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Before the
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Washington, D.C.

In the Matter of	)	
	)	
Distribution of 2000, 2001, 2002	)	Docket No. 2008-2 CRB CD
And 2003 Cable Royalty Funds	)	2000-2003 (Phase II) (Remand)
________________________________	)	

TESTIMONY OF RAUL GALAZ

INDEPENDENT PRODUCERS GROUP
REBUTTAL TO THE WRITTEN DIRECT STATEMENT
OF THE SETTLING DEVOTIONAL CLAIMANTS

January 8, 2018

INDEPENDENT PRODUCERS GROUP REBUTTAL TO THE WRITTEN DIRECT STATEMENT OF THE SETTLING DEVOTIONAL CLAIMANTS

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OF RAUL GALAZ
OF INDEPENDENT PRODUCERS GROUP

A. SDC WITNESS JOHN SANDERS RETAINS NO PARTICULAR QUALIFICATIONS TO CONSTRUCT A METHODOLOGY ASSESSING THE VALUE TO CABLE SYSTEM OPERATORS OF RETRANSMITTED PROGRAMMING.

Despite presenting Mr. John Sanders as its chief witness in several proceedings, it was not until his most recent testimony in the consolidated proceedings for 2004-2009 cable/1999-2009 satellite royalties that it was revealed that Mr. Sanders has literally zero experience in the subject for which he was requested to opine. While Mr. Sanders' resume touts that he and his firm "[have] been actively involved in both fair market valuations and asset appraisals of over 3,000 communications and media businesses", in not one instance has that involved either cable or satellite retransmissions.

Specifically, upon questioning by the Judges, Mr. Sanders had the following to say:

> JUDGE STRICKLER: "Okay. Have you been involved personally in determinations made by cable system operators or satellite system operators, in terms of choosing which stations to retransmit?"
>
> * * *
>
> MR. SANDERS: "To the best of my recollection, I have not been involved in any decisions to carry an out of market station. You

> know, we've probably done -- we number projects, as we get them in my company. I think we're now at like 3,328 was the last number we gave. But I don't have any – if I ever did, I don't have a recollection of it."
>
> * * *
>
> JUDGE STRICKLER: "Has Bond and Pecaro been involved in that particular activity – again, "that activity" being the decision whether to retransmit a station from one market to another?"
>
> MR. SANDERS: "Not to my recollection, but it's possible."

Docket nos. 2012-6 CRB CD 2004-2009 (Phase II), 2012-7 CRB SD 1999-2009 (Phase II), Testimony of John Sanders, Tr. at pp. 26-28 (Apr. 14, 2015).

Immediately following the foregoing testimony, Mr. Sanders stated that he has been involved in valuations for the purpose of the selection of syndication programming by a *broadcaster*, but no person has ever challenged that such decisionmaking for a *broadcaster* is based on anticipated viewership ratings which, to a *broadcaster*, directly relates to the advertising dollars that a broadcaster can secure.

The foregoing is poignant for the obvious reason that Mr. Sanders purports in his report to detail the bases by which cable system operators ("CSO") engage in a decision as to which programming to retransmit. Predictably, Mr. Sanders resorts to his observations about *broadcasters*, but without the benefit of ever having spoken once with a CSO regarding such matters. Such lack of due diligence in the consideration of a CSO's motives borders on obscene in light of the outstanding credentials of witnesses who have testified in the very same proceedings in which Mr. Sanders has testified, i.e., witnesses with decades of experience in the cable television industry, whom have been owners of cable systems, and who remain the expert witnesses before the Federal Communications Commission on behalf of the largest CSOs in the United States – all of whom disagree with Mr. Sanders' premise. See, e.g., IPG Designated Testimony, Docket nos. 2012-6 CRB CD 2004-2009 (Phase II), 2012-7 CRB SD 1999-2009 (Phase II), Testimony of Michael Egan, Tr. at pp. 105-211 (Apr. 15, 2015).

Despite such obvious resources by which to consider the validity of his premise – that CSOs select programming for distant transmission based solely on broadcaster ratings in the local (non-distant) market – Mr. Sanders resorts to the use of blinders, not even bothering to review the wealth of contrary testimony. Whether this lack of scrutiny was the product of Mr. Sanders' apathy, or the SDC's "straitjacket" method of limiting Mr. Sanders' resources for consideration (see infra), neither can be countenanced.

In fact, in order to rationalize this decision to rely *solely* on viewership ratings data to attribute value to retransmitted programming, Mr. Sanders cherry-picks a narrow quote from the Judges from the 2000-2003 cable decision, ignoring their more comprehensive position. As the Judges stated in the same opinion cited by Mr. Sanders:

> "Indeed, the Judges conclude that viewership is the initial and predominant heuristic that a hypothetical CSO would consider in determining whether to acquire a bundle of programs for distant retransmission, subject to marginal adjustments needed to maximize subscribership. Nevertheless, the Judges are reluctant to rely solely on viewership data merely because the marginal bundling adjustments are not readily measurable. ***The Judges must also consider subscriber fees and subscribership levels***, even if the evidence relating to subscribership creates only a crude proxy for addressing the economic bundling issue."

Docket no. 2008-2 CRB CD 2000-2003 (Phase II), *Final Determination of Distributions*, *Phase II*, at p. 37 (Aug. 13, 2013) (emphasis added).

The testimony of all witnesses with CSO backgrounds that have appeared in royalty distribution proceedings *uniformly* disagree with the position that CSOs rely on the viewership ratings garnered by the broadcast stations. All of these witnesses appeared in distribution proceedings for parties other than IPG, and one of which appeared for IPG ten years subsequent. According to these experts, all of whose testimony was cited in precedential opinions, the determination as to which stations will be retransmitted are based on which retransmitted stations will generate the greatest increase in cable system subscribership. See IPG Designated Testimony, citing Docket nos. 2001-8 CARP CD 98-99 (Phase I), Docket nos. 2012-6 CRB CD 2004-2009 (Phase II), 2012-7 CRB SD 1999-2009 (Phase II), Testimony of John Fuller, James Trautman, Michael Egan, Judith Allen, and Gregory Rosston. While such decisions are most obviously reflected by data showing which stations and programming has actually been retransmitted (i.e., subscribership data), and despite the availability of such data in these very proceedings, no attempt was made by Mr. Sanders to incorporate such data into his proposed methodology.

No doubt, Mr. Sanders is unaware of the fact that programming currently falling in the devotional programming category used to be part of the Phase I "Motion Picture Association of America and other program syndicators" category. Devotional programming was separated out in proceedings relating to 1980 royalties precisely because devotional programmers, whom purchase their time with broadcasters and present it commercial-free, argued that viewership ratings were an irrelevant measure of the value of devotional programming. See *1980 Cable Royalty Distribution Determination*, 48 Fed. Reg. 9,552 (Mar. 7, 1983). According to such devotional parties, who remain part of the existing SDC, a greater value was realized by the cable system operators than is reflected by local Nielsen ratings. Id. In fact, then-existent Nielsen studies accorded a zero value to devotional programming, despite the significant volume of retransmission. By all accounts, Mr. Sanders and his clients have come full circle to disregard the very basis on which the devotional programming category took root.

B. THE TESTIMONY OF SDC WITNESS JOHN SANDERS WAS "STRAITJACKETED".

At pages 2-3 of his testimony, SDC witness John Sanders identifies the materials that he considered but those materials conveniently fail to include:

- any testimony of any rebuttal witness ever produced by IPG;
- any testimony by a non-SDC witnesses;
- numerous precedential decisions directly addressing the motivations of cable system operators for the selection of programming that will be retransmitted on their system.

In its written direct statement, IPG has designated the testimony of several IPG and non-IPG witnesses whose testimony was the basis for and cited in precedential decisions addressing the selection of programming retransmitted by CSOs. The obvious failure by Mr. Sanders to consider any of the foregoing testimony and decisions is particularly troublesome because IPG has previously criticized the SDC and Mr. Sanders' testimony for this exact same reason, i.e., that his proposed methodologies have purposely ignored the testimony of other qualified witnesses and precedential decisions. In no uncertain terms, the selection of materials provided to Mr. Sanders appears to have "straitjacketed" his opinion.

The Judges have previously criticized IPG for ostensibly “straitjacketing” its witness Laura Robinson when IPG did not provide Ms. Robinson Nielsen ratings data that IPG neither had in its possession nor could reasonably afford to purchase. Docket no. 2008-1 CRB CD 98-99 (Phase II), *Final Determination of Distributions of 1999 Cable Royalty Funds (Phase II)*, at p. 38 (Jan. 14, 2015). In the instant case, the broad swath of materials that were *not* considered by Mr. Sanders was not only freely available, but was already in the possession of the SDC. On this basis alone, Mr. Sanders’ testimony and opinions are tainted, and cannot be considered credible.

C. THE DATA ON WHICH MR. SANDERS SUBMITS HIS PROPOSED METHODOLOGY HAS ALREADY BEEN RULED AS DEFICIENT BY THE JUDGES, EVEN WHEN AUGMENTED BY DATA THAT THE SDC FAILED TO INCLUDE. ADDITIONAL BASES EXIST FOR REJECTING SUCH DATA.

As described by Mr. Sanders, his proposed methodology consists of the use of one source of data to value any given devotional broadcast -- the national averages of local ratings for the subject programs being broadcast.[1] For each of the years 2000-2003, the local ratings measurements on which Mr. Sanders *exclusively* relies are the Nielsen “RODP” reports for the month of February. To confirm the

[1] To be more accurate, Mr. Sanders relies on the number of households *projected* to have viewed particular programs.

validity of using local ratings, Mr. Sanders computed the correlation between local ratings and what is ostensibly distant viewership of the same group of programs.

Problematic for Mr. Sanders and the SDC is the fact that this panel of Judges *has already deemed this data insufficient*. Specifically, in the consolidated 2004-2009 cable/1999-2009 satellite proceedings, the SDC's proposed methodology for distributing satellite royalties for 1999-2003 relied on the *identical* 2000-2003 February RODP reports, but "'scaled' by numbers of distant subscribers who are able to access the programs". In response to *that* proposed methodology based on *that* data, the Judges stated the following:

> "The SDC's implementation of its methodology suffers from a critical lack of data. First, Dr. Erdem bases his conclusion that local ratings are an appropriate proxy for distant viewing on a correlation that he derived solely from February 1999 data. There is no basis in the record for the Judges to conclude that the correlation Dr. Erdem found in the 1999 data continues unchanged throughout the entire succeeding decade. Dr. Erdem's decision to rest his entire analysis of relative market value over a decade on such a diminutive slice of distant viewing data raises a question concerning the reliability of the application of his methodology. *See* 4/16/15 Tr. at 170 (Robinson).
>
> Second, the local ratings data on which Dr. Erdem rests his conclusions regarding relative market value are extremely sparse. For 1999 through 2003, Dr. Erdem relies on ratings data from a single month in each year to compute relative market value. The Judges will not rest a determination upon such a slender evidentiary reed.
>
> The Judges conclude that, given the lack of contemporaneous distant viewing data, and the dearth of local ratings data—or competent persuasive evidence that such data are not needed to produce reliable

> results from the SDC's viewership-based methodology—the Judges cannot employ that methodology to distribute the funds at issue in this proceeding."

See Docket nos. 2012-6 CRB CD 2004-2009 (Phase II), 2012-7 CRB SD 1999-2009 (Phase II), *Order Reopening Record and Scheduling Further Proceedings*, at pp. 4-5 (May 4, 2016).

Even though the foregoing firmly establishes that the Mr. Sanders' current proposed methodology is already deficient as a matter of precedent, certain rather evident bases for rejecting Mr. Sanders' proposed methodology *additionally* exist. In the consolidated proceeding addressed above, the values attributed to programs by the SDC were "'scaled' by numbers of distant subscribers who are able to access the programs". Id. at pp. 4-5. In the current proceeding, the SDC has engaged in no such "scaling". Rather, the SDC's proposed methodology is simply to apply the national averages of local ratings for the subject programs being broadcast, and apply values exclusively on such basis. In a phrase, the methodology proposed by the SDC in this proceeding is dramatically more rudimentary and limited than the methodology already rejected by the Judges because of a "critical lack of data".

Although it should appear self-evident, a methodology based exclusively on local ratings fails to account for the vast variations by which local stations are retransmitted into distant marketplaces. For example, data relied on to create IPG's methodology includes a variety of stations, including some with as many as 33,696,042 average distant subscribers and, in contrast, other stations with a mere 1,976 average distant subscribers. Under Mr. Sanders' proposed methodology, a 1.0 rating applied to broadcasts on the latter local station is treated as being of equal value to a 1.0 rating applied to broadcasts on the latter station. The very nature of the royalty being distributed in these proceedings is for *distant* retransmission, so the failure of Mr. Sanders to "scale" the ratings according to the number of *distant* subscribers make the SDC-presented figures largely irrelevant.

In fact, one other rather evident error exists in Mr. Sanders analysis. By failing to "scale" the local ratings data with distant subscriber data, Mr. Sanders' methodology relies on local ratings data *even when the local stations are not distantly retransmitted*. No attempt is made to even determine how many of the local stations from which the local rating data is derived were distantly retransmitted, much less what percentage of the retransmission market those stations represent, all of which data was in the possession of the SDC from earlier discovery in this proceeding.

Mr. Sanders' is amply aware of these and other issues relating to the use of Nielsen meter data, as his own testimony in Consolidated Docket No. 14-CRB-

0010-CD/SD(2010-2013), filed on December 29, 2017, reveals the following testimony by him:

> "Although metered data can give more up-to-date information where it is available, and is frequently cited for programs with large national audiences, diary data is often regarded by the industry as being more informative and, therefore, a better measure of value. This is true because diary data is collected from all markets, *whereas metered data is collected only from certain markets and a sample of geographical areas, and because diary data utilizes far more households than metered data*, and is therefore regarded as a more accurate and granular measure, particularly for programs with comparatively low viewing levels or in smaller markets. Additionally, diary data likely provides a better measure as to what viewers actually value, because it shows what viewers say they were actually watching, rather than simply whether the television was on a particular channel."

Consolidated Docket No. 14-CRB-0010-CD/SD(2010-2013), *Written Direct Statement of the Settling Devotional Claimants, Test. of Sanders* at pp. 5-6.

In sum, Mr. Sanders' methodology relies exclusively on data that, even when augmented by other data in the consolidated 2004-2009/1999-2009 satellite proceedings, was found deficient. Such data utilizes *local* ratings data to appropriate *distant* transmission royalties, with zero regard for whether the local ratings data is derived from stations with any distant retransmission, or whether the surveyed stations represent any significant percentage of the distant retransmission marketplace. Finally, by Mr. Sanders' own admission, such local ratings data (metered) is far more limited than distant ratings data (diary data) utilized in these proceedings that has already demonstrated extraordinary "zero viewing" rates, a problem exacerbated by the significantly fewer devotional broadcasts available for measurement (see infra).

D. THE SDC ATTEMPTS TO BOLSTER ITS "LOCAL RATINGS" METHODOLOGY BY AN OSTENSIBLE CORRELATION COEFFICIENT THAT THE SDC CANNOT VERIFY.

Although Mr. Sanders asserts that he has found a correlation coefficient ranging from 0.71 to 0.89 between the local ratings data on which his proposed methodology relies and "HHVH reports prepared by Alan Whitt based on Motion Picture Association of America ("MPAA") data", sparse information is provided about the HHVH reports and figures. This is for good reason. The SDC and Mr. Sanders *do not have* any of the underlying data that ostensibly resulted in the reports. In fact, the SDC has not produced a single document or electronic file demonstrating the source of the HHVH figures.[2] The HHVH figures for which the SDC and Mr. Sanders asserts he has found a "strong" correlation coefficient are literally just numbers on a page, with no electronic or documentary backup. The SDC and Mr. Sanders nevertheless attempt to bolster the significance of their

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[2] IPG will be filing a *motion in limine* to formally exclude any reference to or reliance on the HHVH reports referenced in the SDC written direct statement.

"local ratings data" methodology by asserting a correlation coefficient with data *that they cannot even confirm*.

The SDC has already stated in its direct statement that <u>it does not have and has chosen not to acquire the underlying data to the MPAA study</u> that ostensibly created the "HHVH results" (see SDC WDS at pp. 7-8). In fact, Mr. Sanders reveals that the data underlying the HHVH reports for 2000-2003 "are not in Mr. Whitt's possession". Id. Moreover, while the SDC assert that they obtained the HHVH report from computer programmer Alan Whitt, they do not even submit Mr. Whitt's declaration as to his qualifications for creating an HHVH report, what data was used to derive the HHVH figures, or *how* the HHVH figures were derived, making any assertion by Mr. Sanders' as to the HHVH figures impermissible hearsay.

While the SDC may have made a strategic decision to not acquire the data necessary to substantiate any "bottom line figures", it cannot reasonably now ask its adversaries or the Judges to accept unverifiable figures. "All bottom line figures must be verified, and all parties must be prepared to share all of the underlying data that contributed to those bottom-line figures." Order in Docket no. 94-3 CARP CD 90-92 at 2 (October 30, 1995); Order in Docket no. 2008-2 CRB CD 2000-2003 (Phase II) (October 24, 2012). No differently than why the Judges cannot utilize the unsubstantiated figures for which the SDC has absolutely no means to verify, the Judges cannot utilize a purported *correlation* with such figures.[3]

As though the foregoing is not already ample to toss out any consideration of the ostensible correlation, Attached as **Exhibit 1** is a printout of the Excel spreadsheet that the SDC produced to substantiate such correlation (SDC 00001471). Of immediate note are the number of instances in which there are wild swings in the percentages attributed to programs, where one or the other measurements is double the other measurement. Of additional note are the number of instances in which no number appears in a particular "RODP" or "HHVH" cell, while a positive number appears in the opposing "RODP" or "HHVH" cell. These are what can be characterized as instances in which there is "zero viewing" for

[3] It bears noting that while the SDC argues that there is a "strong" correlation coefficient between its "local ratings data" methodology and the unsubstantiated "HHVH" figures, wide variations exist between the results. For example, for calendar year 2000, the "local ratings data" methodology attributes IPG programs with 28.30% of the devotional pool, while the HHVH figure is ostensibly 39.20%, i.e., an increase of 10.90% of the royalty pool and a 38.5% increase over the figure advocated by the SDC.

In fact, when the correlation coefficient is calculated just for IPG-represented programs, the range of correlation drops considerably, and varies from 0.39 to 0.81, with an average of 0.61. See **Exhibit 2**. This is a simple calculation performed by modifying the range of cells being evaluated on the electronic version of the Excel spreadsheet produced by the SDC as SDC00001471 (**Exhibit 1**).

either the "RODP" or "HHVH" measurement for *all broadcasts* of a program, yet Mr. Sanders has obfuscated the correct correlation by omitting reference to the zero viewing instances, therefore miscalculating the correlation coefficient.

To be clear, the "HHVH figures" to which Mr. Sanders' refers is *not* data derived from the study performed by Dr. Gray on behalf of the MPAA, and adopted for the Program Suppliers category of programming in the 2000-2003 cable proceedings. Even though such data was itself available for the SDC to utilize in this proceeding if it had so chosen, the SDC elected neither to request such data from the MPAA nor ask the Judges to order the production thereof.

Finally, and just as a matter of logic, the question must be asked why the SDC has attempted to demonstrate a correlation between "local ratings" data and (what is purported to be) distant ratings data, rather than just relying on the distant ratings data. Clearly, the royalties at issue in this proceeding relate to the distant retransmission of broadcasts. Ergo, distant ratings data would clearly be more pertinent. Two reasons exist for the SDC's hesitance to do so.

First, and as set forth above, the SDC has literally no information to substantiate the source data for the figures, no firsthand witness statement as to who prepared the data or those persons' qualifications, and no information as to how the distant retransmission figures were actually derived. Second, the distant retransmission figures for which the SDC seeks to establish a correlation are, on the whole, *more advantageous* to IPG than to the SDC.

Table 1

	SDC method	HHVH method	Difference
2000	28.30%	39.20%	**10.90%**
2001	27.20%	23.00%	**-4.20%**
2002	32.60%	38.10%	**5.50%**
2003	31.80%	29.50%	**-2.30%**

In sum, the SDC has asked the Judges to find significance in a correlation between the RODP "local ratings data" figures and a page full of numbers for which there is no documentary or electronic backup, ostensibly obtained from an individual who has not appeared as a witness in these proceedings, for which there is literally no explanation as to what data was utilized as a basis for the figure or how the figure was derived, all of which is data that the SDC freely admits it could have secured but elected not to obtain. Additionally, the correlation is for four weeks in February for any given year, ignoring the remaining 48 weeks of the year, and omitting from the correlation the several instances in which positive ratings were recorded by one measurement and no ratings were recorded by the other measurement. The HHVH figures are inadmissible and nonetheless questionable, as is any asserted correlation between such figures and the SDC "local ratings data" figures.

E. THE SDC'S "LOCAL RATINGS" METHODOLOGY GENERATES HIGHLY QUESTIONABLE RESULTS BECAUSE OF THE LIMITED NUMBER OF NIELSEN MEASURING POINTS AND LIMITED NUMBER OF MEASURED BROADCASTS.

1. The Nielsen "RODP" report indicates that *any* IPG-represented program has half the viewership of *any* SDC-represented program.

For the calendar years 2000-2003, I have identified 92,075 retransmitted broadcasts compared to the SDC's 76,123 broadcasts, representing 54.74% of the retransmitted broadcasts compensable in this proceeding for the distribution of devotional programming royalties.[4]

This figure is significant when compared to the average percentage of royalties that the IPG and SDC proposed methodologies assert are allocable to IPG. The IPG methodology proposed herein generates an average percentage of

[4] I originally identified 93,664 retransmitted broadcasts of IPG programming, but as revealed in the pleadings surrounding the SDC's *Motion to Strike IPG's Written Direct Statement* (filed April 4, 2017), I had errantly included the 2001 broadcasts of Salem Baptist Church and Jack Van Impe Ministries. IPG acknowledged this error and revised its claim accordingly pursuant to IPG's *Notice of Revised Claim to 2001 Royalties (Devotional)*, filed May 10, 2017. Consequently, the number of retransmitted broadcasts of IPG programming has reduced to 92,075. The total number of retransmitted devotional broadcasts addressed by this proceeding is 168,198 (92,075 + 76,123 = 168,198).

52.34% allocable to IPG, whereas the SDC methodology generates an average percentage of 29.98% allocable to IPG, a vastly smaller percentage.

Table 2

	SDC method	IPG method	Difference
2000	28.30%	40.69%	**12.39%**
2001	27.20%	42.32%	**15.12%**
2002	32.60%	62.69%	**30.09%**
2003	31.80%	63.66%	**31.86%**
Average	**29.98%**	**52.34%**	**22.37%**

Predictably, the SDC will assert that IPG's percentage of broadcasts is very close to the value allocable to IPG broadcasts under IPG's proposed methodology simply because the IPG methodology relies on a volume component. However, such criticism would be misplaced because the IPG methodology also factors in the number of distant subscribers capable of receiving the retransmitted broadcast. As noted earlier, the number of distant subscribers sampled as part of IPG's proposed methodology varies widely when considering the 200-231 stations sampled by IPG for each of the years 2000 through 2003. As such, the only conclusion that can be reached mathematically is that the average number of distant subscribers being reached by IPG retransmitted programming is slightly higher than the average number of distant subscribers being reached by SDC retransmitted programming.

An explanation must nevertheless be reached as to why IPG retransmitted program constitutes 54.74% of the volume, yet garners only 29.98% of the viewership ratings in the data relied on by the SDC. According to such figures, if valid, one could only surmise that over the course of almost one hundred thousand broadcasts, the average broadcast of four IPG retransmitted programs *consistently* have half the viewers as any of 22 SDC retransmitted programs, despite having a significantly greater number of broadcasts that, on average, are made available to a greater number of subscribers. I challenge that this is an incorrect conclusion, and that a more obvious explanation exists.

2. The Nielsen "RODP" report fails to measure most devotional programming, and relies on an inadequate amount of broadcast measurements from an inadequate number of households.

The "local ratings" methodology proposed by the SDC is already of questionable validity for the mere fact that it relies exclusively on viewership ratings only during four weeks in February, ignoring the other 48 weeks of any given year. Such sliver of information, particularly given the prevalent amount of "zero viewing" whereby a Nielsen measured broadcast is credited with no viewers, raises the prospect that an inadequate number of Nielsen measuring points exist. The significance of this fact is exacerbated when considering a small programming category, such as the devotional programming category, which has a much smaller number of broadcasts relative to the aggregate programming that exists.

The problem of an inadequate number of Nielsen measuring points is even further exacerbated when only a handful of programs are measured. According to the RODP reports, IPG retransmitted programming constitutes only four programs for any given year,[5] whereas SDC retransmitted programming constitutes 9-12 programs. See **Exhibit 1**. During calendar years 2000-2001, an aggregate of only 17 programs are measured, and during 2002-2003, only 14 programs are measured. Id.

Figures from the Nielsen diary data utilized in the program suppliers category for the 2000-2003 cable proceedings (Phase II) demonstrated that of the 5.9 Million Nielsen measured broadcasts, 76% to 82% of all broadcasts measured for each of the years from 2000-2003, recorded “0” for the number of households projected to be watching a station. See *IPG Rebuttal to the Written Direct Statement of the MPAA-Represented Program Suppliers, Testimony of Raul Galaz* at pp. 18-19, (May 15, 2013). Whereas the RODP reports do not lend themselves

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[5] The Nielsen RODP reports recorded no instances of broadcasts of programming controlled by IPG-represented claimant Billy Graham Evangelistic Association for any of the years 2001-2003, though IPG’s data reflected no less than 824 compensable broadcasts. See discussion, **Exhibit 4**, infra.

to assessing the level of Nielsen “zero viewing” in such reports, the fact that 48 of 52 weeks are already ignored means that 92.3% of the compensable broadcasts are not being measured. Moreover, the more limited nature of the Nielsen “metered” data utilized by him in this proceeding is well known, and even acknowledged by Mr. Sanders in his testimony in other proceedings. A cursory review of the RODP reports reflects the same issue as exists with Nielsen diary data, i.e., a dearth of “zero viewing” even during the four-week timeframe during which such measurements occur. For example, in the RODP report attached as **Exhibit 3**,[6] the detail report for the program “Benny Hinn – This Is Your Day” reflects 71 varied program broadcasts across 46 broadcast stations. See **Exhibit 3** at pp. SDC00000560-564. Nonetheless, of those 71 varied program broadcasts, 65 were assigned a “<<” figure for ***all*** broadcasts appearing on the identified station, effectively a zero rating.[7] Only six varied program broadcasts generated positive figures.

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[6] See e.g., **Exhibit 3**, SDC00000503, *et seq.*, *Nielsen RODP February 2001* [Note: Restricted.]. SDC00000503, *et seq.* is a 254-page document. For purposes of ease, I attach as **Exhibit 3** only those pages as are relevant to my testimony herein. If desired by the Judges, I will augment Exhibit 3 with the entirety of the *Nielsen RODP February 2001*.

[7] On **Exhibit 3**, pp. SDC00000560-564, column “1” of “23” columns identifies the “HH RTG”. Thereon appears the assigned household rating for the measured broadcast and the lead-in program.

In light of the fact that the IPG programming really only constitutes a handful of programs, the consequence of a shift to the detriment of a particular retransmitted program can be dramatic. For example, all other things being equal, of the 168,198 retransmitted devotional program broadcasts identified in IPG's data for 2000-2003, only 12,938 are likely being measured because RODP data for only four weeks per year exists (168,198 x 4/52 = 12,938). Next, presuming that only 24% of those measured broadcasts are measuring any viewers because of the prevalence of "zero viewing",[8] the RODP ratings data is based only on 3,105 broadcasts over the course of four years, i.e., 776 broadcasts per year. Finally, the attributed viewership figures are not even actual measured viewership, but rather *projections* of actual viewership.

Next, unique to RODP reports is the fact that such reports require certain criteria to be met in order for a viewership rating to be recognized. For example, "the program must have been telecast in at least five NSI markets . . . and scheduled at the same time and day in at least two of the four weeks" and "a station must have telecast once during the four measurement weeks (at least three different

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[8] This is the lowest percentage of "zero viewing" appearing in the Nielsen diary data from 2000-2003, and is relied on herein despite the fact that the Nielsen meter data on which Mr. Sanders relies is generally acknowledged as being much more limited and, therefore would generate higher "zero viewing" percentages than the Nielsen diary data. See supra.

days for Monday-Friday programs)", and a wealth of other requirements that could attribute a zero rating to an otherwise compensable broadcast. See e.g., **Exhibit 3**, at pp. SDC00000506-507, Sections I.A-C. Moreover, a measured rating might *still* not be reflected, as the RODP report explains "When household audiences fall below the minimum reporting standards the symbol << is inserted. 'Blanks' should not be interpreted as connoting zero viewing in the universe." Id. at Section I.C.

Finally, the RODP reports identify the aggregate number of surveyed households for any DMA, and what appears to be a remarkably small sampling for a category as small as the devotional programming category. **Exhibit 3** at pp. SDC00000511-512. For example, the DMA sampling for Abilene-Sweetwater is 523 households. Id. However, a footnote thereto clarifies that the presented figures are for all four weeks of February, and that the sample size for any given week is one-quarter of such figures, i.e., 131 households for Abilene-Sweetwater. Id. The largest market in the U.S., New York City, has a DMA sample of 2,318, meaning that only 579 households are being surveyed at any given time, despite having 6.93 Million DMA households. **Exhibit 3** at pp. SDC00000512 and SDC00000525. Such sampling equals a mere 0.0083% of the DMA (579/6,935,610 = 0.00008355).

Even ignoring the possible circumstances by which Nielsen-imposed criteria automatically impose a “blank” viewership rating to an otherwise compensable broadcast, the foregoing amply demonstrates how the attribution of ratings for 26 different devotional programs based on *no more than 776 broadcasts in a given year* for the entire U.S., where an extremely limited number of households are being surveyed in any given market in order to capture ratings for that limited number of broadcasts (e.g., New York City), is highly vulnerable to being skewed by the attribution or non-attribution of a single broadcast.

3. The Nielsen “RODP” report fails to even measure programming by Billy Graham Evangelistic Association.

In the course of reviewing Exhibit 1 (SDC00001471), I noticed a rather glaring omission not addressed by Mr. Sanders. Notably, the Nielsen RODP reports account for no broadcasts by one of IPG’s five represented devotional claimants, Billy Graham Evangelistic Association (“BGEA”). Although Mr. Sanders purports to have reviewed IPG’s written direct statement in the initial round of these 2000-2003 cable proceedings, and the data reliant thereon, no mention is made in his testimony that the BGEA program broadcasts are reflected *nowhere* in the RODP reports. It is not even the case that such program broadcasts have been acknowledged and assigned a “non-rating”, i.e., a “<<” designation.

Rather, the broadcasts do not appear at all, and the BGEA programming is not listed. See **Exhibit 3** at pp. SDC00000532.

The foregoing is notable because it brings into question the entirety of the RODP reports. Billy Graham was an iconic devotional programmer, and BGEA is his popular successor. IPG represents BGEA for the years 2001-2003. During that timeframe, IPG's data demonstrates 824 distantly retransmitted broadcasts of BGEA programming taken from the broadcast data for the 200-231 stations included in IPG's database. Although the RODP reports should be inclusive of such broadcasts, i.e., a survey of *all* U.S. broadcasts, distantly retransmitted or not, the BGEA broadcasts found in IPG's data appear nowhere in the RODP reports.

Attached hereto as **Exhibit 4** is a spreadsheet identifying each of the 2001-2003 BGEA broadcasts, including information as to the title, station, date, and time of local broadcast. For ease of consideration, I have organized such exhibit according to years of broadcast, wherein there are 399 retransmitted broadcasts during 2001, 244 retransmitted broadcasts during 2002, and 181 retransmitted broadcasts during 2003.

The BGEA broadcasts are not insignificant. As to sheer volume, the 824 broadcasts represent 0.64% of *all* retransmitted broadcasts between 2001 and 2003 (824/128,682= .00640338). More significantly, the BGEA broadcasts appear on some of the most extensively retransmitted stations, including superstations WGN Chicago, WPIX New York, KTLA Los Angeles, WSBK Boston, WWOR New York, and KCAL Los Angeles. See **Exhibit 4**. Consequently, if there had been a measured viewership rating of the BGEA broadcasts, more likely than not it would have been significant.

The explanation for the omission is simple but, as stated previously, brings into question the entirety of the RODP reports. During 2001-2003, BGEA broadcasts appeared during the periods covered by the RODP reports on only a handful of occasions. Specifically, BGEA program broadcasts occurred on only five occasions during February 2001, four occasions during February 2002, and zero broadcasts during February 2003. That is, of 824 BGEA program broadcasts from 2001-2003, an aggregate of nine broadcasts occurred during the timeframe on which the SDC chooses to rely in order to allocate all royalties. Given the limited timeframe covered by the RODP reports, and the small number of programs that are being surveyed, the possibility that the RODP reports might inequitably omit any value to a program (or several programs, in the case of BGEA) is not only possible, it is likely.

In sum, absent the SDC submission of testimony by an expert statistician with an expertise in Nielsen ratings data, who can affirm how such limited broadcasts for so many programs is statistically significant, and who explains how such measurements could still maintain a limited relative error rate,[9] the Nielsen RODP data is of questionable validity. Mr. Sanders is not that witness. In a phrase, even if it were legitimate to consider "local ratings" data in order to allocate royalties for the *distant* retransmission of programming (which it is not), the Nielsen RODP data is simply too sparse from which to draw any legitimate conclusions.

F. THE SDC'S "LOCAL RATINGS" METHODOLOGY RELIES ON THE MOST ADVANTAGEOUS INFORMATION CONTAINED IN THE RODP REPORTS, AND IGNORES SIGNIFICANTLY LESS ADVANTAGEOUS INFORMATION CONTAINED THEREIN.

Although there is a logical misstep in relying on *local* ratings data to allocate *distant* retransmission royalties, particularly when the local ratings data is derived from stations that might not have even been distantly retransmitted, I additionally

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[9] At **Exhibit 3**, p. SDC00000513, Nielsen calculates the Statistical Tolerances for the RODP figures, but such calculation begins at an attributed 5% rating. It therefore cannot be applied to *any* of the devotional programming household projections because their ratings are dramatically lower, even *if* measurements are reported by Nielsen. See, e.g., **Exhibit 3**, pp. SDC00000560-564. For example, the two devotional programs in these proceedings that Mr. Sanders asserts are "among the best performers" are "Hour of Power" and "In Touch". However, in the 2001 RODP report, both garner only an average rating of 0.9%. **Exhibit 3**, pp. SDC00000540. In fact, more than two-thirds of the devotional programming that reflect *any* measurements garner a mere 0.3% average rating, again raising issue with the validity of such measurements. Id.

observed that the RODP reports provide varied figures for what appears to be the same measurement. Specifically, the RODP reports contain, *inter alia*, an explanation of the report contents, program rankings according to projected viewership, average projected viewership per broadcast, and details about the projected viewership for any given measurable program.

Appendix B to Mr. Sanders' testimony in the SDC written direct statement reflects the figures utilized from the RODP reports as the ultimate basis for value allocation between IPG and SDC programming. From what I can surmise from comparing the RODP reports and Appendix B, the Appendix B figures were derived from a single entry on each of the RODP "detail" pages.

For example, pages SDC00000560-564 of **Exhibit 3** are the "detail" pages for "Benny Hinn's This Is Your Day" for February 2001. On the initial page there is an entry of "128" under the heading "TOTAL HHLDS (000)", presumably reflecting a projection of 128,000 households for the program during February 2001. This is the figure on which Mr. Sanders relies to create Appendix B to his testimony and, for example, the figure "128" appears in Appendix B as the figure allocated to Benny Hinn Media Ministries for calendar year 2001.

Nonetheless, elsewhere in the RODP reports, a *different* figure is provided for projected DMA household viewing for this exact same program. Specifically, on page "R-7" of each RODP report, there is a ranking of the measured programs which also provides a figure of projected viewers for the aggregate DMAs. This information appears in the next to last column of each page "R-7". Attached as **Exhibit 5** are the "R-7" pages for each of the years 2000-2003.

Making a side-by-side comparison with the entries appearing in Appendix B to Mr. Sanders' report, discrepancies exist from the figures appearing in the "R-7" pages. See **Exhibit 6**. While the discrepancies of percentages allocable to IPG programming do not appear extraordinary, they represent significant royalties. A summary of the discrepancies are reflected in the table below.

TABLE 3

IPG % from RODP	**Appendix B (from "detail" pages)**	**per page "R-7"**	**Difference**
2000	28.3%	29.1%	.8%
2001	27.2%	28.1%	.9%
2002	32.6%	33.3%	.7%
2003	31.8%	32.3%	1.1%

The initial question, of course is why Mr. Sanders elected to rely on the figures buried in the "detail" pages of the RODP reports, rather than the summarized figures already available in the "R-7" pages. No hint of the answer appears in his testimony, but it presumably relates to such figures being slightly more advantageous to the SDC. In fact, when utilizing RODP figures in other proceedings, the SDC has used the figures from the R-7 pages rather than the figures buried in the "detail" pages. See, e.g., Consolidated Docket No. 14-CRB-0010-CD/SD (2010-2013), *Written Direct Statement of Settling Devotional Claimants, Testimony of E. Erkam* at p. 19 *et seq*. (Dec. 29, 2017). While there is a logical misstep by the use of *local* ratings data to allocate *distant* retransmission royalties, if any use were made of the local ratings data wherein discrepancies of projected viewers exists, such use should logically be of such information as is least favorable to the presenting party, i.e., the figures set forth above.

Respectfully submitted,

By_______/s/________________
Raul C. Galaz

January 8, 2018

DECLARATION OF RAUL GALAZ

I declare under penalty of perjury that the foregoing testimony is true and correct, and of my personal knowledge.

Executed on January 8, 2018 __________/s/_________________

Raul C. Galaz

EXHIBIT 1

REDACTED

EXHIBIT 2

REDACTED

EXHIBIT 3

REDACTED

EXHIBIT 4

REDACTED

EXHIBIT 5

REDACTED

EXHIBIT 6

REDACTED

Certificate of Service

I hereby certify that on Monday, January 08, 2018 I provided a true and correct copy of the Testimony of Raul Galaz INDEPENDENT PRODUCERS GROUP REBUTTAL TO THE WRITTEN DIRECT STATEMENT OF THE SETTLING DEVOTIONAL CLAIMANTS Redacted Public Version to the following:

Settling Devotional Claimants (SDC), represented by Clifford M Harrington served via Electronic Service at clifford.harrington@pillsburylaw.com

Signed: /s/ Brian D Boydston