

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

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

REBUTTAL TESTIMONY OF TOM POLEMAN,
PRESIDENT OF NATIONAL PROGRAMMING PLATFORMS, iHEARTMEDIA, INC.

BACKGROUND AND QUALIFICATIONS

1. I am President of National Programming Platforms for iHeartMedia, Inc. I oversee the team of programmers that select the music we play on iHeartMedia’s broadcast radio stations, which are simulcast online by iHeartRadio, and iHeartRadio’s custom digital radio stations.

2. I previously submitted a statement in support of iHeartMedia’s direct case in the above-captioned proceeding concerning the power of live radio to introduce the public to new artists and new music and iHeartMedia’s programs for highlighting new artists and new music, including our Artist Integration Program (“AIP”) and “On the Verge” Program, which have proven highly successful in helping record labels “break” artists and sell music.

3. I understand that SoundExchange, Inc.’s expert witness, Daniel Rubinfeld, contends that the promotional benefits of playing music on live radio are “increasingly limited” and “the notion of promoting sales of music is quickly becoming an anachronism.” This is contrary to my experience that playing music on iHeartMedia’s radio platforms boosts sales, and that record labels continue to devote enormous resources to promotion.

4. Radio play often produces immediate results. For example, Elvis Duran played Family of the Year's song "Hero" on his radio show, which is simulcast over iHeartRadio, on a Friday morning. [[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]]]

5. In recent years, record labels have added marketing and digital staff specifically tasked with promoting the labels' artists and music online to compliment their existing promotion departments, which have historically focused on promoting the labels' artists and music to terrestrial radio stations. Record labels are wise to devote more resources to digital radio. Today consumers are discovering new music by listening to digital radio in the same way that they have long discovered new music by listening to terrestrial radio. iHeartMedia recently commissioned a survey to find out if consumers are using digital radio for music discovery. Of those who listen to digital radio – defined as live AM/FM radio you stream through a PC, smartphone, or other mobile device – 91% agreed with the statement "*I have discovered new music listening to digital radio,*" and 66% agreed with the statement "*I have purchased music that I heard for the first time on digital radio.*"

6. I also understand that SoundExchange's expert witness, Daniel Rubinfeld, contends that guaranteed promotional programs in direct licensing deals between digital radio services and record labels – including AIP – are equivalent to cash that should be included in calculating the effective per-play rate under the deal. But, AIP is not the equivalent of cash: iHeartMedia has never sold AIP for cash, and the record labels have never paid cash for AIP.

7. I am submitting this statement in support of iHeartMedia's rebuttal case in the above-captioned proceeding.

“ON THE VERGE”: LAUNCHING A MEGA-HIT IN 2014

8. iHeartMedia's "On the Verge" Program helps our listeners find their new favorite songs. Once every six to ten weeks our local programmers for each current-based format (e.g., Country, Alternative, Rhythmic) come together to select a new song that they believe has the potential to be a hit and increase station audience ratings. Each programmer commits to spinning the selected song 150 times over the next six to ten weeks on his or her station; listeners will hear the song whether they tune in to the station by broadcast radio or simulcast. The decision to select a song for "On the Verge" is 100% a programming decision. Labels, managers, and artists cannot purchase or bargain for this program.

9. In my previous testimony, I explained that the data show that when iHeartMedia's radio stations play a song with greater frequency as part of the "On the Verge" Program, often the song will shoot up the charts and sales of the song will increase substantially.

10. One of the songs I highlighted as having benefited from the "On the Verge" Program was Sam Smith's song "Stay with Me," which was "On the Verge" for six weeks from May 12, 2014 to June 22, 2014. During those six weeks, "Stay with Me" reached #7 on the Top 40 Chart and sold over 1,000,000 copies, and Sam Smith gained over 150,000 new fans on social media. *See Ex. B.*

11. Sam Smith's popularity continued to grow during the last six months of 2014. Sam Smith's album "In the Lonely Hour" sold 1,000,000 copies in December 2014 and went Platinum. On Spotify, "Stay with Me" was played over 2 million times, and "In the Lonely Hour" was the second-most popular album of 2014 around the world.

12. Eight months after “Stay with Me” was “On the Verge,” on February 8, 2015, I watched Sam Smith win four Grammy Awards, including song of the year for “Stay with Me” and was proud that iHeartMedia programmers spotted the hit potential of “Stay with Me,” selected it for “On the Verge,” and helped introduce the song and Sam Smith to the American public.

13. Sam Smith is represented by Capitol Music Group (“Capitol”), a division of Universal Music Group (“Universal”).

14. [[[REDACTED]
[REDACTED]]]

15. [[[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]]]

16. [[[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]]]

17. [[[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]]

18. [[REDACTED]

[REDACTED]

[REDACTED]]

19. [[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]]

ARTIST INTEGRATION PROGRAM SPOTS

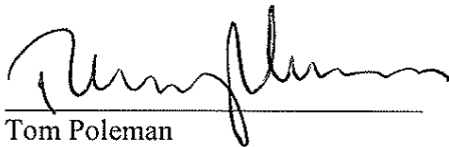
20. iHeartMedia’s Artist Integration Program (“AIP”) spots introduce our terrestrial broadcast and simulcast listeners to new songs and albums selected by iHeartMedia’s brand managers. Our AIP Program provides a valuable to service to our listeners by introducing them to new music they are likely to enjoy, and contributes to a healthy music industry by helping artists build their brands and sell their music.

21. I developed the AIP Program in 2011 with the goal of improving iHeartMedia’s relationships with artists and record labels by supporting their efforts to build artists’ brands and sell music. I continue to view the AIP Program as an industry-relations tool. We put in the effort to select artists and music for the AIP Program, and to produce and air AIP spots on our

stations, in order to be good partners to artists and record labels. We have never sold AIP to an artist or record label for cash.

22. Because we use the same system to run AIP and paid commercials, we have occasionally measured the quantity of AIP spots for an artist or record label using the amount we would charge for an equivalent number of commercials of the same length. But, these monetary figures serve no other purpose than to help us gauge the amount of AIP spots we are running. These monetary figures do not reflect the amount we charge artists or record labels for AIP – we do not sell AIP at all.

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



Tom Poleman

2/20/15
Date