the one hand, and 2000-03, on the other hand. Thus, that methodology does not support any change in the award that the CARP (and Librarian) made to the Canadians in the 1998-99 proceeding. The best evidence of the relative market value of distant signal Canadian programming to cable operators during the period 2000-03 is the benchmark award established in the 1998-99 proceeding.

[1] *See* Report of the Copyright Arbitration Royalty Panel in Docket No. 2001-08 CD 98-99 at 92-93 (Oct. 21, 2003); Final Order Issued by Librarian of Congress in Docket No. 2001-8 CARP CD 98-99, 69 Fed. Reg. 3606, 3610 (January 26, 2004), *aff'd, Program Suppliers v. Librarian of Congress*, 409 F.3d 395 (D.C. Cir. 2005).

1. Testimony of Marsha E. Kessler

Ms. Kessler's testimony is sponsored by Program Suppliers.

Ms. Kessler is Vice-President, Retransmission Royalty Distribution, at the Motion Picture Association of America. Ms. Kessler will provide information regarding cable systems' Statement of Account ("SOA") filing requirements. Specifically, she will describe key elements of the SOA, types of cable systems, types of distant signals, and the methodology by which cable operators calculate royalties. She will also explain how royalties were actually reported on the SOAs filed by a specific cable system that carried Canadian distant signals. Finally, using specific examples, she will illustrate how a cable system's royalty payments (and thus the "fees generated" by particular distant signals) may fluctuate due to a variety of factors.

2. Testimony of Jonda K. Martin

Ms. Martin's testimony is sponsored by all the Settling Parties.

Ms. Martin is President and Owner of Cable Data Corporation ("CDC"), which collects and computerizes the data contained in the cable SOAs. Ms. Martin will provide an overview of CDC's operations, including its "fee-generated" methodology, by which CDC allocates royalty payments among Canadian and other distant signals. She will also describe how the different CDC data reports presented by the parties in this proceeding were prepared and authenticate the CDC data underlying testimony of the other witnesses for the Settling Parties.

3. Testimony of Linda McLaughlin

Ms. McLaughlin's testimony is sponsored by the National Association of Broadcasters on behalf of Commercial Television Claimants and by the Public Broadcasting Service on behalf of Public Television Claimants.

Ms. McLaughlin is an economist and Senior Vice President of National Economic Research Associates, Inc. She will describe the "relative marketplace value" criterion historically used in cable royalty distribution cases to determine the shares allocated to claimant groups. She will then explain why, given the nature and structure of the cable royalty system, a "fee-generated" approach does not properly measure relative marketplace value.

4. Testimony of Hal J. Singer

Dr. Singer's testimony is sponsored by the Joint Sports Claimants.

Dr. Singer is an economist and President of Empiris, LLC, an economics consulting firm. Dr. Singer will explain that, in the 1998-99 proceeding, the Canadians relied upon significant changes in the distant signal marketplace between 1990-92 and 1998-99 to support their request for an increased award based on the "fee-generated" methodology. Dr. Singer will then show, relying upon the same factors cited by the Canadians in the 1998-99 proceeding, that there was no significant change in the distant signal marketplace between 1998-99 and 2000-03 supporting a further increase in the Canadians' award. Dr. Singer concludes that there is no reliable economic evidence of a change in the relative value of Canadian distant signals from the last proceeding and, therefore, the benchmark award established in that proceeding should not be changed.

CLAIM OF THE SETTLING PARTIES

The Settling Parties respectfully request that the Judges award the Canadians no more than the following shares of the 2000-03 cable royalty funds, which equal their average 1998-99 award as determined by the CARP and affirmed by the Librarian:

	BASIC FUND	3.75% FUND	SYNDEX FUND
2000	1.84%	0.25%	0%
2001	1.84%	0.25%	0%
2002	1.84%	0.25%	0%
2003	1.84%	0.25%	0%

The remaining royalties should be awarded to the Settling Parties, who will allocate that amount among themselves according to the terms of their confidential settlement agreement.

Respectfully submitted,

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February 2, 2009

STIPULATION OF THE PHASE I PARTIES
REGARDING SCOPE OF PROCEEDING

This Stipulation of the Phase I Parties Regarding Scope of Proceeding (the "Stipulation") is made this 30th day of September 2008, by and among the Program Suppliers, the Joint Sports Claimants, the National Association of Broadcasters, the Public Television Claimants, the Devotional Claimants, the Music Claimants (the American Society of Composers, Authors and Publishers, Broadcast Music, Inc. and SESAC, Inc.) and the Canadian Claimants Group (collectively, the "Phase I Parties").

RECITALS

WHEREAS, all of the Phase I Parties except the Canadian Claimants Group (collectively the "Settling Parties"), have entered into a confidential, non-precedential settlement regarding the allocation of their collective share of the 2000-03 Funds among themselves; and

WHEREAS, that settlement has resolved all outstanding issues regarding the distribution of the 2000-03 Funds among the Settling Parties, leaving as the sole unresolved Phase I issue the determination of the Canadian Claimants Group's share of the 2000-03 Funds; and

WHEREAS, the Phase I Parties seek to promote judicial economy and reduce the cost of litigation by narrowing the scope of the instant proceeding and the issues submitted to the Copyright Royalty Judges ("Judges") for resolution;

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the Phase I Parties hereby stipulate and agree as follows:

1. The Phase I Parties agree that the sole unresolved issue in the instant proceeding to be submitted to the Judges is the Phase I share that should be awarded to the Canadian Claimants Group from the 2000-03 Funds.

2. The Phase I Parties will not seek, as a part of this proceeding, to have the Judges determine separate Phase I shares of the 2000-03 Funds for the claimant groups that comprise the Settling Parties, and will instead seek a specific determination only as to the Phase I share to be awarded to the Canadian Claimants Group, with the remaining balance to be awarded to the Settling Parties.

IN WITNESS WHEREOF, the Phase I Parties have executed this Stipulation as of the day first written above.

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Copyright Royalty Board

Before the
COPYRIGHT ROYALTY BOARD
Washington, D.C.

In the Matter of

Distribution of the 2000, 2001, 2002, and 2003 Cable Royalty Funds

Docket No. 2008-2 CRB CD 2000-2003

MOTION OF THE PHASE I PARTIES TO ADOPT JOINT STIPULATION

The undersigned parties, representing all parties who filed petitions to participate in the instant Phase I proceeding ("Phase I Parties") regarding the distribution of the 2000, 2001, 2002, and 2003 cable royalty funds ("2000-03 Funds"),[1] hereby move the Copyright Royalty Judges ("Judges") to issue an order adopting the Phase I Parties' joint Stipulation Regarding Scope of Proceeding ("Stipulation"), which is attached hereto as Exhibit A.

The Phase I Parties, except for the Canadian Claimants Group (collectively the "Settling Parties"), have entered into a confidential, non-precedential settlement regarding the allocation of their collective share of the 2000-03 Funds among themselves. That settlement has resolved all outstanding issues regarding the distribution of the 2000-03 Funds among the Settling Parties, leaving as the sole unresolved Phase I issue the determination of the Canadian Claimants Group's share of the 2000-03 Funds. In light of this near-global Phase I settlement, and in an effort to promote judicial economy and reduce the costs of litigation, the Phase I Parties have

[1] The Phase I Parties in this proceeding are the Canadian Claimants Group, Devotional Claimants, Joint Sports Claimants, National Association of Broadcasters, Music Claimants, Program Suppliers, and Public Television Claimants. *See* Order Announcing Negotiation Period, Docket No. 2008-2 CRB CD 2000-2003 (June 30, 2008). Because National Public Radio has already received final distribution of its share of the 2000-03 Funds pursuant to the parties' settlement, it did not file a petition to participate in this proceeding.

entered into the attached Stipulation in order to refine the scope of the instant Phase I proceeding and narrow the issues to be submitted to the Judges for resolution.

Direct precedent supports limiting the issues to be determined in a royalty distribution proceeding when all but one of the parties have resolved their differences through settlement. *See 1982 Cable Royalty Distribution Determination*, 49 Fed. Reg. 37653, 37654 (Sept. 25, 1984) ("All Phase I parties, other than Devotional, in a series of voluntary agreements determined the Phase I awards. Since these agreements did not include the Devotional Claimants, the only controversy to be determined by the Tribunal was what award, if any, to make to the Devotional Claimants."); *National Association of Broadcasters v. Copyright Royalty Tribunal*, 772 F.2d 922, 939 (D.C. Cir. 1985) ("We would effectively eliminate the likelihood for settlements if we accepted the Devotionals' contention that when one claimant—no matter how modest that claimants' share under even the most sanguine view—chooses not to settle with the other claimants, all awards would thereby be in controversy and a full hearing would be required."); *see also National Ass'n of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319, 1321 (D.C. Cir. 1982) ("If serious settlement negotiations are held, even if they may prove not entirely successful, it should be possible for the parties to narrow the issues that must be brought before the District Court.").

In light of this precedent, and in the interest of judicial economy, the Phase I Parties respectfully request that the Judges adopt the Phase I Parties' stipulation in their forthcoming order scheduling further proceedings regarding the 2000-03 Funds.

Respectfully submitted,

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Dated: October 1, 2008

EXHIBIT A

STIPULATION OF THE PHASE I PARTIES
REGARDING SCOPE OF PROCEEDING

This Stipulation of the Phase I Parties Regarding Scope of Proceeding (the "Stipulation") is made this 30th day of September 2008, by and among the Program Suppliers, the Joint Sports Claimants, the National Association of Broadcasters, the Public Television Claimants, the Devotional Claimants, the Music Claimants (the American Society of Composers, Authors and Publishers, Broadcast Music, Inc. and SESAC, Inc.) and the Canadian Claimants Group (collectively, the "Phase I Parties").

RECITALS

WHEREAS, all of the Phase I Parties except the Canadian Claimants Group (collectively the "Settling Parties"), have entered into a confidential, non-precedential settlement regarding the allocation of their collective share of the 2000-03 Funds among themselves; and

WHEREAS, that settlement has resolved all outstanding issues regarding the distribution of the 2000-03 Funds among the Settling Parties, leaving as the sole unresolved Phase I issue the determination of the Canadian Claimants Group's share of the 2000-03 Funds; and

WHEREAS, the Phase I Parties seek to promote judicial economy and reduce the cost of litigation by narrowing the scope of the instant proceeding and the issues submitted to the Copyright Royalty Judges ("Judges") for resolution;

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the Phase I Parties hereby stipulate and agree as follows:

1. The Phase I Parties agree that the sole unresolved issue in the instant proceeding to be submitted to the Judges is the Phase I share that should be awarded to the Canadian Claimants Group from the 2000-03 Funds.

2. The Phase I Parties will not seek, as a part of this proceeding, to have the Judges determine separate Phase I shares of the 2000-03 Funds for the claimant groups that comprise the Settling Parties, and will instead seek a specific determination only as to the Phase I share to be awarded to the Canadian Claimants Group, with the remaining balance to be awarded to the Settling Parties.

IN WITNESS WHEREOF, the Phase I Parties have executed this Stipulation as of the day first written above.

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2. The Phase I Parties will not seek, as a part of this proceeding, to have the Judges determine separate Phase I shares of the 2000-03 Funds for the claimant groups that comprise the Settling Parties, and will instead seek a specific determination only as to the Phase I share to be awarded to the Canadian Claimants Group, with the remaining balance to be awarded to the Settling Parties.

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Dated: September 30, 2008

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of **Distribution of the 2000, 2001, 2002 and 2003 Cable Royalty Funds**	} } } } } }	**Docket No. 2008-2 CRB CD 2000-03**

ORDER GRANTING MOTION ON STIPULATION

All the parties who filed petitions to participate in the instant Phase I proceeding, ("Phase I Parties") filed a motion to adopt a joint stipulation. The motion is filed by all the participants and the Copyright Royalty Judges are aware of no reason not to adopt the joint stipulation. The motion will promote judicial economy. Therefore, the motion is **GRANTED** and the joint stipulation is adopted. The sole issue to be submitted to the Copyright Royalty Judges in this proceeding is the Phase I share that should be awarded to the Canadian Claimants Group from the 2000-03 Funds. The settlement among all of the Phase I Parties except the Canadian Claimants Group will not be presented in this proceeding.

SO ORDERED.

JAMES SCOTT SLEDGE
Chief Copyright Royalty Judge

DATED: October 15, 2008

FURTHER STIPULATION OF THE PHASE I PARTIES REGARDING DETERMINATION OF THE <u>CANADIAN CLAIMANTS GROUP'S ROYALTY SHARE</u>

This Further Stipulation is made this 30th day of January 2009, by and among the Program Suppliers, the Joint Sports Claimants, the National Association of Broadcasters, the Public Television Claimants, the Devotional Claimants, the Music Claimants (the American Society of Composers, Authors and Publishers, Broadcast Music, Inc. and SESAC, Inc.) and the Canadian Claimants Group ("CCG") (collectively, the "Phase I Parties").

<u>RECITALS</u>

WHEREAS, the Phase I Parties previously stipulated, and the Copyright Royalty Judges ("Judges") agreed by Order dated October 15, 2008, that the sole unresolved issue ("Sole Issue") in the 2000-03 Phase I cable royalty distribution proceeding ("Proceeding") is the share of the 2000-03 cable royalty funds that should be awarded to the CCG ("Canadians' 2000-03 Share");

WHEREAS, all of the Phase I Parties except the CCG (collectively the "Settling Parties") believe that the Canadians' 2000-03 Share should be no greater than the CCG's average share awarded in the last litigated Phase I distribution proceeding, the 1998-99 cable royalty distribution proceeding;

WHEREAS, CCG believes that the Canadians' 2000-03 Share should be determined by applying the same methodology that the Copyright Arbitration Royalty Panel ("CARP") used to determine the CCG's 1998-99 cable royalty share ("1998-99 CARP Methodology") to data from 2000-2003;

WHEREAS, the Phase I Parties seek to promote judicial economy and reduce the cost of litigation by further narrowing the scope of the instant proceeding and the issues submitted to the Judges for resolution;

NOW, THEREFORE, in consideration of the foregoing, the Phase I Parties hereby stipulate and agree as follows:

AGREEMENT

1. In order to resolve the Sole Issue in the 2000-03 cable royalty distribution proceeding, the Judges need decide only whether the Canadians' 2000-03 Share should (a) be no greater than the CCG's average share awarded in the last litigated Phase I distribution proceeding, the 1998-99 cable royalty distribution proceeding; or (b) be determined by applying the 1998-99 CARP Methodology to data from 2000-2003.

2. If the Judges determine that the Canadians' 2000-03 Share should be no greater than the CCG's average share awarded in the last litigated Phase I distribution proceeding, the 1998-99 cable royalty distribution proceeding, CCG shall receive the following shares of the 2000-03 cable royalty funds:

	BASIC FUND	3.75% FUND	SYNDEX FUND
2000	1.84%	0.25%	0%
2001	1.84%	0.25%	0%
2002	1.84%	0.25%	0%
2003	1.84%	0.25%	0%

3. If the Judges determine that the Canadians' 2000-03 Share should be determined by applying the 1998-99 CARP Methodology to data from 2000-2003, CCG shall receive the following shares of the 2000-03 cable royalty funds:

IN WITNESS WHEREOF, the Phase I Parties have executed this Further Stipulation as of the above date.

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Copyright Royalty Board

Before the
COPYRIGHT ROYALTY BOARD
Washington, D.C.

In the Matter of **Distribution of the 2000, 2001, 2002, and 2003 Cable Royalty Funds**	**Docket No. 2008-2 CRB CD 2000-2003**

MOTION OF THE PHASE I PARTIES TO ADOPT FURTHER JOINT STIPULATION

The undersigned parties, representing all parties who filed petitions to participate in the instant Phase I proceeding ("Phase I Parties") regarding the distribution of the 2000, 2001, 2002, and 2003 cable royalty funds ("2000-2003 Funds"),[1] hereby move the Copyright Royalty Judges ("Judges") to issue an order adopting the Further Stipulation of the Phase I Parties Regarding Determination of the Canadian Claimants Group's Royalty Share ("Further Stipulation") attached hereto as Exhibit A.

The Phase I Parties other than the Canadian Claimants Group (collectively the "Settling Parties") have entered into a confidential, non-precedential settlement regarding the allocation of their collective share of the 2000-2003 Funds among themselves. That settlement left as the sole unresolved Phase I issue the determination of the Canadian Claimants Group's share of the 2000-2003 Funds. In an effort to promote judicial economy, reduce the costs of evidence, and streamline the presentation of evidence, on September 30, 2008, the Phase I Parties entered into a

[1] The Phase I Parties in this proceeding are the Canadian Claimants Group, Devotional Claimants, Joint Sports Claimants, Commercial Television Claimants, Music Claimants, Program Suppliers, and Public Television Claimants. *See* Order Announcing Negotiation Period, Docket No. 2008-2 CRB CD 2000-2003 (June 30, 2008). National Public Radio, which received final distribution of its share of the 2000-2003 Funds pursuant to settlement, did not file a petition to participate in this proceeding.

Stipulation of the Phase I Parties Regarding Scope of Proceeding ("September 30 Stipulation") that provided that the parties would not seek to have the Judges determine separate Phase I shares of the 2000-2003 Funds for the claimant groups that comprise the Settling Parties. The Phase I Parties agreed that they would seek a specific determination only as to the Phase I share to be awarded to the Canadian Claimants Group, with the remainder of the Funds to be awarded to the Settling Parties. Thereafter, upon motion of the Phase I Parties filed October 1, 2008, ("Motion"), the Judges adopted the September 30 Stipulation. Order Granting Motion on Stipulation, Docket No. 2008-2 CRB CD 2000-2003 (October 15, 2008).

In order to narrow the scope of this proceeding further and to promote judicial economy and the efficient resolution of this matter, the Phase I Parties have agreed to the Further Stipulation. The Further Stipulation clarifies that the Judges in the 2000-03 cable royalty distribution proceeding need to decide only whether the Canadians' 2000-03 Share (1) should be no greater than the Canadian Claimants Group's average share awarded in the last litigated Phase I distribution proceeding, the 1998-99 cable royalty distribution proceeding; or (2) should be determined by applying to data from 2000-2003 the same methodology that the Copyright Arbitration Royalty Panel applied in the 1998-99 proceeding. It also provides the particular royalty shares that would be awarded to Canadian Claimants Group depending upon which of the foregoing alternatives the Judges adopt. The Further Stipulation greatly simplifies the case and squarely places the core of the parties' dispute before the Judges.

For the reasons set forth above and in the Motion and Order, the Phase I Parties respectfully request that the Judges adopt the Further Stipulation.

Dated: February 2, 2009

Respectfully submitted,

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Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of	)	
Distribution of the	)	**Docket No. 2008-2 CRB CD 2000-2003**
2000, 2001, 2002, and 2003 Cable Royalty Funds	)	

Direct Testimony of

Marsha E. Kessler

February 2, 2009

DIRECT TESTIMONY OF MARSHA E. KESSLER

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DIRECT TESTIMONY OF MARSHA E. KESSLER

I. BIOGRAPHICAL INFORMATION

My name is Marsha E. Kessler. I am appearing as a witness in this proceeding on behalf of the Program Suppliers. I am Vice-President, Retransmission Royalty Distribution, at Motion Picture Association of America ("MPAA"). I have held this position, under various titles, for about 27 years. Prior to that, I was a founding member of the Copyright Office's Licensing Division, the division responsible for collecting cable royalties under Section 111 of the Copyright Act. **Section 111**, also known as the "statutory" or "compulsory" license, governs cable system royalty fee liability for the carriage of broadcast signals. At the Licensing Division, I initially was an "Examiner" of **Statements of Account ("SOAs")** -- the documents cable operators file to substantiate their royalty payments. Later, I became a "Lead Examiner." As a Lead Examiner, I advised colleagues as they encountered difficulties with individual SOAs.

In order to verify the accuracy of a royalty payment, examiners confirmed that the operator had filed the correct SOA form applicable to the amount of **gross receipts** reported (more about which I will say later) and that the operator had supplied all other information required in the statement (*e.g.*, numbers of subscribers served, stations carried, revenues, *etc.*). In the case of larger (or so-called "Form 3") systems, we confirmed that the royalty payment reflected correct application of the provisions of the statutory license in conjunction with the former signal carriage rules of the Federal Communications Commission ("FCC").[1]

The FCC's signal carriage rules are used to identify distant stations carried by Form 3 systems. I will say more about distant stations later, but for the time being, note that different types of distant stations are assigned different weights and those weights are reflected in the formula for calculating each cable system's royalty obligation. Examiners at the Licensing Division made sure each reporting cable system used the correct SOA form, accurately identified its distant stations, and calculated the royalty as required by statute. If all those conditions were met, the filing was deemed accepted.

If a SOA appeared deficient (for example, if the system omitted or misreported information), examiners wrote to the system and sought correction of the matter.

Since leaving the Licensing Division in 1982, I have worked for MPAA, where I oversee the distribution of cable and satellite retransmission royalties (under Sections 111 and 119 of the Copyright Act, respectively). I work closely with information technology contractors and with financial, legal and statistical professionals to provide fair and efficient distribution of royalties among our represented claimants. In addition to overseeing royalty distribution, I assist

[1] The signal carriage rules, now rescinded, were found at Sections 76.57 through 76.63 of the regulations of the FCC. 47 C.F.R. §§ 76.57-76.63 (1976), PS Exhibit ___ (MEK-1).

program owners in the annual filing of their royalty claims with the Copyright Royalty Board ("CRB").

Finally, I supervise MPAA's compulsory license enforcement efforts.[2] My responsibilities in that regard include training, reviewing the work of, and supervising the staff who review cable system SOAs for compliance with the statutory license. I also make recommendations regarding potential areas of concern for investigation and on other matters that crop up during the course of an investigation.

I have testified numerous times before the Copyright Royalty Tribunal, the Copyright Arbitration Royalty Panel, and the Canadian Copyright Board on matters related to statutory license royalties. I have also appeared before the Intellectual Property Subcommittee of the House Judiciary Committee in a matter connected with satellite royalty rates.

II. PURPOSE OF TESTIMONY

I will provide information regarding cable systems' SOA filing requirements, including descriptions of key elements of the SOAs, types of cable systems, types of distant signals, and the methodology by which cable operators

[2] Although the Copyright Office takes action to get licensees to correct errors on SOAs, it has no authority to pursue actions in the courts if the licensees do not fix the errors. That role falls to copyright owners, who must file infringement actions against systems that fail to satisfy their statutory filing obligations. MPAA's enforcement program monitors cable systems' filings and seeks to bring cable systems and satellite carriers into compliance when it believes their reporting or payments conflict with the requirements of the statutory licenses.

calculate royalties. I will also illustrate how royalties were actually reported on the SOAs filed by a specific cable system that carried Canadian distant signals. Finally, using specific examples, I will illustrate how a cable system's royalty payment may fluctuate due to a variety of factors.

III. INTRODUCTION

To be considered compensable under Section 111, programming must meet three qualifiers:

1. The programming must be initially transmitted by a broadcast television station that either the FCC or the Canadian or Mexican governments have licensed to a particular community on a specific channel. An example of a broadcast television station here in Washington, D.C. is WJLA, channel 7.
2. A cable system must simultaneously retransmit the broadcast station's programming outside the station's local market (a station *transmits* and the cable system *retransmits*).
3. The programming cannot be part of programming transmitted by the ABC, CBS or NBC networks via their affiliated stations ("**network programming**").[3]

The compensable programming represented by the Settling Parties in this proceeding includes series and movies, professional and collegiate sporting

[3] Programming on cable networks, *e.g.*, HBO, ESPN, USA, *etc.* does not fall within the terms of Section 111 because program owners license programming directly to cable networks through private negotiations.

programming, station-produced news and other programming, religious programming, non-commercial programming, and music used during these programs.[4]

Now, a little more detail: As I indicated above, a **broadcast station** is a facility licensed by the FCC (or the Canadian or Mexican governments) to a particular community on a specific channel. Each station is identified by a **call sign** and **channel** along with its **city of license**, for example, WJLA, channel 7, in Washington, D.C. or KOMO, channel 4, in Seattle. With minor exceptions, call signs of stations located in the western part of the U.S. begin with the letter "K" (*e.g.*, KOMO in Seattle) and call signs of stations located in the eastern part of the U.S. begin with the letter "W" (*e.g.*, WJLA in Washington, D.C.). Broadcast stations are sometimes referred to as "free, over-the-air television stations" or "free TV" or "TV stations." Stations are also referred to as "signals."

Program owners can license their shows to television stations for broadcast within a television market (usually defined by geographic areas). Program owners receive compensation for such a license. For example, a program owner could license a program to Washington, D.C. station WJLA, channel 7 only for broadcast in the Washington, D.C. market. WJLA transmits (*i.e.*, broadcasts) its programming free of charge to the public, and anyone in the D.C. metro area who

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[4] The Settling Parties are comprised of Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Public Television Claimants, Music Claimants and Devotional Claimants.

has a television set capable of receiving the WJLA signal can watch the programs on WJLA free of charge.

As long as a cable operator complies with Section 111, it may retransmit WJLA to subscribers located *outside* of the Washington, D.C. local market. This means the programs on WJLA would be available to a new audience for which the program owner has not been compensated. It is the purpose of Section 111 to compensate program owners for this increased exposure of their works outside (*i.e.*, distant to) the area to which the program was originally licensed.

When a cable system located in Washington, D.C. retransmits WJLA to subscribers located *within* the Washington, D.C. market, WJLA is called a "**local**" signal. When a cable system located outside of the Washington, D.C. market retransmits WJLA and delivers its signal to subscribers outside the Washington, D.C. market, WJLA becomes, for that cable system, a "**distant**" station for Section 111 purposes. I will say more about distant stations, or distant signals, later.

IV. OPERATION OF THE SECTION 111 STATUTORY LICENSE

In order to retransmit broadcast station signals without infringing program owners' copyright in individual works, the cable operator must comply with the requirements of the statutory license. Compliance consists of, among other things, the operator filing a SOA and paying a royalty, the calculation of which is determined by Section 111. Cable operators make royalty payments and file the accompanying SOAs twice a year with the Licensing Division of the Copyright Office. Royalties and SOAs for January 1 through June 30 are due by August 29; for August 1 through December 31, they are due by March 1 of the following year. We refer to these time frames as accounting periods "1" and "2," respectively, for example "2000-1" (for the first accounting period in 2000) and "2001-2" (for the second accounting period in 2001).

V. THE STATEMENT OF ACCOUNT

A. Contents of the Statement of Account

Section 111 requires that cable operators accompany each royalty payment with a SOA. In the SOA, the operator must provide information about the system's operations during the accounting period. Different-sized systems file different SOA forms. Copies of the two types of Statement of Account forms are attached to my testimony. PS Exhibit ___ (MEK-2) is the form for smaller systems called "Form 1-2" and PS Exhibit ___ (MEK-3) is the form for larger systems called "Form 3."

Information found on both SOAs includes:

- Owner of the system
- Communities served by the system
- The categories of service offered by the system (*e.g.*, basic, expanded basic and pay cable, more about which I will say later)
- The number of subscribers to those services

- The rates charged the subscribers
- Television broadcast stations retransmitted to the system's subscribers (by call sign, local channel, city of license, *etc.*)
- Gross receipts for any and all packages or tiers of service that contain broadcast signals
- The royalty fee calculation plus a section where interest can be calculated if the system files late
- The number of channels on which the system retransmitted broadcast stations and the total number of activated channels offered by the system
- Various schedules providing the basis for calculating certain royalties
- A certification of the information in the SOA
- An individual at the system to whom inquires can be made if further information is required

Next, I will describe the key reported items found in an SOA.

B. Gross Receipts

Gross receipts are the fees collected by cable operators from subscribers who receive the categories of service containing broadcast stations. Cable operators offer various packages, or tiers, of programming. Typically, there is a "basic service tier" (or "basic tier"), which must include local broadcast stations and may also include distant broadcast stations and access channels for local city and county governments and educational institutions as well as cable networks. In a hypothetical situation, a cable system might charge a monthly rate of $14 for the basic tier.

One notch up from basic is what the cable system typically refers to as the "expanded basic" tier, which may include such things as distant signals and digital broadcast stations plus basic cable networks. In the hypothetical situation envisioned in the preceding paragraph, the same cable system might charge an expanded basic tier monthly fee of $25. Of course, a cable customer must first subscribe to the basic tier (for $14) before she can receive the expanded basic tier, so the subscriber's total cost would be $39 for both tiers.

Cable operators also offer premium cable networks ("pay cable") such as HBO or Showtime. Cable systems market these premium channels either alone or in packages of multiple channels for an additional monthly fee, say $20. The cable customer must first subscribe to the basic tier before electing additional premium channels. In the hypothetical posed above, if the customer subscribes to basic (for $14), expanded basic (for $25) and HBO/Showtime for ($20), the customer's bill would be $59 per month.

For purposes of calculating its Section 111 royalties, the cable operator must report as Gross Receipts the full amounts received from all tiers of service that contain broadcast stations. In the hypothetical given above, if the cable operator offered its local broadcast and distant broadcast stations in the basic ($14) tier and a distant station in the expanded basic ($25) tier, the operator must calculate its gross receipts based on the $39 ($14 plus $25) paid by all subscribers who received the basic and expanded basic tiers. Operators are not allowed to prorate fees for tiers of service that contain both broadcast and non-broadcast offerings when reporting their gross receipts.

Section 111 differentiates cable systems based on the amount of their semi-annual gross receipts. As stated, smaller systems file SOAs known as "Form 1-2." Larger systems use the SOA known as "Form 3."

Different-sized systems pay different statutory fees based on their Gross Receipts. In the first accounting period of 2000 (*i.e.*, 2000-1), the Gross Receipts thresholds for the three forms were:

Form 1: $75,800 or less

Form 2: More than $75,800 and less than $292,000

Form 3: $292,000 and more

For 2000-1, the royalty payments were as follows:

- Form 1 operators paid a *flat fee* of $28 every 6 months.
- Form 2 operators paid flat *percentages* of their Gross Receipts (0.5% up to $146,000 and 1.0% of their Gross Receipts in excess of $146,000 but less than $292,000).

- Form 3 operators paid a royalty based on a calculation whose components are the system's Gross Receipts and the number and type of distant stations they carried.

Commencing July 1, 2000, the rate increased. Thereafter, the Gross Receipts thresholds for the three forms increased:

Form 1: $98,600 or less

Form 2: More than $98,600 and less than $379,600

Form 3: $379,600 and more

Commencing with the 2000-2 accounting period, Form 1 operators paid a *flat fee* of $37 every 6 months. The methodology for calculating Form 2 and Form 3 operators' royalties did not change.

VI. THE 2000, 2001, 2002, AND 2003 CABLE FUNDS AND SUBSCRIBERS

For the years, 2000, 2001, 2002, and 2003, the approximate total royalties paid by cable operators each year were as follows:

2000 $120.4 million

2001 $122.9 million

2002 $130.9 million

2003 $132.1 million

Appendix A is a copy of the Licensing Division's Report of Receipts dated January 23, 2009, showing cable royalty deposits from inception to date. Appendix B breaks out the average number of systems, subscribers and total royalties reported by cable operators in the SOA filings for 2000-2003. The data for Appendix B were provided by **Cable Data Corporation** (**"CDC"**), a Rockville, Maryland company, whose representative I understand will testify in this proceeding. CDC compiles SOA information, as reported on paper forms at the Copyright Office, and reproduces the data in electronic format. CDC is the only company that does this work and all parties in this proceeding rely on CDC for SOA data.

You will note small differences between Appendix A (the Licensing Division's deposits) and the royalty amounts as recorded by CDC and reported in Appendix B. While the Division's document reports the deposits related to unexamined SOAs, CDC's data are compiled after SOAs have been examined and may include adjustments for interest, additional payments, refunds, *etc.* Regardless of the differences in the absolute amounts between the two sources, they both show that the royalties paid for the years at issue in this proceeding total approximately $500 million, and that the bulk of the subscribers (about 92%) and of the royalties (about 96%) are attributable to Form 3 cable systems.

VII. FORM 3 ROYALTIES

A. Distant Signals

The Form 3 royalty calculation involves the number and type of distant stations carried by the system. Remember, "**distant**" means a cable system carries the station outside the station's local market, which under Section 111(f) is referred to as the station's "local service area." Form 3 cable operators are required to account for all distant signals when calculating the royalty obligation.

In 2000, 2001, 2002, and 2003, the process for identifying a system's distant stations was based on an amalgam of current and former FCC cable system signal carriage rules. These rules define which stations a cable system "must" carry (meaning the local stations) and which stations a cable system "may" carry (*i.e.*, distant stations). The FCC's former signal carriage rules applied different standards depending on size of the market in which the cable system was located. But the primary determinant, which comes from the current rules, is whether the station is being transmitted within its own Nielsen **Designated Market Area** ("**DMA**"). DMAs are non-overlapping geographic markets consisting of counties in which one market's stations are viewed predominately.

Under Section 111(c)(4), cable systems are allowed to retransmit Canadian broadcast stations as long as the cable system is located north of the forty-second parallel of latitude and within 150 miles of the U.S.-Canadian border. The rules for determining which Canadian stations are distant and which are local are the same as for U.S. broadcast stations.

Form 1 and Form 2 systems pay either the flat fee (Form 1) or specific percentages of Gross Receipts (Form 2) regardless of how many distant broadcast stations they retransmit. For Form 3 operators, if a station is local, the operator does not have to account for the station in the calculation. If the station is distant, the operator must account for the station in the royalty calculation.

B. Royalty Fee Calculation for Form 3 Systems

A Form 3 operator pays a royalty based on the system's Gross Receipts and the number and type of distant stations carried. If you return to PS ___(MEK-3) you will see Space E of a Form 3 SOA, which is the where the operator reports the types of services or tiers of services related to carriage of broadcast stations. The subscriber fees collected from all those services must be included in the system's Gross Receipts. For this purpose, those fees include not only fees from residential customers, but also fees from commercial users, as well as payments made for related services (for example, for additional sets or for converter boxes).

If you look at Space G, you will see the section where the operator identifies all stations carried during the accounting period plus an identification of those stations which were distant. Again, the determination of whether a station is distant or local to the system is determined by analyses associated with the signal carriage rules.

After identifying the distant signals retransmitted by the system, the cable operator assigns a weight to each one. The weight is called a **Distant Signal Equivalent** (**"DSE"**). DSE values are a statutorily-prescribed system of values, assigned by Section 111 as follows:

- **Independent** stations, which include Fox, UPN, WB, PAX and Canadian signals, are set at 1.00 DSE.
- Stations affiliated with the ABC, CBS and/or NBC networks are set at 0.25 DSE.
- **Public television** stations are set at 0.25 DSE.

Congress assigned the different DSE values based in part on assumptions about the amount of nonnetwork (*i.e.*, compensable) programming carried by each type of station.

The next step is for the cable operator to total the DSE values. Assume, for example, that a system carried a total of 6 distant stations -- 2 independent stations, 3 network stations and 1 PBS station. Those 6 distant stations translate to a total DSE value of 3.0, calculated as follows:

2.00	(2 distant independents at 1.00 DSE each)
0.75	(3 distant networks at 0.25 DSE each)
0.25	(1 distant PBS station at 0.25 DSE each)
3.00	Total DSEs

After determining Gross Receipts and DSE values, the cable operator calculates the first of three potential royalty payments, the **Base Rate Fee**. The Base Rate Fee is the primary or first royalty that all Form 3 cable operators must pay. The Base Rate Fee must be paid regardless of whether or how many distant signals are carried. Page 16 of PS Exhibit __ (MEK-3) shows the place on the SOA where cable operators tabulate their Base Rate Fee.

If the system retransmits more than one distant signal, the Base Rate Fee is calculated according to a sliding scale of percentages based on the number of DSEs. Starting in 2000-2, those percentages for the period covered by this case were:

Royalty Rates – Base Rate Fee

DSEs	Percentage of Gross Receipts
1st DSE	0.956%
2nd, 3rd & 4th DSEs, each	0.630%
All DSEs over 4	0.296%

The cable operator calculates the royalty by multiplying the system's Gross Receipts by the DSE percentages.

Example of Base Rate Fee Calculation

If we assume that the cable system had Gross Receipts of $1,300,000 and 3.0 DSEs (based on the carriage of the 6 distant stations in the example above), here is how the Form 3 Base Rate Fee is calculated:

Gross Receipts	$1,300,000
Total number DSEs	3.0
1st DSE at 0.956% ($1,300,000 x 0.956% x 1)	$12,428
2nd and 3rd DSEs at 0.630% ($1,300,000 x 0.630% x 2)	$16,380
5th DSE at 0.296% ($1,300,000 x 0.296% x 0)	$0
Total Royalty, Base Rate Fee	$28,808

Explanation: Royalties for the 1st DSE are calculated by multiplying Gross Receipts of $1,300,000 by 0.956% (the rate for the 1st DSE), which equals $12,428. The second and third DSEs are paid for at the same rate of 0.630%, so the royalty payment for those remaining 2 DSEs in the hypothetical is calculated by multiplying Gross Receipts of $1,300,000 times the rate (0.630%) times 2, for a royalty of $16,380. Had there been more than 4 DSEs, the royalty would have been calculated by multiplying Gross Receipts of $1,300,000 times 0.296% times the number of DSEs over 4. Added together, the Base Rate Fee for this hypothetical Form 3 system is $28,808.

If a cable system carries no distant stations, or if the number of distant stations it carries totals less than 1.0 DSE, the system pays a minimum fee. The minimum fee is the equivalent of 1.0 DSE and is paid at the rate of the 1st DSE, *i.e.*, 0.956% of Gross Receipts. The Base Rate Fee paid by each cable operator makes up the Basic Fund.

C. The 3.75% Fee and the Syndicated Exclusivity Surcharge

In addition to the Base Rate Fee, there are two additional categories of royalties for which an operator may be obligated to pay in certain circumstances: the "**3.75% Fee**" and the "**Syndicated Exclusivity Surcharge**" (also called "**Syndex Surcharge**"). These fees resulted from changes in the FCC rules and regulations that affected carriage of distant signals.

Prior to June 24, 1981, cable systems were limited as to the number and type of distant stations they were permitted to retransmit. Appendix C is a chart showing those limits.

The term "3.75% Fee" refers to the royalty obligation for the carriage of stations a cable system could not have carried prior to June 24, 1981, the date on which the FCC eliminated its rules restricting the number of distant signals cable systems were permitted to retransmit. The fee for qualifying stations is 3.75% of Gross Receipts per station in lieu of the Base Rate Fee or the Syndex Surcharge. Page 13 of PS Exhibit __ (MEK-3) shows the page where the cable system calculates the 3.75% Fee royalty.

The calculation of 3.75% Fee liability is similar to that of the Base Rate Fee. The first step is identifying all stations for which there is 3.75% Fee liability. Next, the DSEs for those stations are totaled. Then Gross Receipts are multiplied by 3.75% and that result is multiplied by the total DSEs for 3.75% Fee stations. The result is the 3.75% Fee royalty obligation.

Here is an example of the 3.75% Fee calculation in a hypothetical situation where a system with Gross Receipts of $700,000 must pay 3.75% for one independent (1.00) DSE plus one network affiliate (0.25 DSE) for a total of 1.25 DSEs.

$700,000 times 3.75% times 1.25 = $32,813

Note three observations regarding the 3.75% Fee:

- If the cable operator pays the 3.75% Fee for a particular distant station, there is no other royalty due for that station.
- If an operator is carrying two independent stations (say a U.S. independent plus a Canadian station) and is required to pay 3.75% Fee liability for one independent station, the option as to which station is paid at the Base Rate versus which is paid at the 3.75% rate is an arbitrary choice by the cable system.
- In situations where the cable system serves communities where the application of the 3.75% Fee rules differs (for example, if the system serves communities in the Top 50 markets and also serves communities outside all television markets), the operator is permitted to prorate the 3.75% Fee.

The 3.75% Fee royalties are paid into the 3.75% Fee Fund.

"Syndicated Exclusivity Surcharge" or "Syndex Surcharge" refers to the protection FCC rules formerly provided to television stations in the top 100 markets. At one time, the FCC required cable systems, if requested by the local station, to black out syndicated programs on distant stations if the same programs were available on a local TV station. The purpose was to protect the local station's right to provide an exclusive audience to the businesses to whom the station had sold commercial time. Those rules have gone through several evolutions, one of the effects of which was the imposition of the Syndex Surcharge for Form 3 systems located in the top 100 markets. A cable operator becomes liable for the Syndex Surcharge when the operator:

1. serves subscribers located in one of the top 100 markets as defined by the FCC (Section 76.51)
2. carries a very high frequency ("VHF") station
3. serves subscribers located within the station's Grade B contour[5]
4. whose syndicated programs the operators once were required to black out pursuant to FCC rules in effect on June 24, 1981, but which the operators are no longer required to black out because the FCC rule changed.

Fortunately, the circumstances that trigger this type of payment occur rather infrequently and result in a very small amount of royalties generated -- approximately $272,000 for 2000, 2001, 2002 and 2003 combined. Page 15 of PS Exhibit ___ (MEK-3) shows the schedule by which the cable operator calculates any applicable Syndex Surcharge royalty, and Appendix D is a listing of the FCC's top 100 markets. The Syndex Surcharge fees are paid into the Syndex Surcharge Fund.

[5] A Grade B contour is a prediction of the station's signal strength. The contour generally resembles a circle around the station's transmitter.

In the cases of all three fee schedules, the Base Rate Fee, 3.75% Fee and Syndex Surcharge, cable operators are permitted to prorate their payments in one limited circumstance, to wit, if they retransmit stations that are distant to some communities in the cable system, but local to other communities served by the system. Such stations are called **"partially-distant" stations**, or "P-D" and the operator pays royalties only on the Gross Receipts attributable to the so-called distant subscribers.

Appendix E reports the breakdown of Form 3 payments for 2000, 2001, 2002, and 2003 by royalty type.

VII. THE CONCEPT OF "FEES GENERATED"

The term "**fees gen**" is an abbreviation of the term "**fees generated**" and it refers to the attempt to assign a proportionate share of the total royalties paid by all systems to each individual broadcast station that is retransmitted as a distant signal. However, it is actually not possible to quantify the precise amount of total royalties that can be directly attributable to any individual station.

Recall the example I gave earlier wherein the system with $1,300,000 in gross receipts carried 6 distant stations for a total of 3 DSEs:

2.00	(2 distant independents at 1.00 DSE each)
0.75	(3 distant networks at 0.25 DSE each)
0.25	(1 distant PBS station at 0.25 DSE each)
3.00	Total DSEs

Recall also that the DSE percentages are on a sliding scale that has lower rates as more distant signals are carried. Cable operators are not required to match DSEs to specific stations, so for the following illustration, let us assume that at least one of the distant independents in my example is a Canadian station.

The hypothetical system paid a royalty of $12,428 for the first 1.0 DSE. But the calculation of that amount was related to the *DSE value* allocated to individual stations, not to a specific station. There are several possible ways to reach $12,428. It could be a payment for a Canadian station (*i.e.*, for 1.0 DSE); it could be the payment for three network affiliates plus one public television station (*i.e.*, four stations at 0.25 DSE each); it could be a payment for a different independent; or it could be a payment for four network stations. The matter is further complicated if the 2nd, 3rd, 4th and 5th DSEs are taken into account. Just as the 1.0 DSE for the Canadian station could be considered to be part of the calculation for the first 1.0 DSE, that 1.0 DSE could instead be housed within the "last four" DSEs, and paid for at a lower rate. The point is -- there is no way to attach any particular distant signal with any particular royalty payment.

CDC devised the fees gen methodology for allocating fees generated to individual stations. The following is my understanding of how the CDC "fees gen" protocol operates:

Form 3 systems that carried no distant stations are required to pay a minimum fee equivalent to 1.0 DSE. For these systems, CDC allocates the entire royalty payment to what it calls the Minimum Fee Category. Thus if a system paid $30,000 and retransmitted 6 (local) broadcast stations, the entire $30,000 would be allocated to CDC's Minimum Fee Category.

For Form 3 systems whose total DSEs are less than 1.0 and whose distant stations carried no 3.75% Fee liability, the royalty is allocated among the distant station(s) as a proportion of their total DSEs and the balance is allocated to the Minimum Fee Category. For example, assume a cable system carried 3 distant network affiliates (*i.e.*, 3 stations times 0.25 DSE each for a total of 0.75 DSE). Such a system would pay the minimum fee. If the minimum fee were $6,000, each distant station would be allocated $1,500, and the remaining $1,500 would be allocated to the Minimum Fee Category.

For Form 3 systems with total DSEs of 1.0 or more, CDC sums total DSEs and then allocates the royalty among the distant stations in the same proportion that each station's DSE value represents of total DSEs. In our hypothetical system above, the allocation of the $28,808 royalty payment would go like this:

DISTANT STATION	DSE	% OF TOTAL DSEs	SHARE OF $28,808
1st independent	1.00	33.33%	$ 9,603
2nd independent	1.00	33.33%	$ 9,603
1st network affiliate	0.25	8.33%	$ 2,401
2nd network affiliate	0.25	8.33%	$ 2,401
3rd network affiliate	0.25	8.33%	$ 2,401
1st PTV station	0.25	8.33%	$ 2,401
TOTAL	3.00	100.0%	$ 28,808

Note the difference between the royalty paid for a single 1.0 DSE value in the hypothetical versus the fees gen assigned by prorating the independent stations in the foregoing illustration. For Form 3 systems with 3.75% Fee liability, CDC allocates the payment on a pro rata basis by dividing each station's DSE value by total DSE values for all 3.75% Fee stations and multiplying each station's resulting percentage times the royalty amount.

CDC's fees gen allocation reflects the relative weights of DSE values for independent (including Canadian) stations, network affiliates and public television stations.

It might be helpful to illustrate how the fees gen allocation plays out in practice by examining the following SOA filings by the cable system serving Dunkirk, New York. The individual filings covering periods 1998-1 through 2005-1 are included as PS Exhibit ____ (MEK-4). In the initial periods, the system carried the same distant stations, shown below with the DSE value for each:

CBLT	5	TORONTO	1.00
CFTO	9	TORONTO	1.00
CHTV	11	TORONTO	1.00
WICU	12	ERIE, PA	0.25
WJET	24	ERIE, PA	0.25
WSEE	35	ERIE, PA	0.25
WPIX	11	NEW YORK	1.00
CIII	6	PARIS, ONT	1.00
		Total DSEs	5.75

Appendix F summarizes the system's subscriber count, gross receipts, total DSEs and royalty for accounting periods 1998-1 through 2005-1. It is immediately obvious that, although the number of subscribers to the Dunkirk system and the number of distant stations retransmitted (between 6 and 8) remained relatively steady throughout the years in question, the system's gross receipts and corresponding royalty payments fluctuated significantly. The gross receipts started at $299,058 in 1998-1. Starting in 2002-2, the system added a "satellite tier" and the subscriber fees associated with that tier increased the Gross Receipts to $1.6 million in 2002-2. Two years later, when the system began providing the satellite tier at no cost, the gross receipts dropped to $338,000 in 2005-1, and the system filed as a Form 2 system, thereby reducing its royalty payment.

Dunkirk's royalties similarly track the gross receipts, starting at $21,105 for 1998-1, getting as high as $252,000 in 2004-1, and then plummeting to around $2,400 in 2005-1 -- substantially below where they were in 1998-1.

Another factor in the history of Dunkirk's royalty payments is the effect of a Section 111 rate change that took place in 2000-2. The change increased the Form 3 royalty rate, but it also increased the Gross Receipts threshold so that in 2000-2 the system was able to file as a Form 2 system, thereby reducing its royalty payment.

Appendix F shows the effect of these various influences on fees gen for the Base Rate and 3.75% Fee royalties for 1.00 DSE.

Another factor that can cause fluctuation in fees gen is the merger of formerly independent systems. Such a merger would result in an increase in gross receipts of the merged entity and automatically trigger a higher payment in the next period and a higher allocation to distant signals.

Similarly, a system might drop a previously-carried distant signal, resulting in the royalties being allocated among fewer stations/DSEs. Related to this factor would be a system that carries just a single distant independent (Canadian) station. That system must pay the same minimum fee, whether or not it carries that single station.

Thank you for the opportunity to present the information in this testimony. I hope it will be helpful in the Judges' deliberations.

APPENDIX A

LICENSING DIVISION
REPORT OF RECEIPTS
1/23/2009

CABLE YEAR/PERIOD	TOTAL DEPOSITS	PERCENT GROWTH	LAST DEPOSIT	TOTAL DEPOSIT BY YEAR	PERCENT GROWTH
2008/2	$113,668.14		01/23/09		
2008/1	$79,820,256.26		01/16/09	$79,933,924.40	
2007/2	$73,139,271.05	3.74%	01/21/09		
2007/1	$72,605,842.64	1.32%	01/21/09	$145,745,113.69	2.52%
2006/2	$70,503,340.21	1.65%	01/09/09		
2006/1	$71,660,397.41	5.71%	01/09/09	$142,163,737.62	3.66%
2005/2	$69,358,843.73	3.46%	01/09/09		
2005/1	$67,791,763.22	0.72%	01/09/09	$137,150,606.95	2.09%
2004/2	$67,039,968.71	1.88%	12/08/08		
2004/1	$67,305,696.93	1.55%	10/24/08	$134,345,665.64	1.72%
2003/2	$65,803,392.51	0.30%	08/15/08		
2003/1	$66,276,120.47	1.56%	10/09/08	$132,079,512.98	0.93%
2002/2	$65,605,614.29	5.99%	07/28/08		
2002/1	$65,261,154.97	6.92%	07/28/08	$130,866,769.26	6.45%
2001/2	$61,900,086.00	-6.40%	07/28/08		
2001/1	$61,037,417.89	12.41%	07/28/08	$122,937,503.89	2.08%
2000/2	$66,133,957.49	15.70%	02/11/08		
2000/1	$54,299,665.30	-2.99%	07/28/08	$120,433,622.79	6.45%
1999/2	$57,159,927.51	5.27%	07/28/08		
1999/1	$55,971,187.67	3.83%	07/28/08	$113,131,115.18	4.55%
1998/2	$54,296,755.51	-30.30%	07/28/08		
1998/1	$53,907,972.57	-29.53%	07/28/08	$108,204,728.08	-29.92%
1997/2	$77,900,354.10	-12.68%	07/28/08		
1997/1	$76,495,072.67	-13.51%	02/11/08	$154,395,426.77	-13.09%
1996/2	$89,216,634.56	6.32%	07/28/08		
1996/1	$88,440,053.50	7.90%	07/28/08	$177,656,688.06	7.10%
1995/2	$83,910,133.03	7.31%	07/28/08		
1995/1	$81,962,891.10	-1.34%	07/28/08	$165,873,024.13	2.85%
1994/2	$78,197,770.21	-14.25%	07/28/08		
1994/1	$83,077,232.43	-11.79%	07/28/08	$161,275,002.64	-13.00%
1993/2	$91,191,061.78	-3.13%	02/11/08		
1993/1	$94,183,949.75	-0.22%	02/11/08	$185,375,011.53	-1.68%
1992/2	$94,141,711.32	4.17%	07/28/08		
1992/1	$94,395,613.62	4.45%	02/11/08	$188,537,324.94	4.31%
1991/2	$90,376,655.26	6.55%	02/11/08		
1991/1	$90,377,632.96	5.68%	02/11/08	$180,754,288.22	6.12%
1990/2	$84,819,301.05	-20.23%	02/11/08		
1990/1	$85,516,221.89	-15.99%	02/11/08	$170,335,522.94	-18.16%
1989/2	$106,334,726.38	9.86%	02/11/08		
1989/1	$101,791,515.01	5.69%	02/11/08	$208,126,241.39	7.78%
1988/2	$96,790,730.13	13.22%	02/11/08		
1988/1	$96,313,278.58	24.00%	02/11/08	$193,104,008.71	18.35%
1987/2	$85,492,550.64	34.43%	02/11/08		
1987/1	$77,670,753.05	27.06%	02/11/08	$163,163,303.69	30.82%
1986/2	$63,598,291.16	17.39%	02/11/08		
1986/1	$61,127,295.88	20.80%	02/11/08	$124,725,587.04	19.04%
1985/2	$54,176,755.47	12.52%	02/11/08		
1985/1	$50,600,568.70	14.67%	02/11/08	$104,777,324.17	13.55%
1984/2	$48,147,865.41	27.01%	02/11/08		
1984/1	$44,125,443.21	26.56%	02/11/08	$92,273,308.62	26.79%
1983/2	$37,909,196.05	74.87%	02/11/08		
1983/1	$34,866,475.47	79.00%	02/11/08	$72,775,671.52	76.82%
1982/2	$21,678,906.56	28.16%	02/11/08		
1982/1	$19,478,472.04	39.42%	02/11/08	$41,157,378.60	33.26%
1981/2	$16,915,375.02	64.22%	11/25/08		
1981/1	$13,970,784.29	43.38%	11/25/08	$30,886,159.31	54.09%
1980/2	$10,300,643.55	24.74%	10/24/05		
1980/1	$9,743,848.23	27.67%	10/25/05	$20,044,491.78	26.15%
1979/2	$8,257,623.65	25.63%	10/26/05		
1979/1	$7,632,169.73	20.44%	10/27/05	$15,889,793.38	23.08%
1978/2	$6,572,982.50		10/28/05		
1978/1	$6,337,044.38		10/29/05	$12,910,026.88	
Total				**$3,751,093,960.40**	

LICENSING DIVISION
REPORT OF RECEIPTS
1/23/2009

SATELLITE YEAR/PERIOD	TOTAL DEPOSITS	PERCENT GROWTH	LAST DEPOSIT	TOTAL DEPOSIT BY YEAR	PERCENT GROWTH
2008/2					
2008/1	$46,926,370.55	4.00%	08/20/08	$46,926,370.55	
2007/2	$44,820,833.24	4.45%	01/30/08		
2007/1	$45,121,723.99	3.60%	11/08/07	$89,942,557.23	4.03%
2006/2	$42,909,846.50	10.04%	03/22/07		
2006/1	$43,552,154.74	10.77%	03/22/07	$86,462,001.24	10.41%
2005/2	$38,993,747.81	10.28%	03/22/07		
2005/1	$39,315,963.37	12.39%	08/01/05	$78,309,711.18	11.33%
2004/2	$35,357,420.59	4.43%	09/01/05		
2004/1	$34,981,057.03	3.96%	09/01/05	$70,338,477.62	4.20%
2003/2	$33,857,253.35	-0.22%	01/30/04		
2003/1	$33,647,366.17	-1.58%	07/19/04	$67,504,619.52	-0.90%
2002/2	$33,933,297.12	-8.75%	02/25/03		
2002/1	$34,186,301.93	-7.21%	09/26/02	$68,119,599.05	-7.98%
2001/2	$37,186,165.31	7.18%	01/31/02		
2001/1	$36,842,154.99	10.64%	09/20/02	$74,028,320.30	8.87%
2000/2	$34,696,199.62	18.08%	10/29/01		
2000/1	$33,298,565.71	-35.08%	10/29/01	$67,994,765.33	-15.72%
1999/2	$29,383,056.92	-45.41%	05/04/00		
1999/1	$51,290,949.82	-7.96%	10/05/99	$80,674,006.74	-26.36%
1998/2	$53,821,069.71	128.81%	01/19/00		
1998/1	$55,727,832.06	189.80%	08/07/98	$109,548,901.77	156.24%
1997/2	$23,522,196.82	52.62%	03/18/98		
1997/1	$19,229,571.70	41.93%	11/07/97	$42,751,768.52	47.62%
1996/2	$15,412,271.22	25.22%	02/26/97		
1996/1	$13,548,288.52	23.67%	08/06/96	$28,960,559.74	24.49%
1995/2	$12,307,755.12	23.41%	02/20/96		
1995/1	$10,954,852.38	36.03%	10/04/95	$23,262,607.50	29.05%
1994/2	$9,973,123.28	47.74%	06/05/95		
1994/1	$8,053,301.13	55.14%	09/13/94	$18,026,424.41	50.96%
1993/2	$6,750,269.48	72.79%	03/28/94		
1993/1	$5,190,922.06	99.74%	08/27/93	$11,941,191.54	83.55%
1992/2	$3,906,711.02	103.26%	05/05/93		
1992/1	$2,598,879.32	49.24%	08/03/92	$6,505,590.34	77.58%
1991/2	$1,921,990.44	17.22%	03/06/92		
1991/1	$1,741,464.97	14.87%	03/06/92	$3,663,455.41	16.09%
1990/2	$1,639,662.03	22.83%	05/14/91		
1990/1	$1,515,974.06	39.25%	07/31/90	$3,155,636.09	30.21%
1989/2	$1,334,880.11		08/30/90		
1989/1	$1,088,677.39		08/01/89	$2,423,557.50	
TOTAL				**$933,613,751.03**	

LICENSING DIVISION
REPORT OF RECEIPTS
1/23/2009

DART YEAR/PERIOD	TOTAL DEPOSITS	PERCENT GROWTH	LAST DEPOSIT	TOTAL DEPOSIT BY YEAR	PERCENT GROWTH
2008/4	$1,150.92	-99.79%	01/20/09		
2008/3	$303,658.57	-20.91%	11/20/08		
2008/2	$424,155.48	6.28%	11/19/08		
2008/1	$350,706.93	2.85%	08/15/08	$1,079,671.90	
2007/4	$555,688.61	-57.17%	08/27/08		
2007/3	$383,937.32	2.05%	01/14/08		
2007/2	$399,075.70	-64.04%	01/17/08		
2007/1	$340,973.18	-28.37%	06/11/07	$1,679,674.81	-48.47%
2006/4	$1,297,394.68	33.04%	11/15/07		
2006/3	$376,231.35	-14.60%	06/11/07		
2006/2	$1,109,898.07	106.31%	06/11/07		
2006/1	$476,030.14	-0.84%	06/11/07	$3,259,554.24	33.93%
2005/4	$975,171.17	44.20%	06/11/07		
2005/3	$440,568.04	-9.95%	06/11/07		
2005/2	$537,971.82	32.44%	06/11/07		
2005/1	$480,081.60	-56.73%	06/11/07	$2,433,792.63	-9.23%
2004/4	$676,284.90	-19.16%	06/11/07		
2004/3	$489,236.00	-30.74%	06/11/07		
2004/2	$406,198.73	-35.39%	06/11/07		
2004/1	$1,109,623.20	15.16%	06/11/07	$2,681,342.83	-14.48%
2003/4	$836,599.15	-19.36%	06/11/07		
2003/3	$706,407.83	-29.13%	06/11/07		
2003/2	$628,741.80	-25.42%	06/11/07		
2003/1	$963,516.87	60.60%	06/11/07	$3,135,265.65	-9.83%
2002/4	$1,037,414.44	1.55%	06/11/07		
2002/3	$996,698.01	6.14%	06/11/07		
2002/2	$843,051.89	19.05%	06/11/07		
2002/1	$599,935.96	-42.14%	06/11/07	$3,477,100.30	-6.17%
2001/4	$1,021,604.38	-38.24%	10/21/02		
2001/3	$939,021.40	-32.59%	08/14/03		
2001/2	$708,177.59	-42.61%	11/05/02		
2001/1	$1,036,896.54	3.76%	07/16/02	$3,705,699.91	-29.82%
2000/4	$1,654,096.28	79.57%	08/18/04		
2000/3	$1,393,072.95	63.03%	10/31/03		
2000/2	$1,234,062.82	48.46%	11/20/06		
2000/1	$999,304.59	13.33%	04/26/01	$5,280,536.64	51.36%
1999/4	$921,127.84	31.54%	02/05/01		
1999/3	$854,480.25	31.49%	02/05/01		
1999/2	$831,224.09	159.18%	07/27/00		
1999/1	$881,791.61	177.73%	07/27/00	$3,488,623.79	75.45%
1998/4	$700,280.95	145.85%	07/27/00		
1998/3	$649,858.83	129.01%	10/27/00		
1998/2	$320,707.65	90.41%	07/27/00		
1998/1	$317,496.33	18.76%	07/27/00	$1,988,343.76	97.97%
1997/4	$284,846.45	193.62%	07/27/00		
1997/3	$283,774.20	139.14%	07/27/00		
1997/2	$168,428.23	77.76%	07/27/00		
1997/1	$267,333.37	130.83%	07/27/00	$1,004,382.25	135.64%
1996/4	$97,011.58	-23.67%	07/27/00		
1996/3	$118,666.76	-13.89%	07/27/00		
1996/2	$94,748.82	-11.41%	07/27/00		
1996/1	$115,816.46	5.52%	07/27/00	$426,243.62	-11.50%
1995/4	$127,094.30	-13.38%	07/27/00		
1995/3	$137,808.40	5.36%	07/27/00		
1995/2	$106,950.25	-30.56%	05/31/00		
1995/1	$109,755.58	21.36%	05/31/00	$481,608.53	-7.74%
1994/4	$146,726.29	22.47%	05/31/00		
1994/3	$130,803.26	23.19%	05/31/00		
1994/2	$154,028.62	29.41%	05/31/00		
1994/1	$90,441.47	-48.36%	05/22/98	$521,999.64	0.35%
1993/4	$119,806.92	1.34%	09/14/94		
1993/3	$106,179.39		05/31/00		
1993/2	$119,024.84		05/31/00		
1993/1	$175,151.69		05/31/00	$520,162.84	
1992/4	$118,227.42		07/31/94	$118,227.42	
TOTAL				**$34,202,558.86**	

NUMBER OF CABLE SYSTEMS BY FORM

YEAR	AVERAGE NUMBER OF F1 SYSTEMS	AVERAGE NUMBER OF F2 SYSTEMS	AVERAGE NUMBER OF F3 SYSTEMS	TOTAL NUMBER OF SYSTEMS
2000	5,301	2,373	2,103	9,777
	54.2%	24.3%	21.5%	100.0%
2001	5,258	2,051	1,836	9,145
	57.5%	22.4%	20.1%	100.0%
2002	4,940	1,788	1,743	8,471
	58.3%	21.1%	20.6%	100.0%
2003	4,533	1,640	1,669	7,842
	57.8%	20.9%	21.3%	100.0%
AVERAGE, ALL YEARS	5,008	1,963	1,838	8,809
	56.9%	22.3%	20.9%	100.0%

SOURCE: CABLE DATA CORPORATION

ROYALTIES BY FORM

YEAR	ROYALTIES PAID BY F1 SYSTEMS	ROYALTIES PAID BY F2 SYSTEMS	ROYALTIES PAID BY F3 SYSTEMS	TOTAL ROYALTIES
2000	$ 351,954	$ 4,279,608	$ 111,871,811	116,503,373
	0.3%	3.7%	96.0%	100.0%
2001	$ 375,651	$ 4,159,556	$ 116,144,090	120,679,297
	0.3%	3.4%	96.2%	100.0%
2002	$ 365,936	$ 3,630,270	$ 125,765,602	129,761,808
	0.3%	2.8%	96.9%	100.0%
2003	$ 337,159	$ 3,360,197	$ 126,726,417	130,423,773
	0.3%	2.6%	97.2%	100.0%
TOTAL, ALL YEARS	1,430,700	15,429,631	480,507,920	497,368,251
	0.3%	3.1%	96.6%	100.0%

SOURCE: CABLE DATA CORPORATION

NUMBER OF SUBSCRIBERS BY FORM

YEAR	AVERAGE NUMBER OF F1 SUBSCRIBERS	AVERAGE NUMBER OF F2 SUBSCRIBERS	AVERAGE NUMBER OF F3 SUBSCRIBERS	TOTAL NUMBER OF SUBSCRIBERS
2000	1,531,710	4,190,980	60,418,458	66,141,148
	2.3%	6.3%	91.3%	100.0%
2001	1,596,572	4,134,215	60,470,614	66,201,401
	2.4%	6.2%	91.3%	100.0%
2002	1,394,309	3,359,605	60,604,709	65,358,623
	2.1%	5.1%	92.7%	100.0%
2003	1,243,011	2,958,685	59,707,396	63,909,092
	1.9%	4.6%	93.4%	100.0%
AVERAGE, ALL YEARS	1,441,401	3,660,871	60,300,294	65,402,566
	2.2%	5.6%	92.2%	100.0%

SOURCE: CABLE DATA CORPORATION

PERMITTED SIGNALS PRIOR TO JUNE 24, 1981

LOCATION OF SYSTEM	NUMBER OF PERMITTED NETWORKS*	NUMBER OF PERMITTED INDEPENDENTS	ADDITIONAL INDEPENDENTS
TOP 50 MARKETS	1/EACH PER NETWORK	3	2, SUBJECT TO RESTRICTIONS
SECOND 50 MARKETS	1/EACH PER NETWORK	2	2, SUBJECT TO RESTRICTIONS
SMALLER MARKETS	1/EACH PER NETWORK	1	(ZERO)

*ABC, CBS or NBC

Subpart B—Registration Statements

§ 76.29 Special temporary authority.

(a) In circumstances requiring the temporary use of community units for operations not authorized by the Commission's rules, a cable television system may request special temporary authority to operate. The Commission may grant special temporary authority, upon a finding that the public interest would be served thereby, for a period not to exceed ninety (90) days, and may extend such authority, upon a like finding, for one additional period, not to exceed ninety (90) days.

(b) Requests for special temporary authority may be submitted informally, by letter, and shall contain the following:

(1) Name and address of the applicant cable system.

(2) Community in which the community unit is located.

(3) Type of operation to be conducted.

(4) Date of commencement of proposed operations.

(5) Duration of time for which temporary authority is required.

(6) All pertinent facts and considerations relied on to demonstrate the need for special temporary authority and to support a determination that a grant of such authority would serve the public interest.

(7) A certificate of service on all interested parties.

(c) A request for special temporary authority shall be filed at least ten (10) days prior to the date of commencement of the proposed operations, or shall be accompanied by a statement of reasons for the delay in submitting such request.

(d) A grant of special temporary authority may be rescinded by the Commission at any time upon a finding of facts which warrant such action.

[39 FR 35166, Sept. 30, 1974; 42 FR 19346, Apr. 13, 1977, as amended at 43 FR 49008, Oct. 20, 1978]

Subpart C—Federal-State/Local Regulatory Relationships [Reserved]

Subpart D—Carriage of Television Broadcast Signals

§ 76.51 Major television markets.

For purposes of the cable television rules, the following is a list of the major television markets and their designated communities:

(a) First 50 major television markets:

(1) New York, New York-Linden-Paterson-Newark, New Jersey.

(2) Los Angeles-San Bernardino-Corona-Riverside-Anaheim, Calif.

(3) Chicago, Ill.

(4) Philadelphia, Pa.-Burlington, N.J.

(5) Detroit, Mich.

(6) Boston-Cambridge-Worcester-Lawrence, Mass.

(7) San Francisco-Oakland-San Jose, Calif.

(8) Cleveland-Lorain-Akron, Ohio.

(9) Washington, DC.

(10) Pittsburgh, Pa.

(11) St. Louis, Mo.

(12) Dallas-Fort Worth, Tex.

(13) Minneapolis-St. Paul, Minn.

(14) Baltimore, Md.

(15) Houston, Tex.

(16) Indianapolis-Bloomington, Ind.

(17) Cincinnati, Ohio-Newport, Ky.

(18) Atlanta-Rome, Ga.

(19) Hartford-New Haven-New Britain-Waterbury-New London, Ct.

(20) Seattle-Tacoma, Wash.

(21) Miami, Fla.

(22) Kansas City, Mo.

(23) Milwaukee, Wis.

(24) Buffalo, N.Y.

(25) Sacramento-Stockton-Modesto, Calif.

(26) Memphis, Tenn.

(27) Columbus-Chillicothe, Ohio.

(28) Tampa-St. Petersburg-Clearwater, Florida.

(29) Portland, Oreg.

(30) Nashville, Tenn.

(31) New Orleans, La.

(32) Denver-Castle Rock, Colorado.

(33) Providence, R.I.-New Bedford, Mass.

(34) Albany-Schenectady-Troy, N.Y.

(35) Syracuse, N.Y.

(36) Charleston-Huntington, W. Va.

(37) Kalamazoo-Grand Rapids-Battle Creek, Mich.

(38) Louisville, Ky.

(39) Oklahoma City, Okla.

(40) Birmingham, Ala.

(41) Dayton-Kettering, Ohio.

(42) Charlotte, N.C.
(43) Phoenix-Mesa, Ariz.
(44) Norfolk-Newport News-Portsmouth-Hampton, Va.
(45) San Antonio, Tex.
(46) Greenville-Spartanburg-Anderson, S.C.-Asheville, N.C.
(47) Greensboro-High Point-Winston Salem, N.C.
(48) Salt Lake City, Utah.
(49) Wilkes Barre-Scranton, Pa.
(50) Little Rock-Pine Bluff, Arkansas.

(b) Second 50 major television markets:

(51) San Diego, Calif.
(52) Toledo, Ohio.
(53) Omaha, Nebr.
(54) Tulsa, Okla.
(55) Orlando-Daytona Beach-Melbourne-Cocoa-Clermont, Florida.
(56) Rochester, N.Y.
(57) Harrisburg-Lancaster-York, Pa.
(58) Texarkana, Tex.-Shreveport, La.
(59) Mobile, Ala.-Pensacola, Fla.
(60) Davenport, Iowa-Rock Island-Moline, Ill.
(61) Flint-Bay City-Saginaw, Mich.
(62) Green Bay, Wis.
(63) Richmond-Petersburg, Va.
(64) Springfield-Decatur-Champaign, Illinois.
(65) Cedar Rapids-Waterloo, Iowa.
(66) Des Moines-Ames, Iowa.
(67) Wichita-Hutchinson, Kans.
(68) Jacksonville, Fla.
(69) Cape Girardeau, Mo.-Paducah, Ky.-Harrisburg, Ill.
(70) Roanoke-Lynchburg, Va.
(71) Knoxville, Tenn.
(72) Fresno-Visalia-Hanford-Clovis, California.
(73) Raleigh-Durham-Goldsboro-Fayetteville, North Carolina.
(74) Johnstown-Altoona, Pa.
(75) Portland-Poland Spring, Maine.
(76) Spokane, Wash.
(77) Jackson, Miss.
(78) Chattanooga, Tenn.
(79) Youngstown, Ohio.
(80) South Bend-Elkhart, Ind.
(81) Albuquerque, N. Mex.
(82) Fort Wayne-Roanoke, Ind.
(83) Peoria, Ill.
(84) Greenville-Washington-New Bern, N.C.
(85) Sioux Falls-Mitchell, S. Dak.
(86) Evansville, Ind.
(87) Baton Rouge, La.
(88) Beaumont-Port Arthur, Tex.
(89) Duluth, Minn.-Superior, Minn.
(90) Wheeling, W. Va.-Steubenville, Ohio.
(91) Lincoln-Hastings-Kearney, Nebr.
(92) Lansing-Onondaga, Mich.
(93) Madison, Wis.
(94) Columbus, Ga.
(95) Amarillo, Tex.
(96) Huntsville-Decatur, Ala.
(97) Rockford-Freeport, Ill.
(98) Fargo-Valley City, N.D.
(99) Monroe, La.-El Dorado, Ark.
(100) Columbia, S.C.

NOTE: Requests for changes to this list shall be made in the form of a petition for rulemaking pursuant to § 1.401 of this chapter, except that such petitions shall not be subject to the public notice provisions of § 1.403 of this chapter.

[37 FR 3278, Feb. 12, 1972, as amended at 37 FR 13866, July 14, 1972; 39 FR 24373, July 2, 1974; 39 FR 27572, July 30, 1974; 39 FR 37988, Oct. 25, 1974; 58 FR 17359, Apr. 2, 1993; 58 FR 30995, May 28, 1993; 58 FR 64168, Dec. 6, 1993; 58 FR 67694, Dec. 22, 1993; 59 FR 25344, May 16, 1994; 59 FR 46358, Sept. 8, 1994; 60 FR 45376, Aug. 31, 1995; 60 FR 51928, Oct. 4, 1995; 61 FR 18292, Apr. 25, 1996; 65 FR 68101, Nov. 14, 2000]

§ 76.53 Reference points.

The following list of reference points shall be used to identify the boundaries of the major and smaller television markets (defined in § 76.5). Where a community's reference point is not given, the geographic coordinates of the main post office in the community shall be used.

State and community	Latitude	Longitude
Alabama:		
Anniston	33°39′49″	85°49′47″
Birmingham	33°31′01″	86°48′36″
Decatur	34°36′35″	86°58′45″
Demopolis	32°30′56″	87°50′07″
Dothan	31°13′27″	85°23′35″
Dozier	31°29′30″	86°21′59″
Florence	34°48′05″	87°40′31″
Huntsville	34°44′18″	86°35′19″
Louisville	31°47′00″	85°33′09″
Mobile	30°41′36″	88°02′33″
Montgomery	32°22′33″	86°18′31″
Mount Cheaha State Park	33°29′26″	85°48′30″
Selma	24°24′26″	87°01′15″
Tuscaloosa	33°12′05″	87°33′44″
Alaska:		
Anchorage	61°13′09″	149°53′29″
College	64°51′22″	147°48′38″
Fairbanks	64°50′35″	147°41′51″
Juneau	58°18′06″	134°25′09″
Sitka	57°02′58″	135°20′12″
Arizona:		
Flagstaff	35°11′54″	111°39′02″
Mesa	33°24′54″	111°49′41″

APPENDIX E

BREAKDOWN OF FORM 3 PAYMENTS BY ROYALTY TYPE

2000

FEE SCHEDULE	AVERAGE NUMBER OF F3 SYSTEMS	ROYALTIES	SHARE OF F3 ROYALTIES	SHARE OF 2000 FUND $116,503,373
BASE RATE	1,863	$ 99,648,160	89.1%	85.5%
3.75	232	$ 12,104,368	10.8%	10.4%
SYNDEX	8	$ 119,283	0.1%	0.1%
TOTAL	**2,103**	**$ 111,871,811**	**100.0%**	**96.0%**

2001

FEE SCHEDULE	AVERAGE NUMBER OF F3 SYSTEMS	ROYALTIES	SHARE OF F3 ROYALTIES	SHARE OF 2000 FUND $120,679,297
BASE RATE	1,595	$ 102,542,014	88.3%	85.0%
3.75	232	$ 13,517,280	11.6%	11.2%
SYNDEX	9	$ 84,796	0.1%	0.1%
TOTAL	**1,836**	**$ 116,144,090**	**100.0%**	**96.2%**

2002

FEE SCHEDULE	AVERAGE NUMBER OF F3 SYSTEMS	ROYALTIES	SHARE OF F3 ROYALTIES	SHARE OF 2000 FUND $129,761,808
BASE RATE	1,474	$ 109,361,432	87.0%	84.3%
3.75	263	$ 16,371,409	13.0%	12.6%
SYNDEX	6	$ 32,761	0.0%	0.0%
TOTAL	**1,743**	**$ 125,765,602**	**100.0%**	**96.9%**

2003

FEE SCHEDULE	AVERAGE NUMBER OF F3 SYSTEMS	ROYALTIES	SHARE OF F3 ROYALTIES	SHARE OF 2000 FUND $130,423,773
BASE RATE	1,393	$ 109,983,369	86.8%	84.3%
3.75	271	$ 16,707,622	13.2%	12.8%
SYNDEX	6	$ 35,426	0.0%	0.0%
TOTAL	**1,670**	**$ 126,726,417**	**100.0%**	**97.2%**

SOURCE: CABLE DATA CORPORATION

FEE GEN ANALYSIS - DUNKIRK, NY*

ACCOUNT PERIOD	SUBSCRIBERS	ROYALTY	GROSS RECEIPTS	# DISTANT STATIONS	TOTAL DSEs	RATE, 1st DSE	BASE RATE ROYALTY 1st DSE	BASE RATE 1.00 DSE FEES GEN	3.75 1.00 DSE FEES GEN	NOTES
1998-1	12,711	$ 21,105	$ 299,058	8	5.75	0.893%	$ 2,671	$ 1,744	$ 2,879	
1998-2	13,647	$ 21,992	$ 389,374	8	5.75	0.893%	$ 3,477	$ 1,744	$ 3,033	
1999-1	13,912	$ 21,583	$ 386,923	8	5.75	0.893%	$ 3,455	$ 1,798	$ 2,934	
1999-2*	7,479	$ 21,947	$ 387,839	8	5.75	0.893%	$ 3,463	$ 2,642	$ 3,108	
2000-1	7,773	$ 22,048	$ 383,820	8	5.75	0.893%	$ 3,428	$ 1,744	$ 3,037	
2000-2	7,638	$ 2,854	$ 365,696	(8)	N/A	(F2)	N/A	N/A	N/A	SECTION 111 RATE CHANGED
2001-1	7,659	2,605	$ 349,237	(7)	N/A	(F2)	N/A	N/A	N/A	
2001-2	7,589	$ 19,353	$ 383,219	7	4.75	0.956%	$ 3,664	$ 2,161	$ 3,219	
2002-1	7,589	$ 82,365	$ 652,787	7	4.75	0.956%	$ 6,241	$ 2,180	$ 24,479	
2002-2	7,438	$ 133,113	$ 1,633,584	6	3.75	0.956%	$ 15,617	$ 6,909	$ 61,259	ADDED SATELLITE TIER, GROSS RECEIPTS INCREASED
2003-1	7,213	$ 126,543	$ 1,552,965	6	3.75	0.956%	$ 14,846	$ 6,568	$ 58,236	
2003-2	6,957	$ 242,883	$ 1,552,118	8	5.75	0.956%	$ 14,838	$ 4,281	$ 58,205	
2004-1	6,810	$ 252,820	$ 1,615,618	8	5.75	0.956%	$ 15,445	$ 4,456	$ 60,586	
2004-2	6,561	$ 2,324	$ 327,320	(6)	N/A	(F2)	N/A	N/A	N/A	PROVIDED SATELLITE TIER FOR FREE
2005-1	6,387	$ 2,432	$ 338,144	(6)	N/A	(F2)	N/A	N/A	N/A	

*Data were taken from photocopies of microfiched SOA. The microfiche was difficult to read, but was the only copy available.
The information offered in this chart is based on a good-faith effort at reading the problematic SOA.

I declare, under penalty of perjury, that the foregoing testimony is true and correct and of my personal knowledge.

Executed on February 2, 2009

Marsha E. Kessler

Marsha E. Kessler

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of	)	
Distribution of the	)	**Docket No. 2008-2 CRB CD 2000-2003**
2000, 2001, 2002, and 2003 Cable Royalty Funds	)	

Direct Testimony of

Jonda K. Martin

February 2, 2009

DIRECT TESTIMONY OF JONDA K. MARTIN

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DIRECT TESTIMONY OF JONDA K. MARTIN

I. BIOGRAPHICAL INFORMATION

My name is Jonda K. Martin. I am appearing as a witness in this proceeding on behalf of the following parties: Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Public Television Claimants, Music Claimants and Devotional Claimants (collectively, "the Settling Parties"). I am the President and Owner of Cable Data Corporation ("CDC"). I have worked at CDC for over 20 years, and during this time, I have been actively involved in all aspects of the company, including research, data-entry, report generation, and administration. I received a Bachelor of Science/Business Administration degree from American University, with concentrations in international business and management of information systems. I also received a MBA from University of Maryland. I have previously testified before the Copyright Arbitration Royalty Panel ("CARP") regarding CDC's data collection activities in connection with the CARP's distribution of 1998 and 1999 cable compulsory license royalties. This is my first opportunity to testify before the Copyright Royalty Judges ("Judges").

II. PURPOSE OF TESTIMONY

The purpose of my testimony is to provide the Judges with an overview of CDC's operations and describe its data collection operations and methodologies in relevant detail, including CDC's methodology for allocating royalty payments among distant signals. I will also describe how the different CDC data reports presented by the parties in this proceeding were prepared and authenticate the CDC data underlying the testimony of witnesses of the Settling Parties.

III. CABLE DATA CORPORATION

Located in Rockville, Maryland, CDC was established in 1979 to collect and analyze information on Statements of Account ("SOAs") that cable systems file with the Licensing Division of the Copyright Office ("Licensing Division"). CDC makes the collected information available to users either by purchase, on an as needed basis, or by subscription. CDC is the only company providing such a service. Numerous parties involved in the cable and satellite industries rely on data collected by CDC. This is particularly true for parties involved in copyright compulsory license proceedings. As a result, CDC data have been presented over the years to the Copyright Royalty Tribunal and the CARP in virtually all of the cable and satellite copyright royalty distribution proceedings and rate adjustment proceedings. In this proceeding, witnesses presented by both the Canadian Claimants Group and the Settling Parties are relying on CDC data to support their testimony. In this section of my testimony, I will provide an overview of CDC's operations and its data collection methodologies.

A. Data Collection and System Updates

Data collection is an integral part of CDC's operations. CDC has two full-time employees who spend the vast majority of each work day on-location in the Licensing

Division of the Copyright Office. Those employees record data and other information from each filed SOA on laptop computers. The employees return to CDC's office periodically to transfer the data collected at the Copyright Office on laptops to CDC's HP3000 minicomputer. Once the data are transferred to CDC's minicomputer, CDC produces standard reports and customized reports which summarize the SOA data. To keep CDC data as consistent as possible with the SOAs on file with the Licensing Division, CDC performs regular system updates to account for modifications made to a system's filing, for reasons such as for additional royalty payments and refunds issued by the Licensing Division.

B. Data Reports

CDC regularly produces two major standardized reports of aggregated cable system data. The first standardized report, the "Account Period Summary," provides a snapshot of all the SOA data collected for each accounting period. This two-page summary report tabulates the total number of systems, royalty paid, subscribers, gross receipts, number of systems with carriage, average number of stations reported, average number of distant signals reported, number of systems with zero distant signals, and average distant signal equivalents ("DSEs"). The data are grouped by accounting period, and categorized by SOA form type (Form 1-2 or Form 3), type of royalty for Form 3 systems, and market category (Top 50, Second 50, Smaller and Outside All Markets). This report allows comparison of how the royalty fund changes over time. CDC produces the Account Period Summary report both in its complete form, and also in a summary format that condenses the same data without market breakdown. As an example, a copy of CDC's Account Period Summary report for the 1999-1 through the 2001-2 accounting periods is attached to my testimony as Appendix A.

CDC's second standardized report is the "Station Summary" report, which is a set of reports that provides aggregated data for all stations reported in an accounting period. This report includes station type, the number of systems reporting carriage of each station, the number of distant and local subscriber instances, and an accumulation of the royalty fees attributed ("fees generated" or "fees gen") to each station as calculated by CDC. As an example, I have attached a copy of the Station Summary report for the 2000-1 accounting period to my testimony as Appendix B.

In addition to these two standardized reports, CDC also produces customized reports as requested by clients. While these customized reports may differ in format from CDC's standardized reports, they are derived from the same database and rely on the same data protocols employed by CDC that I will explain later in my testimony.

C. Fees Generated Protocols And Allocation Of The Minimum Fee

Cable systems pay royalties based on the total DSE value of the stations carried. One of CDC's early assignments was to provide a means to match these royalties with individual stations to show, in effect, how much of the royalty fund was attributable to each station. CDC apportions the total royalty fees paid by an individual cable system among all the distant broadcast stations the system carries. These apportioned royalties are known as "fees-generated" or "fees-gen." CDC accumulates the fees-generated for each station across all of the systems reporting the station. These accumulated fees-generated and other reporting statistics are aggregated and summarized by station-type and station affiliation. It is important to recognize that CDC fees-generated protocols do not reflect a legal determination of how the royalties paid by each cable system should be allocated among the stations carried by that system. CDC's fees-generated protocols are merely CDC's own method of matching royalties to stations.

Under Section 111, each cable system is required to pay a minimum fee for the privilege of carrying distant retransmissions, regardless of whether the particular system actually imports any distant signals. These minimum fee payments have become more important in the fees generated allocation. Prior to 1998, the vast majority (over 99%) of fees-generated were allocated based on the actual carriage of distant signal(s) by cable systems. In other words, from the inception of the compulsory license until 1998, only a handful of Form 3 systems did not carry any distant signal. Although these systems were subject to the minimum fee, how CDC allocated those minimum fees was relatively unimportant because the amount of royalties involved was insignificant.

Throughout that period, WTBS was the most widely carried broadcast television station in the United States. During the 1997-2 accounting period, WTBS was carried as a distant signal by over 93% of Form 3 systems, representing 95.2% of all Form 3 subscribers, and that station's carriage accounted for over 50% of fees-generated. Because WTBS was so widely carried, there were very few systems that had no distant signals. During the 1997-2 accounting period, only 40 Form 3 systems reported no distant signals.[1] However, all of that changed in 1998 when WTBS became the cable network, TBS. The number of systems carrying no distant signals increased from 40 to 459, or about 20% of all Form 3 systems, representing 25% of all Form 3 subscribers.[2] Cable system minimum fees grew from about $330,000 in 1997-2 to $11.9 million in 1998-1, which placed greater emphasis on CDC's fees-generated protocols for assigning royalties to individual stations carried by these systems.

Until recently, CDC fees-generated protocols allocated the minimum fee paid by systems carrying zero distant signals equally among all of the local stations carried by the system, reporting those amounts in CDC data reports as "local fees-generated." Also, for systems carrying at least one distant signal, but with a total system DSE value of less than 1.0, CDC's former fees-generated protocols allocated the royalty paid by each of these systems entirely to the reported distant station(s). Assume that a system carried one distant educational or network station with a DSE value of 0.25 and paid a minimum fee of $5,000. Under CDC's former distant fees-generated protocols, the one reported distant station would get credited with the entire $5,000 as its distant fees-generated.

In the course of the 1998-99 Phase I Cable Distribution proceeding before the CARP, I testified regarding CDC's use of these fees-generated protocols. The Canadian Claimants Group criticized CDC's then existing fees-generated protocols as not properly

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[1] This amounted to less than 2% of all Form 3 cable systems.

[2] Despite this increase in the number of systems carrying no distant signals, the total royalty fund only went down by about 32%.

allocating the minimum fees for systems that carried at least one distant signal, but which had a total DSE value less than 1.0. In response to that criticism, and in the interest of improving our protocols for allocating the minimum fee, I and others at CDC worked diligently over the last five years to create new fees-generated protocols for allocating the minimum fee. In addition to modifying CDC's protocols for allocating the minimum fees for systems carrying at least one distant signal, but with a total DSE value of less than 1.0, CDC also created a "Minimum Fee Category" for allocating fees-generated that are not deemed attributable to distant signal carriage and eliminated a designation for "local fees generated." CDC's current fees-generated protocols, which have been in place since June 2008, are summarized below.

1. Base Rate Systems With At Least One Distant Signal And A Total DSE Equal To, Or Greater Than, 1.0.

For systems with at least one distant signal and a total DSE equal to or greater than 1, on a system-by-system basis, CDC proportionately allocates each system's royalties among the distant stations carried according to each station's DSE value relative to the total DSEs reported. For example, a system paying a total of $30,000 in royalty, which carries two distant network stations and one distant independent station, would have a total DSE value of 1.5 (0.25 DSE for each network and 1.0 DSE for the independent). The distant independent station is allocated two-thirds (1.0 DSE for the independent station divided by the 1.5 total system DSE) of the $30,000 or $20,000 in fees-generated.

The distant network stations are each allocated $5,000 in fees-generated, or one-sixth of the $30,000 (0.25 DSE per network station divided by the 1.5 total system DSE).

2. Base Rate Systems With Zero Distant Signals.

Systems that report no distant station carriage are required to pay the "minimum fee" royalty. Since such systems report only local stations, CDC does not allocate any portion of the minimum fee paid by these systems to individual stations. For these systems, CDC allocates the entire minimum fee to the Minimum Fee Category, which is reported in the Station Summary Report. For example, if a system pays a minimum fee of $10,000, but carries no distant stations, CDC would allocate the entire $10,000 to its Minimum Fee Category.

3. Base Rate Systems With At Least One Distant Signal, But Total DSE Values Less Than 1.0.

Systems with at least one distant signal, but a total DSE value of less than 1.0 are required to pay the minimum fee royalty. For these systems, CDC proportionately allocates royalties to the distant stations based on each station's DSE value. The balance of the royalty paid is then allocated to CDC's Minimum Fee Category. For example, consider a system paying a minimum fee of $15,000 that carried two distant network stations and one distant educational (non-commercial) station, each with a 0.25 DSE value, for a total system DSE of 0.75. CDC would allocate 25% of the minimum fee, or $3,750 to each of the three distant network and educational stations reported by the system (0.25 x $15,000), for a total station allocation of $11,250, and then allocate the balance of the royalties, here $3,750, to CDC's Minimum Fee Category. The same distant fee allocation methodology is used for each separate subscriber group reported by a system on its SOA. The fee generated amounts from each subscriber group are added together for a system total.

4. Systems Subject to the 3.75% Fee

Systems that carry a nonpermitted[3] signal are subject to the 3.75% Fee for that carriage. Typically, systems that are subject to the 3.75% Fee are not subject to the minimum fee. For these systems, CDC determines the 3.75% fees generated for each nonpermitted signal carried by proportionately allocating each system's 3.75% royalties among the distant nonpermitted stations carried according to each station's DSE value relative to the total DSEs reported for nonpermitted stations. However, a small number of systems existed during the 2000-1 through 2003-2 accounting periods that were subject to the 3.75% Fee but that were still required to pay the minimum fee. These systems typically utilize subscriber groups on their SOAs and carry the nonpermitted signal that gives rise to the systems' 3.75% Fee to only a portion of the systems' subscribers, causing the systems' calculated royalty on their SOAs to be lower than the minimum fee that they are required to pay under Section 111. For these systems, CDC allocates the fees generated by the individual distant signals carried at the subscriber

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[3] "Nonpermitted" refers to a station that could not have been carried prior to June 24, 1981, the date on which the FCC eliminated its rules restricting the number of distant signals cable systems were permitted to retransmit. The 3.75% Fee is 3.75% of gross receipts per DSE, in lieu of the base rate fee.

group level. CDC first proportionately allocates the dollar value of the system's calculated royalty for each subscriber group (as reported on its SOA) among the distant signals reported in that subscriber group according to each station's prorated DSE value. CDC then allocates the difference between the system's total calculated royalty and the total minimum fee paid by the system to the Minimum Fee Category.

IV. DATA PREPARED FOR THIS PROCEEDING

As I mentioned earlier in my testimony, all of the parties to this proceeding are relying on CDC data reports to support their respective witnesses' testimony. I understand that the parties have agreed to the authenticity of the CDC data that will be presented to the Judges in this proceeding.

CDC regularly updates its databases to capture any changes resulting from SOA amendments or other Licensing Division adjustments. Because these updates modify the underlying data in CDC's database, they can impact the data reported on prior CDC standardized reports and its customized reports. While the impact of these updates on the overall data are small, the presence of differences can lead to confusion and invite unnecessary cross-examination. To avoid any discrepancies between CDC data from different dates used in this proceeding due to database updates, the Canadian Claimants Group and the Settling Parties asked me to create a separate archived database of CDC data as they existed on November 7, 2008. This archived database was prepared by saving the CDC database of underlying data on November 7, 2008 as a separate data set, and creating archived copies of CDC's standardized Account Period Summary and Station Summary Reports as of November 7, 2008. All of the different customized CDC reports and underlying CDC data presented by the parties in this proceeding are derived from this archived database and the archived copies of CDC's standardized reports.

At the request of the Settling Parties, I have prepared SP Exhibit ___ (JKM-1) and SP Exhibit ___ (JKM-2). These exhibits identify each Form 3 system that carried one or more Canadian distant signals during any of the 1998-1 through 2003-2 accounting periods. They also show selected information CDC has extracted from each such system's SOAs, as well as CDC's allocation of fees-generated.

Thank you for the opportunity to present this information in this proceeding. I hope that it will assist you in your deliberations.

FORM-DESCR	TOTAL SYSTEMS	ROYALTY	Average Royalty	# SOA SYSTMS	SUBSCRIBERS	Average Subs	GROSS RECEIPTS	Average Receipts	# With CARR'G	AVG # STA	AVG # DIST	# =0 Dist	AVG DSE
2001-2												2001-2	
1 ONE	5,094	173,983	34	5,049	1,519,170	301	169,015,616	33,541	4,885	7.830	1.646	920	1.382
2 TWO	2,004	1,996,744	996	1,998	4,005,201	2,008	395,143,866	197,968	1,969	9.220	1.785	292	1.435
3 THREE	1,818	58,563,769	32,213	1,818	60,638,086	33,354	4,770,594,121	2,624,089	1,817	11.516	2.013	312	1.325
3 3.75%	239	7,201,918	30,133	239	6,243,346	26,123	477,362,542	1,997,333	239	11.958	4.866		1.825
3 SYNDEX	7	38,995	5,571	7	173,915	24,845	11,774,906	1,682,129	7	12.429	3.857		1.740
TOTAL F1,2,3	8,916	60,734,496	6,812	8,865	66,162,457	7,473	5,334,753,603	602,593	8,671	8.918	1.755	1524	1.383
2001-1												2001-1	
1 ONE	5,421	201,668	37	5,324	1,673,973	315	180,927,724	34,015	5,321	7.749	1.644	922	1.369
2 TWO	2,097	2,162,812	1,031	2,084	4,263,228	2,047	413,616,792	198,473	2,084	9.222	1.777	309	1.430
3 THREE	1,853	57,580,321	31,074	1,853	60,303,142	32,544	4,786,573,108	2,583,148	1,852	11.314	1.937	325	1.294
3 3.75%	225	6,315,462	28,069	225	5,616,437	24,962	435,524,852	1,935,666	225	11.711	4.822		1.772
3 SYNDEX	10	45,801	4,580	10	205,285	20,529	14,015,393	1,401,539	10	12.400	2.400		1.387
TOTAL F1,2,3	9,371	59,944,801	6,397	9,261	66,240,343	7,155	5,381,117,624	581,365	9,257	8.794	1.733	1556	1.368
2000-2												2000-2	
1 ONE	5,586	211,472	38	5,538	1,778,820	322	189,697,710	34,328	5,541	7.751	1.692	748	1.375
2 TWO	2,206	2,231,869	1,012	2,190	4,476,925	2,047	429,200,210	196,161	2,190	9.156	1.815	288	1.447
3 THREE	1,898	56,174,162	29,597	1,898	60,098,647	31,664	4,750,635,908	2,502,969	1,889	11.256	1.903	311	1.292
3 3.75%	211	5,617,387	26,623	211	4,923,739	23,335	375,142,551	1,777,927	211	11.673	4.531		1.754
3 SYNDEX	6	27,810	4,635	6	132,216	22,036	8,326,523	1,387,754	6	10.667	2.833		1.427
TOTAL F1,2,3	9,690	58,617,503	6,049	9,626	66,354,392	6,901	5,369,533,828	558,628	9,620	8.759	1.761	1347	1.376
2000-1												2000-1	
1 ONE	5,016	140,482	28	4,848	1,284,599	267	138,604,909	28,715	4,844	7.611	1.654	682	1.358
2 TWO	2,539	2,047,739	807	2,477	3,905,034	1,579	380,520,554	153,932	2,478	8.965	1.821	309	1.448
3 THREE	2,307	55,697,649	24,143	2,307	60,738,269	26,328	4,958,564,374	2,149,356	2,303	10.945	1.906	380	1.305
3 3.75%	253	6,486,981	25,640	253	5,037,914	19,913	400,646,263	1,583,582	253	11.292	4.336		1.828
3 SYNDEX	9	91,473	10,164	9	398,486	44,276	21,563,802	2,395,978	9	13.778	3.444		1.852
TOTAL F1,2,3	9,862	57,885,870	5,870	9,632	65,927,902	6,870	5,477,689,837	570,236	9,625	8.757	1.757	1371	1.369
1999-2												1999-2	
1 ONE	5,370	150,361	28	5,152	1,402,514	272	145,496,630	28,384	5,146	7.490	1.694	755	1.376
2 TWO	2,558	2,077,812	812	2,527	4,039,163	1,608	389,355,719	154,200	2,524	8.824	1.910	283	1.473
3 THREE	2,296	53,685,386	23,382	2,296	60,410,335	26,323	4,873,824,404	2,123,671	2,293	10.888	1.908	378	1.304
3 3.75%	245	5,609,965	22,898	245	5,049,838	20,612	372,205,752	1,519,207	245	10.992	4.359		1.787
3 SYNDEX	12	48,635	4,053	12	278,590	23,216	16,299,324	1,358,277	12	11.500	2.833		1.456
TOTAL F1,2,3	10,224	55,913,559	5,469	9,975	65,872,012	6,609	5,408,676,753	543,804	9,963	8.610	1.798	1416	1.385
1999-1												1999-1	
1 ONE	5,407	151,289	28	5,301	1,501,389	284	151,097,273	28,633	5,296	7.412	1.684	673	1.351
2 TWO	2,728	2,213,448	811	2,696	4,375,750	1,625	415,233,640	154,305	2,694	8.805	1.902	301	1.465
3 THREE	2,312	52,109,392	22,539	2,312	59,286,553	25,643	4,767,945,090	2,062,260	2,311	10.814	1.865	382	1.290
3 3.75%	230	4,778,724	20,777	230	4,609,736	20,042	347,160,318	1,509,393	230	11.143	4.352		1.754
3 SYNDEX	11	30,926	2,811	11	438,999	39,909	23,669,799	2,151,800	11	11.727	2.909		1.415
TOTAL F1,2,3	10,447	54,474,129	5,214	10,309	65,163,692	6,329	5,334,276,003	518,898	10,301	8.540	1.782	1356	1.369

FORM 1/2 Dist & DSE EST'd ..AVG-DIST Denom Incl's '# =0-Dist', AVG-DSE NOT ...3.75 and Syn = Subsets; Roy's = 3.75 or Syn resp.

JAN 26 2009
SSF3SUMS

SUMMARY PAGES FOR FORM 3 (THREE), Accounting Period: 2000-1

Description	TOTAL Instances of Carriage	TOTAL SUBSCRIBER Instances	TOTAL FEES-Generated	No. of UNIQUE Stations Total	DISTANT INSTANCES of Carriage	DISTANT SUBSCRIBER Instances	DISTANT FEES-Generated	No. of UNIQUE Stations Distant
U.S. Educational						U.S.	Educational	
regular	3,892	128,053,946	1,348,308	356	626	7,312,512	1,348,308	178
Religious	13	875,404	0	4	0	0	0	0
Educational	3,905	128,929,350	1,348,308	360	626	7,312,512	1,348,308	178
U.S. Independent						U.S.	Independent	
regular	3,032	110,486,270	27,463,432	105	1,446	34,925,778	27,463,432	25
FOX	2,463	65,817,737	1,984,557	178	258	2,369,748	1,984,557	96
HSN	2	62,369	0	1	0	0	0	0
Language	1,036	51,668,445	185,416	52	20	337,402	185,416	12
PAX	950	39,129,141	62,067	61	20	155,178	62,067	14
Relig & Lang	8	354,327	0	2	0	0	0	0
Religious	799	29,225,686	104,211	63	27	93,820	104,211	18
UPN & WBN	61	1,576,111	382	8	1	766	382	1
UPN,Paramont	1,528	52,398,549	3,082,035	81	229	3,966,820	3,082,035	37
WBN - Warner	1,505	48,547,257	3,844,329	74	314	5,360,853	3,844,329	44
Independent	11,384	399,265,892	36,726,429	625	2,315	47,210,365	36,726,429	247
U.S. Low Power						U.S.	Low Power	
regular	365	9,831,536	87,985	230	16	99,172	87,985	14
FOX	29	540,244	0	8	0	0	0	0
Language	27	1,321,187	4,502	8	1	9,274	4,502	1
Religious	5	63,050	0	1	0	0	0	0
UPN,Paramont	30	518,636	75,441	10	2	15,963	75,441	2
Low Power	456	12,274,653	167,928	257	19	124,409	167,928	17
U.S. Network						U.S.	Network	
ABC	3,025	74,084,848	1,058,368	215	426	3,963,158	1,058,368	135
ABC & CBS	3	33,807	67	1	1	153	67	1
ABC & NBC	2	11,610	689	1	1	3,687	689	1
ABC,CBS &NBC	3	6,428	0	2	0	0	0	0
CBS	3,076	73,075,665	1,130,590	209	434	3,941,870	1,130,590	123
CBS & NBC	4	50,000	1,184	2	1	6,292	1,184	1
NBC	3,102	76,084,859	1,217,765	215	466	5,071,466	1,217,765	127
Network	9,215	223,347,217	3,408,663	645	1,329	12,986,626	3,408,663	388

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SSF3SUMS

SUMMARY PAGES FOR FORM 3 (THREE), Accounting Period: 2000-1

Description	TOTAL Instances of Carriage	TOTAL SUBSCRIBER Instances	TOTAL FEES-Generated	No. of UNIQUE Stations Total	DISTANT INSTANCES of Carriage	DISTANT SUBSCRIBER Instances	DISTANT FEES-Generated	No. of UNIQUE Stations Distant
U.S. Minimum Fee						U.S.	Minimum Fee	
Minimum Fee	528	16,849,425	11,271,600	1	0	0	0	0
Minimum Fee	528	16,849,425	11,271,600	1	0	0	0	0
Country Subtotal:								
U.S.	25,488	780,666,537	52,922,928	1,888	4,289	67,633,912	41,651,328	830
CANADIAN Independent						CANADIAN	Independent	
regular	126	4,058,913	1,188,897	25	61	2,083,265	1,188,897	17
Language	23	640,931	327,529	3	23	585,832	327,529	3
Independent	149	4,699,844	1,516,426	28	84	2,669,097	1,516,426	20
Country Subtotal:								
CANADIAN	149	4,699,844	1,516,426	28	84	2,669,097	1,516,426	20
MEXICAN Independent						MEXICAN	Independent	
regular	5	171,559	0	3	0	0	0	0
FOX	13	815,136	0	2	0	0	0	0
Language	19	1,328,164	24,573	9	2	17,384	24,573	2
Independent	37	2,314,859	24,573	14	2	17,384	24,573	2
Country Subtotal:								
MEXICAN	37	2,314,859	24,573	14	2	17,384	24,573	2
OVERALL Total 2000-1								
Total	25,674	787,681,240	54,463,927	1,930	4,375	70,320,393	43,192,327	852

I declare, under penalty of perjury, that the foregoing testimony is true and correct and of my personal knowledge.

Executed on February 2, 2009

Jonda K Martin

Jonda K. Martin

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of	)	
	)	
Distribution of the	)	**Docket No. 2008-2 CRB CD 2000-2003**
2000, 2001, 2002, and 2003	)	
Cable Royalty Funds	)	

Testimony of

Linda McLaughlin

January 30, 2009

I. Qualifications and Summary

I am an economist and a Senior Vice President of National Economic Research Associates, Inc. I have conducted research on entertainment and media industries for over 30 years. I have analyzed marketplace prices paid for copyright licenses, reasonable rates for such licenses, and the distribution of fees collected to individual rights owners in a variety of media, including cable networks, broadcast stations, television programs, motion pictures, books, music compositions and recorded songs. I have submitted reports to and testified before the Copyright Arbitration Royalty Panel (CARP) and Copyright Royalty Judges concerning the compulsory license fee for satellite-retransmitted broadcast stations, the distribution of satellite royalty funds, and the costs and revenues of the record labels affiliated with the major U.S. record companies. In addition, I have submitted reports to the Federal Communications Commission and the Federal Trade Commission, and have testified before state and Federal courts and arbitrators concerning entertainment market issues. A detailed statement of my qualifications is attached as Exhibit 1.

I understand that Canadian Claimants assert that the relative value of the distant Canadian stations imported by cable operators in 2000-03 is no less than the portion of fees generated by the importation of the Canadian signals during that period. In this context, counsel for the National Association of Broadcasters and the Public Broadcasting Service asked me to address two issues: how marketplace values for cable-retransmitted broadcast programming are determined and whether fees generated for retransmitting particular stations reflect relative marketplace values.

In summary, I conclude:

- Cable retransmission is a secondary market. Relative marketplace values in such markets are based on relative programming demand.

- Fees generated reflect the payment framework of the compulsory license and attribution methods, not the relative demand for the programming on the retransmitted stations.

II. Marketplace Prices and Quantities

According to previous CARP proceedings and related court decisions, the standard for determining the distribution of the royalties for cable-retransmitted distant signals among the claimant groups that supply the compensable programming is relative marketplace value. The hypothetical marketplace negotiation over such programming would occur between cable operators and broadcasters (as intermediaries for copyright owners) for the rights to retransmit entire broadcast signals.[1] Such a framework is appropriate to determine marketplace value because it reflects the nature of the decisions actually being made. Cable operators decide whether to retransmit an entire broadcast signal or instead offer a cable network or devote the bandwidth to an alternate use. If they do retransmit a distant signal, they choose which one.

Cable retransmission of distant signals is a secondary market. Supply and demand set prices and quantities in primary market negotiations, but only demand is relevant in secondary market negotiations. Secondary markets are common for entertainment content. Once the program, music or other content is created for a primary market, it can be resold in a secondary market. Previously created content is available for licensing in secondary markets, e.g., old TV programs are available to cable networks and old songs are available for TV commercials, as long as the price is greater than the transaction costs.[2] Transaction costs may limit the availability of rights licensing, but they do not affect the price of the licensing agreements that are concluded.[3] Neither does the original cost of production affect those prices. The price is determined by demand.

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1 CARP Report, Cable Royalties for the Years 1990-92, May 31, 1996, pp. 22-24; Report of the CARP to the Librarian of Congress, In the Matter of the Distribution of 1998 and 1999 Cable Royalty Funds, Docket No. 2001-8 CARP CD 98-99, October 21, 2003, pp. 9-11.

2 This does not mean that any revenue from the secondary market has no effect on the supply of programming. Expected revenues from the secondary market can be used to fund programming. Where secondary revenues become large relative to primary market revenues (e.g., motion pictures), expected secondary revenues can also influence the type of programming, that is, programming likely to generate more total revenues from the primary and secondary markets combined. That is not the case with respect to cable retransmission royalties, which are small relative to other program rights revenues.

3 Where the seller bears the distribution cost—unlike the case of retransmitted programming—the additional cost of distribution is a relevant supply-side consideration. For example, the cost of clearing DVD rights, manufacturing a DVD, and getting it placed in stores relative to the expected DVD demand explains why some old movies are not available on DVD.

The hypothetical negotiations, then, to determine relative marketplace value are focused on the demand by the cable operators for the compensable programming in the distant signals they choose to import. Demand for distant signals depends on the prices and quality of the available substitutes—the local stations and cable networks, the additional cost (if any) of bringing the distant station to the cable system headend, and the income and taste of the cable system subscribers and potential subscribers. Among other factors, differing distant signal characteristics, local station availability and subscriber taste suggest that there will not be a single marketplace value (whether in total, per subscriber, or as a percentage of subscriber fees) for each signal imported by each cable operator. Even the same system will have a different marketplace value for different signals. For example, a system may retransmit one partially distant signal only for the purpose of carrying the same broadcast stations and other channels throughout its system, in order to save on marketing and technical cost, and retransmit another distant station to bring workplace news to those who commute to a nearby (but distant by signal designation) city. The system is likely to value the commuter-desired signal more than the system-cost-saving signal.

III. Demand for Imported Distant Signals Versus Compulsory License Payments

The fees generated by cable retransmissions of distant broadcast signals depend on the payment rules, not the relative marketplace value of the retransmitted signals. The payment rules are arbitrary; they were established by legislative compromise, not relative marketplace value.[4] As a result, relative fees generated would not be expected to reflect relative marketplace value.

Even if each distant signal carried by a cable system were valued, in absolute terms, at more than was paid for it, the relative marketplace value of a particular signal applied to the

[4] See, e.g., Copyright Royalty Tribunal, Adjustment of the Royalty Rate for Cable Systems, Docket No. CRT 81-2, November 19, 1982, 47 FR 52146 at -47, citing Jack Valenti's testimony that "the royalty fee schedule [since adjusted for inflation] was not based on any supporting data or economic analysis, but was the product of political compromises and of Congress's perception of the economic needs of the then [1976] infant cable industry,' and at -54 the Tribunal's conclusion that "the current statutory rates [since adjusted for inflation] could not be considered those that would result from full marketplace conditions if the compulsory license did not exist. The rates were established as a legislative compromise, they are arbitrary, and they were intended to require only a minimum payment on the part of cable operators [footnote omitted]."

royalties collected could well be lower than the fees it generated. Suppose there are only two types of signals: higher value and lower value, with relative marketplace values at 75 and 25, respectively, but both types generate the same fees: 20 for each group. While both have marketplace values in excess of fees generated, the excess is large for one group and small for the other. If the 40 collected for the two groups were distributed according to relative marketplace value, the higher value signals would receive 30 and the other group 10. Based on relative marketplace value, the higher value group receives more than was paid for it, while the lower value group receives less than was paid for it.

An examination of the demand conditions and the payment rules shows not only that there is no relationship between the payment rules and the absolute or relative demand for different types of signals but also that, in particular circumstances, the payment rules produce higher fees for signals of lower value. Further, fees attributed to a signal are largely fees allocated to the signal, not fees generated by the signal.

The compulsory license requires payments of particular royalty percentages of the cable operators' receipts for the tier or tiers that include the distant signals. In general, the receipts are the monthly rate for that tier multiplied by the number of subscribers, and multiplied by six months to reflect the semiannual payment period:

Specified Royalty % x Tier Rate x Tier Subscribers x 6

For large cable systems, called Form 3 systems, which account for the vast majority of the subscribers and royalties paid,[5] the royalty percentages vary based on the number and type of imported signals.[6] Four aspects of the payment rules are particularly relevant:

- Depending on the characteristics of the cable operator and the retransmitted station, some stations were permitted to be retransmitted by certain cable operators under rules prevailing prior to mid-1981, while others were not. Since 1981, both categories can be retransmitted under the compulsory license but at different royalty percentages. A basic fee under one percent is charged for the formerly permitted

[5] Form 3 systems accounted for 92 percent of the subscribers and 97 percent of the royalties paid in 2000-03 (Cable Data Corporation [CDC]). Data and discussion of the royalty payment system throughout this section of my report concern Form 3 systems.

[6] I understand that the calculation of royalties is described in detail in the Direct Testimony of Marsha Kessler, also submitted in this proceeding.

signals, while a 3.75 fee, equal to 3.75 percent, is charged for the formerly nonpermitted signals.[7]

- The basic and 3.75 signal royalty percentages apply to one full signal, called a Distant Signal Equivalent or DSE. Affiliates of the three major U.S. networks and educational stations are set at 0.25 of a DSE, while independents (including affiliates of Fox and minor networks and Canadian stations) are valued at one DSE.
- Within the basic fee, the first DSE is charged at 0.956 percent of receipts, the second through fourth at 0.630 percent, and the fifth or more at 0.296 percent.[8]
- A minimum fee equal to a basic fee for one DSE is required even if no signal or only a fractional DSE is imported.

First, whatever the royalty percentage, its application to gross receipts derived from tiers that include a variety of services, and not to receipts solely for the distant signals themselves, suggests that fees generated from distant signals will not be proportional to the marketplace value of the distant signals. The tier containing the distant signals is generally the basic service tier, which must be taken by all subscribers. The content of this tier varies widely among cable systems; it includes all local broadcast stations and public, educational and governmental channels, but also may include various distant retransmitted stations and cable networks.[9] The vast majority of subscribers do not specifically choose to purchase this tier but rather purchase a bundle of two tiers, basic service and expanded basic (sometimes called cable programming services), for a combined package price.[10] As a result, the price of the basic tier itself does not necessarily reflect the value of the services in the basic tier. Even if it did, the tier price would likely vary depending on the size and quality of the basic tier. That is, higher-priced basic tiers with distant signals likely include more channels and possibly more popular cable networks (for

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[7] There is a small third category, which generates a syndex fee and also arises from changes to the pre-1981 rules.

[8] For the five years ending June 2000, these percentages were slightly smaller: 0.893 percent for the first DSE, 0.563 percent for the second through fourth, and 0.265 percent for the fifth or more. Library of Congress, Copyright Office, Adjustment of Cable Statutory License Royalty Rates, Docket 2000-04, October 20, 2000.

[9] See, e.g., Federal Communications Commission, In the Matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Tenth Annual Report, MB Docket No. 03-172, January 28, 2004, ¶20, fn 25.

[10] In 2002, for example, approximately 90 percent of subscribers purchased the two packages combined. For systems surveyed in July 2002, the average basic service rate was $14.45 and the total for both packages, including equipment, was $40.11 for a total of 63 channels. Federal Communications Commission, In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Report on Cable Industry Prices, MM Docket No. 92-266, July 8, 2003, ¶3 and ¶25, Table 1.

example, Discovery and CNN) that in other systems are carried in the expanded basic tier. Because of the compulsory license payment formula, a system with a higher rate for the basic tier generates more fees per subscriber for the first basic DSE than a system with a lower basic tier rate. The larger fees generated likely reflect the other attributes of the combined package, and the somewhat artificial division of the combined package into two parts, rather than a higher marketplace value for the distant signal.

Second, the 3.75 fee generates higher fees for less desirable distant signals. The difference between a basic signal and a 3.75 signal can be simply the number of such signals. For example, a cable system in a smaller market can import one distant independent station as a basic signal (at 0.956), but the second distant independent station is a 3.75 signal (at 3.75 percent). Economic theory tells us that the first independent is worth the most and the second somewhat less. In this case, relative fees attributed to the signals (the second independent is assigned the higher fees) are not in line with relative demand for the signals (the first independent has the highest value). The difference is not minor: fees attributed to the second independent are almost four times larger than fees attributed to the first independent.[11]

Third, the basic fee has a declining scale, as economic theory dictates, but only between the first, second and fifth DSE (i.e., no decline from second to third to fourth). Further, the magnitude of the decline is arbitrary: the second signal should not necessarily be valued at about two-thirds of the first.[12]

Fourth, different DSE counts are applied to different types of stations without regard to the existence of noncompensable or duplicative programming. A 0.25 DSE count is assigned to distant network affiliates, which broadcast some amount of noncompensable network

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[11] Systems in larger markets can generally import two or three distant independent stations under the basic fee, with any additional distant independent stations falling into the 3.75 category. See Library of Congress, Copyright Office, Section 109 Report to Congress, Notice of Inquiry, Docket No. 2007-1, April 10, 2007, p. 5, and Television Digest, 1982 Cable and Station Coverage Atlas, pp. 58a-59a, Federal Communications Commission Rules, §76.61 and §76.63. In this case, an additional distant independent station would generate fees almost four times the first one (3.75 is 3.9 times 0.956) and almost six times the second one (3.75 is 5.95 times 0.63).

[12] A minor example of this arbitrariness is illustrated by the increase in the relative royalty percentages for the first and second DSE when the rates were adjusted for inflation in July 2000. Just before this adjustment, the second signal fee equaled 63 percent of the first (0.563/0.893); after the adjustment the second signal fee equaled 66 percent of the first (0.630/0.956).

programming, while other stations also broadcast noncompensable network programming but are not assigned a fractional DSE count. For example, some distant Canadian stations also contain substantial amounts of noncompensable U.S. network programming (prime time and daytime programs from ABC, CBS and NBC),[13] yet these Canadian stations are counted as a full signal. A 0.25 DSE count is also applied to distant educational stations. Both network affiliates and educational distant stations broadcast some amount of programming duplicative of that broadcast by local stations, and even the same program retransmitted at the same time (e.g., where the distant station is affiliated with the same network as a local station in the same time zone).[14] Other distant stations, however, may also have substantial duplicative programming: (a) programming broadcast on Fox or minor networks, (b) syndicated programming (e.g., Oprah) and/or (c) programming broadcast by the three major U.S. networks. Some distant Canadian stations have substantial duplicative programming in all three categories.[15]

An economic principle is that the purchaser will not pay more than the value of a product. In the context of distant signals, the value of the signal to a cable operator must equal or exceed the extra cost of carrying it. Thus, hypothetically, fees generated by a particular imported station could reveal the minimum marketplace value of that station to the cable operator; however, the economic principle does not provide much guidance in attempting to determine the marketplace value of retransmitted signals. All systems must pay a minimum fee covering one DSE whether they import no signals, only a fractional DSE or one DSE. The minimum fee is not a technicality: Form 3 systems covering about one-quarter of subscribers import no distant signals and pay the minimum fee. Two-thirds of the subscribers in systems that do import some signals receive at most one DSE.[16] Thus, for most of the systems (as counted by subscribers to reflect their size) the decision to import a fractional or full DSE does not even indicate that the value of

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13 See http://web.archive.org/web/20030425085821/http:/www.ctv.ca/generic/generated/tvlist/CFTOtvlist.html for an April 2003 schedule of CFTO-TV, a CTV station and *Broadcasting & Cable*, April 28, 2003, p. 16 and May 5, 2003, p. 12 for comparable schedules in prime time for ABC, CBS, NBC, Fox, WB, UPN and Pax. CFTO's schedule also includes prime time programming from Fox and Pax, and syndicated programming in other dayparts.

14 Neither the noncompensable nor the partially duplicative programming explains the particular (75 percent) reduction chosen.

15 See footnote 13 above.

16 CDC. Stated differently, about 25 percent of all Form 3 subscribers receive no DSEs, 50 percent receive some DSEs but no more than one, and the remaining 25 percent receive more than one.

the retransmitted signal is at least as large as the fees generated by those signals. In fact, the fees are not actually generated by the retransmitted signals; rather, they are generated by the minimum fee requirement and allocated to that signal by CDC.

Even in systems retransmitting more than one DSE, and so incurring extra cost to do so, the economic principle that the extra cost of the signal must cover its value reveals little. For example, a system that carries two basic DSEs and pays extra as a result (an extra 0.63 percent of receipts) reveals only that each DSE is worth at least the extra cost of the second signal (the 0.63 percent). CDC averages the total fee and applies the average rate, 0.793 percent of receipts, to each signal.[17] Thus, the fees generated by each signal, as calculated by CDC, are larger than the signal's minimum value. While averaging occurs within the basic fee group, CDC takes the opposite approach when a system imports both basic and 3.75 signals.[18] In this case, CDC relies on the cable operator's designation of which station is nonpermitted under the old rules, although the designation may be arbitrary when nonpermitted is defined based on the number of distant stations rather than particular type of distant station.

As a practical matter, during 2000-03, only a very small amount of importation occurred above one DSE. The average subscriber in Form 3 systems with distant signals received 1.2 DSEs.[19] Due to the low average number of DSEs relative to the minimum requirement, as well as CDC's allocation methods, the fees generated do not reveal the minimum value for the vast majority of the DSEs.

Of course, the extra cost of carrying the signal would not reveal the marketplace value, only the minimum value. The conversion of TBS from a superstation to a cable network illustrates that cable operators valued it much more highly than the amount they paid under the compulsory license. One commenter cited by the Copyright Office stated, "carrying the same programming as it had as a distant signal, TBS was immediately able to obtain license fees that

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17 The average of 0.956 and 0.63 is 0.793.

18 I understand that CDC's allocation of royalties is described in detail in the Direct Testimony of Jonda K. Martin, also submitted in this proceeding.

19 CDC.

exceeded the entire 1998 royalty fund ($165 million for TBS vs. the $108 million for the royalty fund)."[20]

IV. Conclusion

In summary, the fees generated do not reflect relative marketplace value; rather, they reflect the compulsory license payment formula and CDC's allocations of fees paid to particular stations. As a result, changes in fees generated do not reflect changes in relative marketplace value.

[20] Library of Congress, Copyright Office, Satellite Home Viewer Extension and Reauthorization Act Section 109 Report: a Report of the Register of Copyrights, June 2008, p. 68, citing comments of Program Suppliers. The comparison cited does not give an exact measure of the extra amount cable operators were willing to pay, for example, the extra royalty amount paid for WTBS was less than the full royalty fund in 1998 and, on the other side, the operators' saving in common carrier costs is not considered; nevertheless, TBS's conversion did show that cable operators were willing to pay more for the channel than they did under the compulsory license.

APPENDIX A

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LINDA McLAUGHLIN

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Ms. McLaughlin specializes in antitrust and trade regulation. She has prepared studies of relevant product and geographic markets, market structure and performance, the impact of mergers and acquisitions, vertical and horizontal arrangements, and pricing and purchasing practices. These studies have focused on various consumer and producer industries, with particular emphasis on media and insurance.

Her work in the media and entertainment industries also includes: analyses of proposed US Federal Communications Commission rules concerning cable and broadcast television; pricing of music copyrights and retransmitted television stations rights; evaluation of motion picture talent contracts; the impact of a new magazine introduction; the reasonableness of cable, home satellite, and recorded music projections; and the value of cable systems, cable networks, and newspaper distributors.

In the area of insurance, she has also studied the effect of state rate regulation and deregulation of large commercial transactions, as well as the causes of the liability insurance crisis and its effect on reinsurers.

In addition, Ms. McLaughlin has performed studies of impact and damages in connection with antitrust, contract, trademark, and other litigation. The firms involved in these studies have included: manufacturers of consumer electronics products, fertilizers, windows, paint, and pharmaceutical products; distributors of chemicals, steel, beverages, and telecommunications services and equipment; tobacco growers; and satellite and internet service providers.

Education

University of Pennsylvania
M.A., Economics, 1970

Marquette University
B.S., *cum laude*, Mathematics, 1968

Professional Experience

NERA Economic Consulting

1974- Senior Vice President (since 2000)

Specialization: antitrust and trade regulation, intellectual property, economic damages.

Primary industries studied: media and entertainment, including broadcast, cable and satellite television, broadcast and satellite radio, motion pictures, recorded music, music publishing, advertising, newspapers, magazines and internet; and property-casualty and health insurance.

Other industries studies: telecommunications, photographic supplies, consumer electronics products, fertilizers, paint, windows, window coverings, pharmaceutical products, building products, hardware, chemicals, glass, steel, breakfast cereal, beverages, and tobacco.

Hofstra University

1970-1974 Instructor

Taught introductory economics, intermediate microeconomics, and the application of mathematics to economics.

Professional Activities

Member, American Economic Association and Committee on the Status of Women in the Economics Profession.

Testimony, Reports, and Publications

In the Matter of the Arbitration between BMI, Petitioner, and Williston Community Broadcasting, et al., Respondent (American Arbitration Association), a contract case. Affidavit, December 2008.

In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceedings before the Copyright Royalty Board, Docket No. 2006-3 CRB DPRA. Report, November 2006; deposition testimony, October 2007; hearing testimony, February 2008.

In the Matter of the Application of Clear Channel Adshel, Inc. For a Judgment Pursuant to Article 78 of the CPLR v. Franchise and Concession Review Committee of the City of New York, et al. (Sup. Court N.Y.S., New York County). Affidavit, July 2006.

Teleglobe Communications Corporation et al. v. BCE, Inc. et al. (D. Del.), a bankruptcy case. With William E. Taylor, Report, March 2006; rebuttal report, April 2006; deposition testimony, May 2006.

Clear Channel Investments, Inc., Claimant v. XM Satellite Radio Holdings, Inc., et al., Respondents (JAMS Arbitration), a breach of contract case. Report, September 2005; deposition testimony, September 2005.

Proposed Acquisition of United General Title Insurance Company by The First American Corporation (Arkansas Insurance Department). Report, February 2005.

Mitchell Camarda, et al. v. Snapple Distributors, Inc., et al. (S.D.N.Y.), an antitrust case. Report, August 2004; rebuttal report, January 2007; deposition testimony, February 2007; affidavit, March 2007.

Paul Zuccarini v. Ziff Davis Media Inc., et al. (Sup. Court N.Y.S., Nassau County), a breach of contract case. Report, May 2004; deposition testimony, July 2004.

In the Matter of the Merger of Pacific Northwest Title Insurance Company with and into The First American Corporation (Washington State Office of the Insurance Commissioner and Alaska Department of Insurance). Reports (both states), April 2004; hearing testimony (Washington), April 2004.

CSC Holdings, Inc., Claimant, and Yankees Entertainment and Sports Network, LLC, Respondent (American Arbitration Association), a contract case. Report, January 2004; deposition testimony, February 2004; hearing testimony, March 2004.

United Magazine Company, Inc., et al. v. Murdoch Magazines Distribution, Inc., et al. (S.D.N.Y.), an antitrust case. Report, December 2003.

D. Lamar DeLoach, et al. v. Philip Morris Companies, Inc., et al. (M.D.N.C.), an antitrust case. Report, October 2003; deposition testimony, October 2003.

Trowbridge, et al. v. Sony Music Entertainment, Inc., et al. (D. Me.), an antitrust case. Report, July 2003; supplemental report, October 2003; addendum, November 2003.

Original IFPC Shareholders, Inc. v. AT&T Wireless Services, Inc. et al. (Cir. Court of DuPage County, Ill.), a trade secret case. Report, March 2003; rebuttal report, May 2003; deposition testimony, June 2003.

"Recording Industry Revenues and Costs." Hearing testimony before the California Legislature, Joint Hearing of the Senate Committee on Judiciary and the Senate Select Committee on the Entertainment Industry on Record Label Accounting Practices, September 2002; report prepared for the Recording Industry Association of America, November 2002.

Twentieth Century Fox Film Corp. v. Marvel Enterprises, Inc., Tribune Entertainment Co., Fireworks Communications, Inc. and Fireworks Television (US) Inc. (S.D.N.Y.), a breach of contract, copyright and Lanham Act case. Report, August 2002; deposition testimony, September 2002.

In the Matter Between Paxson Communications Corp., Claimant, and National Broadcasting Co., Respondent (American Arbitration Association), an antitrust case. Report, March 2002; supplemental report, June 2002; hearing testimony, June 2002.

The Commission's Cable Horizontal and Vertical Ownership Limits and Attribution Rules, FCC MM Docket No. 92-264. With Paul L. Joskow, Report, January 2002.

We Media Inc. v. Cablevision Systems Corp. et al. (S.D.N.Y.), a Lanham Act case. Report, December 2001; deposition testimony, February 2002.

U.S. v. BMI, In the Matter of the Application of Hicks Broadcasting of Indiana, et al., Applicants, for the Determination of Reasonable License Fees (S.D.N.Y.). Report, November 2001; rebuttal report, January 2002; deposition testimony, March 2002.

Atlantic Embroidery, Inc. v. Vanguard Industries, Inc. (E.D. Va.), an antitrust case. Report, August 2001.

Determination of Rates and Terms for Digital Performances of Sound Recordings, Docket No. 2000-9 CARP DTRA 1&2. Report, April 2001; hearing testimony, July-August 2001.

BPW Rhythmic Records L.L.C. v. CDNow, Inc. and N2K Inc. (S.D.N.Y.), a breach of contract case. Report, August 2000; deposition testimony, August 2000.

Rajendra Patel v. Hughes Electronics Corporation et al. (S.D. Md.), a breach of contract case. Report, July 2000.

Distribution of Satellite Royalty Funds, Docket No. 97-1 CARP SD 92-95. Report, January 1999.

Arthur Sarkissian v. The Walt Disney Company, et al. (Sup. Court, Los Angeles, Cal.), a contract case. Deposition testimony, October 1998.

Hometron USA, Inc., v. Bell Atlantic Corporation et al. (Cir. Court of Baltimore City, Md.), a fraud case. Report, February 1998; deposition testimony, February 1998.

Time Inc. v. Petersen Publishing Co., L.L.C. (S.D.N.Y.), a Lanham Act case. With Philip A. Beutel, Report, January 1998.

Integrated Consulting Services, Inc. v. LDDS Communications, Inc. (S.D. Md.), a breach of contract case. Report, July 1997.

"Background Analysis for New York State Insurance Enterprise Zone." Report prepared for The Insurance Brokers' Association of the State of New York, April 1997.

Satellite Carrier Royalty Rate Adjustment Proceeding, Docket No. 96-3 CARP SRA. Report, November 1996; hearing testimony, March 1997.

Frebon International Corporation v. Bell Atlantic Corporation, et al. (D.D.C.), a breach of contract case. Report, February 1996; deposition testimony, March 1996.

Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates, FCC MM Docket No. 95-92. With Philip A. Beutel and Howard P. Kitt, Report, October 1995, Supplemental Report, January 1996.

Turner Broadcasting System, Inc., et al., v. Federal Communications Commission, et al. (D.D.C.), a First Amendment case. Deposition testimony, May 1995; affidavits, May and June 1995.

"Competitive Effect of Elimination of Small Overbuilds Between Time Warner and Cablevision Industries." With Paul Joskow, Report prepared for submission to the Federal Trade Commission, April 1995.

Thompson Everett, Inc. v. National Cable Advertising, Inc., et al. (E.D. Va.), an antitrust case. With Richard Schmalensee, report, March 1994; deposition testimony, April 1994.

Selcke v. Touche Ross & Co., et al. (Cir. Court of Cook County, Ill.), a breach of contract case. Deposition testimony, March 1994 and May 1995.

Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, FCC MM Docket No. 92-266. With Lewis J. Perl and Jonathan Falk, reports on econometric issues, June and July 1993.

Hachette Distribution, Inc. et al. v. Hudson County News Company, Inc. et al. (E.D.N.Y), an antitrust case. Deposition testimony, March 1993.

Abbott Laboratories v. Mead Johnson & Company (S.D. Ind.), a Lanham Act case. Report, January 1993.

"Federal Charter Plan Background Analysis." Report prepared for the Insurance Solvency Coalition, December 1991.

"McCarran-Ferguson Act Reform: More Competition or More Regulation?" With Paul Joskow, *Journal of Risk and Uncertainty*, December 1991.

Personal Preference Video, Inc. et al. v. Home Box Office, Inc. (N.D. Tex.), a breach of contract case. Trial testimony, October 1991.

Cable Television Franchise Renewal Proposals of Manhattan Cable TV and Paragon Cable Manhattan. Opinions on the reasonableness of certain assumptions, January 1990.

Associated Imports, Inc. v. International Longshoremen's Association et al. (S.D.N.Y.), a breach of contract case. Deposition testimony, October 1988, September 1990; trial testimony, October 1990.

James M. King and Associates, Inc. v. G. D. Van Wagenen Co., et al. (D. Minn.), an antitrust case. Affidavit, January 1988; deposition testimony, February 1988.

Apache Corp. v. McKeen et al. (E.D.N.Y.), a RICO case. Deposition testimony, April 1987.

James F. Chumbley, et al. v. Rockland Industries, Inc. (D. Md.), a breach of contract case. Deposition testimony, December 1985; trial testimony, January-February 1986.

Acorn Building Components, Inc. v. Norton Co.; Jeld-Wen, Inc. v. Norton Co.; and Weather Shield Mfg, Inc. v. Norton Co. (E.D. Mich., Southern Div.), product liability cases. Deposition testimony, October 1985.

Action Publications v. Panax Corp. et al. (W.D. Mich.), an antitrust case. Deposition testimony, June 1984; trial testimony, December 1984.

East Coast Chemicals v. Exxon (Sup. Court, N.J.), a product liability case. Report, June 1983; deposition testimony, June 1983.

Mississippi Chemical Corp. v. Chemical Construction Corp. et al. (S.D. Miss.), a breach of *contract* case. Deposition testimony, June 1982.

Comet Industries, Inc. v. ESB Inc., et al. (W.D. Mo.), a breach of contract case. Deposition testimony, September 1981.

Paschall and Intervenors v. The Kansas City Star Co. (W.D. Mo.), an antitrust case. Deposition testimony, November 1980.

December 2008

Before the
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Library of Congress
Washington, D.C.

In the Matter of Distribution of 2000, 2001, 2002 and 2003 Cable Royalty Funds	))))))	Docket No. 2008-2 CRB CD 2000-03

DECLARATION

I, Linda McLaughlin, declare under penalty of perjury that the Testimony of Linda McLaughlin presented in the 2000-2003 Cable Copyright Royalty Distribution Proceeding is true and correct to the best of my knowledge, information and belief.

Linda McLaughlin

Linda McLaughlin

Executed on: 1/30/2009

Before the
Copyright Royalty Judges
Washington, D.C.

In the Matter of Distribution of the 2000-03 Cable Royalty Funds	)	**Docket No. 2008-2 CRB CD 2000-2003**

Testimony of Hal J. Singer, Ph.D.

January 31, 2009

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SUMMARY

1. Counsel for the Joint Sports Claimants ("JSC") has asked me to determine, from an economist's perspective, whether the Section 111 royalty award that the Copyright Arbitration Royalty Panel ("CARP") made to the Canadian Claimants Group ("CCG") for the years 1998-99 should be adjusted for the years 2000-03. Specifically, I have been asked whether there has been any change in the fair-market value of the CCG programming carried on a "distant signal" basis in 2000-03 relative to that of the other programming compensable under Section 111 of the Copyright Act. To answer this question, I analyzed the same factors that CCG cited in the 1998-99 cable royalty distribution proceeding to support its claim that there had been a significant change in circumstances warranting an increased CCG award over its 1990-92 level. Based on that analysis, I found that there was no material change in circumstances between the periods 1998-99 and 2000-03, supporting the conclusion that the relative market value of CCG programming had increased. This finding is hardly surprising since the two periods (1998-99 and 2000-03) are contiguous in time and reflect no dramatic change in the distant-signal marketplace. Accordingly, I conclude that the CCG benchmark award established in the 1998-99 proceeding should not be increased for 2000-03.

QUALIFICATIONS

2. I am President of Empiris, LLC. My areas of economic expertise are antitrust, industrial organization, and regulation. I have applied my expertise to several regulated industries, including cable television and video programming. I have written several scholarly articles on these topics.[1]

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1. *See, e.g.*, *Vertical Foreclosure in Video Programming Markets: Implication for Cable Operators,* 3 REVIEW OF NETWORK ECONOMICS 348 (2007), co-authored with J. Gregory Sidak; *Does Video Delivered Over a Telephone Network Require a Cable Franchise?*, 59 FEDERAL COMMUNICATIONS LAW JOURNAL 251 (2007), co-

3. I also have written on the intersection of competition issues and the communications industry. I published a book chapter in *Access Pricing: Theory, Practice and Empirical Evidence* (Justus Haucap and Ralf Dewenter eds., Elsevier Press 2005) and in *Handbook of Research in Trans-Atlantic Antitrust* (Philip Marsden, ed., Edward Elgar Publishing 2006). I am also the co-author of the book *Broadband in Europe: How Brussels Can Wire the Information Society* (Kluwer/Springer Press 2005).

4. I have published scholarly articles in several economics and legal journals, including *American Economics Association Papers and Proceedings*, *Berkeley Technology Law Review*, *Canadian Journal of Law and Technology*, *Federal Communications Law Journal*, *Harvard Journal of Law and Technology*, *Hastings Law Journal*, *Journal of Business and Finance*, *Journal of Competition Law and Economics*, *Journal of Financial Transformation*, *Journal of Industrial Economics*, *Journal of Insurance Regulation*, *Journal of Network Industries*, *Journal of Regulatory Economics*, *Journal of Telecommunications and High Tech Law*, *Review of Network Economics*, *Telecommunications Policy Journal*, *Topics in Economic Analysis and Policy*, and *Yale Journal on Regulation*.

5. In regulatory proceedings, I have presented economic testimony in several forums, including the U.S. Federal Communications Commission, the U.S. Federal Trade Commission, the Antitrust Division of the U.S. Department of Justice, the U.S. National Highway Traffic and Safety Administration, the House of Commons of Canada, the Canadian Radio-television and Telecommunications Commission, and the U.S. Congressional Budget Office. My written testimony on the effect of telecom entry on cable television prices was cited

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authored with Robert W. Crandall and J. Gregory Sidak; *The Competitive Effects of a Cable Television Operator's Refusal to Carry DSL Advertising,* 2 JOURNAL OF COMPETITION LAW AND ECONOMICS 301 (2006); *Cable Modems and DSL: Broadband Internet Access for Residential Customers*, 91 AMERICAN ECONOMICS ASSOCIATION PAPERS AND PROCEEDINGS 302 (2001), co-authored with Jerry A. Hausman and J. Gregory Sidak.

by the Department of Justice in a November 2008 report entitled *Voice, Video and Broadband: The Changing Competitive Landscape and Its Impact on Consumers*. I also worked with Dr. Robert Crandall of the Brookings Institution in preparing his testimony before the CARP in the 1998-99 cable royalty distribution proceeding, which involved analyzing the efficacy of the Bortz constant-sum survey of cable operators and the use of a regression analysis to infer relative values of programming categories.

6. I have served as an economic expert for the NFL Network and for MASN, which owns the television rights to live baseball games for the Baltimore Orioles and the Washington Nationals, in several disputes involving carriage of programming networks by cable operators. A primary objective of those disputes is to determine the fair-market value of the video programming at issue.[2]

7. In addition to these cable carriage disputes, I have served as a testifying expert in several litigation matters. My experience as a testifying expert in litigation is summarized in my curriculum vitae, which is attached to this testimony. In addition to litigation, I have written expert testimony in regulatory proceedings and commissioned white papers for several firms and trade associations, including Advanced Medical Device Manufacturers Association (AdvaMed), Allegheny Communications, AT&T, Bell Canada, BellSouth, Broadband Roundtable, Cellular Telephone Industry Association (CTIA), Coventry First, Fiber to the Home Coalition, General Motors, Harvest Partners, Internet Innovation Alliance, Medical Device Manufacturers Association, National Association of Broadcasters, Qwest, SBC, TELUS, Verizon, Walt Disney, and 1-800 CONTACTS.

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2. *See TCR Sports Broad. Holding, L.L.P. v. Time Warner Cable*, AAA Case No. 71-472-E-00697-07 (2008); *TCR Sports Broad. Holding, L.L.P. v. Comcast Corp.*, File No. CSR-8001-P (F.C.C. 2008); *NFL Enters. L.L.C. v. Comcast Cable Commc'ns, L.L.C.*, File No. CSR-7876-P (F.C.C. 2008).

8. Before joining Empiris, I was president of Criterion Economics, an economic consulting firm based in Washington D.C. Prior to that, I worked as a senior economist at LECG, an economic consulting firm based in Emeryville, California. In addition, I have worked as an economist for the Securities and Exchange Commission and the Army Corps of Engineers, and I have taught microeconomics and international trade at the undergraduate level.

9. I earned M.A. and Ph.D. degrees in economics from The Johns Hopkins University and a B.S. *magna cum laude* in economics from Tulane University. My curriculum vitae is included in Appendix 1.

I. BACKGROUND

10. In this section, I briefly describe my understanding of the cable royalty distribution proceedings and the CARP's awards to CCG and other parties for the 1998-99 period.

A. The Cable Royalty Distribution Proceedings

11. Section 111 of the Copyright Act allows a cable system to retransmit broadcast programming without the consent of the copyright owner, provided that the cable system pays a statutorily prescribed royalty to the Copyright Office. Larger ("Form 3") cable systems, which account for over 95 percent of royalties collected, pay three types of Section 111 royalties: Basic, 3.75, and Syndex.[3] Each cable system accrues distant signal equivalents ("DSEs") by carrying broadcast television stations outside its local market ("distant signals"); the cable system operator then multiplies those DSEs by the applicable statutory rates and the system's "gross

3. The Basic royalties are paid for distant signals carried under FCC rules in effect in 1981. The 3.75 royalties are paid for signals not permitted under those rules. Syndex royalties are paid for signals affected by the FCC's syndicated exclusivity rules.

receipts" to determine its Section 111 royalty payment. Currently, those royalty payments amount to approximately $120 million per year.[4]

12. Absent a settlement, the Copyright Royalty Judges conduct distribution proceedings to allocate the cable royalties among affected copyright owners. The purpose of the "Phase I" distribution proceedings, as I understand them, is to estimate the relative fair-market value of the various programming categories (such as sports, public television, devotional, station-produced news and public affairs, syndicated series, movies and Canadian programming) and underlying music that comprise the distant signals carried by cable operators. Fair-market value is the price that would emerge from a voluntary exchange between a buyer (in this case, a cable operator) and a seller (the programmer or copyright holder). Thus, the objective in Phase I is to ensure that each claimant category receives essentially the same share of the royalty fund that it would have received from cable operators in an unregulated market free of any compulsory licensing regime.

13. The purpose of this particular proceeding is to determine CCG's share of the approximately $480 million in Section 111 royalties that cable systems paid for the years 2000-03. I understand that all Phase I claimant groups except CCG have settled with each other on royalty shares and that they believe CCG has failed to justify why it is entitled to a greater share of the 2000-03 royalties than the share that the CARP awarded CCG in the 1998-99 proceeding.

4. A cable system that carries a distant Canadian signal accrues a full DSE because that signal is considered to be an "independent" signal. A cable system that carries a distant educational or network signal accrues a quarter of a DSE. Accordingly, a cable system that carries a distant Canadian signal, a network signal, and an educational signal accrues 1.5 DSEs (equal to 1 DSE + 0.25 DSE + 0.25 DSE). Every Form 3 cable system must pay a minimum fee, which is equal to 1 DSE. As of the second accounting period of 2000, that fee was computed by multiplying the gross receipts of the system by 0.956 percent. Each of the second, third, and fourth DSEs carried a charge of 0.63 percent of gross receipts per DSE. Assuming the same cable system (carrying 1.5 DSEs) had gross receipts of $10 million, the fees paid by that system would be $127,100 (equal to $10M x 1 x 0.00956 + $10M x 0.25 x .00630 + $10M x 0.25 x .00630). The Testimony of Marsha Kessler describes in greater detail the manner in which cable operators calculate their Section 111 royalties.

CCG, on the other hand, believes it is entitled to a share of 2000-03 royalties greater than its 1998-99 share.

B. The 1998-99 CARP Awards

14. In the 1998-99 proceeding the CARP allocated cable royalties among six Phase I claimant groups—JSC, Program Suppliers, Commercial Television Claimants, Public Television Claimants, Music Claimants, and CCG (two additional groups, NPR and the Devotional Claimants, had settled with the other claimants). The CARP determined that the Bortz constant-sum survey of cable operators, which asked a random sample of cable operators to value the different categories of programming on the distant signals they carried, was (1) "more reliable than any other methodology presented" for determining the relative value of Program Suppliers, JSC, and Commercial Television Claimants; and (2) "reliably establishe[d] a Basic Fund floor" for PTV.[5] The CARP, however, said it could not rely on the Bortz survey for CCG because the sample of respondents whose systems carried Canadian distant signals was too small to be sufficiently reliable.[6] As an alternative, the CARP considered (1) the "fees generated" by distant Canadian signals and (2) the Ringold constant-sum survey, which asked cable operators that carried distant Canadian signals to assess the relative value of the programming on those signals.[7]

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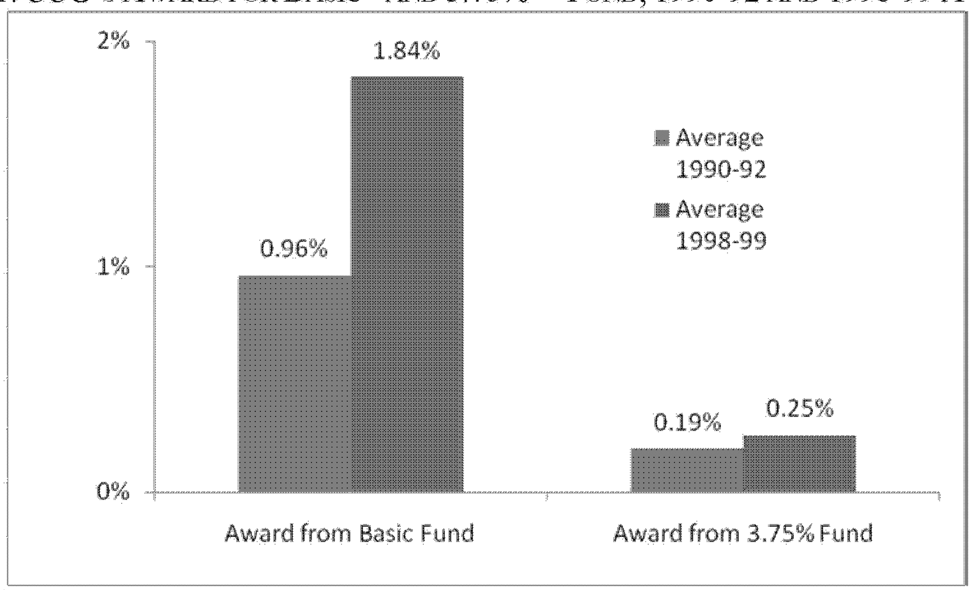
5. Report of the Copyright Arbitration Royalty Panel to the Librarian of Congress, In the Matter of Distribution of 1998 and 1999 Cable Royalty Funds, Dkt. No. 2001-8 CARP CD 98-99, at 31 (Oct. 21, 2003) [hereinafter *CARP 1998-99 Report*].

6. *Id.* at 31 n.13 (noting that Bortz could not produce "statistically significant results for Canadians").

7. CCG could have designed its constant-sum survey to determine the relative value of Canadian programming *carried on all distant signals*. But rather than design the survey that way, CCG effectively substituted data on "fees generated" for survey results; the constant-sum survey CCG did introduce only allows one to determine the relative value of Canadian programming *carried on Canadian signals*. I discuss the concept of "fee generation" in greater detail below as do other witnesses in this proceeding. *See* Testimony of Jonda Martin, Marsha Kessler and Linda McLaughlin.

15. For the 1998-99 period, the CARP awarded CCG an average of 1.84 percent of the Basic royalties and 0.25 percent of 3.75% royalties. The CARP effectively determined that in a market free of any compulsory licensing regime, the Canadian programming on Canadian distant signals would receive those shares of the total Section 111 royalties paid by U.S. cable operators.[8] The 1998-99 awards to CCG represented a significant increase over the awards made to CCG in the prior litigated proceeding involving the 1990-92 cable royalties. Figure 1 shows the average awards for CCG in the two previously litigated proceedings.

FIGURE 1: CCG'S AWARD FOR BASIC* AND 3.75%** FUND, 1990-92 AND 1998-99 AVERAGES



Source: * Proposed Findings of Fact and Conclusions of Law of the Canadian Claimants Group, Dkt. No. 2001-8 CARP CD 1998-99, at 2 (Aug. 20, 2003) [hereinafter *CCG Proposed Findings of Fact*]. ** *CARP 1998-99 Report* at 92-93.

16. In determining to increase CCG's award over its prior level, the CARP said it was "impress[ed]" by the "doubling" of "fees generated" associated with Canadian signals.[9] Yet the CARP refused to embrace the fee-generation approach to determine PTV's award, even though

8. It is worth noting that Section 111 allows only cable systems close to the U.S.-Canadian border to carry Canadian signals pursuant to a compulsory license. *See* 17 U.S.C. § 111(c)(4). Consequently, only about 60 (or less than four percent of) the approximately 1,700 Form 3 cable systems carried one or more distant Canadian signals in the 2000-03 period.

9. *CARP 1998-99 Report* at 74 ("However, it is the very change in shares of fees generated that is impressive. Shares of fees generated approximately doubled since the last litigated proceeding.").

PTV distant signals, like Canadian distant signals, experienced a significant increase in "fees generated" since the last proceeding.[10] Because the CARP found no significant change in circumstances for PTV relative to the 1990-92 period, the CARP kept the PTV award the same.[11] As I demonstrate below, the very same logic can be applied to CCG in the current proceeding—that is, the only evidence of a change in circumstances here is a (modest) increase in fees generated by Canadian signals. Without any additional evidence, one cannot infer, based on a change in fees generated alone, that the relative value of Canadian programming has increased significantly since the prior proceeding.

II. Analysis

17. In the 1998-99 proceeding, CCG said that (1) "the 1990-1992 proceeding established a baseline award for CCG"; and (2) because "circumstances changed from 1990-1992 to 1998-1999," that baseline award should be increased.[12] In this section, I describe the "changed circumstances" cited by the CCG in the 1998-99 proceeding that it believed warranted an increase in CCG's 1990-92 award. I then explain that none of those circumstances supports an increase in the CCG award for the period 2000-03.

A. Changed Circumstances: 1998-99 vs. 1990-92

18. In the 1998-99 proceeding, CCG relied heavily on what it described as a "large scale upheaval" in the distant signal marketplace to support its claim of changed circumstances. According to CCG,

> There has been large scale upheaval in the cable compulsory licensing market during the years 1998 and 1999 that has resulted in a dramatic change in the amount of royalties paid and in types of signals carried. The resulting changed circumstances by themselves

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10. *Id.* at 65.
11. *Id.* at 69.
12. *CCG Proposed Findings of Fact* at 2.

> warrant a doubling of the award to the CCG to reflect the diminution in the carriage of all other types of programming.[13]

CCG explained that the primary cause of this "upheaval" was the conversion of distant signal WTBS (Atlanta, Georgia) from a "superstation" (for which cable systems paid a Section 111 royalty) to a cable network (for which cable systems paid no Section 111 royalty).[14] Before its conversion, WTBS, which broadcast non-Canadian and non-PTV programming, was carried by virtually all cable systems pursuant to Section 111. Even the CARP emphasized the importance of that so-called "seismic shift" on the relative value of Canadian programming.[15]

19. CCG also referred to the reduced carriage of WWOR (New York, New York) as another important change in circumstances.[16] CCG argued that because "Canadian programming was not carried on these signals [WTBS and WWOR]. . . . removal of these signals from the distant signal royalty pool increased the value of Canadian programming relative to the value of the programming that was carried on such dropped signals."[17]

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13. *Id.; see also id.* at 47 ("Upheaval in the cable compulsory licensing market during the years 1998 and 1999 has resulted in a dramatic change in the amount of royalties paid and in types of signals carried. The resulting changed circumstances require the relative percentage of the CCG baseline award to increase to reflect the amount paid for Canadian signals. This amount has remained steady despite the diminution in the carriage of all other types of programming."); Reply Findings of Fact and Conclusions of Law of the Canadian Claimants Group, Dkt. No. 2001-8 CARP CD 1998-99, at 3 (Sept. 5, 2003) [hereinafter *CCG Reply Findings of Fact*] ("As the CCG has demonstrated, changed circumstances warrant a significant increase in its award. Specifically, the nature of the overall cable retransmission market has changed, making Canadian signals a more important part of that market.").

14. *CCG Proposed Findings of Fact* at 3 (noting that the "most dramatic change, affecting all claimants, was the conversion of WTBS from a distantly retransmitted superstation to a cable network").

15. *CARP 1998-99 Report* at 28-29 ("The conversion of WTBS to a cable network would not necessarily reduce the *relative* value of those programming categories (movies, syndicated series, sports, news and public affairs, and devotional programming) with regard to each other. Their relative value would be reduced, if at all, primarily when another programming category not carried on WTBS was carried by the cable system. Therefore, it is likely that the 'seismic shift' would only occur, if at all, for that minority of cable systems that carried PTV signals or Canadian signals *in addition to WTBS*.").

16. *See CCG Proposed Findings of Fact* at 7.

17. *Id.*; *CCG Reply Findings of Fact* at 4 ("[R]emoval of these signals from the distant signal royalty pool increased the value of Canadian programming relative to the value of the programming that was carried on such dropped signals.").

20. CCG noted that this "upheaval" manifested itself in several ways. For example, the total royalty pool decreased between 1990-92 and 1998-99.[18] In fact, the Section 111 royalties decreased from approximately $182 million in 1992 to approximately $106 million in 1999. *See* Appendix 2. Given this significant reduction in the royalty pool, an increase in the Canadian share of the royalty fund was necessary simply to maintain the CCG's award in absolute terms. Stated differently, if CCG received the same percentage share as it did in 1990-92, CCG's dollar award would have been significantly less than in 1990-92, even though the primary cause of the reduction in the royalty funds was the decrease in the carriage of distant signals with no Canadian programming.

21. CCG also emphasized that the exit of WTBS from the distant-signal universe caused the number of so-called "zero DSE systems"—that is, systems that elected not to carry *any* distant signals—to increase dramatically.[19] The number increased from less than 20 systems in 1992 to approximately 375 systems in 1999. *See* Appendix 3. According to CCG's estimates, in 1992, the fees paid by systems with no distant carriage amounted to approximately 0.2 percent of total cable royalties; by 1999, the royalties paid by systems with no distant carriage amounted to more than 21.0 percent of total royalties.[20] CCG argued that the increase in "zero DSE systems" supported its claim for increased royalties because CCG was now entitled to a share of the royalties paid by the systems that previously had not carried any Canadian distant signals.[21]

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18. *CCG Proposed Findings of Fact* at 3 (noting that the "Basic and 3.75 Funds decreased sharply beginning in 1998"); *id.* at 7 (noting that the "royalty pool has decreased by almost half. . . . the primary cause of the reduction was that U.S. cable systems no longer carried commercial television stations such as WTBS and WWOR as distant signals"); *id.* at 22 (noting that the "amount of cable royalties paid into the fund has dropped dramatically"); *id.* at 23 (referring to the "dramatic changes and resulting decline in fees").

19. *Id.* at 3 (noting that the "number of cable systems that do not retransmit any distant signals have increased dramatically").

20. *Id.* at 18.

21. *Id.* at 53.

22. Another factor cited by CCG as supporting its claim for a higher award in 1998-99 than in 1990-92 was the number of cable subscribers that had access to distant Canadian signals and to distant U.S. signals in 1998-99 relative to 1990-92 (so-called "subscriber instances").[22] According to CCG,

> Canadian signals also saw an absolute growth in the number of subscribers with access to distant Canadian signals. Canadian carriage as measured by subscribers increased more than 28% from 1990-1992 while the number of subscribers for [U.S.] signals collectively decreased 45%. Further the *relative percentage of subscribers receiving Canadian distant signals* more than doubled, rising from 1.55% in 1990-1992 to 3.56% in 1998 and 3.62% in 1999. This broader reach of Canadian signals on American cable systems is a strong indication that despite tremendous upheaval and change in the industry, cable operators continue to find value in the unique programming available on Canadian signals, and further justifies an increase in the Canadian award.[23]

B. Changed Circumstances: 2000-03 vs. 1998-99

23. The situation in this proceeding is very different from the situation in the 1998-99 proceeding because there was no "large scale upheaval" in the distant signal marketplace during the years 2000-03 compared to 1998-99. Based upon the type of data cited by CCG in the 1998-99 proceeding to support its claim of changed circumstances, the 2000-03 distant signal marketplace looked very much like the distant signal marketplace of the preceding two years (1998-99). To the extent that there were changes in 2000-03 as compared to 1998-99, those changes did not mirror the changes between the periods 1998-99 and 1990-92. And none of those

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22. A "subscriber instance" reflects one subscriber receiving one distant signal. If a cable system has 10,000 subscribers and carries one distant Canadian signal and one distant independent signal, then the Canadian signal is said to have "10,000 subscriber instances" and the distant independent signal is said to have the same.

23. *CCG Proposed Findings of Fact* at 3-4 (emphasis added); *see also id.* at 7 ("Since 1990-1992, the number of U.S. cable subscribers who have access to Canadian programming on Canadian distant signals has *increased* by more than 25% while the total number of distant subscriber instances has *decreased* by 45%. On a relative basis, the share of distant subscriber instances attributable to Canadian signals has increased 268% in this same period."); *id.* at 28 (charts showing change in distant subscriber instances); *CCG Reply Findings of Fact* at 4 (same).

changes provide any economic evidence that the relative value of distant signal Canadian programming had increased between the periods 1998-99 and 2000-03.[24]

1. The Royalty Funds

24. In contrast to the "dramatic" reductions in the Section 111 royalty funds between 1990-92 and 1998-99, Form 3 systems on average and in the aggregate paid *greater* royalties in the 2000-03 period than they did in the 1998-99 period. Table 1 summarizes these data for each period, while annual data are provided in Appendix 2.

TABLE 1: ROYALTIES PAID BY FORM 3 SYSTEMS

Period	*Average Royalty Per System*	*Percent Change From Prior Proceeding*	*Total Royalties*	*Percent Change From Prior Proceeding*
Average 1990-92	$79,105	NA	$173,505,715	NA
Average 1998-99	$44,288	-44.0%	$103,107,801	-40.6%
Average 2000-03	$66,153	49.4%	$120,126,980	16.5%

Source: Cable Data Corporation ("CDC").

As Table 1 shows, relative to the 1990-92 period, the average Form 3 system in 1998-99 experienced a decline of 44.0 percent in the annual royalties paid (from $79,105 to $44,288), largely as a result of the exit of WTBS from the distant-royalty universe. But that trend appears to have reversed itself in the 2000-03 period, as the average system paid almost what it paid in the 1990-92 period ($66,153 versus $79,105). The same phenomenon occurred in the aggregate. Relative to the 1990-92 period, total royalties *declined* by 40.6 percent in the 1998-99 period, from an annual average of approximately $173.5 million in 1990-92 to $103.1 million in 1998-99. Relative to the 1998-99 period, total royalties *increased* by 16.5 percent in the 2000-03 period, from $103.1 million to $120.1 million.

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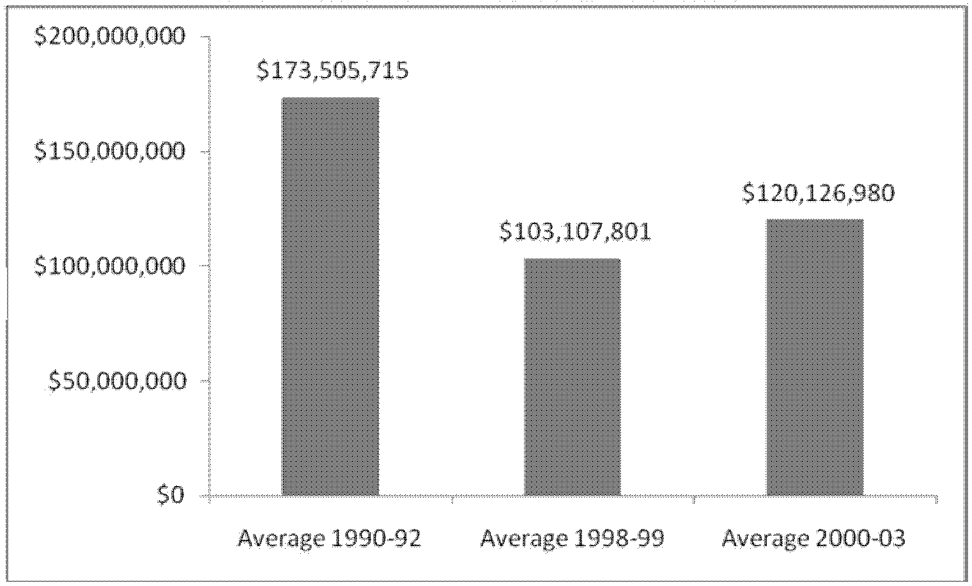
24. In addition to the factors discussed below, CCG also emphasized that, according to the Ringold survey, cable operators increased their valuation of the Canadian content on Canadian distant signals by eight percentage points between 1991-92 and 1998-99—from 51 to 59 percent. *CCG Reply Findings of Fact* at 5. My understanding is that the Ringold valuation for Canadian content was essentially unchanged between 1998-99 and 2000-03.

FIGURE 2: TOTAL ROYALTIES BY PERIOD



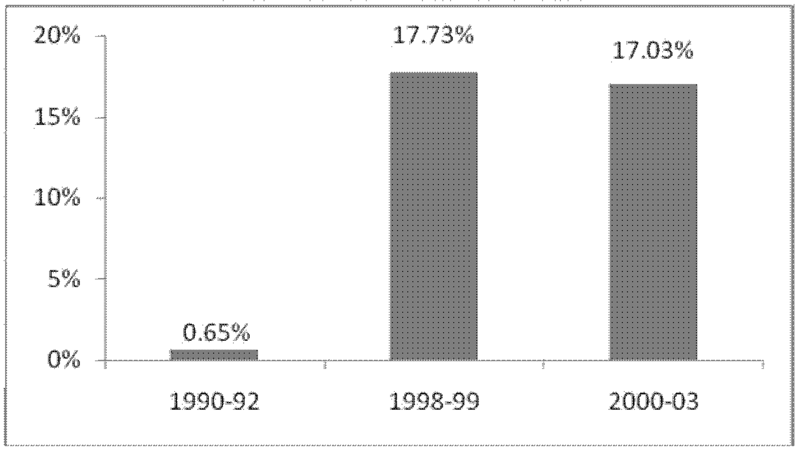
Source: CDC.

25. As noted above, in the 1998-99 proceeding, it was necessary to increase the CCG award simply to ensure that CCG received the same dollar level as in 1990-92. In contrast, simply maintaining the CCG award for 2000-03 at its 1998-99 level would result in an average dollar increase of approximately 15 percent per year.

2. Zero DSE Systems

26. As also discussed above, in the 1998-99 proceeding CCG relied upon the increased share of zero DSE systems—that is, systems carrying no distant stations—relative to the 1990-92 period. There was no similar increase in zero DSE systems between 1998-99 and 2000-03.

FIGURE 3: ZERO DSE SYSTEMS



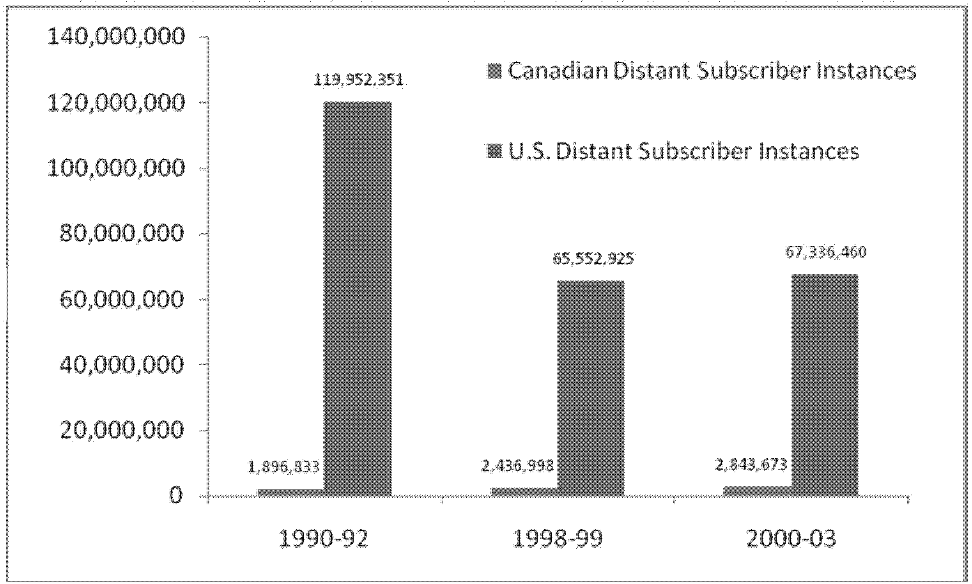
Source: CDC.

Figure 3 shows a dramatic *increase* in Zero DSE systems from the 1990-92 period to the 1998-99 period and a slight *decrease* in Zero DSE systems from the 1998-99 period to the 2000-03 period. Relative to the 1998-99 period, both the share of Zero DSE systems (pictured above) and the number of Zero DSE systems actually *declined* in the 2000-03 period (from an average of 411 in 1998-99 to 312 in 2000-03). *See* Appendix 3 for annual data.

3. Subscriber Instances

27. Although there was a sizeable *decrease* in the number of distant U.S. subscriber instances from 1990-92 to 1998-99 (from approximately 119.9 million to 65.5 million), there was a slight *increase* from 1998-99 to 2000-03 (from 65.5 million to 67.3 million). The number of Canadian subscriber instances increased from 1.9 million in 1990-92 to 2.4 million in 1998-99 to 2.8 million in 2000-03. In absolute terms, the U.S. increase between 1998-99 and 2000-03 (1.8 million) represented more than three times the Canadian increase (0.5 million), and the average U.S. increase in absolute terms was almost as much as the Canadian total for subscriber instances in 2000-03. Figure 4 summarizes these data.

FIGURE 4: CANADIAN AND U.S. DISTANT SUBSCRIBER INSTANCES



Source: CDC.

See Appendix 4 for annual data.

4. Carriage of Distant Stations

28. Data on carriage of distant stations provide further confirmation that there was no "upheaval" in the 2000-03 distant signal marketplace, let alone an "upheaval" comparable to the one upon which CCG relied in the 1998-99 proceeding. Table 2 shows the average number of U.S. and Canadian distant signals carried by Form 3 systems during the periods 1990-92, 1998-99 and 2000-03.

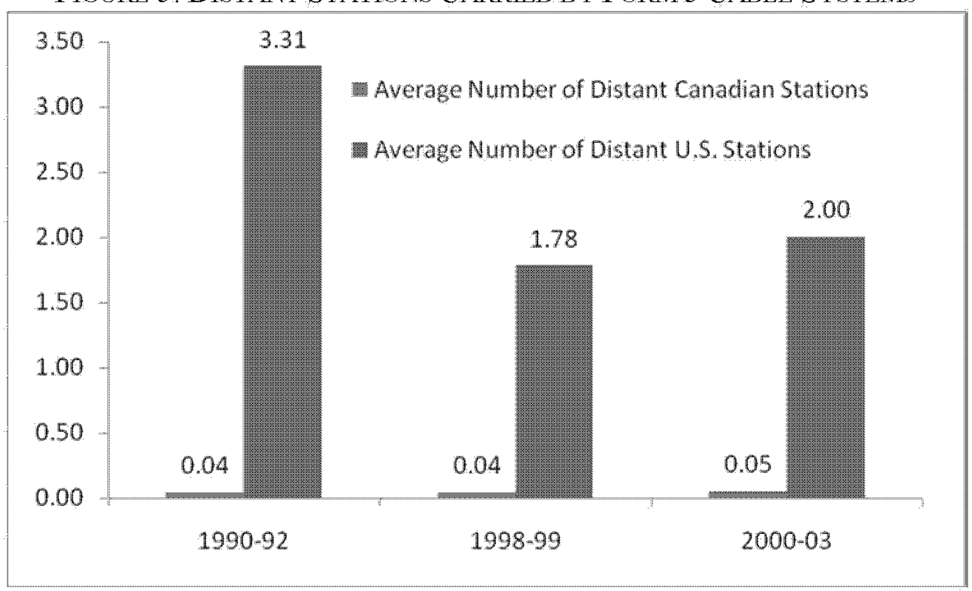
TABLE 2: DISTANT STATIONS CARRIED BY FORM 3 CABLE SYSTEMS

Accounting Period	*Average Number of U.S. Distant Stations Carried*	*Average Number of Canadian Distant Stations Carried*
1990-92	3.31	0.04
1998-99	1.78	0.04
2000-03	2.00	0.05

Source: CDC.

As Table 2 shows, the average number of U.S. distant stations carried by Form 3 systems *declined* significantly between 1990-92 and 1998-99—from 3.31 signals to 1.78 signals—while the average number of distant Canadian stations remained constant. This decline reflected in part the fact that, with the conversion of WTBS, cable systems were typically carrying one less distant signal pursuant to Section 111. In contrast, the average number of distant U.S. stations carried by Form 3 systems *increased* from 1.78 in 1998-99 to 2.00 in 2000-03. These data are presented in Figure 5.

FIGURE 5: DISTANT STATIONS CARRIED BY FORM 3 CABLE SYSTEMS



Source: CDC.

This increase (0.22 signals), in absolute terms, was greater than that experienced by distant Canadian stations which went from 0.04 to 0.05 (an increase of 0.01 signals). Although the Canadian share of total distant stations increased from 1998-99 to 2000-03, that increase was much more modest than the increase in Canadian share from 1990-92 to 1998-99. Again, there was no near doubling as had occurred in the prior proceeding. *See* Appendix 5.

5. Fee Generation

29. In the 1998-99 proceeding, CCG relied heavily upon the fact that the share of basic "fees generated" by distant Canadian signals had nearly doubled from 1.97 percent in

1990-92 to 3.48 percent in 1998-99.[25] And, as noted above, CCG explained that the increase was attributable to a "large scale upheaval" in the distant signal marketplace in which cable operators' demand for U.S. distant signals substantially decreased (resulting in a significantly decreased royalty fund)—while the demand for distant Canadian signals either remained relatively constant or increased.

30. Between 1998-99 and 2000-03 the share of fees generated by distant Canadian signals increased more modestly, from 3.48 percent to 4.34 percent. However, as also discussed above, the very factors cited by CCG in the 1998-99 proceeding demonstrate that there was no decrease in the demand for distant U.S. signals and no decrease in the size of the royalty fund between 1998-99 and 2000-03; indeed, if anything, the opposite is true. The factors upon which CCG relied in the 1998 proceeding to show that its relative increase in "fee generation" reflected an increase in relative market value are simply not present in this proceeding. Under these circumstances—and given that changes in "fee generation" may be attributable to several factors that have little or nothing to do with relative market value—the modest change in CCG's share of "fee generation" does not provide a sound economic basis for concluding that the relative value of CCG programming on Canadian distant signals increased from 1998-99 to 2000-03.

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25. *CCG Proposed Findings of Fact* at 22-23; *see also id.* at 48 ("The net effect of this change in circumstances is that as a percentage of all royalties paid by U.S. cable systems, the percentage paid for the carriage of Canadian signals doubled."). Other witnesses in this proceeding have described the "fee generation" methodology of Cable Data Corporation ("CDC") in detail. *See* Testimony of Jonda Martin, Marsha Kessler and Linda McLaughlin. Briefly, that methodology simply allocates the total royalty paid by a cable system among its DSEs. Consider a hypothetical system, with gross receipts of $100 million, that carried only one Canadian distant signal. The annual royalties for that system would be $956,000 (equal to $100 million x 1 DSE x 0.00956). CDC credits all of those royalties to that Canadian signal, even though the cable operator would pay the same amount of royalties regardless of whether or not it carried the signal. Now consider a cable system that carries, on a distant basis, one Canadian signal and one independent U.S. signal and has gross receipts of $100 million. CDC credits each signal with one-half of the total royalty, $793,000 (equal to the average of $100 million x 1 DSE x 0.00956 for the first full DSE and $100 million x 1 DSE x 0.0063 for the second full DSE), although the carriage of second signal costs less ($630,000) than the minimum fee ($956,000). Now consider a cable system that carries a Canadian signal and one network and has gross receipts of $100 million. The total royalties are $1,113,500 (equal to $100 million x 1 DSE x 0.00956 for the first signal and $100 million x 0.25 DSE x 0.0063 for the second signal). CDC attributes 20 percent of the royalty to the network (equal to 0.25 DSE divided by 1.25 DSEs) and 80 percent to the Canadian signal.

CONCLUSION

31. In the 1998-99 proceeding, the CCG cited several factors—including the "tremendous upheaval" in the distant signal marketplace caused by the conversion of WTBS; a decrease in the royalty funds; an increase in zero DSE systems; and a substantial decrease in the carriage of U.S. distant signals coupled with an increase in the relative share of carriage of distant Canadian signals—to bolster its claim that an increase in fees generated relative to the period 1990-92 implied an increase in the relative value of Canadian programming. Those factors simply cannot be invoked in the present proceeding. Because there is no significant change in circumstances for CCG relative to the 1998-99 period, there is no reason to adjust the CARP's benchmark award from the prior proceeding—despite the fact that the Canadian's share of fees generated increased.

APPENDIX 1: CURRICULUM VITAE

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EDUCATION

THE JOHNS HOPKINS UNIVERSITY, Ph.D., 1999; M.A. (Economics), 1996.

TULANE UNIVERSITY, B.S. *magna cum laude* (Economics), 1994. Dean's Honor Scholar (full academic scholarship). Senior Scholar Prize in Economics, 1994.

CURRENT EMPLOYMENT

EMPIRIS, L.L.C., Washington, D.C.: President, 2008-present.

EMPLOYMENT HISTORY

CRITERION ECONOMICS, L.L.C., Washington, D.C.: President, 2004-2008. Senior Vice President, 1999-2004.

LECG, INC., WASHINGTON, D.C.: Senior Economist, 1998-99.

U.S. SECURITIES AND EXCHANGE COMMISSION, OFFICE OF ECONOMIC ANALYSIS, WASHINGTON, D.C.: Staff Economist, 1997-98.

THE JOHNS HOPKINS UNIVERSITY, ECONOMICS DEPARTMENT, BALTIMORE: Teaching Assistant, 1996-98.

AUTHORED BOOKS AND BOOK CHAPTERS

Valuing Life Settlements as a Real Option, co-authored with Joseph R. Mason, in LONGEVITY TRADING AND LIFE SETTLEMENTS (Vishaal Bhuyan ed., John Wiley & Sons 2009).

An Antitrust Analysis of the World Trade Organization's Decision in the U.S.-Mexico Arbitration on Telecommunications Services, co-authored with J. Gregory Sidak, in HANDBOOK OF TRANS-ATLANTIC ANTITRUST (Philip Marsden, ed. Edward Elgar 2006).

BROADBAND IN EUROPE: HOW BRUSSELS CAN WIRE THE INFORMATION SOCIETY, co-authored with Dan Maldoom, Richard Marsden, and J. Gregory Sidak (Kluwer/ Springer Press 2005).

Are Vertically Integrated DSL Providers Squeezing Unaffiliated ISPs (and Should We Care)?, co-authored with Robert W. Crandall, in ACCESS PRICING: THEORY, PRACTICE AND EMPIRICAL EVIDENCE (Justus Haucap and Ralf Dewenter eds., Elsevier Press 2005).

JOURNAL ARTICLES

1. Evaluating Market Power with Two-Sided Demand and Preemptive Offers to Dissipate Monopoly Rent: Lessons for High-Technology Industries from the Antitrust Division's Approval of the XM-Sirius Satellite Radio Merger, 4 JOURNAL OF COMPETITION LAW & ECONOMICS (forthcoming 2008), co-authored with J. Gregory Sidak.

2. Assessing Bias in Patent Infringement Cases: A Review of International Trade Commission Decisions, 21 HARVARD JOURNAL OF LAW AND TECHNOLOGY (2008), co-authored with Robert W. Hahn.

3. The Effect of Incumbent Bidding in Set-Aside Auctions: An Analysis of Prices in the Closed and Open Segments of FCC Auction 35, 32 TELECOMMUNICATIONS POLICY JOURNAL (2008), co-authored with Peter Cramton and Allan Ingraham.

4. A Real-Option Approach to Valuing Life Settlement Transactions, 23 JOURNAL OF FINANCIAL TRANSFORMATION (Aug. 2008), co-authored with Joseph R. Mason.

5. The Economics of Wireless Net Neutrality, 3 JOURNAL OF COMPETITION LAW AND ECONOMICS 399 (2007), co-authored with Robert W. Hahn and Robert E Litan.

6. Vertical Foreclosure in Video Programming Markets: Implication for Cable Operators, 3 REVIEW OF NETWORK ECONOMICS 348 (2007), co-authored with J. Gregory Sidak.

7. The Unintended Consequences of Net Neutrality, 5 JOURNAL ON TELECOMMUNICATIONS AND HIGH TECH LAW 533 (2007), co-authored with Robert E. Litan.

8. Does Video Delivered Over a Telephone Network Require a Cable Franchise?, 59 FEDERAL COMMUNICATIONS LAW JOURNAL 251 (2007), co-authored with Robert W. Crandall and J. Gregory Sidak.

9. The Competitive Effects of a Cable Television Operator's Refusal to Carry DSL Advertising, 2 JOURNAL OF COMPETITION LAW AND ECONOMICS 301 (2006).

10. Uberregulation without Economics: The World Trade Organization's Decision in the U.S.-Mexico Arbitration on Telecommunications Services, 57 FEDERAL COMMUNICATIONS LAW JOURNAL 1 (2004), co-authored with J. Gregory Sidak.

11. The Secondary Market for Life Insurance Policies: Uncovering Life Insurance's "Hidden" Value, 6 MARQUETTE ELDER'S ADVISOR 95 (2004), co-authored with Neil A. Doherty and Brian A. O'Dea.

12. Do Unbundling Policies Discourage CLEC Facilities-Based Investment?, 4 TOPICS IN ECONOMIC ANALYSIS AND POLICY (2004), co-authored with Robert W. Crandall and Allan T. Ingraham.

13. Foreign Investment Restrictions as Industrial Policy, 3 CANADIAN JOURNAL OF LAW AND TECHNOLOGY 19 (2004), co-authored with Robert W. Crandall.

14. Regulating the Secondary Market for Life Insurance Policies, 21 JOURNAL OF INSURANCE REGULATION 63 (2003), co-authored with Neil A. Doherty.

15. Interim Pricing of Local Loop Unbundling in Ireland: Epilogue, 4 JOURNAL OF NETWORK INDUSTRIES 119 (2003), co-authored with J. Gregory Sidak.

16. The Benefits of a Secondary Market for Life Insurance, 38 REAL PROPERTY, PROBATE AND TRUST JOURNAL 449 (2003), co-authored with Neil A. Doherty.

17. The Empirical Case Against Asymmetric Regulation of Broadband Internet Access, 17 BERKELEY TECHNOLOGY LAW JOURNAL 954 (2002), co-authored with Robert W. Crandall and J. Gregory Sidak.

18. How Can Regulators Set Nonarbitrary Interim Rates? The Case of Local Loop Unbundling in Ireland, 3 JOURNAL OF NETWORK INDUSTRIES 273 (2002), co-authored with J. Gregory Sidak.

19. Vertical Foreclosure in Broadband Access, 49 JOURNAL OF INDUSTRIAL ECONOMICS (2001) 299, co-authored with Daniel L. Rubinfeld.

20. Open Access to Broadband Networks: A Case Study of the AOL/Time Warner Merger, 16 BERKELEY TECHNOLOGY LAW JOURNAL 640 (2001), co-authored with Daniel L. Rubinfeld.

21. Cable Modems and DSL: Broadband Internet Access for Residential Customers, 91 AMERICAN ECONOMICS ASSOCIATION PAPERS AND PROCEEDINGS 302 (2001), co-authored with Jerry A. Hausman and J. Gregory Sidak.

22. Residential Demand for Broadband Telecommunications and Consumer Access to Unaffiliated Internet Content Providers, 18 YALE JOURNAL ON REGULATION 1 (2001), co-authored with Jerry A. Hausman and J. Gregory Sidak.

23. Determining the Source of Inter-License Synergies in Two-Way Paging Networks, 18 JOURNAL OF REGULATORY ECONOMICS 59 (2000).

24. A General Framework for Competitive Analysis in the Wireless Industry, 50 HASTINGS LAW REVIEW 1639 (2000), co-authored with J. Gregory Sidak and David Teece.

25. Capital Raising in Offshore Markets, 23 JOURNAL OF BUSINESS AND FINANCE 1181 (1999), co-authored with Ian Gray and Reena Aggarwal.

EXPERT TESTIMONY IN THE LAST FOUR YEARS

1. Cindy Johnson et al. v. Arizona Hospital and Health Care Association et al., Case No. 07-01292 (SRB) (D. Az. Dec. 22, 2008)

2. Southeast Missouri Hospital et al. v. C.R. Bard, Inc., Case No. 1:07CV0031 TCM (E.D. Mo. 2008) (Sept. 19, 2008).

3. TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corporation, Federal Communications Commission, File No. CSR-8001-P (August 22, 2008).

4. Meijer, Inc. & Meijer Distribution, Inc. et al. v. Abbott Laboratories, Case No. C 07-5985 CW (N.D. Ca. 2007) (July 23, 2008).

5. NFL Enterprises LLC. v. Comcast Cable Communications, LLC, Federal Communications Commission, File No. CSR-7876-P (July 10, 2008).

6. Medical Mutual of Ohio Inc. v. GlaxoSmithKline PLC, and SmithKline Beecham Corporation, Civil Action No. 05-396 (E.D. Pa. 2008) (June 13, 2008).

7. TCR Sports Broadcasting Holding, L.L.P., D/B/A Mid-Atlantic Sports Network v. Time Warner Cable Inc., American Arbitration Association, Case No. 12 494 E 000326 07 (May 8, 2008).

8. Coors Brewing Company v. Hipal Partners Ltd., Case No. 71 155 00358 07 (American Arbitration Association 2007) (Mar. 3, 2008).

9. Natchitoches Parish Hosp. Serv. Dist. v. Tyco Int'l, Ltd. et al. (D. Mass. 2005) (Feb. 15, 2008).

10. Ralph O. Stalsberg, et al. v. New York Life Insurance Company, New York Life Insurance and Annuity Corporation, Case No. 2:07-Cv-29-Bj (D. Utah 2007) (Feb. 8, 2008).

11. In Re Tricor Indirect Purchaser Antitrust Litigation, C.A. No. 05-360 (KAJ) (D. Del. 2006) (Oct. 8, 2007).

COMMISSIONED WHITE PAPERS

1. Economic Effects of Tax Incentives for Broadband Infrastructure Deployment (prepared for the Fiber to the Home Council), co-authored with Jeffrey Eisenach and Jeffrey West (Dec. 23, 2008).

2. The Effect of Brokered Deposits and Asset Growth on the Likelihood of Failure (prepared for Morgan Stanley, Citigroup, and UBS), co-authored with Joseph Mason and Jeffrey West (Dec. 17, 2008).

3. Estimating the Benefits and Costs of M2Z's Proposal: Reply to Wilkie's Spectrum Auctions Are Not A Panacea (prepared for CTIA), co-authored with Robert W. Hahn, Allan T. Ingraham and J. Gregory Sidak (July 23, 2008).

4. Is Greater Price Transparency Needed in The Medical Device Industry? (prepared for Advanced Medical Technology Association), co-authored with Robert W. Hahn (Nov. 30, 2007).

5. Should the FCC Depart from More than a Decade of Market-Oriented Spectrum Policy? Reply to Skrzypacz and Wilson (prepared for CTIA), co-authored with Gerald Faulhaber and Robert W. Hahn (Jun. 18, 2007).

6. Does Retransmission Consent Contribute To Rising Cable Rates? (prepared for the National Association of Broadcasters), co-authored with Jeffrey A. Eisenach and James C. Miller III (Mar. 9, 2007).

7. Does Public Safety Need More Spectrum? (prepared for Verizon Wireless), co-authored with Peter Cramton, Thomas S. Dombrowsky, Jr., Jeffrey A. Eisenach and Allan Ingraham (Nov. 9, 2006).

8. The Budgetary Impact of Eliminating the GPOs' Safe Harbor Exemption from the Anti-Kickback Statute of the Social Security Act (prepared for the Medical Device Manufacturers Association) (Dec. 20, 2005).

9. Reply to "The Life Settlements Market: An Actuarial Perspective on Consumer Economic Value" (prepared for Coventry First), co-authored with Eric Stallard (Nov. 15, 2005).

10. The Competitive Effects of Telephone Entry into Video Markets (prepared for the Internet Innovation Alliance), co-authored with Robert W. Crandall and J. Gregory Sidak (Nov. 9, 2005).

11. How Do Consumers and the Auto Industry Respond to Changes in Exhaust Emission and Fuel Economy Standards? A Critique of Burke, Abeles, and Chen (prepared for General Motors Corp.), co-authored with Robert W. Crandall and Allan T. Ingraham (Sept. 21, 2004).

12. Inter-City Competition for Retail Trade in North Texas: Can a TIF Generate Incremental Tax Receipts for the City of Dallas? (prepared for Harvest Partners), co-authored with Thomas G. Thibodeau and Allan T. Ingraham (July 16, 2004).

13. An Accurate Scorecard of the Telecommunications Act of 1996: Rejoinder to the Phoenix Center Study No. 7 (prepared for BellSouth), co-authored with Robert Crandall (Jan. 6, 2004).

14. Competition in Broadband Provision and Implications for Regulatory Policy (prepared for the Alcatel, British Telecom, Deutsche Telekom, Ericsson, France Telecom, Siemens, Telefónica de España, and Telecom Italia), co-authored with Dan Maldoom, Richard Marsden, and Gregory Sidak (Oct. 15, 2003).

15. The Effect of Ubiquitous Broadband Adoption on Investment, Jobs, and the U.S. Economy (prepared for Verizon), co-authored with Robert W. Crandall (Sept. 17, 2003).

16. The Deleterious Effect of Extending the Unbundling Regime on Telecommunications Investment (prepared for BellSouth), co-authored with Robert W. Crandall (July 10, 2003).

17. Letter Concerning Spectrum Auction 35 to the Honorable Michael K. Powell, Chairman, Federal Communications Commission, from Peter C. Cramton, Robert W. Crandall, Robert W. Hahn, Robert G. Harris, Jerry A. Hausman, Thomas W. Hazlett, Douglas G. Lichtman, Paul W. MacAvoy, Paul R. Milgrom, Richard Schmalensee, J. Gregory Sidak, Hal J. Singer, Vernon L. Smith, William Taylor, and David J. Teece (Aug. 16, 2002).

WORKING PAPERS

1. What Does an Economist Have to Say About the Calculation of Reasonable Royalties?, presented at Law Seminars International Standard Setting and Patent Pools Conference, co-authored with Kyle Smith (Sept. 2008).

2. Irrational Expectations: Can a Regulator Credibly Commit to Removing an Unbundling Obligation?, AEI-Brookings Joint Center Related Publication No. 07-28, co-authored with Jeffrey A. Eisenach (Dec. 2007).

3. An Antitrust Analysis of Google's Proposed Acquisition of DoubleClick, AEI-Brookings Joint Center Related Publication No. 07-24, co-authored with Robert W. Hahn (Sept. 2007).

4. Inter-City Competition for Retail Trade in North Texas: Can a TIF Generate Incremental Tax Receipts for the City of Dallas?, co-authored with Thomas G. Thibodeau and Allan T. Ingraham (revise and resubmit to JOURNAL OF REAL ESTATE RESEARCH) (July 16, 2004).

5. An Economic Assessment of the Weight-Based CAFE Standard Proposed by the National Highway Traffic Safety Administration, co-authored with Robert W. Crandall and Allan T. Ingraham (Apr. 2004).

6. How Common Are "Conflicts of Interests" in the Investment Banking Industry?, co-authored with Charles W. Calomiris (Dec. 2003).

7. Does Clustering by Incumbent MSOs Deter Entry by Overbuilders? (July 2002).

SPEAKING ENGAGEMENTS

1. Markets and Regulation: How Do We Best Serve Customers?, Wireless U. Communications Policy Seminar, UNIVERSITY OF FLORIDA PUBLIC UTILITY RESEARCH CENTER, Tampa, FL., Nov. 13, 2008.

2. The Price Of Medical Technology: Are We Getting What We Pay For? HEALTH AFFAIRS BRIEFING, Washington, D.C., Nov. 10, 2008.

3. Standard Setting and Patent Pools, LAW SEMINARS INTERNATIONAL, Arlington, VA., Oct. 3, 2008.

4. The Changing Structure of the Telecommunications Industry and the New Role of Regulation, INTERNATIONAL TELECOMMUNICATIONS SOCIETY BIENNIAL CONFERENCE, Montreal, Canada, June 26, 2008.

5. The Debate Over Network Management: An Economic Perspective, AMERICAN ENTERPRISE INSTITUTE CENTER FOR REGULATORY AND MARKET STUDIES, Washington, D.C., Apr. 2, 2008.

6. Merger Policy in High-Tech Industries, GEORGE MASON UNIVERSITY SCHOOL OF LAW, Washington, D.C., Feb. 1, 2008.

7. Telecommunications Symposium, U.S. DEPARTMENT OF JUSTICE ANTITRUST DIVISION, Washington, D.C., Nov. 29, 2007.

8. Wireless Practice Luncheon, FEDERAL COMMUNICATIONS BAR ASSOCIATION, Washington, D.C., Nov. 29, 2007.

9. Association for Computing Machinery's Net Neutrality Symposium, GEORGE WASHINGTON UNIVERSITY, Washington, D.C., Nov. 12, 2007.

10. Regulators' AdvanceComm Summit, NEW YORK LAW SCHOOL, New York, N.Y., Oct. 14, 2007.

11. Annual Conference, CAPACITY USA 2007, New York, N.Y., Jun. 26, 2007.

12. William Pitt Debating Union, UNIVERSITY OF PITTSBURGH, SCHOOL OF ARTS & SCIENCES, Pittsburgh, PA., Feb. 23, 2007.

13. Annual Conference, WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, Washington, D.C., June 27, 2006.

14. Annual Conference, MEDICAL DEVICE MANUFACTURERS ASSOCIATION, Washington, D.C., June 14, 2006.

15. Annual Conference, ASSOCIATION FOR ADVANCED LIFE UNDERWRITING, Washington, D.C., May 1, 2006.

16. Entrepreneur Lecture Series, LAFAYETTE COLLEGE, Easton, PA., Nov. 14, 2005.

EDITORIALS AND MAGAZINE ARTICLES

1. Is Greater Price Transparency Needed in the Medical Device Industry?, HEALTH AFFAIRS (forthcoming 2008), co-authored with Robert W. Hahn and Keith Klovers.

2. Foxes in the Henhouse: FCC Regulation through Merger Review, MILKEN INSTITUTE REVIEW (First Quarter 2008), co-authored with J. Gregory Sidak.

3. Don't Drink the CAFE Kool-Aid, WALL STREET JOURNAL, Sept. 6, 2007, at A17, co-authored with Robert W. Crandall.

4. The Knee-Jerk Reaction: Misunderstanding the XM/Sirius Merger, WASHINGTON TIMES, Aug. 24, 2007, at A19, co-authored with J. Gregory Sidak.

5. Net Neutrality: A Radical Form of Non-Discrimination, REGULATION, Summer 2007.

6. Telecom Time Warp, WALL STREET JOURNAL, July 11, 2007, at A15, co-authored with Robert W. Crandall.

7. Earmarked Airwaves, WASHINGTON POST, June 27, 2007, at A19, co-authored with Robert W. Hahn.

8. Not Neutrality, NATIONAL POST, Mar. 29, 2007, at FP19.

9. Should ATM Fees Be Regulated?, NATIONAL POST, Mar. 8, 2007, at FP17, co-authored with Robert W. Crandall.

10. Life Support for ISPs, REGULATION, Fall 2005, co-authored with Robert W. Crandall.

11. No Two-Tier Telecommunications, NATIONAL POST, Mar. 7, 2003, at FP15, co-authored with Robert W. Crandall.

MEMBERSHIPS

American Economics Association

REVIEWER

JOURNAL OF COMPETITION LAW AND ECONOMICS

JOURNAL OF RISK MANAGEMENT AND INSURANCE REVIEW

JOURNAL OF REGULATORY ECONOMICS

MANAGERIAL AND DECISION ECONOMICS

TELECOMMUNICATIONS POLICY

PERSONAL INFORMATION

American citizen, born March 31, 1972. Married to Ingrid Arraut Singer. Two daughters: Alexis and Kayla. Resident of Oakton, Virginia.

January 30, 2009

APPENDIX 2: TOTAL ROYALTIES PAID BY FORM 3 SYSTEMS

Year	*Total Royalties Paid*
1990	$ 163,685,852
1991	$ 174,375,424
1992	$ 182,455,868
Average 1990-92	**$ 173,505,715**
1993	$ 176,922,979
1994	$ 155,296,839
1995	$ 159,816,460
1996	$ 170,411,737
1997	$ 148,235,668
1998	$ 100,420,824
1999	$ 105,794,778
Average 1998-99	**$ 103,107,801**
2000	$ 111,871,811
2001	$ 116,144,090
2002	$ 125,765,602
2003	$ 126,726,417
Average 2000-03	**$ 120,126,980**

Source: CDC.

APPENDIX 3: FORM 3 ZERO DSE SYSTEMS

Period	*Number of Systems with Zero DSEs*	*Total Systems*	*% of Systems with Zero DSEs*
1990-1	17	2,106	0.81%
1990-2	12	2,124	0.56%
1991-1	13	2,200	0.59%
1991-2	12	2,202	0.54%
1992-1	14	2,250	0.62%
1992-2	17	2,272	0.75%
1993-1	15	2,348	0.64%
1993-2	18	2,289	0.79%
1994-1	10	2,241	0.45%
1994-2	14	2,213	0.63%
1995-1	12	2,242	0.54%
1995-2	12	2,301	0.52%
1996-1	15	2,343	0.64%
1996-2	27	2,383	1.13%
1997-1	38	2,306	1.65%
1997-2	40	2,317	1.73%
1998-1	459	2,333	19.67%
1998-2	437	2,359	18.52%
1999-1	379	2,308	16.42%
1999-2	372	2,287	16.27%
2000-1	379	2,302	16.46%
2000-2	309	1,887	16.38%
2001-1	324	1,851	17.50%
2001-2	306	1,811	16.90%
2002-1	305	1,757	17.36%
2002-2	305	1,720	17.73%
2003-1	298	1,685	17.69%
2003-2	270	1,646	16.40%

Source: CDC.

APPENDIX 4: TOTAL SUBSCRIBER INSTANCES FOR FORM 3 SYSTEMS, U.S. VS. CANADIAN

Acct-Period	*Canadian Distant Subscriber Instances*	*Canadian % of Total Distant Subscriber Instances*	*U.S. Distant Subscriber Instances*	*U.S. % of Total Distant Subscriber Instances*
1990-1	1,808,437	1.5%	117,122,003	98.5%
1990-2	1,895,253	1.6%	118,240,166	98.4%
1991-1	1,921,445	1.6%	119,474,267	98.4%
1991-2	1,869,623	1.5%	120,537,094	98.5%
1992-1	1,903,262	1.5%	121,755,298	98.5%
1992-2	1,983,277	1.6%	122,585,277	98.4%
1993-1	2,038,775	1.6%	124,609,618	98.4%
1993-2	2,121,721	1.6%	127,319,113	98.4%
1994-1	2,093,197	1.7%	123,687,412	98.3%
1994-2	2,062,399	1.7%	119,123,303	98.3%
1995-1	2,281,032	1.8%	121,916,293	98.2%
1995-2	2,199,811	1.7%	124,422,069	98.3%
1996-1	1,979,286	1.5%	127,101,349	98.5%
1996-2	2,034,531	1.6%	127,833,686	98.4%
1997-1	2,030,404	1.8%	113,431,121	98.2%
1997-2	2,006,874	1.7%	114,709,936	98.3%
1998-1	2,320,580	3.5%	63,564,199	96.5%
1998-2	2,444,712	3.6%	65,209,892	96.4%
1999-1	2,435,014	3.5%	66,644,777	96.5%
1999-2	2,547,685	3.7%	66,792,831	96.3%
2000-1	2,669,097	3.8%	67,633,912	96.2%
2000-2	2,585,301	3.8%	66,133,447	96.2%
2001-1	2,653,758	3.9%	66,247,761	96.1%
2001-2	2,913,025	4.1%	67,618,109	95.9%
2002-1	2,940,482	4.0%	70,284,785	96.0%
2002-2	2,803,228	4.0%	67,886,093	96.0%
2003-1	2,921,592	4.3%	65,070,628	95.7%
2003-2	3,262,903	4.6%	67,816,942	95.4%

Source: CDC.

APPENDIX 5: NUMBER OF DISTANT STATIONS CARRIED BY FORM 3 SYSTEMS, U.S. VS. CANADIAN

Period	*Average Number of Distant Stations*	*Average Number of Distant U.S. Stations*	*Average Number of Distant Canadian Stations*	*Canadian Share*
1990-1	3.404	3.360	0.045	1.31%
1990-2	3.386	3.343	0.043	1.27%
1991-1	3.376	3.334	0.042	1.25%
1991-2	3.329	3.291	0.039	1.16%
1992-1	3.320	3.280	0.040	1.19%
1992-2	3.299	3.258	0.040	1.20%
Average 1990-92	**3.352**	**3.311**	**0.041**	**1.23%**
1998-1	1.751	1.712	0.037	2.13%
1998-2	1.779	1.733	0.043	2.43%
1999-1	1.865	1.820	0.041	2.20%
1999-2	1.908	1.859	0.042	2.22%
Average 1998-99	**1.826**	**1.781**	**0.041**	**2.24%**
2000-1	1.906	1.854	0.044	2.30%
2000-2	1.903	1.845	0.047	2.48%
2001-1	1.937	1.877	0.047	2.42%
2001-2	2.013	1.947	0.051	2.52%
2002-1	2.071	2.000	0.049	2.39%
2002-2	2.210	2.122	0.059	2.68%
2003-1	2.200	2.118	0.052	2.37%
2003-2	2.314	2.228	0.054	2.33%
Average 2000-03	**2.069**	**1.999**	**0.050**	**2.44%**

Source: CDC.

Before the
Copyright Royalty Judges
Washington, D.C.

In the Matter of Distribution of the 2000-03 Cable Royalty Funds	**Docket No. 2008-2 CRB CD 2000-2003**

DECLARATION

I, Hal J. Singer, declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge and belief.

Hal J. Singer

Executed on: 1/31/09

CERTIFICATE OF SERVICE
Docket. No. 2008-2 CRB CD 2000-2003

I hereby certify that a copy of the foregoing Written Direct Statement of the Settling Parties and accompanying exhibits is being hand delivered via personal courier service on February 2, 2009 before 5:00 p.m. to the following party:

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