

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DETERMINATION OF ROYALTY RATES AND
TERMS FOR PERFORMANCE OR DISPLAY
OF NONDRAMATIC MUSICAL WORKS AND
PICTORIAL, GRAPHIC, AND SCULPTURAL
WORKS BY PUBLIC BROADCASTING
ENTITIES (PBR-III)**

Docket No. 16-CRB-0002 PBR
(2018-2022)

**ORDER FOR FURTHER PROCEEDINGS
AND MODIFIED CASE SCHEDULE**

The Copyright Royalty Judges (Judges) initiated the captioned proceeding to set rates and terms for the compulsory license described in 17 U.S.C. § 118 (Public Broadcasting License), by publishing notice in the *Federal Register*. See 81 Fed. Reg. 256 (Jan. 5, 2016). After receiving Petitions to Participate, the Judges provided notice of the participants to all interested parties and issued a case scheduling order. See *Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order* (Mar. 25, 2016) (Scheduling Order).

On July 6, 2016, a number of participants filed a *Joint Motion Requesting Postponement of Commencement of Preliminary Disclosure and Discovery and Subsequent Periods* (Joint Motion). In the Joint Motion, the participants requested that the Judges grant a postponement of 30 days (until August 8, 2016, or such other period that the Judges believe provides a reasonable period of time for the parties to resolve some or all outstanding issues in the proceeding) of the Preliminary Disclosure and Discovery Period that was scheduled to commence on July 8, 2016, and a postponement of each subsequent period. The Judges granted the Joint Motion on July 20, 2016, and issued an *Order Postponing Case Schedule*.

During the extended Voluntary Negotiation Period, most of the participants notified the Judges that they had reached agreements or agreements in principle regarding rates and terms for the Public Broadcasting License.

On July 1, 2016, the National Association of College and University Business Officers (NACUBO) notified the Judges that it had reached three separate agreements with the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

On July 1, 2016, the National Religious Broadcasters Noncommercial Music License Committee (NRBNMLC) notified the Judges that it had reached four separate agreements with ASCAP, BMI, SESAC, and the Harry Fox Agency / National Music Publishers Association

(HFA/NMPA). It also represented that participant Education Media Foundation (EMF), a member of NRBNMLC, agrees with all of the negotiated rates and terms.

On August 1, 2, 2, and 5, 2016, NPR and PBS notified the Judges that they had reached four agreements in principle with BMI, ASCAP, HFA/NMPA and SESAC, respectively, but before the agreements can become final the board of the Corporation for Public Broadcasting (CPB) must approve them at its September meeting and ASCAP must also receive board approval (which could also occur in September 2016).

Subsequent to their notifying the Judges of their agreements, several of the settling participants filed joint proposals outlining the details of their agreements.

On July 8 and 12, 2016, the Judges received two separate joint proposals of rates and terms from NACUBO and BMI and ASCAP, respectively.

On July 8, 12, 20, and 20, 2016, the judges received four joint proposals of rates and terms from NRBNMLC and BMI, ASCAP, SESAC, and HFA/NMPA, respectively. As for the joint proposal from NRBNMLC and HFA/NMPA, EMF joins in it, and the Church Music Publishers Association (CMPA) supports it.

Until the agreements in principle with NPR/PBS are executed and codified by the Judges, all participants settling with NPR/PBS are considered active participants in this proceeding unless and until they withdraw from the proceeding.

The extant proceeding is ongoing for the purpose of establishing rates and terms for all entities making use of the section 118 compulsory licenses; consequently, the Judges determine there is a need for further proceedings. In recognition of the participants' success in reaching negotiated settlements to date and to accommodate anticipated CPB and ASCAP board approval where necessary, the Judges issue the Amended Case Schedule detailed on Attachment A to this order to govern further proceedings.

SO ORDERED.

DATED: August 12, 2016.

Jesse M. Feder
Copyright Royalty Judge

**Rates and Terms Determination Proceeding (PB III)
Modified Case Schedule**

Case event	Date
Order for Further Proceedings	August 12, 2016
Parties file Written Direct Statements (WDS)	November 17, 2016
Commencement of Discovery Period	November 17, 2016
Exchange documents upon which witnesses based WDS	November 21, 2016
Exchange document requests and interrogatories	November 23, 2016
Exchange written objections/responses to document requests	December 14, 2016
Produce documents and interrogatory responses	December 22, 2016
End of Discovery Period	January 20, 2017
End Settlement Conference Period	February 10, 2017
Deadline for Joint Settlement Conference Report	February 17, 2017
IF PARTIES DO NOT SETTLE	
Deadline to file Written Rebuttal Statements ¹	March 17, 2017
Hearing	Commencing May 17, 2017
Deadline to file proposed findings and conclusions	TBD
Deadline to file responsive proposed findings and conclusions	Two weeks after submission of proposed findings and conclusions
Issuance of Determination	not later than December 15, 2017

¹ Additional discovery is at the discretion of the Judges. The Judges may, and likely will, schedule a prehearing conference. *See* 37 C.F.R. § 351.8.