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

In the Matter of	)	
	)	
ADJUSTMENT OF RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES AND SATELLITE DIGITAL AUDIO RADIO SERVICES	)	**Docket No. 2006-1 CRB DSTRA**

TESTIMONY OF

DAN NAVARRO

Recording Artist, Songwriter, Performer and an Artist Member of SoundExchange

October 2006

FINAL

SX Trial Ex. 63

DECLARATION OF DAN NAVARRO

I. Background and Qualifications

I am a recording artist, performer, songwriter, and an artist member of SoundExchange. I understand that the Copyright Royalty Board in this proceeding will set the rates that the satellite radio services (XM and Sirius) and several services that stream music over television (such as Muzak) pay to copyright owners and performers for the digital performance of sound recordings. Because the law requires that 50% of these digital performance royalties be paid to recording artists, I believe it is important for the Board to hear about the importance of the statutory license and royalties from an artist's perspective.

For twenty years, my partner, Eric Lowen, and I have written and recorded songs, released albums, and toured. We met in the 1980's when we were both working as waiters and trying to make it as musicians. After several years of relative obscurity, our live shows in Venice, California, which featured nothing more than our voices and acoustic guitars, began to generate crowds and a buzz around our music. We were part of an emerging so-called "Nu-Folk" scene in Los Angeles at the time. In 1989, we were offered what we thought might be a once-in-a-lifetime chance to record an album. That first album, *Walking On A Wire*, was released in 1990. We toured relentlessly and soon built up a loyal fan base nationwide.

Since then, we have gone on to make our livings as musicians and to release eight more albums. Two of our albums were originally released on major labels, and a third independent release was subsequently purchased and re-released by a major label. An independent label released another album, and we have self-produced and released five albums on our own label, Red Hen Records -- *Live Wire* (1996), *Live Radio* (2002), *At Long Last . . . Christmas* (2002), *All the Time in the World* (2004), and *Hogging the Covers* (2006). Our music combines elements of

rock and folk and falls into in the "Triple-A" ("Adult Album Alternative") radio format. Through our music, we document humanity's dignity and frailty, we examine life's losses and lessons, and we try to convey an emotional immediacy.

Over the years, we have had a number of Triple-A radio hits, including "Walking on a Wire," "All Is Quiet," "Constant As The Night," "Just to See You," and "Rapt in You." We are songwriters as well as performers, and our songs have been recorded by artists as diverse as Pat Benatar (we wrote the hit song "We Belong"), The Bangles, Dionne Warwick, The Four Tops, Dave Edmunds, The Temptations and others. I have also performed as a non-featured artist on others' recordings, sung background vocals on numerous albums for artists such as Neil Young, Clint Black and Julio Iglesias, and worked as a session singer for movies.

I am a member of the American Federation of Musicians of the United States and Canada (AFM). I am on the Board of Governors of the Los Angeles Chapter of the National Academy of Recording Arts and Sciences (NARAS), the Board of Directors of the American Federation of Television and Radio Artists (AFTRA), and the Board of Directors of the North American Folk Music and Dance Alliance. In 2002, I testified before the United States Senate Committee on the Judiciary regarding the importance of digital performance license income to artists.

II. Recording Artists' Contributions to the Creation of Sound Recordings

Recording an album requires a lot of hard work and involves considerable costs and risk, especially now that we release albums on our own record label. The currency of what we do is finding an emotional thread to express the thoughts and ideas we're trying to convey in a unique way. When we record songs, we put ourselves on the line emotionally and hope that our audience will respond.

When Eric and I create an album, we generally write 50% more songs than we end up using on an album. We work on finding a mix of songs that fit well together thematically and that have a good balance of slow and fast tempos. Once we have selected the songs that we hope to include on an album, it takes approximately six months to record the album and to create a final product.

Although no two albums are alike, and the recording process can vary from one album to the next, I would like to describe some of the creative, technological and financial contributions we make to an album, and to highlight the risks we face with each new release.

One of the first things we do when recording an album is to hire musicians to play with us. We typically hire at least three musicians to play bass, drums and keyboard, and we sometimes hire as many as nine or ten musicians to play a variety of instruments. Because we record and release our own albums, we are responsible not only for finding quality musicians, but for paying them, as well. [redacted] Recording a song is not as easy as simply gathering musicians and playing our instruments at the same time. It takes substantial amounts of rehearsal to develop the sound we want and to perfect the performance. In addition, it takes years of training and practice to become a facile, expressive singer and instrumentalist.

When we are satisfied with a song's arrangement, the next step in the creation of an album is to record the songs in a commercial studio. Recording is a logistical and technological obstacle course that requires patience and stamina, not to mention technical skill. In the studio, we work with a producer and sound engineer, who help us achieve the sound we want. Studio time is expensive -- it can cost thousands of dollars for a single album -- and so we work as quickly as we can, but recording is never a fast process. On occasion, it can take days to

complete even a single vocal track -- even when the track is technically perfect, it may lack the desired emotional spark, and so we re-record it. And, of course, we have to pay the producer and engineer. Recording an entire album typically requires three or four weeks of cumulative studio time alone.

Once the songs are recorded, we work on mixing the album -- this is the crucial assembly of all the record's component parts. A recorded song can include multiple tracks of recorded vocals and instruments. Mixing a song requires listening to all of the tracks that have been recorded, figuring out which ones work best together, and then mixing them together into a unified recording. The difference between a mediocre recording and a great one can rest on the technical skill and expertise involved in mixing an album. Mixing usually requires a studio with vastly upgraded sound processing equipment, including automated mixing boards, special sound processing gear, computers and high end speaker systems. It also requires someone with specialized skills. The mixer's fine art is to place sounds accurately in the stereo image, to equalize tones so that certain instruments don't cover others, and to place the vocals at a level that assures optimal emotional impact. Mixing studios are generally three to four times more expensive than basic recording studios. It takes us somewhere between one and three weeks to mix an album.

We also supervise the mastering of an album. Mastering is among the most mysterious elements of the recording process. To master a song, we work with a sound engineer who is the gate-keeper for the sound quality on the whole album. Mastering engineers are often weird guys who hear things that only dogs can hear. The engineer works with expensive equipment to create overall balance and unity for the album as a whole, makes sure that the sound is consistent from song to song, eliminates unwanted noises, adjusts the sounds of various instruments, and

sets the sequence of and pauses between songs. The engineer must have considerable expertise and a finely-tuned ability to hear which elements of a song or album are not working and what's missing. An unskillful engineer's mastering can make a good record sound bad. Without good mastering, an album can sound dull or the sounds can be uneven.

[redacted]

Based on our many years of experience, we've found that one of the best ways to sell records is through touring and playing live shows. Arranging a tour is not easy. We devote a considerable amount of time to organizing the logistics of a tour -- everything from renting cars and reserving hotel rooms to finding local bands to serve as back-up musicians in the various

locales where we play across the country. To enable ourselves to continue touring, and because the costs of touring come out of our own pockets, we try to strip it down to the bare minimum.

[redacted]

[redacted]

[redacted]

IV. The Satellite Radio Services

I want to be clear that I don't consider myself to be "against" any of the music services participating in this proceeding. To the contrary, I support them and am glad that Congress has recognized that they should compensate me when they play my recordings. In fact, about four years ago, I added a link to XM on our web site, and XM eventually gave me a free XM receiver and a year of free XM service. Indeed, I have heard from some of my fans that they signed up for XM because XM plays our music. At some point, Sirius complained because we didn't feature its logo on our web site -- Sirius apparently believed that its association with us would help drive fans to its services. In response to that complaint, we added a link to Sirius on our web site. Some months later, Sirius dropped the channel that played our music (which I believe was called Folktown), and so we removed the link.

I have played three live performances at XM. I have never traveled to XM's studios in Washington simply to perform on XM, but I've played those sessions when I was already going to be in the area for other reasons. I enjoy playing the XM sessions and I hope that the performances help maintain our presence in the marketplace. But I have never noticed any sales increase for our recordings after those sessions were aired by XM, and attendance at our live shows has never increased after those sessions. I suspect that the national (as opposed to local) nature of the satellite radio services contributes to this. When we play a live show in a particular city or town, we can target that area with advertising and can try to get terrestrial radio play and

promotion in that area, all as part of a coordinated effort to generate record sales. That kind of focused and coordinated approach can help sell records in a given city. By contrast, satellite radio lacks that local focus. If we're playing a show in Alexandria, Virginia, getting a local d.j. on terrestrial radio to talk about our upcoming show or to do a ticket give-away in the days leading up to the show can help us. Satellite radio doesn't offer that same promotional opportunity.

V. Conclusion

I very much appreciate the opportunity to testify to the Copyright Royalty Board. As the Board sets the royalty rate, I urge it to keep in mind that this proceeding is not simply one set of big companies against another. At the heart of this proceeding are thousands of artists whose talents and hard work make the music. We provide the intellectual property that draws listeners to satellite radio -- without us, there would be no music on their stations -- and we are entitled to a fair return for our work.

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

Date: 10/27/06

Dan Navarro