

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**Determination of Rates and Terms for
Preexisting Subscription Services and
Satellite Digital Audio Radio Services**

**Docket No. 2006-1 CRB DSTRA
(2007-12)**

ORDER SCHEDULING HEARING

Having received the participants' respective Written Merits Opening Submissions and Written Merits Rebuttal Submissions, pursuant to paragraph 11 of the Judges' Case Scheduling Order dated October 6, 2015, the Judges have determined to convene an evidentiary hearing in connection with the issues raised by the participants' submissions. The following procedure shall apply to the hearing.

1. The hearing shall be held in Room 408, James Madison Building, Library of Congress, 101 Independence Avenue SE, Washington, D.C. The hearing shall commence on Tuesday, September 13, 2016, at 9 a.m. The hearing may continue through Thursday, September 15, 2016, as warranted. All hearing days will conclude no later than 5 p.m. During each hearing day, the Judges will allow a 15 minute recess before lunch and a 15 minute recess after lunch. The Judges shall call a lunch recess for one hour at a time to be determined by the Judges.
2. In the evidentiary hearing, participants shall limit evidence to documents submitted in their submissions, except documents used for impeachment purposes, and participants' shall call as witnesses only individuals who provided supporting reports, declarations, or other documents that were filed and exchanged between the participants in support of their submissions.
3. Each participant shall, through counsel, make an opening statement¹ not to exceed 30 minutes.
4. Counsel for Sirius XM shall make the first opening statement, followed immediately by counsel for SoundExchange, Inc.
5. Sirius XM shall present its case-in-chief.
6. After Sirius XM has rested, SoundExchange, Inc. shall present its case-in-chief.

¹ Counsel are reminded that opening statements are an opportunity to outline what they believe their evidence will show. An opening statement is not for arguing fact or law.

7. The Judges reserve the right, in their discretion, to permit the participants to present rebuttal evidence.
8. Each case-in-chief and rebuttal case, if any be permitted, shall include direct examination, cross-examination, and re-direct examination of witnesses. The Judges reserve the right to permit further examination of witnesses.
9. Each participant shall, through counsel, make a closing argument² not to exceed 30 minutes.
10. Counsel for SoundExchange, Inc. shall make the first closing argument, followed immediately by counsel for Sirius XM.
11. The Judges may modify this schedule, as warranted, in their discretion.
12. In all other respects not modified by this Order, the Judges intend to follow the Judges' regulations regarding the conduct of hearings, as appropriate, including 37 C.F.R. §§ 351.9 - .10 and .12 - .13.
13. The Judges shall determine after the close of the hearing whether to require post-hearing submissions.
14. If any participant, counsel or witness is unalterably unavailable to appear during the days scheduled for the hearing, counsel shall immediately, by email and physical correspondence, notify the Judges and in the same manner, simultaneously notify the other participant. The participants may recommend alternate days, and/or fewer or more days, as they deem essential. Availability of alternate or additional days is limited and grant of the participants' requested schedule is in the Judges' discretion.

SO ORDERED.

Jesse M. Feder
Copyright Royalty Judge

Dated: September 2, 2016.

² Counsel are reminded that closing argument is not a time to restate all the evidence. Closing argument is an opportunity for counsel to educate the Judges on the applicable law and argue how they believe the applicable law favors their preferred outcome.