



1410-72-P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 15-CRB-0010-CA]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing partial settlement and commencement of further proceedings on the issue of a proposed Sports Rule Surcharge, with request for further petitions to participate.

SUMMARY: The Copyright Royalty Judges (Judges) announce partial settlement of the proceeding to adjust the rates for the cable statutory license described in section 111 of the Copyright Act (Rate Adjustment Proceeding). The Judges also announce commencement of further proceedings resulting from action by the Federal Communications Commission (FCC) effecting a change in the Sports Rule. Any party that has filed a Petition to Participate in the present proceeding may file a Notice of Intent to Participate in the Sports Rule Surcharge portion of the proceeding without payment of a further filing fee. Any other party in interest wishing to participate in the Sports Rule Surcharge portion of the proceeding must file its Petition to Participate and pay the \$150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: This notice and request is posted on the agency's website (www.loc.gov/crb) and on Regulations.gov (www.regulations.gov). Parties who plan to participate should see the "How to Submit Petitions to Participate" sub-section of the Supplementary Information section below for physical addresses and further instructions.

FOR FURTHER INFORMATION CONTACT: Kimberly Whittle, Attorney-Advisor, by telephone at (202) 707-7658, or by e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 111 of the Copyright Act grants a statutory copyright license to cable television systems for the retransmission of over-the-air television and radio broadcast stations to their subscribers. 17 U.S.C. 111(c). In exchange for the license, cable operators submit royalty payments and statements of account detailing their retransmissions semiannually to the Copyright Office. 17 U.S.C. 111(d)(1). The Copyright Office deposits the royalties into the United States Treasury for later distribution to copyright owners of the broadcast programming that the cable systems retransmit. 17 U.S.C. 111(d)(2).

A cable system calculates its royalty payments in accordance with the statutory formula described in 17 U.S.C. 111(d)(1). Royalty rates are based upon a cable system's gross receipts from subscribers who receive retransmitted broadcast signals. For rate calculation purposes, cable systems are divided into three tiers based on their gross receipts (small, medium, and large). 17 U.S.C. 111(d)(1)(B) through (F). Both the applicable rates and the tiers are subject to adjustment. 17 U.S.C. 801(b)(2).

Every five years persons with a significant interest in the royalty rates may file petitions to initiate a proceeding to adjust the rates. 17 U.S.C. 804(a) and (b). No person with a significant interest filed a petition to initiate a proceeding in 2015.¹ Therefore, the Copyright Royalty Judges (Judges) initiated this rate adjustment proceeding relating to statutory licenses for

¹ The cable rates were last adjusted in 2005. Although the Judges commenced a rate proceeding relating to the 2010 rate adjustment, the Judges terminated it when passage of the Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, rendered the proceeding unnecessary. *Order Granting Request to Terminate Proceeding*, Docket No. 2010-1 CRB Cable Rate (July 13, 2010).

the distant retransmission by cable systems of over-the-air broadcast radio and television programming. *See* 17 U.S.C. §§ 801(b)(2), 803(b)(1), 804(a) and (b), by notice published in the *Federal Register* on June 19, 2015.

The Judges received two joint Petitions to Participate, one from a group referring to itself as Phase I Parties² and another from the National Cable & Telecommunications Association and the American Cable Association. The Judges accepted these petitions and commenced a Voluntary Negotiation Period (VNP).

On November 23, 2015, the Joint Sports Claimants³ filed a “Petition ... to Initiate Cable Royalty Rate Adjustment Proceedings” with a self-styled caption indicating a proceeding for cable rate adjustments “for Retransmission of Certain Sports Telecasts.” On December 15, 2015, at the conclusion of the VNP, all participants, including the Joint Sports Claimants, notified the Judges of a global settlement and asked that cable retransmission rates remain unchanged for the rate period 2015 to 2019, inclusive. Given the conflicting positions of the Joint Sports Claimants, the Judges rejected the proposed global settlement, without prejudice.

Settling participants have now asked that the Judges accept the negotiated settlement as a “partial settlement” and permit continuing proceedings to determine whether and to what degree to make a rate adjustment under section 801(b)(2)(C). Section 801(b)(2)(C) provides for adjustment proceedings⁴ in the event of an FCC rule change “with respect to ... sports program

² The Phase I Parties consist of: Program Suppliers, Joint Sports Claimants, Public Television Claimants, Commercial Television Claimants, Music Claimants, Canadian Claimants Group, National Public Radio, and Devotional Claimants.

³ The Joint Sports Claimants consist of: the National Basketball Association, the National Collegiate Athletic Association, the National Football League, the National Hockey League, the Office of the Commissioner of Baseball, and the Women’s National Basketball Association.

⁴ Sports program exclusivity proceedings may be conducted apart from the quinquennial proceedings required by § 804 of the Act.

exclusivity....” The Joint Sports Claimants base their separate petition on an FCC rule change, *viz.*, repeal of the sports exclusivity rule, effective November 24, 2014.

The Judges give this notice and opportunity for additional parties to file a Petition to Participate in the extant proceeding. The Judges shall continue the proceeding solely for determination of what rate adjustment, if any, should result from the FCC rule change.

According to the Act, any adjustment resulting from the remainder of this proceeding shall be limited to those broadcast signals carried on systems affected by the FCC rule change. *See* 17 U.S.C. § 801(b)(2)(C).

How to Submit Petitions to Participate

Any party that has filed a Petition to Participate in the present proceeding need only file a Notice of Intent to Participate in the Sports Rule Surcharge portion of the proceeding. Any other party wishing to participate in the proceeding to determine a Sports Rule Surcharge adjustment to the cable royalty rate shall submit to the Copyright Royalty Board the filing fee (US \$150), an original Petition to Participate, five paper copies, and an electronic copy on a CD or other portable memory device in Portable Document Format (PDF) that contains searchable, accessible text (not a scanned image of text). Participants should conform filed electronic documents to the Judges’ Guidelines for Electronic Documents posted online at www.loc.gov/crb/docs/Guidelines_for_Electronic_Documents.pdf. Participants shall deliver Petitions to Participate to only **one** of the following addresses.

U.S. mail: Copyright Royalty Board, PO Box 70977, Washington, DC 20024-0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, PO Box 70977, Washington, DC 20024-0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE, Washington, DC 20559-6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

Dated: April 20, 2016.

Suzanne M. Barnett,
Chief Copyright Royalty Judge

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