Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In re	)	
	)	
ADJUSTMENT OF CABLE STATUTORY LICENSE ROYALTY RATES	)	**Docket No. 15-CRB-0010-CA-S (Sports Rule Proceeding)**

JOINT COMMENTS OF THE PARTICIPATING PARTIES
IN SUPPORT OF PROPOSED SETTLEMENT

On January 11, 2017, the Joint Sports Claimants ("JSC"),[1] NCTA−The Internet & Television Association ("NCTA"),[2] and American Cable Association ("ACA") (collectively, the "Participating Parties") notified the Copyright Royalty Judges ("Judges") that a complete settlement of the proceeding had been reached. The Participating Parties requested that the Judges terminate the proceeding by adopting a set of proposed regulations under which "covered cable systems" would be required to pay a separate per-telecast "Sports Surcharge" royalty in addition to the other royalties payable by cable systems under Section 111 of the Copyright Act. *Joint Motion of the Participating Parties to Suspend Procedural Schedule and to Adopt Settlement*, Docket No. 15-CRB-0010-CA-S (Jan. 11, 2017) ("*Motion to Adopt Settlement*"). On May 30, 2017, pursuant to Section 351.2(b)(2) of the Judges' rules, 37 C.F.R. § 351.2(b)(2), the

[1] The Joint Sports Claimants are the Office of the Commissioner of Baseball, the National Football League, the National Basketball Association, the Women's National Basketball Association, the National Hockey League and the National Collegiate Athletic Association.

[2] NCTA filed its notice of intent to participate in this proceeding (jointly with ACA) on May 26, 2016 under the name "National Cable & Telecommunications Association." Subsequent to the initial filing, NCTA changed its name to "NCTA−The Internet & Television Association."

Judges published the proposed regulations for comment. 82 Fed. Reg. 24611 (May 30, 2017) ("Notice of Settlement and Proposed Rule").

Under Section 804(b)(1)(B) of the Copyright Act, any copyright owner who sought a royalty rate adjustment based on the repeal of the FCC sports blackout rule was required to "file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate" within 12 months after the rule was repealed. The JSC were the only copyright owners to request such an adjustment. Subsequent to the JSC's petition to initiate this proceeding, the Judges published a notice in the *Federal Register,* requiring any party who wished to participate in the proceeding to file a petition to participate and pay the required filing fee by "no later than May 26, 2016." 81 Fed. Reg. 24655 (April 26, 2016). The Participating Parties were the only parties to file timely petitions to participate in this proceeding. As the Participating Parties indicated in their *Motion to Adopt Settlement*, the Judges' rules make it clear that only "participants" who give timely notice of their intent to participate in a proceeding may object to a settlement of a proceeding after it has been commenced. *See* 37 C.F.R. §§ 351.1(d) and 351.2(b)(2). *See also* 17 U.S.C. § 801(b)(7)(A)(i)-(ii). The Participating Parties thus are the only entities with standing to object to the settlement. For the purpose of avoiding any doubt, the Participating Parties hereby reiterate that they have no objection to the adoption of the proposed rules and urge the Judges to adopt them as published, subject to the correction of one inadvertent typographical error in Section 387.2(e)(7)(iii) of the proposed rules.

Specifically, Section 387.2(e)(7)(iii), as submitted to the Judges by the Participating Parties and published in the Notice of Settlement and Proposed Rule, excludes from the definition of "gross receipts" those gross receipts attributable to subscribers located in "[a]ny community located wholly outside the specified zone referenced in paragraph (e)(1) above."

However, the "specified zone" that is subject to the Sports Surcharge is referenced in paragraph (e)(2)(ii), not paragraph (e)(1). Thus, the correct cross-reference in Section 387.2(e)(7)(iii) is "paragraph (e)(2)(ii)" and not "paragraph (e)(1)." As corrected, proposed Section 387.2(e)(7) should read as follows:

> (7) the term "gross receipts" shall have the same meaning as in 17 U.S.C. § 111(d)(1)(B) and shall include all gross receipts of the covered cable system during the semiannual accounting period except those from the covered cable system's subscribers who reside in (i) the local service area of the primary transmitter, as defined in 17 U.S.C. § 111(f)(4); (ii) any community where the cable system has fewer than 1000 subscribers; (iii) any community located wholly outside the specified zone referenced in paragraph (e)(2)(ii) above; and (iv) any community where the primary transmitter was lawfully carried prior to March 31, 1972.

CONCLUSION

For the reasons stated above, the Participating Parties respectfully request that the Judges terminate this proceeding by adopting the proposed rule set forth in the Judges' May 30, 2017 Notice of Settlement and Proposed Rule, subject to correction of the typographical error identified above.

Respectfully submitted,

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