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IN THE MATTER OF:)
)
DETERMINATION OF RATES) Docket No.
AND TERMS FOR MAKING AND) 16-CRB-0003-PR
DISTRIBUTING PHONORECORDS) (2018-2022)
(PHONORECORDS III),)
-----X

OPEN SESSION

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7 AND TERMS FOR MAKING AND) 16-CRB-0003-PR

8 DISTRIBUTING PHONORECORDS) (2018-2022)

9 (PHONORECORDS III),)

10 -----X

11 BEFORE: THE HONORABLE SUZANNE BARNETT

12 THE HONORABLE JESSE M. FEDER

13 THE HONORABLE DAVID R. STRICKLER

14 Copyright Royalty Judges

15

16 Library of Congress

17 Madison Building

18 101 Independence Avenue, S.E.

19 Washington, D.C.

20

21 March 16, 2017

22 9:00 a.m.

23 VOLUME VI

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1 P R O C E E D I N G S

2 (9:12 a.m.)

3 JUDGE BARNETT: Good morning. Please be
4 seated.

5 We heard from our attorney/clerk. She
6 takes the red line in, and so she won't about here
7 for about 45 minutes. So if you have any exhibits,
8 I'm going to ask that someone in the room just keep
9 close account of what we're doing with the exhibits
10 so we can update her when she gets here. Thanks.
11 Who is volunteering? Great. Thank you.

12 I think, Mr. Zakarin?

13 MR. ZAKARIN: I think Mr. Elkin is still
14 on direct.

15 JUDGE BARNETT: Oh, Mr. Elkin. Okay.

16 MR. ELKIN: Your Honor, I think we're
17 still in restricted session.

18 JUDGE BARNETT: Okay. We remain in
19 restricted session. So anyone who is not permitted
20 to hear confidential information, if you will please
21 wait outside.

22 (Whereupon, the trial proceeded in
23 confidential session.)

24

25

1 O P E N S E S S I O N

2 BY MR. ZAKARIN:

3 Q. Mr. Mirchandani, you've talked about your
4 employment history, and you have worked for record
5 labels, correct?

6 A. Correct.

7 Q. You haven't ever worked for a music
8 publishing company, have you?

9 A. That is correct. When I was at Ultra
10 Music, we did have a publishing catalogue, but it
11 was primarily a record label.

12 Q. Have you ever worked closely -- strike
13 that.

14 Have you ever worked with songwriters?

15 A. In my professional role, no.

16 Q. Now, do you know which precise Amazon
17 company employs you?

18 A. I'm not familiar with the exact corporate
19 structure of Amazon.

20 Q. Okay. But all of them are ultimately
21 owned by Amazon, wholly-owned by Amazon.com, Inc.?

22 A. I believe that is correct, yes.

23 Q. Okay. And, technically, I think that the
24 company that you're working for is -- is Amazon
25 Digital Services; is that correct?

1 A. I think that -- that describes the
2 company that houses our digital music business,
3 correct, yes.

4 Q. Okay. And the operations of the -- the
5 group that you work with are supervised -- or,
6 rather, subject to the oversight and approval of
7 Amazon.com, Inc. executives; isn't that correct?

8 I think that was garbled, so why don't I
9 withdraw that and try that in English.

10 You report to Steve Boom; is that right?

11 A. That is correct.

12 Q. Okay.

13 A. Well, actually one -- one clarification.
14 I have and I have a new direct manager who -- who
15 then reports to Steve Boom.

16 Q. Is that new since your deposition?

17 A. It is.

18 Q. Okay. And Mr. Boom reports to
19 Jeff Blackburn?

20 A. He does.

21 Q. And, to your knowledge, Mr. Blackburn
22 reports directly to Mr. Bezos?

23 A. He does.

24 Q. Okay. Your group licenses content from
25 record labels and music publishers, right?

1 A. Yes.

2 JUDGE STRICKLER: When you say "your
3 group," are you referring to Amazon Digital
4 Services.

5 MR. ZAKARIN: Yes.

6 JUDGE STRICKLER: Or something within
7 that?

8 MR. ZAKARIN: Well, why don't we clarify.

9 BY MR. ZAKARIN:

10 Q. Is there some division or entity that
11 does the actual licensing or is it just Amazon
12 Digital Services that does so?

13 A. So what I -- it's -- yeah, let me
14 clarify. When I was referring to group, I was
15 referring to my team. My team is responsible for
16 the licensing we do with record labels and music
17 publishers.

18 JUDGE STRICKLER: And the team is within
19 Amazon Digital Services?

20 THE WITNESS: We -- yes, we sit within
21 the digital music business. Again, I'm not
22 intimately familiar with the actual corporate
23 structure in terms of payroll.

24 JUDGE STRICKLER: Is Amazon Digital
25 Services a separate corporation, or you don't know?

1 THE WITNESS: I don't know. I know it's
2 a wholly-owned and controlled part of Amazon.

3 BY MR. ZAKARIN:

4 Q. Now, I think as you testified on direct,
5 from the beginning Amazon built its business
6 initially starting with books and then the second
7 thing it moved into was actually a music store,
8 correct, an on-line music store?

9 A. That is correct.

10 Q. So virtually from the beginning Amazon
11 has been involved as a significant part of its
12 business in the music industry?

13 A. I'm not sure what you mean by
14 "significant."

15 Q. Well, it was certainly one of the
16 formative parts of its business early on. Fair?

17 A. It was the second category that we
18 entered.

19 Q. And over time, Amazon has expanded its
20 offering to include a digital download store, right?

21 A. Correct.

22 Q. And then it started its locker service?

23 A. Correct.

24 Q. And then it started the Prime Music
25 streaming service?

1 A. Correct.

2 Q. And most recently, last October, it
3 started Amazon Music Unlimited? Is that right?

4 A. Correct.

5 Q. Okay. And I think, if I -- if I
6 understood your testimony correctly, it's true,
7 isn't it, that Amazon started Amazon Prime Music
8 because it saw that the consumption of music was
9 changing, first from CDs to MP3s and then from MP3s
10 to streaming; isn't that right?

11 A. Correct.

12 Q. And, indeed, Amazon saw that there was a
13 shift in its customers evidenced by the declining
14 revenues in the sale of digital downloads and the
15 growth out in the marketplace of other streaming
16 services?

17 A. Can you repeat the question?

18 Q. I can try.

19 A. Yeah.

20 Q. Amazon saw a format shift in its own
21 customers evidenced by declining revenues from the
22 sale of digital downloads and the growth of
23 streaming services out in the marketplace?

24 A. We -- we saw a shift both in our
25 customers and in the overall market segment from

1 downloads to streaming.

2 Q. And, indeed, it's your view, isn't it,
3 that people who are using a streaming service are no
4 longer purchasing digital downloads or not very
5 much, so that streaming is really substitutional for
6 downloads? Isn't that correct?

7 A. It depends.

8 Q. Depends on what?

9 A. The type of streaming service.

10 Q. Maybe you can amplify that. The type of
11 streaming -- whether it's substitutional depends on
12 the type of streaming service; is that your
13 testimony?

14 A. Whether and the extent to which.

15 Q. In paragraph 33 of your witness
16 statement, you state in the last sentence of it --

17 A. Which -- sorry, which --

18 Q. Paragraph 33 of your original witness --

19 A. Which exhibit?

20 Q. Oh, I'm sorry, it's Exhibit 1. And it's
21 on page 14. Now, you state there, "but with
22 customers now migrating to streaming offerings in
23 droves, Amazon -- and the digital music industry
24 broadly -- needs diversified, stratified offerings
25 that appeal to customers of all different purchasing

1 preferences."

2 With respect to that statement, is it
3 true that you noticed or you identified that
4 customers were migrating to streaming offerings in
5 droves?

6 A. Yes.

7 Q. And they were migrating from purchasing
8 digital downloads; isn't that correct?

9 A. Yes, that was a general trend that we
10 saw.

11 Q. And to some extent, Amazon started Amazon
12 Prime Music to capitalize on that format shift;
13 isn't that right?

14 A. I think I described why we started Prime
15 Music. It was -- we saw that our MP -- we saw the
16 trend in the MP3 business, the -- you know, despite
17 the characterization that music was sort of a
18 formative category within Amazon, our MP3 business
19 never -- never, you know, achieved significant
20 scale. There was really one large player in that
21 business. Locker services never scaled for us or
22 for anyone.

23 So as a music team, the reason we started
24 Prime Music was to try to develop another -- a music
25 service. And as I said, we started by looking at

1 our customers and trying to develop a service that
2 would meet a need in the market. And, yes, that was
3 aligned with the fact that customers were moving --
4 we saw adoption of streaming services generally.

5 Q. Now, however successful or unsuccessful
6 Amazon's music store was, Amazon did generate
7 revenue from that music store, didn't it?

8 A. Are you talking about our MP3 store?

9 Q. Sure.

10 A. Yes, we generated revenue in our MP3
11 store.

12 Q. And Amazon also sold physical recordings,
13 didn't it?

14 A. Yes.

15 Q. And generated revenue from those?

16 A. Yes.

17 Q. But Amazon Prime Music was established as
18 a free benefit provided to Amazon Prime subscribers,
19 bundled with other benefits that Amazon provides; is
20 that right?

21 A. Amazon is offered -- I'm sorry, Amazon
22 Prime Music is offered as a benefit to Prime
23 members, correct.

24 Q. At no further charge, other than their
25 Prime subscription?

1 A. That is correct.

2 Q. And the monthly cost of an Amazon Prime
3 subscription, the membership, is \$9.99 a month?

4 A. It's \$99 per year.

5 Q. But it's offered on a monthly basis as
6 well or only on an annual basis?

7 A. We -- we've introduced an annual -- or a
8 monthly plan as well.

9 Q. Is the monthly plan \$9.99?

10 A. I'd have to -- I'd have to confirm that.

11 Q. If Amazon launched Prime Music because it
12 saw a shift from download to streaming services, why
13 would Amazon want to offer Prime Music for free if
14 it understood that Prime Music would be
15 substitutional for its sale of digital downloads and
16 physical recordings?

17 MR. ELKIN: Objection, lack of
18 foundation.

19 JUDGE BARNETT: Overruled.

20 THE WITNESS: Can you repeat the
21 question?

22 BY MR. ZAKARIN:

23 Q. I doubt I can do it that way, but let me
24 try it another way.

25 By offering Prime Music as a free

1 benefit, whereas before Amazon was generating
2 revenue from the sale of CDs and physical -- or
3 digital downloads and physical recordings, Amazon
4 was reducing its own revenue; isn't that right? At
5 least from music?

6 A. Given the shift that we saw in the
7 market, I believe we had concluded that the MP3
8 market, irrespective of our choice to launch a
9 streaming service, was contracting and that there
10 was -- the long -- there wasn't a long-term business
11 there.

12 So our decision to launch Prime Music,
13 while the -- the trends in, you know, the download
14 market were happening was -- was just -- you know,
15 the trends were happening independent of our
16 decision to launch the service.

17 Q. Okay. So you viewed it as a -- the
18 digital download and physical business as a rapidly
19 declining business; is that right?

20 A. I was talking about the MP3 business.
21 And so it was certainly not a expanding business.
22 And as I said, we had never achieved significant
23 scale.

24 So with the -- us not having, again,
25 achieved scale and with there not being significant

1 growth in the market, and then when we were -- we
2 were starting to see declines, yes, we didn't see a
3 -- it as being a significant strategic business for
4 us.

5 JUDGE BARNETT: Could I ask
6 Mr. Mirchandani, do you know if the increase in the
7 annual subscription, Prime subscription rate was
8 coincident with the addition of video or music or
9 both? Or if it was separate and apart from those?

10 THE WITNESS: Which increase are you
11 referring to?

12 JUDGE BARNETT: From \$79.99 to \$99.99.

13 THE WITNESS: So I am not on Prime team
14 and I didn't drive that decision. My understanding
15 of that decision is that the -- and it was increased
16 before we launched Prime Music, but my understanding
17 of that decision is that the cost of Prime had been
18 \$79 for a -- for a long time.

19 When we first introduced Prime, there --
20 there was a limited number of products that are
21 actually eligible for Prime shipping. Over the
22 years, that has increased significantly. There are
23 real infrastructure costs involved in increasing the
24 amount of selection available for Prime.

25 JUDGE BARNETT: That's okay. It's --

1 it's not your area, but what you're saying is that
2 switch happened, that increase happened before Prime
3 Music was launched?

4 THE WITNESS: It happened before Prime
5 Music was launched. And the one -- the one thing I
6 can say because I was on the music team is that it
7 was not driven by the coming introduction of music.

8 JUDGE BARNETT: Thank you.

9 BY MR. ZAKARIN:

10 Q. It's a fact, isn't it, Mr. Mirchandani,
11 that Amazon believed that providing music as a free
12 benefit of Prime membership would help it attract
13 people to Prime membership and also help it retain
14 people? Isn't that true?

15 A. Our -- our primary belief was that it
16 would help engagement and -- engagement and
17 conversion -- sorry, conversion and renewal. We
18 didn't see it as -- we didn't see new Prime -- Prime
19 customers as being a huge driver.

20 While a customer could sign up to access
21 Prime Music, there are many other alternatives out
22 there at lower cost. And if you're going to pay \$99
23 just to access Prime Music, for almost the same
24 price you could access a full catalogue service.
25 But -- so we primarily viewed it as a way to

1 increase engagement, retention, and also conversion.

2 Q. Retention means keeping Prime members
3 Prime members, right?

4 A. That is correct.

5 Q. Okay. And actually, Amazon, in fact,
6 tracks the acquisition of Prime members and what
7 causes them to become Prime members and tracks as
8 well the retention of Prime members and what causes
9 their retention; isn't that right?

10 A. Yeah, of course, we do. We -- we make a
11 significant investment in Prime Music, both in
12 developing the service and in the content costs.
13 And we have a duty to try to evaluate how that
14 investment is performing.

15 JUDGE FEDER: Excuse me. You also -- you
16 used the terms "conversion" and "engagement." Can
17 you define what you mean by those, please?

18 THE WITNESS: Sure. So engagement is how
19 many customers are engaging with the service. The
20 -- then two terms that I was referring to were
21 conversion. So that is for a customer who is taking
22 a Prime free trial and interacts with the service,
23 how likely -- is there an increase in their
24 likelihood to convert to a paying subscriber. And
25 then for customers who are renewing their

1 subscription, we look at did they use Prime Music
2 and did that increase their likelihood to renew?

3 JUDGE STRICKLER: Thank you.

4 BY MR. ZAKARIN:

5 Q. It's true, is it not, on this subject
6 that Amazon wants to retain and also to acquire
7 Prime subscribers because it knows that they
8 purchase a much higher dollar volume of products and
9 services from Amazon than non-Prime members? Isn't
10 that correct?

11 A. I'm sorry, I just want to make sure I
12 understand the question. Can you repeat it one more
13 time?

14 Q. Sure. It is a fact that Amazon wants to
15 both acquire new Prime members and retain the Prime
16 members that it has because they purchase a much
17 higher dollar volume of goods and services from
18 Amazon than non-Prime members?

19 A. I'm not on our Prime team, so I can't
20 speak to their specific strategy.

21 MR. ZAKARIN: I'm going to move into a
22 restricted area at this point.

23 JUDGE BARNETT: No, because we're going
24 to take our morning recess, after which you may do
25 your restricted area.

1 MR. ZAKARIN: I expected it would be a
2 good time to do that.

3 JUDGE BARNETT: 15 minutes.

4 (A recess was taken at 10:58 a.m. after
5 which the hearing resumed at 11:22 a.m.)

6 JUDGE BARNETT: Please be seated.

7 Mr. Zakarin, we are in unrestricted
8 territory at this time; is that correct?

9 MR. ZAKARIN: No, I think we're moving
10 into restricted territory.

11 JUDGE BARNETT: Oh, we're moving into
12 restricted.

13 MR. ZAKARIN: I think we were out of and
14 now we're back into it.

15 JUDGE BARNETT: Okay. So anyone in the
16 courtroom who is not privy to restricted material,
17 please wait outside.

18 (Whereupon, the trial proceeded in
19 confidential session.)

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25

1 O P E N S E S S I O N

2 DIRECT EXAMINATION

3 BY MR. LANE:

4 Q. Good afternoon, Dr. Hubbard.

5 A. Good afternoon.

6 Q. Could you please state and spell your
7 full name?

8 A. Sure. Robert, R-o-b-e-r-t, Glenn,
9 G-l-e-n-n, Hubbard, H-u-b-b-a-r-d.

10 Q. And what is your profession, sir?

11 A. I'm an economist.

12 Q. How long have you been an economist?

13 A. I finished my Ph.D. in 1983 at Harvard,
14 and then ever since then have been teaching at a
15 variety of universities, currently Columbia
16 University in New York, and I have had two stints in
17 public service during that time.

18 Q. Do you hold any other positions aside
19 from teaching at Columbia?

20 A. Yes, I am also the dean of the Business
21 School. I came to Columbia as professor of
22 economics. And the Trustees asked me to be dean of
23 the Business School, where I am also Professor of
24 Finance.

25 Q. Have you had occasion to teach at schools

1 aside from Columbia?

2 A. I have. I began my career at
3 Northwestern University in Evanston, also taught at
4 the University of Chicago and Harvard.

5 Q. And what areas of economics do you
6 consider yourself to be a specialist in?

7 A. Well, I am an applied economist with
8 actually a number of fields. In microeconomics, my
9 specialist or my fields of specialization are in the
10 organization of industry and markets, in public
11 economics, which is the economics of the public
12 sector, and corporation finance.

13 On the macroeconomic side, I have done a
14 variety of research efforts in money and banking and
15 macroeconomics and asset pricing and finance.

16 Q. Have you ever published any a
17 peer-reviewed articles in your fields of expertise?

18 A. Yes, I have published more than 100
19 peer-reviewed articles, as well as books and
20 textbooks and popular writings or at least popular
21 for an economist.

22 Q. And have you ever worked in the public
23 sector or held any positions in the public sector?

24 A. I have. In the early '90s, I ran the
25 Office of Tax Policy inside the U.S. Treasury

1 Department, which is basically revenue estimates for
2 the government, regulations involving tax and so on.

3 And then in the early 2000s, I was
4 President Bush's Chief Economic Advisor, chairman of
5 the Council of Economic Advisors, at which time I
6 also chaired the OECD's Economic Policy Committee.

7 Q. And did you ever have a role in the
8 Congressional Budget Office?

9 A. I have. I have been an advisor twice on
10 the panel for the director of the Congressional
11 Budget Office, an ad hoc group of economists that
12 advise him.

13 Q. And have you served on any boards of
14 directors?

15 A. I have. I am currently on the Board of
16 ADP, Automatic Data Processing. If we don't pay
17 you, we would like to. The BlackRock Closed-End
18 Funds, Complex, and Met Life Insurance Company. I
19 have been on other corporate boards but those are my
20 present boards.

21 Q. Have you had occasion to provide expert
22 testimony in the past?

23 A. I have.

24 Q. Approximately how many times?

25 A. I would say over the course of my career

1 well over 50 times.

2 Q. And in what types of forms or settings?

3 A. In federal court, state court, tax court,
4 regulatory proceedings for the SEC, for
5 telecommunications.

6 Q. And with respect to your being offered as
7 an expert, have you had any tribunal or court or
8 body refused to recognize your expertise?

9 A. No.

10 MR. LANE: Members of the panel, we would
11 offer Dr. Hubbard as an expert economist in the
12 field of applied microeconomics and industrial
13 organization economics.

14 MR. ZAKARIN: We will stipulate.

15 JUDGE BARNETT: The panel accepts your
16 stipulation, and Dr. Hubbard is so qualified.

17 MR. LANE: Thank you, Your Honor. And I
18 believe we have come to an agreement with respect to
19 the exhibits we're going to be using with
20 Dr. Hubbard. That would be Amazon Exhibit 22, and
21 the appendices related to that.

22 JUDGE BARNETT: 22, okay.

23 MR. LANE: Amazon Exhibits 23, 24, 25,
24 26, 27, 28, and 29.

25 MR. ZAKARIN: We agree.

1 JUDGE BARNETT: Those enumerated exhibits
2 are admitted.

3 (Amazon Exhibit Numbers 22, 23, 24, 25,
4 26, 27, 28, and 29 were marked and received into
5 evidence.)

6 MR. LANE: With that, I would like to
7 save the substance until we can have him
8 cross-examined at the same time.

9 JUDGE BARNETT: Thank you, Dr. Hubbard.
10 Your testimony to this point has been brilliant and
11 very elucidating.

12 THE WITNESS: Thank you. I hope I
13 haven't peaked too soon.

14 (Laughter)

15 JUDGE BARNETT: And we look forward to
16 seeing you again in the near future.

17 THE WITNESS: Thank you, Your Honor.

18 JUDGE BARNETT: Anything further we can
19 do this afternoon then? No? Thank you.

20 MR. ASSMUS: Your Honor, the next four
21 witnesses are four Spotify witnesses. I wanted to
22 give you that preview. On Monday morning we're
23 starting with a fact witness, Will Page; our
24 economic expert, Dr. Leslie Marx. That's Monday.
25 Following on Tuesday, two more fact witnesses, Jim

1 Lucchese and the CFO, Barry McCarthy.

2 JUDGE BARNETT: Thank you so much. We
3 still would like to see the list. Did you send it?

4 MS. MAZZELLO: I did. I sent it to the
5 CRB e-mail address.

6 JUDGE BARNETT: Perfect. I haven't had a
7 chance to check.

8 MR. ASSMUS: And one, we -- as I
9 indicated, I put those in order. We believe we're
10 going to take Jim Lucchese, who should be a very
11 short witness, first thing on Tuesday morning, give
12 the rest of the day to Mr. McCarthy, the CFO.

13 JUDGE BARNETT: Okay. Thank you.

14 MR. ASSMUS: Thank you.

15 JUDGE BARNETT: Thank you very much. We
16 have made it through the first full week, and we
17 look forward to seeing everyone here again Monday
18 morning, 9:00 o'clock. And we will be at recess
19 until that time.

20 (A recess was taken at 4:43 p.m., after
21 which the trial recessed, until 9:00 a.m. on Monday,
22 March 20, 2017.)

23

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25

1	C O N T E N T S				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	RISHI MIRCHANDANI				
4		1380	1438	1615	1631
5	ROBERT GLENN HUBBARD				
6		1643			
7					
8	AFTERNOON SESSION: 1503				
9					
10	CONFIDENTIAL SESSIONS: 1380-1453, 1469-1642				
11					
12	E X H I B I T S				
13	EXHIBIT NO:	MARKED/RECEIVED		REJECTED	
14	AMAZON				
15	3		1522		
16	22		1647		
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24	129		1496		
25	162		1640		

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2	164	1640
3	1146	1564
4	1373	1596
5	PANDORA	
6	975	1565
7	APPLE	
8	1677	1441
9	COPYRIGHT OWNERS	
10	2618	1561
11	2644	1524
12	2645	1529
13	3005	1488
14	3006	1569
15	3007	1471
16	3051	1477
17	3054	1477
18	3056	1511
19	3059	1490
20	3225	1544
21	3383	1526
22		
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CERTIFICATE

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I certify that the foregoing is a true and accurate transcript, to the best of my skill and ability, from my stenographic notes of this proceeding.

3-17-77 *Ku Montesu*

Date Signature of the Court Reporter