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1	Written Direct Testimony of Michael Bloom
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Exhibit 7	REDACTED
Exhibit 8	REDACTED
Exhibit 9	REDACTED

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

In The Matter Of: Digital Performance Right in Sound Recording and Ephemeral Recordings for a New Subscription Service	Docket No. 2005-5 CRB DTNSRA

Testimony of

MICHAEL BLOOM

Vice President and General Manager of Digital Music, MTV Networks

Witness for MTV Networks

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:	:	**Docket No. 2005-5**
	:	**CRB DTNSRA**
Digital Performance Right In Sound Recordings and Ephemeral Recordings For a New Subscription Service	:	

TESTIMONY OF MICHAEL BLOOM, VICE PRESIDENT AND GENERAL MANAGER OF DIGITAL MUSIC OF MTV NETWORKS

INTRODUCTION AND WITNESS BACKGROUND

1. I am the Vice President and General Manager of Digital Music of MTV Networks, a division of Viacom Inc. ("MTVN"). As such, I am responsible for managing the digital audio services distributed by MTVN under the "Urge" brand, including the digital audio radio ("DAR") service at issue in this proceeding. I have worked at MTVN since 2004. I submit this statement in support of MTVN in this proceeding.

2. As is described more fully herein, MTVN will soon launch a DAR service that will be distributed by cable systems and that complies with the statutory licenses under 17 U.S.C. § 114(f)(2), as part of a package of services offered by MTVN. The service will offer dozens of channels of digital audio programming to cable television subscribers.

3. MTVN's DAR service is functionally the same type of service as the MusicChoice audio service delivered to cable and satellite TV subscribers. However,

because MTVN's DAR service does not fit within the statutory regime as a "pre-existing subscription service" (under which MusicChoice has been licensed) and also does not fit within the license structure of webcasting "new subscription services" (which historically have involved rate concepts of "aggregate tuning hours" or "per song" per listener which are inapplicable to DAR services such as MTVN's), MTVN filed a notice to participate in these CRB proceedings to establish rates for what I understand to be a "new type" of new subscription service.

DISCUSSIONS WITH SOUNDEXCHANGE

4. This fall, through its counsel, MTVN inquired of SoundExchange, Inc. ("SoundExchange") whether it could negotiate a licensing arrangement for MTVN's new DAR service.

5. SoundExchange replied that it was unable to quote a specific fee to MTVN; hence we are here reluctantly but with no other place to go to secure an appropriate and reasonable rate.

6. Therefore, MTVN had no choice but to participate in this proceeding so that it could obtain a fair, competitive royalty rate to pay to SoundExchange for MTVN's "new type" of subscription service.

MTVN'S DIGITAL AUDIO CABLE SERVICE

7. Beginning in 2007, MTVN plans to launch a new DAR service that is offered to consumers through a variety of cable systems, including Verizon, AT&T, and others. The DAR service is currently being tested internally, but has not been offered to consumers. MTVN's new service will operate in the same markets as MusicChoice and,

to consumers, the service will be functionally the same as the service offered by MusicChoice.

8. MTVN's DAR service will offer more than fifty (50) channels of the best mix of music – from Alternative to Hip Hop to Classical – featuring the hottest artists and tracks for each genre. The service will use industry-leading programming schedules and rotation plans. In addition, the depth, breadth and expertise of MTVN's music programmers will make the DAR service the new and improved standard for digital audio cable programming.

9. In addition, the DAR service will provide compelling graphics and relevant information about the music and artists to create a truly unique look and feel for each channel. Not only will the service provide information about a track's artist, title, label, album and release date but it also displays biographical data, news and upcoming events including tour dates. In addition, MTVN's service will provide an opportunity for consumers to discover new music because it displays both musicians that have influenced an artist as well as those that have been influenced by that artist. These unique features are to the promotional benefit of the artists and sound recording owners whose works are included within MTVN's DAR service.

10. MTVN plans to deliver its music DAR channels as part of a package or "bundle" of programming channels inclusive of audio visual programming that does not qualify for the Section 114 statutory license; and the practice and expectation is that MTVN will be compensated by cable distributors of its programming for the package as a whole.

THE RATE

11. MTVN is aware of the following marketplace rates that currently or until recently have been in place relevant to services of the same nature as MTVN's DAR service. On the sound recording side, the service closest in kind to ours is the MusicChoice service; and MusicChoice has been paying SoundExchange on the basis of a published, voluntary agreement at the rate of 7.25% of MusicChoice's revenue received from cable/satellite operators for distribution of MusicChoice's digital audio service. See 17 U.S.C. § 114(f)(1).

12. I understand that MusicChoice's initial sound recording performance rates (for the period prior to the most recent statutory license period referred to in the immediately preceding paragraph) were the result of a Copyright Arbitration Royalty Panel (CARP) determination setting such rates; and that the basis upon which the CARP set the initial rates was the then-existing musical work performance rates (e.g., established essentially by reference to ASCAP/BMI rates) in effect for the same service. See Determination of Statutory License Terms and Rates for Certain Digital Subscription Transmissions of Sound Recordings, Docket No. 96-5 CARP-DSTRA (Report of the Copyright Arbitration Panel) (certified Nov. 28, 1997). Based on communications received within the last month from the performing rights organizations, we understand that the current musical work performance rates available to MTVN for its DAR service are in the range of 5 - 5.5% of the revenues attributable to the operation of that service.

13. MTVN believes that these rates – which would result in fees equivalent to somewhere between 5 and 7.25% of revenues received by MTVN from distribution of its DAR service – likely exceed the rates that would prevail in a

competitive market. To be sure, MTVN believes that there is no credible argument that can be made that this level of fees is a marketplace rate pertinent to the MTVN "new type" of subscription service. In addition, of course, in the situation where MTVN's DAR channels are bundled together with other services that are not governed by the statutory license involved in these proceedings, the revenue base to which reference would be made would have to be limited to the revenues attributable to the DAR channels alone (and not the non-statutory programming/services).

14. MTVN is aware that the pre-existing service statutory license is governed by the rate-setting standards set forth in 17 U.S.C. § 114(f)(1), while MTVN's "new type" of subscription service is governed by the section 114(f)(2) "willing buyer, willing seller" marketplace standard – which has been construed by the Librarian of Congress in the initial webcasting CARP proceeding to be equivalent to rates that would prevail in a competitive market. See Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Docket No. 2000-9 CARP DTRA 1&2, 67 Fed. Reg. 45239 (July 8, 2002) (codified at 37 C.F.R. Part 261). There is nothing in the statutory scheme, however, that mandates that – merely because of these different stated standards – a "new type" of subscription service engaged in the functionally identical business as a "pre-existing" subscription service like MusicChoice should pay at a higher rate than MusicChoice. And it seems counter-intuitional – and would lead to indefensibly discriminatory and anticompetitive results – were rates set by this CRB that would give one provider (MusicChoice) a competitive advantage over others.

I declare under the penalty of perjury that the foregoing is true and correct or, in some cases, upon information and belief.

Michael Bloom

Michael Bloom

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PUBLIC VERSION

Before the

UNITED STATES COPYRIGHT OFFICE

LIBRARY OF CONGRESS

Washington, DC

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In the Matter of: : Docket No.

: 2005-5 CRB DTNSRA

Digital Performance Right :

In Sound Recordings and :

Ephemeral Recordings For :

a New Subscription Service :

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CERTIFIED COPY

Oral Deposition of

MICHAEL S. BLOOM

Washington, DC

Thursday, July 19, 2007

1:11 p.m.

Job No.: 22-107773

Pages 1 through 71

Reported by: Rebecca L. Stonerock, RPR

1 Oral Deposition of
MICHAEL S. BLOOM
2
3
Held at the offices of:
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5 601 Thirteenth Street NW
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(202) 639-6000
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23 Taken pursuant to Notice, before Rebecca L.
24 Stonerock, Registered Professional Reporter.
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1 C O N T E N T S

2 EXAMINATION OF MICHAEL S. BLOOM PAGE
3 By Mr. Freedman 7
4 By Ms. Goldstein 64

5
6
7 E X H I B I T S
8 (Attached to Transcript)

9 BLOOM DEPOSITION EXHIBIT PAGE
10 No. 1 Amended Testimony of Michael Bloom,
11 Vice President and General Manager
12 of Digital Music of MTV Networks,
13 Bates (None) 10
14 No. 2 Testimony of Michael Bloom, Vice
15 President and General Manager
16 of Digital Music of MTV Networks,
17 Bates (None) 29
18 No. 3 URGE Radio Financial Statement,
19 2005 - 2010,
20 Bates 2005-5 CRB MTVN 000189 - 203 31
21 No. 4 URGE Radio Financial Statement,
22 Bates 2005-5 CRB MTVN 000226 - 245 40
23 No. 5 12-28-06 Agreement, Grande and MTV,
24 Bates 2005-5 CRB MTVN 000184 - 188 47
25

No. 6	5-23-06 Agreement, Everest and MTV, Bates 2005-5 CRB MTVN 000119 - 124	50
No. 7	12-28-06 Agreement, Buckeye and MTV, Bates 2005-5 CRB MTVN 000094 - 099	51
No. 8	6-30-06 Agreement, AT&T and MTV, Bates 2005-5 CRB MTVN 000151 - 183	52
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1 P R O C E E D I N G S
2 MICHAEL S. BLOOM
3 having been duly sworn, testified as follows:
4 EXAMINATION OF MICHAEL S. BLOOM
5 BY MR. FREEDMAN:
6 Q Good morning. Could you please state your
7 name for the record -- good afternoon.
8 A Good afternoon. Michael Bloom.
9 Q My name is Jared Freedman and I'm an
10 attorney here at Jenner & Block, and we represent
11 SoundExchange in this case and I'll be asking you
12 questions today on behalf of SoundExchange.
13 Have you ever been deposed before?
14 A No.
15 Q So the way -- the way it'll work is I'll
16 ask you some questions, the court reporter here will
17 record your answers. If you don't understand any of
18 my question, just say so and I'll try to clarify the
19 question.
20 Your counsel may object from time to time
21 to my questions. If that happens, you know, we may
22 try to resolve -- I may rephrase the question or I may
23 try to resolve it. But unless she instructs you not
24 to answer, you can go ahead and answer once we've
25 figured out the objection.

1 If you need a break at any time, just let
2 me know or let Ms. Goldstein know and we can take a
3 break.
4 A Okay.
5 Q If you give an answer and a few minutes
6 later you think of something else you should have said
7 or you want to change that, you want to give some
8 additional information, that's fine. Let me know --
9 A Okay.
10 Q -- and we'll let you do that.
11 A Okay.
12 Q Is there any reason you can think of that
13 you can't answer my questions fully and truthfully
14 today?
15 A No.
16 Q Where you do you currently work?
17 A MTV Networks.
18 Q And what is your job title?
19 A I'm the GM of digital music.
20 Q And what does GM stand for?
21 A General manager.
22 Q And what are your job responsibilities?
23 A I lead a division known as "digital music"
24 inside the company building/running digital music
25 services.

Not Designated

Q And are there any people who report to you?
A Yes.
Q About how many?
A Eight roughly.
Q And what is -- as the -- did you say your title is GM for digital music? Is that right?
A (Nodding head up and down.)
Q In that capacity what's -- what role do you play in connection with MTV's digital audio service that's the subject of this proceeding?
A It was my team that was tasked with developing this product.
Q And do you -- does that -- does developing the product also include or did you -- strike that.
Were you also involved in developing the relationships with cable systems who might carry this product?

A No.

Not Designated

Q Let me show you what we will mark as Exhibit 1.

(Exhibit No. 1 was marked for identification and attached to the deposition transcript.)

Not Designated

Not Designated

Q Mr. Bloom, do you recognize this document?
A I do.
Q What is it?
A The amended testimony.
Q Of whom?
A Myself.
Q And if you look on the last page, is that your signature, or did someone sign on your behalf perhaps?
A Yes.
Q And so is this the testimony you submitted in this case -- the amended testimony you submitted in this case?

1 A It is.
2 Q And just so the record's clear, previously
3 at some earlier date you also submitted an earlier
4 version of this testimony; is that right?
5 A Correct.
6 Q And maybe I'll show you that in a little
7 while, but for the moment let me ask you some
8 questions about the amended testimony. If I could
9 have you turn to paragraph 7, please. The first
10 paragraph -- I'm paraphrasing, but you say in January
11 '07 MTV launched a digital audio service that's
12 offered to consumers through several regional cable
13 systems. Do you see that?
14 A Uh-huh.
15 Q And you list Cavalier, Grande and Everest.
16 Do you see that?
17 A Uh-huh.
18 Q Does MTV still offer its digital audio
19 service through those three named cable systems?
20 A The relationships with the cable operators
21 is out of my purview, so I can't really comment on the
22 status of the relationships, but I believe that's
23 true.
24 Q At the time you submitted this testimony
25 did you endeavor to verify that it was true that you

1 offered the digital audio service through those three?
2 A Yes.
3 Q Do you know if -- let me ask you, then,
4 in -- later in the paragraph you say that MT -- I'm
5 paraphrasing again. You say MTV has commitments from
6 larger cable systems and you list Verizon -- I don't
7 know how to pronounce it -- FiOS?
8 A FiOS.
9 Q -- FiOS and AT&T.
10 A Uh-huh.
11 Q Do you know does MTV make its digital audio
12 service available through those two -- those two cable
13 systems currently?
14 A To my knowledge, yes.
15 Q And do you know in addition to the five
16 that are listed here, are there other cable systems
17 through which MTV offers its digital audio service?
18 A Again, it's out of my purview, but I
19 believe there may be a couple others. I can't really
20 say for sure.
21 Q What would those couple others be?
22 A I don't know.
23 Q You say there in the second sentence of
24 paragraph 7 that regional cable providers typically
25 reach less than 100,000 subscribers in just a few

1 states. And if I understand this correctly, that was
2 in reference to Cavalier, Grande and Everest. Is that
3 right?
4 A I believe so. I think that was a general
5 statement about the marketplace of these types of
6 companies.
7 Q Do you know how many subscribers receive
8 MTV's digital audio service?
9 A I don't.
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Not Designated

Q At what point in the sort of evolution of the service did you become involved in working on it?

A On the digital audio service?

Q Yes.

A Well, as I said, the core purpose of my team was to work on the principal activities of the URGE business. This was an offshoot, small type of little product extension. So my team was involved in the development of it from the inception because they were the team that built it, but I personally, as the

1 person running the group, wasn't intimately involved.
2 Q So were you -- were you directing the team?
3 A To a degree.
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8 Q And at any point in time did you become
9 involved in developing the service or working on it in
10 some way?
11 A Involved to the extent that my team was
12 building it, yes.
13 Q And what was your involvement?
14 A Guiding the product development team that
15 was building the service.
16 Q And what kind of guidance were you
17 providing them with?
18 A General guidance a manager would provide a
19 product and technical team that was building a service
20 like this. It was -- again, to clarify, it was fairly
21 noncore and fairly small, so it didn't require a
22 significant amount of attention from senior
23 management.
24 Not Designated
25

Not Designated

Q Were you providing other kinds of guidance?

A The guidance I provided was almost exclusively around the product development process that yielded what is known as "DAS."

Q And when you say, "the product development process," what does that mean?

A The -- the conception and development of the product offering such that we thought it would be compelling to a consumer.

Not Designated

Q Do you know if MTV expected it would be a

1 profitable enterprise?
2 A I'm sure she hoped it would be. Don't -- I
3 don't know enough about the economics to really make
4 an informed comment.
5 Q Do you know if there were other reasons
6 other than trying to turn a profit that MTV wanted to
7 offer this service?
8 A My assumption is people on the business
9 side of this believed that offering DAS as a bundled
10 offering or some such offering would -- would be
11 helpful in the relationship with the operators and be
12 compelling for consumers.
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15 Not Designated
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18 Q Now, in paragraph 8, if you would look
19 there, you say MTV's digital audio service offers up
20 to 56 channels of music. Do you see that?
21 A Yes.
22 Q Is that true today?
23 A I believe so.
24 Q Do you know, do subscribers to the various
25 cable systems that carry MTV's service all receive

1 those 56 channels?
2 A That I don't know.
3 Q Do you know how many of the -- are all the
4 56 channels music?
5 A Primarily, but I'm not -- I don't know for
6 sure if 100 percent. I'm actually not quite sure if
7 they're all music.
8 Q Do you know if most of them are music?
9 A I believe they are.
10 Q Would think more than 50 are music?
11 A Probably.
12 Q But you don't -- you don't know?
13 A I don't know the specifics.
14 Q Do you know whether the channels play just
15 what I might call kind of straight music, just song,
16 song, song, song, song, or do some of them have
17 deejays who -- who announce and talk in between songs?
18 A I don't know for sure, but what I recall is
19 it's primarily music. I don't believe there's any --
20 anything else.
21 Q I'm sorry, you don't think there's any
22 deejays?
23 A Correct.
24 Q Do you know who decided what the content
25 would be on these 56 channels?

A I believe it was a combination of people in my group and perhaps others in the organization that deal with the -- the cable operators.

Q And do you know why they chose to offer music without deejays as opposed to music with deejays?

A I believe it's -- it's really subject to the format of the medium.

Q And what does that mean?

A Streaming radio, streaming-radio-type offering.

Not Designated

Not Designated

Q Yeah. And so your involvement had to do with developing the channels?

A Building the product.

1 Q I guess I'm -- I'm still sort of struggling
2 with what that means. I don't mean to be repetitive.
3 I apologize. But -- and I may have asked this
4 already. The -- building the product, does that
5 relate to the -- the -- developing the artistic
6 content that would be provided?
7 A Yes, the -- the actual music programming
8 and the interface that -- that a consumer would see.
9 Q So when you say "the interface," you were
10 involved with what shows up on the television screen?
11 A Correct, the -- the design aspect of that.
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16 Not Designated
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2 Not Designated
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5 Q You say there that MTV's digital audio
6 service -- I'm paraphrasing, but MTV's digital audio
7 service provides a promotional benefit to artists and
8 sound recording owners. Do you see that?
9 A Uh-huh.
10 Q What do you mean by that?
11 A Just that we think it's an interesting
12 service that aids in the exposure of artists and it's
13 to their benefit.
14 Q Are you aware of any data that shows that
15 MTV's digital audio service causes increased CD or
16 download sales?
17 A No.
18 Q You mention down in paragraph 11 that in
19 the fall of 2006 MTV had planned to deliver its
20 digital audio service solely as part of a package or
21 bundle of programming.
22 A Uh-huh.
23 Q Do you see that?
24 A Uh-huh.
25 Q Can you explain what's meant there by, "a

1 package or bundle of programming"?
2 A Just that the DAS would be included along
3 with other products and services when making an
4 offering to a cable operator.
5 Q And what kinds of other offerings would be
6 included in the package?
7 A Again, that's out of my purview, so I can't
8 speak to it specifically. Things that MTV Networks
9 generally provides around television programming.
10 Q So, for example, would it have included,
11 you know, music video channels?
12 A Sure.
13 Q What other kinds of things might be
14 included?
15 A I don't know that there are many others.
16 Q Okay. Then in paragraph 12 you indicate
17 that in fact MTV ended up pricing the digital audio
18 service either as part of a bundle or as what I would
19 call a "stand-alone" --
20 A Uh-huh.
21 Q -- product. Is that accurate?
22 A My understanding is yes.
23 Q And do you know what -- what happened --
24 what caused that change from offering it -- the plan
25 only offered as part of a package to offering it as a

1 package or as a stand-alone service?
2 A I don't.
3 Q You don't know why that happened?
4 A I don't.
5 Q You also testify in paragraph 12 that --
6 about how MTV internally allocates to the digital
7 audio service the per-subscriber rate that MTV would
8 charge to a cable system. Do you see that?
9 A Uh-huh.
10 Q How does -- do you know how MTV decides how
11 much to allocate for the digital audio service?
12 A No.
13 Q I'm sorry?
14 A I don't.
15 Q Do you know how MTV decides how much to
16 charge for the digital audio service when it offers it
17 as a stand-alone product?
18 A I don't.
19 Q Do you know who at MTV is involved in the
20 decision of how -- how much to allocate for the
21 digital audio service when charging cable systems?
22 A I actually don't.
23 Q Do you have any knowledge of how that
24 allocation is done?
25 A No.

1 Q Now, am I correct from -- from reading your
2 testimony that you think that the rate that Music
3 Choice pays to SoundExchange is the appropriate
4 benchmark to use in figuring out how much MTV should
5 pay for its digital audio service?
6 A Again, it's out of my purview and my scope
7 of responsibilities, but it appears to me that that is
8 indeed a good benchmark.
9 Q And why is it a good benchmark?
10 A My understanding is they would -- Music
11 Choice would be MTV Networks' primary competitor in
12 this space, and for MTV Networks to fairly compete you
13 need to enjoy competitive rates.
14 Q And do you think that MTV's digital audio
15 service is identical to Music Choice's service?
16 A It's substantially similar.
17 Q Are there any differences?
18 A Minor.
19 Q What are the minor differences?
20 A I actually don't know Music Choice's
21 product inside and out, but I believe there are minor
22 graphical differences. But beyond that it is -- it is
23 essentially the same product offering.
24 Q And do you think MTV's product offering is
25 better programmed, the music programming?

1 A We'd like to believe it is. That may be
2 subjective to some.
3 Q Now, one thing you said in paragraph 12 is
4 that -- towards the end, and I'm picking up in the
5 middle of the second-to-last sentence. You say, "As a
6 new entrant in the market, MTV is unable to charge the
7 same amount for its service that Music Choice
8 charges." What does that mean?
9 A I believe the point there is that as a --
10 as a new entrant, without the footprint or consumer
11 knowledge of the offering, we may not be able to
12 charge rates as high as an established brand like
13 Music Choice.
14 Q Do you know -- going back to -- you
15 discussed in your testimony in paragraph 12 you
16 discussed that MTV can offer this digital audio
17 service either as a stand-alone or as part of a
18 bundle. Do you know if there are cable systems who --
19 who pay for the digital audio service as a stand-alone
20 product?
21 A I don't have any knowledge of the business
22 model issues.
23 Q On page 6 towards the very end of your
24 amended testimony, in the last sentence of the
25 paragraph you say, among other things, it would -- it

1 would be indefensibly discriminatory and
2 anticompetitive if MTV were to pay at a higher rate
3 than Music Choice. Do you see that?
4 A Uh-huh.
5 Q What do you mean when you say that?
6 A Similar to what we previously discussed,
7 simply that for a new entrant like MTV Networks to
8 have a fair shot at freely competing, it would seem to
9 be an unfair advantage if MTV Networks had to pay more
10 than Music Choice.
11 Q Are you aware that MTV and Music Choice are
12 subject to different statutory standards for the rates
13 that are set that they have to pay for sound
14 recordings?
15 A I'm actually not clear on that.
16 Q When you prepared your testimony were you
17 aware of that fact?
18 A Again, my -- the scope of my responsibility
19 is more on the product development of this. The
20 economic and financial marketplace dynamics, I'm
21 not -- I'm not as privy to that side of it.
22 Q Let me show you what we can mark as
23 Exhibit 2.
24 (Exhibit No. 2 was marked for
25 identification and attached to the deposition

1 transcript.)
2 (Discussion off the record.)
3 BY MR. FREEDMAN:
4 Q Do you recognize Exhibit 2?
5 A I do.
6 Q And what is this?
7 A This is my testimony.
8 (Discussion off the record.)
9 Q And is that your signature on the last
10 page, or did someone sign on your behalf on the last
11 page?
12 A Yeah.
13 Q And, you know, we -- we had discussed on
14 the record a little while ago that you had submitted
15 some testimony and then submitted amended testimony.
16 Your amended testimony we've introduced today as
17 Depo -- Deposition Exhibit 1. So Deposition Exhibit
18 2, this is the testimony you originally submitted; is
19 that right?
20 A Correct.
21 Q If you'd look at paragraph 8, for example,
22 there you said in Exhibit 2 that MTV will offer more
23 than 50 channels of music. And if you recall your
24 amended testimony, you then updated that, is that
25 correct? In your amended testimony, you give the

1 number a little more precisely, 56?
2 A Yes.
3 Q So in other words, is it fair to say -- is
4 it accurate that -- let me ask you this: What was the
5 purpose of submitting your amended testimony?
6 A To provide new data.
7 Q Let me show you what we can mark as
8 Exhibit 3.
9 (Exhibit No. 3 was marked for
10 identification and attached to the deposition
11 transcript.)
12 BY MR. FREEDMAN:
13 Q Do you have Exhibit 3 in front of you?
14 A I do.
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Have you seen this document before?

A I don't know if I've seen this exact document.

Q Have you -- in the ordinary course of your work do you see documents like this?

A Sure.

Q And can you -- do you know what this document is?

A It looks like a profit and loss or some sort of financial statement.

Q And do you see a date on it towards the top?

A May 15, 2006 is on this -- what I read there.

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Q I think you said a minute ago that this is

1 the kind of document you -- you would see in the
2 ordinary course of your job. Is that right?
3 A Certainly financial statements one would
4 see.
5 Q What about a financial statement that would
6 show rates for the digital audio service that are
7 charged to the cable systems?
8 A Again, this particular side of this project
9 I was -- have not been involved with, so I really have
10 no knowledge.
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Q Do you know who prepared this document?

A I don't.

Not Designated

Not Designated

Q I'll show you what's marked -- we'll mark as Exhibit 4.

(Exhibit No. 4 was marked for identification and attached to the deposition transcript.)

BY MR. FREEDMAN:

Q Do you have Exhibit 4 in front of you?

A Yes.

Q And do you see at the bottom this one, I think -- did the Bates numbers successfully get on there on the first page?

A Looks like it.

Q And is it 2005-5 CRB MTVN 000226?

A Yeah, the 6 got cut off on my copy, but it appears to be 6.

Q Do you recognize this document?

A No.

Q Is this the kind of document you see in the ordinary course of your job responsibilities?

A Varying types of financial statements certainly are.

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Q Well, in your written statement you listed Verizon, didn't you?

A Yes.

Q And you listed Grande, didn't you?

A Yes.

Q And you listed Everest, didn't you?

A Yes.

Q Did you -- I don't recall. Did you list AT&T, do you recall?

A I don't recall.

MS. GOLDSTEIN: It's the other one.

Q You did in fact list -- in paragraph 7 of your amended testimony you listed AT&T, the last one there. Do you see that?

A Yes.

Q And you also listed Cavalier. Do you see that?

A Yes.

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(Exhibit No. 5 was marked for identification and attached to the deposition transcript.)

BY MR. FREEDMAN:

Q I'll show you what we've marked as Exhibit Number 5. I'll just have you take a minute and look at this document, if you would.

A Sure. (Complying.)

Q Do you have Exhibit 5 there?

A I do.

Q Do you know what this document is?

A This is the first time I'm seeing it.

Q Do -- do you know what it is?

A It appears to be a letter between MTV Networks and Grande Communications Networks.

Q Grande is one of the cable systems that you testified --

A Yes.

Q -- carries MTV's digital audio service?

1 A That's right.
2 Q Looking at the back page, do you see the
3 agreement is signed by both parties?
4 A Yes.
5 Q Who is that who signed for MTV?
6 A It appears to be Denise Dahldorf.
7 Q Do you -- do you know who that is?
8 A Yes.
9 Q Who is she?
10 A She appears to be the senior vice president
11 of cable distribution, according to the --
12 Q I'm sorry, do you actually know her?
13 A I've met her, yes.
14 Q Do you know what her responsibilities are?
15 A Not in -- I -- not specifically.
16 Q What about generally?
17 A MTV Networks has gone through a
18 reorganization. I actually don't know specifically
19 what she does, but I know that she's been involved in
20 the cable distribution side of the business.
21 Q And would the cable distribution side of
22 the business include the digital audio service that
23 we're discussing today?
24 A Yes.
25 Q And if you'd look also on the last page of

1 this document, the last section is entitled, "License
2 fees." Do you see that?
3 A Yes.
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10 Q Are those the rates that Grande pays to MTV
11 for its digital audio service?
12 A I don't know. I don't know. I see those
13 rates on this document.
14 Q So far as you can tell, is this the
15 agreement between Grande and MTV for the carriage of
16 MTV's digital audio service on Grande?
17 A Again, this is the first time I'm seeing
18 this document, so I don't know what the document
19 contemplates. I haven't had an opportunity to read
20 it, but it would -- it would appear that it's related
21 to that.
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4 Q I'll show you what we will mark as
5 Exhibit 6.
6 (Exhibit No. 6 was marked for
7 identification and attached to the deposition
8 transcript.)
9 MR. MILLER: Six?
10 MR. FREEDMAN: Yes.
11 BY MR. FREEDMAN:
12 Q I'll ask you to take a minute to look at
13 this document.
14 A (Complying.)
15 Q Have you seen this document before?
16 A No.
17 Q From looking at it, can you tell what it
18 is?
19 A It appears to be a document between Everest
20 Communications -- or, sorry, Everest Connections and
21 MTV Networks, although there's no letterhead or -- on
22 the document.
23 Q All right. If you switch to page 4, do you
24 see it's signed there by MTV and by Everest
25 Connections?

A Yes.

Q The person who signed it for MTV appears to be Scott -- is it Stelzer? Do you -- do you know who that is?

A I believe I've heard his name, but I don't know Scott.

Q And Everest is one of the cable systems you listed in your written testimony as carrying MTV's digital audio service; is that right?

A Yes.

Q But you're not sure if this is -- do you know, can you tell, is this the agreement between MTV and Everest?

A I can't tell.

Not Designated

Q We can go back on the record and I'll show you what we'll mark as Exhibit 7.

(Exhibit No. 7 was marked for identification and attached to the deposition transcript.)

BY MR. FREEDMAN:

1 Q Let me just ask you to take a minute and
2 look at this, if you would, please, Mr. Bloom.
3 A Sure. (Complying.)
4 Q Have you seen this document before?
5 A I have not.
6 Q If you look at the fourth page, do you see
7 it's signed there by, again, Ms. Dahldorf for MTV?
8 A Yes.
9 Q And then it's signed by someone from
10 Buckeye Cablevision. Do you see that?
11 A Yes.
12 Q And by Erie County Cablevision. Do you see
13 that?
14 A Yes.
15 Q Is this the agreement between Buckeye
16 CableSystems and MTV?
17 MS. GOLDSTEIN: I -- I'd object. He said
18 he's never seen this document before, so I don't
19 know how he would know.
20 MR. FREEDMAN: I know what it is. I've
21 never seen it before. I was wondering if he does.
22 A I don't know. It appears to be a document
23 between the parties that you mentioned.
24 Q Show you the next exhibit.
25 (Exhibit No. 8 was marked for

1 identification and attached to the deposition
2 transcript.)
3 BY MR. FREEDMAN:
4 Q Do you have Exhibit 8 in front of you,
5 Mr. Bloom?
6 A Yes.
7 Q Do you see towards the top it lists the
8 date?
9 A Yes.
10 Q What date's there?
11 A June 30, 2006.
12 Q Below that what's -- what's -- do you see
13 it says, "AT&T Services"? Do you see that?
14 A Yes.
15 Q AT&T is one of the companies that you have
16 testified had committed to carrying MTV's digital
17 audio service; is that right?
18 A Yes.
19 Q See if I can find -- if you look on page
20 16, please, do you see where the document's signed by
21 several different people?
22 A Yes.
23 Q Someone from AT&T, do you see that?
24 A Yes.
25 Q And it's also signed by someone for MTV

1 whose name I can't make out. Can you -- can you tell
2 who signed for MTV?
3 A Can't be sure, but it appears to be Sandy
4 Ashendorf.
5 Q Do you know who that is?
6 A I do.
7 Q And who is Sandy Ashendorf?
8 A Actually it's a woman that I believe is no
9 longer with the company.
10 Q She signed this -- it indicates that the
11 date under her signature is July 11, 2006. Do you
12 know what she would be at MTV at that time?
13 A According to this document, it appears her
14 title is SVP affiliate sales and marketing.
15 Q And do you recall, was that in fact her
16 position at MTV?
17 A I -- I can't be sure, but I'm sure -- it
18 appears so, according to this document.
19 Q And do you know, does this agreement
20 between AT&T and MTV include AT&T's carriage of MTV's
21 digital audio service?
22 MS. GOLDSTEIN: Same -- same objection as
23 to the previous document.
24 A Oh, I'm sorry, I'd have to look through and
25 see if -- I don't know where I would find --

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5 Q I'll show you what we're going to mark as
6 Exhibit 9.
7 (Exhibit No. 9 was marked for
8 identification and attached to the deposition
9 transcript.)
10 A Okay.
11 BY MR. FREEDMAN:
12 Q At the top of this document it's dated
13 September 20, 2005. Do you see that?
14 A Yes.
15 Q And then it lists Verizon Services Corp.
16 Do you see that?
17 A Yes.
18 Q And Verizon's one of the companies that you
19 identified in your testimony as either -- either
20 carrying or having committed to carry MTV's digital
21 audio service; is that right?
22 A Correct.
23 Q And if you'll switch to page 4, do you see
24 there are some lines that are quite similar to the
25 agreement we just looked at that was -- that was

1 Exhibit 8 that shows license fees and it lists,
2 "Linear Services, VOD Content and DAR Service." Do
3 you see that?
4 A Yes.
5 Q And again, is that the -- is that a
6 reference to MTV's digital audio service?
7 A This is the first time I'm seeing this
8 document, but it would appear so.
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25 Q And does this agreement include -- this

1 agreement -- is this an agreement between Verizon and
2 MTV that includes Verizon's carriage of MTV's digital
3 audio service?
4 MS. GOLDSTEIN: I make the same objection
5 to the last several documents. Again, he's never
6 seen this document before.
7 A I don't know. I would be speculating.
8 Q Mr. Bloom, a lot of your answers today
9 have -- have been sort of an "I don't know" or "I'm
10 not familiar." Do you know why it is that it was you
11 as opposed to someone else at MTV who submitted
12 testimony in this case?
13 A No.
14 Q Are there other people who are more
15 familiar with MTV's digital audio service who could
16 have provided more complete testimony about it?
17 MS. GOLDSTEIN: Are you -- just to be
18 clear, are you talking about -- is there -- do you
19 have a time in mind, when his testimony was
20 submitted in October of '06 or --
21 MR. FREEDMAN: That's a fair point.
22 Q At the time that the -- your amended
23 testimony was submitted, which I'm afraid isn't dated,
24 but at the time your amended testimony was submitted,
25 would there have been someone at MTV other than you

1 who would have more knowledge about MTV's digital
2 audio service?
3 A I could only speak for my own scope of
4 responsibilities around the product development of the
5 service. I don't -- I can't claim to know what others
6 would -- would know.
7 Q Is there -- and what about at the time you
8 submitted your original testimony, which would have
9 been at the end of October of 2006?
10 A I think I would answer it the same way.
11 Q And at either of those times was there
12 someone at MTV who was responsible for developing this
13 piece of business; in other words, working to develop
14 the agreements with the cable systems?
15 A I would assume the groups that we've
16 discussed today outside of my group would be types of
17 groups that deal with that side of the business, but I
18 can't be sure.
19 Q And when you say, "the groups we've
20 discussed today," what are you referring to?
21 A The affiliate sales and marketing group.
22 Q Is that the group that negotiates with the
23 cable systems?
24 A I believe so, but I don't know if that's
25 the only group that does or the only set of people

1 that do, but they're among them, to my knowledge.
2 Q And given your limited knowledge about
3 MTV's agreements with the cable systems through whom
4 the digital audio service is offered, do you know why
5 you're -- you were chosen to testify instead of
6 someone else?
7 A I don't.
8 Q Were you involved in developing MTV's rate
9 proposal in this case?
10 A No.
11 Q Do you have any firsthand knowledge of the
12 rates that Music Choice pays to SoundExchange?
13 A Not any firsthand knowledge.
14 Q Do you have any knowledge of the rates that
15 MTV pays to any cable system operator for carriage of
16 its digital audio service?
17 A No.
18 Q Do you have any knowledge of the rate that
19 any cable system operator pays for the bundle of MTV
20 programming?
21 A No.
22 Q Do you have any knowledge about how MTV
23 internally allocates the per-subscriber pricing for
24 its digital audio service when it's included as a
25 bundle of --

1 A I don't. I don't. I'm sorry.
2 Q Do you have any knowledge of the
3 decision-making process that led MTV to decide to
4 offer digital audio service through cable systems?
5 A I'm not sure -- would you rephrase the
6 question?
7 Q Yeah. Do you have any knowledge -- what
8 I'm wondering is -- I'll repeat it and see if it's
9 still not clear. Do you have any knowledge of the --
10 MTV's decision-making process in deciding to offer a
11 digital audio service?
12 A No intimate knowledge.
13 Q Do you have any kind of knowledge?
14 A As I --
15 MS. GOLDSTEIN: Wait. Object. The
16 question is really vague. Any kind of
17 knowledge -- maybe just rephrase.
18 Q You said you have no intimate knowledge.
19 I'm wondering if you have -- I assume what you mean is
20 you have no specific knowledge. But do you have any
21 kind of more general knowledge of the considerations
22 that went into deciding to offer this --
23 A I really don't.
24 Q Do you know why MTV chose only to offer
25 music programming to -- as part of its digital audio

1 service?
2 A No.
3 Q Do you have any knowledge of the difference
4 in the statutory standards that MTV is subject to in
5 this proceeding and that Music Choice is subject to?
6 A I don't know the financial side of the
7 business. All I know is what we've discussed today
8 around, you know, the company, like the ability to
9 fairly compete with its competitors.
10 Q Do you have any knowledge that there are
11 different -- there are statutes that set different
12 standards for which a rate is going to be set for MTV
13 and for Music Choice?
14 A I'm aware of there are different rates for
15 different products that -- in -- generally in the
16 marketplace, if that's what -- is that what you're
17 asking?
18 Q Yes. Do you know -- do you have any -- do
19 you know what the standard is that -- well, I'll
20 rephrase that.
21 Have you heard the phrase, "willing buyer/
22 willing seller standard"?
23 A I have heard that, yes.
24 Q And is that the standard that governs
25 MTV -- the setting a rate for MTV's digital audio

1 service in this proceeding?
2 A I don't know. I'm not familiar with
3 details of the rates.
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9 MR. FREEDMAN: As we discussed on the
10 break, for the two exhibits that were the Bates
11 numbers and the "restricted" footer, I guess, were
12 cut off, I'm having copies of those documents made
13 where hopefully we'll get them back on. Someone
14 actually just tried and had the exact same
15 problem, so now he's going to try again and then
16 we can swap those in so that there's no question
17 that they're restricted.
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9 EXAMINATION OF MICHAEL BLOOM
10 BY MS. GOLDSTEIN:
11 Q I just have a couple quick questions. If
12 you could pull out Exhibit 2 again, which is your
13 testimony dated October 2006. Actually I don't know
14 that this particular copy is dated.
15 A Exhibit 2?
16 Q Uh-huh. I think you testified earlier that
17 this was the testimony you originally submitted in
18 this proceeding. Is that correct?
19 A Yes.
20 Q If you could just look at paragraph 3 and
21 read that briefly to yourself.
22 A (Complying.) Uh-huh.
23 Q Looking at the second sentence, which
24 begins at the bottom of the first page, starts
25 "However" and goes on to the next page, can you just

1 tell me briefly what you meant in that particular
2 sentence?
3 A That MTV Networks' DAR service doesn't fit
4 with what, I guess, is generally known as a
5 preexisting service because the service didn't exist
6 at that time. And also doesn't exist under what is
7 generally understood or called a "new subscription
8 service." It's something a little bit different.
9 Q And if you could just look at paragraph 11
10 really quickly. It's on page 4 at the top. Read that
11 quickly -- briefly to yourself.
12 A (Complying.) Uh-huh.
13 Q And if you could just tell me what -- what
14 you mean there in your second -- the second sentence
15 of the testimony, paragraph 11.
16 A That Music Choice, the service that's
17 closest to our service, has been paying at the rate of
18 7.25 percent, to my understanding.
19 Q And I think you -- when Mr. Freedman was
20 asking you questions earlier I think you testified
21 that you didn't have any firsthand knowledge of this
22 particular 7.25 rate. Is that correct?
23 A Yes.
24 Q Do you remember when this original
25 testimony was submitted? I don't think this version

1 is dated.
2 A I don't see a date on it either.
3 Q When -- when you submitted your original
4 testimony in this proceeding, had MTV launched its
5 digital audio service?
6 A No.
7 Q And do you know about when that service was
8 launched?
9 A I believe it was roughly January 2007.
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CERTIFICATE OF SHORTHAND REPORTER

I, Rebecca L. Stonerock, Court Reporter, the officer before whom the foregoing proceedings were taken, do hereby certify that the foregoing transcript is a true and correct record of the proceedings; that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to nor employed by any of the parties to this case, and have no interest, financial or otherwise, in its outcome.

Dated: July 20, 2007

Rebecca L. Stonerock

Court Reporter

Exhibit 1

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:	:	**Docket No. 2005-5**
	:	**CRB DTNSRA**
Digital Performance Right In Sound Recordings and Ephemeral Recordings For a New Subscription Service	:	

AMENDED TESTIMONY OF MICHAEL BLOOM, VICE PRESIDENT AND GENERAL MANAGER OF DIGITAL MUSIC OF MTV NETWORKS

INTRODUCTION AND WITNESS BACKGROUND

1. I am the Vice President and General Manager of Digital Music of MTV Networks, a division of Viacom Inc. ("MTVN"). As such, I am responsible for managing the digital audio services distributed by MTVN under the "URGE" brand, including the digital audio service ("DAS") at issue in this proceeding. I have worked at MTVN since 2004. I submit this statement in support of MTVN in this proceeding.

2. As is described more fully herein, MTVN launched a DAS in January 2007 that is distributed by cable systems and that complies with the statutory licenses under 17 U.S.C. § 114(f)(2). The service offers dozens of channels of digital audio programming to cable television subscribers.

3. MTVN's DAS is functionally the same type of service as the Music Choice audio service delivered to cable and satellite TV subscribers. However, because MTVN's DAS does not fit within the statutory regime as a "pre-existing subscription service" (under which Music Choice has been licensed) and also does not fit within the

Bloom 1
EXHIBIT
7-19-07 RLS

license structure of webcasting "new subscription services" (which historically have involved rate concepts of "aggregate tuning hours" or "per song" per listener which are inapplicable to digital audio services such as MTVN's), MTVN filed a notice to participate in these CRB proceedings to establish rates for what I understand to be a "new type" of new subscription service.

DISCUSSIONS WITH SOUNDEXCHANGE

4. In the fall of 2006, through its counsel, MTVN inquired of SoundExchange, Inc. ("SoundExchange") whether it could negotiate a licensing arrangement for MTVN's new DAS.

5. SoundExchange replied that it was unable to quote a specific fee to MTVN; hence we are here reluctantly but with no other place to go to secure an appropriate and reasonable rate.

6. Therefore, MTVN had no choice but to participate in this proceeding so that it could obtain a fair, competitive royalty rate to pay to SoundExchange for MTVN's "new type" of subscription service.

MTVN'S DIGITAL AUDIO CABLE SERVICE

7. Beginning in January 2007, MTVN launched a new DAS that is offered to consumers through several regional cable systems, including Cavalier, Grande, and Everest. Regional cable providers typically reach less than 100,000 subscribers in just a few states. MTVN also has commitments from larger cable systems that reach a growing number of subscribers and have intentions of becoming nationally distributed, including Verizon FiOS and AT&T. MTVN's new DAS operates in many of the same markets as Music Choice.

8. MTVN's DAS offers up to fifty-six (56) channels of the best mix of music – from Alternative to Hip Hop to Classical – featuring the hottest artists and tracks for each genre. The service uses industry-leading programming schedules and rotation plans. In addition, the depth, breadth and expertise of MTVN's music programmers makes the DAS the new and improved standard for digital audio cable programming.

9. MTVN's DAS also provides compelling graphics and relevant information about the music and artists to create a truly unique look and feel for each channel. Not only does the service provide information about a track's artist, title, label, album and release date but it also displays biographical data, news and upcoming events including tour dates. In addition, MTVN's service provides an opportunity for consumers to discover new music because it displays both musicians that have influenced an artist as well as those that have been influenced by that artist. These unique features are to the promotional benefit of the artists and sound recording owners whose works are included within MTVN's DAS.

10. To consumers, MTVN's DAS is functionally the same as the service offered by Music Choice. Music Choice and MTVN's digital audio services offer a similar number of channels programmed with a particular genre of music, accompanied by artist information and graphics.

11. In the fall of 2006, MTVN planned to deliver its DAS solely as part of a package or "bundle" of programming channels inclusive of audio visual programming that does not qualify for the Section 114 statutory license; and expected that MTVN would be compensated by cable distributors of its programming for the package as a whole.

12. However, MTVN now markets its DAS as an individual service that can be priced one of two ways. When a cable operator takes the DAS as one of a large number of MTVN products, MTVN can offer one price for the entire package. MTVN internally allocates to each service in that package the portion of the per subscriber rate that reflects the value of that service. The per subscriber rate that MTVN allocates for the DAS is based on a number of factors, including the price that MTVN understands that Music Choice charges for its comparable service, taking into account that, as a new entrant in the market, MTVN is unable to charge the same amount for its service that Music Choice charges. MTVN can also charge a cable operator for just the DAS (not as part of a package of services).

THE RATE

13. MTVN is aware of the following marketplace rates that currently or until recently have been in place relevant to services of the same nature as MTVN's DAS. On the sound recording side, the service closest in kind to ours is the Music Choice service; and Music Choice has been paying SoundExchange on the basis of a published, voluntary agreement at the rate of 7.25% of Music Choice's revenue received from cable/satellite operators for distribution of Music Choice's digital audio service. See 17 U.S.C. § 114(f)(1).

14. I understand that Music Choice's initial sound recording performance rates (for the period prior to the most recent statutory license period referred to in the immediately preceding paragraph) were the result of a Copyright Arbitration Royalty Panel (CARP) determination setting such rates; and that the basis upon which the CARP set the initial rates was the then-existing musical work performance rates (e.g.,

established essentially by reference to ASCAP/BMI rates) in effect for the same service. See Determination of Statutory License Terms and Rates for Certain Digital Subscription Transmissions of Sound Recordings, Docket No. 96-5 CARP-DSTRA (Report of the Copyright Arbitration Panel) (certified Nov. 28, 1997). Based on communications received within the last month from the performing rights organizations, we understand that the current musical work performance rates available to MTVN for its DAS are in the range of 5 - 5.5% of the revenues attributable to the operation of that service.

15. MTVN believes that these rates – which would result in fees equivalent to somewhere between 5 and 7.25% of revenues received by MTVN from distribution of its DAS – likely exceed the rates that would prevail in a competitive market. To be sure, MTVN believes that there is no credible argument that can be made that this level of fees is a marketplace rate pertinent to the MTVN "new type" of subscription service. In addition, of course, in the situation where MTVN's DAS channels are bundled together with other services that are not governed by the statutory license involved in these proceedings, the revenue base to which reference would be made would have to be limited to the revenues attributable to the DAS channels alone (and not the non-statutory programming/services).

16. MTVN is aware that the pre-existing service statutory license is governed by the rate-setting standards set forth in 17 U.S.C. § 114(f)(1), while MTVN's "new type" of subscription service is governed by the section 114(f)(2) "willing buyer, willing seller" marketplace standard – which has been construed by the Librarian of Congress in the initial webcasting CARP proceeding to be equivalent to rates that would prevail in a competitive market. See Determination of Reasonable Rates and Terms for

the Digital Performance of Sound Recordings and Ephemeral Recordings; Docket No. 2000-9 CARP DTRA 1&2, 67 Fed. Reg. 45239 (July 8, 2002) (codified at 37 C.F.R. Part 261). There is nothing in the statutory scheme, however, that mandates that – merely because of these different stated standards – a "new type" of subscription service engaged in the functionally identical business as a "pre-existing" subscription service like Music Choice should pay at a higher rate than Music Choice. And it seems counter-intuitional – and would lead to indefensibly discriminatory and anticompetitive results – were rates set by this CRB that would give one provider (Music Choice) a competitive advantage over others.

I declare under the penalty of perjury that the foregoing is true and correct or, in some cases, upon information and belief.

Michael Bloom /kts

Michael Bloom

Exhibit 3

--RESTRICTED--
SUBJECT TO PROTECTIVE ORDER
IN DOCKET NO. 2005-5 CRB DTNSRA

REDACTED FROM PUBLIC VERSION

Exhibit 4

--RESTRICTED--
SUBJECT TO PROTECTIVE ORDER
IN DOCKET NO. 2005-5 CRB DTNSRA

REDACTED FROM PUBLIC VERSION

Exhibit 5

--RESTRICTED--
SUBJECT TO PROTECTIVE ORDER
IN DOCKET NO. 2005-5 CRB DTNSRA

REDACTED FROM PUBLIC VERSION

Exhibit 6

--RESTRICTED--
SUBJECT TO PROTECTIVE ORDER
IN DOCKET NO. 2005-5 CRB DTNSRA

REDACTED FROM PUBLIC VERSION

Exhibit 7

--RESTRICTED--
SUBJECT TO PROTECTIVE ORDER
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REDACTED FROM PUBLIC VERSION

Exhibit 8

--RESTRICTED--
SUBJECT TO PROTECTIVE ORDER
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Exhibit 9

--RESTRICTED--
SUBJECT TO PROTECTIVE ORDER
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REDACTED FROM PUBLIC VERSION