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September 19, 2007

Via Electronic Mail

Copyright Royalty Board
Library of Congress
James Madison Memorial Building
LM-401
Washington, DC 20559

Re: *In the Matter of Distribution of the 2003 Cable Fund*
Comments of the National Association of Broadcasters to 72 Fed. Reg.
46516

To Whom It May Concern:

Enclosed please find NAB's response to the Federal Register Notice issued by the Copyright Royalty Judges on August 20, 2007. The same attachment has been served on the parties listed on the attached pages.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Stewart".

John I. Stewart, Jr.

Enclosure

**Before the
COPYRIGHT ROYALTY BOARD
Library of Congress
Washington, D.C.**

In the Matter of
Distribution of the 2003 Cable Fund

)
)
) Docket No. 2005-4 CRB CD 2003
)
)

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”) files these comments in the above-referenced proceeding in response to the Notice issued by the Copyright Royalty Judges on August 20, 2007.¹ The Notice announces a partial Phase I settlement in connection with the 2003 cable fund and solicits comments on the Motion for Further Distribution.

1. The Motion for Further Distribution Should Be Granted

As a signatory of the joint Motion for Further Distribution filed on June 20, 2007, NAB strongly supports distributing the remaining funds in accordance with the request. NAB urges the Judges to: 1) authorize a distribution directly to NPR of 0.18% of the 2003 Cable Fund; 2) retain a 0.5% share of the 2003 Cable Fund for the Devotional Claimants; 3) reserve an additional 5.5% of the 2003 Cable Fund in respect of the unresolved Phase I dispute between the Canadian Claimants and the settling claimants; and 4) authorize a lump sum distribution of all of the remaining 2003 Cable Fund, less any additional reserves that may be necessary to cover any

¹ 72 Fed. Reg. 46516 (August 20, 2007).

valid Phase II disputes, to the common agent of the settling Phase I claimants other than NPR and the Devotional Claimants.

NAB believes there can be no reasonable justification for objecting to the distribution of all such amounts. Withholding the specified reserve amounts should fully protect all legitimate claims of interested parties to the 2003 Cable Fund.

2. No Conditions Should Be Imposed Beyond the Statutory Requirements Themselves

Based on well-established precedent, the CRJs should not impose conditions beyond those mandated by the statute. The settling claimants in their June 20, 2007, motion provided an appropriate basis for the distribution to be made as requested. Imposing additional conditions, such as IPG's requested prohibition on the distribution of royalties to claimants within the Phase I categories receiving the royalties, would be unjustifiable. Besides having been rejected in a prior proceeding,² IPG's request would thwart the legislative purpose underlying the partial distribution authority. The interests of a legitimate Phase II claimant within such a category are adequately protected by any Phase II reserve the CRJs determine to be necessary with respect to that category.

² See Notice at 46518 (*citing* Distribution Order, Docket No. 2005-4 CRB CD 2003 (Aug. 23, 2006)).

3. Unresolved Phase I and Phase II Disputes

A. Existence of Phase I Controversy

With respect to the 2003 Cable Fund, the only unresolved Phase I controversy concerns the Phase I share of the Canadian Claimants on the one hand and that of all the other Phase I parties on the other.³

B. Existence of Phase II Controversies

With respect to the Phase II distribution of the 2003 cable royalty funds, NAB believes that controversies exist at this time between claimants represented by NAB and other claimants and claimant groups. Specifically, NAB believes there to be unresolved controversies involving the Phase II distribution of royalties within the Program Suppliers and Devotional categories. NAB reserves its right to withdraw Phase II claims or make additional Phase II claims in response to rulings of the CRJs, the outcome of the 2003 distribution proceedings, the acquisition of additional evidence, or the filings of additional claimant parties.

With respect to the Phase II distribution of the 2003 Commercial Television royalties, NAB is unaware of any controversy at this time.

C. Effect on Further Distribution

In Phase II, NAB is unaware of any controversy with respect to the distribution of the share of the Commercial Television category, of which it is the Phase I representative, and no Phase II reserve for that category would be necessary or appropriate. With respect to its own Phase II claims on behalf of individual station claimants in the Devotional and Program

³ IPG has asserted that a new Phase I category should be created for Spanish-language programming. NAB addresses that question below. If, notwithstanding the compelling reasons for rejecting IPG's request, the CRJs were to create such a category, there would presumably be an unresolved controversy with respect to that category's Phase I share as against the Canadian Claimants' share and the share of all the other Phase I claimants.

Suppliers categories in Phase II, NAB estimates that a reserve of approximately 0.65% of the total 2003 Cable Fund would be sufficient.

In setting the Phase II portion of the reserve to be withheld from the lump sum distribution requested in the Joint Motion, the CRJs should aggregate only the specific amounts that are reasonably claimed to be at issue in Phase II, in order to achieve the complete distribution of royalties that are not in dispute. The Copyright Office, by contrast, followed a much more conservative approach with respect to prior years' cable distribution proceedings, reserving far more than was necessary to satisfy pending controversies. But if the CRJs were to determine not to limit the Phase II portion of the reserve to the sum of the specific percentage shares the parties reasonably report as being at issue, NAB believes the CRJs should reserve, with respect to all Phase I and Phase II controversies, no more than the same total \$15 million holdback the Copyright Office adopted based on its overly conservative approach with respect to the 2002 Cable Fund.⁴ The overall sizes of the 2002 and 2003 Cable Funds are comparable, and the Phase I and Phase II disputes identified thus far are directly comparable. In view of this comparability, the CRJs would not be justified in reserving any more than a total of \$15 million of the 2003 Cable Fund before making the lump sum distribution requested in the Joint Motion.

⁴ See Order in Docket Nos. 2001-8 CARP CD 98-99, 2002-8 CARP CD 2000, 2003-2 CARP CD 2001, 2004-5 CARP CD 2002, at 3 (April 3, 2007) (granting in part and denying in part the Phase I Claimants' Notice of Partial Settlement and Motion for Further Distribution).

4. No Additional Phase I Claimant Category Should Be Created

IPG has suggested, without support or explanation, that a new Phase I Claimant category should be created for Spanish-language programming.⁵ However, all Spanish-language programming is already fully represented by the current Phase I categories, and royalties are already being distributed to owners of such programs who properly file claims.

The definitions of the current Phase I categories are mutually exclusive and comprehensive. Every Spanish-language program, whether aired on an English-language station or a Spanish-language station, will meet the definition of programs represented by one of the existing Phase I categories, such as Commercial Television (for station-produced programs), Program Suppliers (for syndicated programs and movies), Joint Sports Claimants (for live telecasts of professional and collegiate sports games), Public Television (for shows appearing on PBS stations), or Devotional Claimants (for syndicated devotional programs).

Within its own Commercial Television category, NAB can state that Spanish-language programs for which claims are filed by commercial television stations receive royalties from the annual cable funds, just as station-produced programs in English and other languages do. Indeed, NAB has presented Spanish-language programs as part of its direct case evidence in Phase I and Phase II cable distribution proceedings in the past.⁶ And Spanish-language program

⁵ See Notice at 46517.

⁶ See, e.g., NAB 1990-1992 Exhibit 3, Docket No. 94-3 CARP CD 90-92 (listing “Charlando” on WGN and “Aprenda Ingles” on WPIX).

producers and distributors have previously participated without restriction in Phase II proceedings when they have had a dispute regarding the royalties their programs receive.⁷

Creating another Phase I category when the copyright owners of Spanish-language programs are already fully represented by existing claimant groups would be both unnecessary and a radical disruption of the annual distribution proceedings. Other subgroups in existing Phase I categories could also be expected to break away in future years, and the substantial efficiencies of the longstanding Phase I / Phase II structure for distribution proceedings would soon be lost. Annual litigation over the shares of new and increasingly narrow “Phase I” program categories would surely follow.

5. The CRJs Should Commence the 2003 Phase I Proceeding

NAB would support the commencement of the 2003 Phase I proceeding, after a reasonably brief period to permit further attempts at settlement. Moreover, it would appear ultimately to be most efficient if the 2000-2002 cable Phase I proceedings, recently terminated by the Copyright Office,⁸ were commenced as well, so that the Phase I proceedings for 2000 through 2002 could be consolidated with the 2003 proceeding. All four of these years were covered by the same substantially global Phase I settlement, and all present the single Phase I issue of determining the respective shares of the Canadian Claimants and the remaining Phase I categories as a whole.

⁷ See, e.g., 1979 Cable Royalty Distribution Determination, 47 Fed. Reg. 9879, 9896 (Mar. 8, 1982), *aff'd*, Christian Broadcasting Co. v. Copyright Royalty Tribunal, 720 F.2d 1295, 1314 (D.C. Cir. 1983) (Spanish International Network Phase II claims in Program Suppliers category).

⁸ Notice, Docket Nos. 2001-8 CARP CD 98-99, 2002-8 CARP CD 2000, 2003-2 CARP CD 2001, 2004-5 CARP CD-2002, 2001-5 CARP SD 99, 2001-7 CARP SD 2000, and 99-4 CARP DPRA, 72 Fed. Reg. 45071 (Aug. 10, 2007).

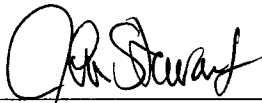
NAB would intend to comment in further detail, as appropriate, on the order, scope, and scheduling of any CRJ royalty proceedings in which it would be involved, in response to whatever further motions or notices might be filed in such regard.

6. The Federal Register Should Be Used to Provide Notice to Interested Parties

In response to the final issue on which the CRJs seek comment, Notice at 46519-20, NAB advocates the use of the Federal Register as the means for providing notice to potentially interested parties of motions or proposed actions that are to be considered in connection with royalty matters. Such motions or actions, prior to commencement of a proceeding and the subsequent identification of proper participants in the proceeding, may affect multiple and unknown parties, and the Federal Register provides the principal valid method of providing widespread constructive notice. By definition, the pre-proceeding circumstances to which the CRJs refer would not be susceptible to a “service list” approach that could reliably deliver notice to all possible interested parties. NAB also strongly supports the posting of material on the CRB website, as well as possible use of a subscription service like the Copyright Office’s “NewsNet” publications, as efficient and practical measures to effectuate most operational communications. But the employment of such other means of communicating information that may require parties to respond or lose their participation rights would, if relied on exclusively or principally, raise questions as to whether notice was adequate. For these reasons, NAB favors principal reliance on Federal Register publication for this purpose, and suggests that all response dates to any motion or proposed action be specified in the notice.

Respectfully Submitted,

THE NATIONAL ASSOCIATION
OF BROADCASTERS

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September 19, 2007

CERTIFICATE OF SERVICE

I, Julia Hamilton, hereby certify that a copy of the attached response to the August 20, 2007 Federal Register Notice was served via first class mail, postage prepaid, this 19th day of September, 2007, upon the following:

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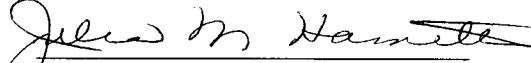
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Dated: September 19, 2007