Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of	)	
DETERMINATION OF ROYALTY RATES FOR DIGITAL PERFORMANCE IN SOUND RECORDINGS AND EPHEMERAL RECORDINGS (WEB IV)	)	**Docket No. 14-CRB-0001-WR (2016-2020)**

WRITTEN DIRECT CASE OF iHEARTMEDIA, INC.
Volume 1

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October 7, 2014

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INTRODUCTORY MEMORANDUM TO THE WRITTEN DIRECT CASE OF iHEARTMEDIA, INC.

iHeartMedia, Inc. respectfully submits its written direct evidence for the consideration of the Judges. As the Judges will see, we propose a searching reexamination of the statutory rates, based on economic evidence, to the end of establishing rates that reflect what willing buyers and sellers would set in an actual, functioning market.

What we seek is a reset: the current rates, set by prior panels, were based not merely on limited or non-existent economic evidence, but on *bad* economic evidence. As the Judges have observed in recent orders, a linchpin of a prior proceeding – the testimony of Dr. Michael Pelcovits presented by SoundExchange – is indefensible and obviously wrong. Yet it was that testimony that justified high per-play rates that have afflicted webcasters and inhibited the growth of the webcasting industry, as the enclosed testimony of iHeartMedia's CEO Robert Pittman and venture capitalist David Pakman explains.

It is plain that the current rates are too high. As the Judges will see in the enclosed written testimony of Professors Daniel R. Fischel and Douglas G. Lichtman, the

current rate is higher than the rate that would maintain full compensation for copyright owners if webcasting *eliminated* all their other revenues. That is, current rates pay those owners *as if* internet radio were a complete substitute for purchasing music, attending concerts, and all other sources of revenue for the labels.

But in fact we know that this is not the case. As the testimony of Professor Brett Danaher demonstrates, the webcasting services at issue in this proceeding *promote* sales, thereby *producing* sales (and revenues) for copyright owners rather than taking them away. As the testimony of iHeartMedia's Tom Poleman and Bob Pittman proves, exposure through "spins" is the critical element that drives music sales, and artists and record labels exert enormous energy to place their works before the public on iHeartMedia's stations for that reason. Copyright holders want to have their cake and eat it too: the indisputable promotional benefits of spins *and* the highest possible payment rate they can gain.

It is time for a fresh and more penetrating look, based on substantial new evidence that was not available to prior Judges. We now have, for the first time, actual evidence of a market negotiation between a major record label (Warner) and a leading webcaster (iHeartMedia). The result of that recent negotiation established, in economic substance, two rates: a rate of $0.0023 to $0.0025 – that is, the statutory rate – for the spins of Warner music that iHeartMedia would have performed in the absence of any agreement with Warner; and a rate of **$0.0005** for the *additional* spins iHeartMedia agreed to give Warner as a result of their agreement. This latter rate actually shows what market actors, unconstrained by flawed statutory rates, agree upon as fair per-performance compensation, as Professors Fischel and Lichtman explain in detail in their testimony.

Other economic evidence strongly supports the conclusion that $0.0005 per performance is the market rate. The independent label deals that iHeartMedia has struck set a rate for additional spins that is below $0.0005 per performance. The satellite rate, set by the CRB, likewise supports the $0.0005 per-performance rate. And a careful analysis of the economics of the internet radio business is yet another vector pointing to the reasonableness of this rate – as well as the crippling excess of the rate to which broadcasters are now subject and will be subject through 2015. These vectors are all described in detail in the report of Professors Fischel and Lichtman.

Ultimately, as the Judges will see, the evidence of the promotional benefits of spins is overwhelming, as the testimony of iHeartMedia's Pittman and Poleman, and the data provided by Professor Danaher, demonstrate. Since the days of illegal "payola," copyright holders have competed with each other for the obvious benefits of broad exposure through broadcasting. In a functioning market – without a monopolist SoundExchange, and without a mandatory, artificially high rate the copyright holder can insist upon – buyers and sellers would in fact agree upon a per-performance rate of $0.0005, and indeed they have agreed upon that rate when recent contracts are properly analyzed.

Summary of the Written Testimony of iHeartMedia's Witnesses[1]

A. Expert Witnesses

Daniel R. Fischel and Douglas G. Lichtman are both affiliated with the economic consulting firm of Compass Lexecon, where Professor Fischel serves as President and Professor Lichtman as Senior Consultant. Professor Fischel is also the Lee and Brena

[1] Pursuant to the Interim Protective Order entered on October 2, 2014, iHeartMedia is filing both Restricted and public versions of certain of its written direct statements.

Freeman Professor of Law and Business Emeritus at The University of Chicago Law School, and Professor Lichtman is also a Professor of Law at the University of California Los Angeles. Their joint testimony supports iHeartMedia's rate proposal.

Professors Fischel and Lichtman first consider the license agreements that iHeartMedia has signed with 28 different record labels, including one of the three major record labels, Warner. These agreements are recent, cover precisely the statutory webcasting services at issue here, and were negotiated on both sides between entities with an important stake in establishing market rates. Most importantly, these are the first and most comprehensive agreements of which iHeartMedia is aware that provide a way to determine the rate to which a willing buyer and willing seller would agree for the statutory webcasting services at issue here, in a free market unconstrained by government regulation or interference. Professors Fischel and Lichtman conclude that iHeartMedia's agreements provide a reliable basis to determine a range of rates that meet the statutory criteria applicable in this proceeding, and that iHeartMedia's proposed rate is within this range (indeed, at the high end).

Professors Fischel and Lichtman also perform several additional analyses, each of which provides further confirmation that the current statutory rates are excessive and that the range of rates derived from the iHeartMedia agreements is reasonable. First, they perform a financial analysis of broadcast radio stations to determine the maximum amount such broadcasters would be able to pay for copyright royalties on the simulcasting of their radio broadcasts. Second, they analyze the royalty rates established for satellite digital audio radio services and, using those rates as a benchmark, make appropriate adjustments to determine a reasonable range of rates for the webcasting

services at issue here. Third, they perform a "thought experiment" to demonstrate that the current rates are so excessively high that they would far over compensate copyright holders even under the extreme and unrealistic scenario in which webcasting substituted for *all* other forms of music consumption. Finally, they demonstrate that the previous methodology used to establish rates – the benchmark analysis of SoundExchange's expert, Dr. Pelcovits – is highly flawed and, when corrected, provides further support for iHeartMedia's rate proposal.

Brett Danaher, Ph.D, is an assistant professor of Economics at Wellesley College. His research focuses on digital music and other digital media.

Dr. Danaher's testimony uses data from an Internet consumer panel tracking company to perform an empirical analysis of the effect of the webcasting services at issue here on other forms of music consumption. This analysis demonstrates to a high degree of statistical certainty that non-interactive webcasting services have a significantly greater promotional effect (and/or less substitutional effect) than interactive webcasting services. Dr. Danaher's analysis also provides strong evidentiary support that non-interactive webcasting services have a net promotional effect, whereas interactive webcasting services have a net substitutional effect.

David B. Pakman is a partner at venture capital firm Venrock, and a former founder and investor of a digital music service, with more than 14 years of experience in digital music. His testimony provides support for iHeartMedia's rate proposal and for seeking a fundamental rethinking of the current statutory rates. He demonstrates that, under the current rates, the industry has fared poorly, as demonstrated by the high failure

rate for webcasting services and the lack of investment in these services, relative to other digital industries.

B. Fact Witnesses

Robert Pittman is the Chief Executive Officer and Chairman of the Board of Directors of iHeartMedia. His testimony supports iHeartMedia's rate proposal and its request for a fundamental rethinking of the current statutory rates. He provides background of iHeartMedia's operations and business and establishes the foundation for understanding iHeartMedia's recent licensing agreements with Warner and more than two dozen independent record labels.

Steven Cutler is the Executive Vice President for Business Development and Corporate Strategy at iHeartMedia. His testimony describes iHeartMedia's efforts to reduce its music licensing costs for its Internet radio services. He provides details regarding iHeartMedia's agreements with Warner and the independent labels, including the assumptions and expectations of iHeartMedia's management and Board at the time these agreements were negotiated and entered. He also describes iHeartMedia's efforts to lower its royalty payments by substituting music content to which high rates apply with other content.

Tom Poleman is the President of National Programming Platforms for iHeartMedia. Drawing on his three decades in the radio industry, Mr. Poleman describes the significant ability of live radio to break new artists and songs and drive music sales – regardless of whether it is transmitted via broadcast radio or simulcast. He explains how iHeartMedia's promotional programs for new music enhance iHeartMedia's stations'

natural role as music discovery platforms for listeners, and increase music sales, to the benefit of artists and record labels.

Jeffrey L. Littlejohn is the Executive Vice President for Engineering and Systems Integrations at iHeartMedia. His testimony describes the technology that iHeartMedia has developed to replace the music content played on terrestrial broadcast radio with other content when that radio is simulcast over the Internet.

Respectfully submitted,

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PROPOSED RATES AND TERMS OF iHEARTMEDIA, INC.

Pursuant to 37 C.F.R. § 351.4(b)(3), iHeartMedia, Inc. ("iHeartMedia") proposes the rates and terms set forth herein for eligible nonsubscription transmissions ("Webcast Transmissions") together with the making of ephemeral recordings necessary to facilitate Webcast Transmissions, under the statutory license set forth in 17 U.S.C. §§ 112(e) and 114, during the period January 1, 2016 through December 31, 2020.

Pursuant to 37 C.F.R. § 351.4(b)(3), iHeartMedia reserves the right to revise its proposed rates and terms at any time during the proceeding up to, and including, the filing of its proposed findings of fact and conclusions of law.

PER-PERFORMANCE RATES

For all Webcast Transmissions (except Exempt Simulcast Transmissions, as defined below) and related ephemeral recordings by commercial webcasters (as defined in 37 C.F.R. § 380.2), iHeartMedia proposes the following royalty rate per performance:

$0.0005, for each year of the 2016-2020 rate period.

iHeartMedia requests that the royalty payable under 17 U.S.C. § 112(e) for the making of ephemeral recordings used by the licensee solely to facilitate transmissions for which it

pays royalties as provided above shall be included within, and constitute five percent of, such royalty payments.

iHeartMedia notes that currently pending before the United District Court for the Western District of Virginia in *WTGD1 105.1 FM v. SoundExchange, Inc.*, No. 5:14-cv-00015-MFU-JCH, is the question whether certain nonsubscription simultaneous digital audio retransmissions of over-the-air AM or FM radio broadcasts within a radius of 150 miles from the site of the radio broadcast transmitter (referred to herein as "Exempt Simulcast Transmissions") are exempt from paying statutory royalties. iHeartMedia proposes to treat Exempt Simulcast Transmissions as other Webcast Transmissions for royalty purposes until such time as a court in that case issues a final and non-appealable ruling that there is no legal obligation to do so, at which time iHeartMedia proposes that a rate of zero shall apply, both prospectively and retroactively (through a refund mechanism) to all Exempt Simulcast Transmissions made during the 2016-2020 period.

OTHER TERMS

iHeartMedia requests that the terms currently set forth in 37 C.F.R. § 380 be continued, subject to the following changes set forth below.

1. Amend § 380.10(b) by deleting the period at the end of that section and adding the following subsection (b)(1):

> (b)(1) Notwithstanding the foregoing, Broadcasters need not comply with the statutory license conditions of 17 U.S.C. § 114(d)(2)(C)(i) and (ii), and with the statutory six-month limitation on retention of ephemeral recordings of § 112 in connection with Broadcast Retransmissions, provided that:
>
> (i) with respect to § 114(d)(2)(C)(i), Broadcasters may not consecutively transmit more than one-half (1/2) of the sound recordings on an entire album of sound recordings, including a compilation album (or, in the case of any set or compilation of phonorecords lawfully distributed together as a single unit for sale in the United States, more than one-half (1/2) of the

> sound recordings on any particular single record unit that constitutes a part of the set or compilation of phonorecords concerned), provided that the transmission of any given musical work reasonably classified as classical, jazz, oldies, classic rock, or other similar format other than current "hit" music formats may be rendered in its entirety, and provided further that Broadcasters may not engage in any programming practice designed to evade this limitation; and
>
> (ii) with respect to § 114(d)(2)(C)(ii), Broadcasters may not publish a written or visual advance program schedule, including for streamed archived programming, that specifies that a particular artist or artists or particular sound recordings will be featured at a specified future time, except that Broadcasters transmitting programming reasonably classified as classical, jazz, oldies, classic rock, or other similar format other than current "hit" music formats may publish a schedule of applicable music programming for regularly scheduled programs, documentaries, retrospectives, archival programs, and the like.

This added language ensures that Broadcasters do not need to alter the content of their radio broadcasts simply because they have elected to simulcast those broadcasts over the Internet.

2. Amend the definition of "*Broadcast Retransmissions*" in § 380.11 by adding to the end of that paragraph the following:

> For the further avoidance of doubt, a Broadcast Retransmission does not cease to be a Broadcast Retransmission because the Broadcaster has replaced programming in its retransmission of the radio broadcast, so long as a majority of the programming in any given hour of the radio broadcast has not been replaced.

This language addresses the present technical capability of a Broadcaster engaged in simulcasting over the Internet to replace songs from the radio broadcast with different songs. This language continues to classify simulcasts as Broadcast Retransmissions so long as the majority of the sound recordings in the radio broadcast continue to be transmitted as part of the simulcast.

3.a. Amend § 380.10(b) by adding as § 380.10(b)(2) the following:

(b)(2) Notwithstanding the foregoing, with respect to Broadcaster Webcasts, Broadcasters need not comply with the statutory six-month limitation on retention of ephemeral recordings of § 112 and, furthermore:

(i) with respect to § 114(d)(2)(C)(i), the sound recording performance complement shall be defined to mean the performance of not more than (A) three (3) different selections from any one (1) phonorecord lawfully distributed for public performance or sale during any one (1)-hour period on a particular channel or station; or (B) four (4) different selections of sound recordings by the same featured recording artist or from any set or compilation of phonorecords lawfully distributed together as a unit for public performance or sale during any one (1)-hour period on a particular channel or station; provided that no more than three (3) such selections are transmitted consecutively;

(ii) with respect to § 114(d)(2)(C)(ii), the Broadcaster Webcast may include, prior the transmission of a particular sound recording, an announcement of the title of such upcoming sound recording, the title of the album containing such sound recording, or the name of the artist featured on such sound recording, provided (A) such announcement is delivered solely by means of a DJ-style oral overlay announcement in a manner consistent with typical AM/FM radio programming practices in effect as of the promulgation of this regulation; and (B) the Broadcaster shall not provide or authorize, or undertake affirmative acts that enable or facilitate third parties to provide, any application or service to detect such oral announcements for any purpose other than delivery of the Broadcaster Webcast. For clarity, such prohibited purposes include using such oral announcements to enable listeners to select a particular sound recording to be transmitted to them.

3.b. Amend § 380.1(b) by adding at the end of this section the following:

Notwithstanding the foregoing, Commercial Webcasters need not comply with the statutory six-month limitation on retention of ephemeral recordings of § 112 and, furthermore:

(i) with respect to § 114(d)(2)(C)(i), the sound recording performance complement shall be defined to mean the performance of not more than (A) three (3) different selections from any one (1) phonorecord lawfully distributed for public performance or sale during any one (1)-hour period on a particular channel or station; or (B) four (4) different selections of sound recordings by the same featured recording artist or from any set or compilation of phonorecords lawfully distributed together as a unit for public performance or sale during any one (1)-hour period on a particular channel or station; provided that no more than three (3) such selections are transmitted consecutively;

(ii) with respect to § 114(d)(2)(C)(ii), the Commercial Webcast may include, prior the transmission of a particular sound recording, an announcement of the title of such upcoming sound recording, the title of the album containing such sound recording, or the name of the artist featured on such sound recording, provided (A) such announcement is delivered solely by means of a DJ-style oral overlay announcement in a manner consistent with typical AM/FM radio programming practices in effect as of the promulgation of this regulation; and (B) the Commercial Webcaster shall not provide or authorize, or undertake affirmative acts that enable or facilitate third parties to provide, any application or service to detect such oral announcements for any purpose other than delivery of the Commercial Webcast. For clarity, such prohibited purposes include using such oral announcements to enable listeners to select a particular sound recording to be transmitted to them.

This new language gives providers of custom, non-interactive webcasts — whether Broadcaster Webcasts or Commercial Webcasts — greater flexibility to provide promotional value to rights holders.

4.a. Amend § 380.4(e) as shown below:

(e) *Late payments and statements of account.* A Licensee shall pay a late fee ~~of 1.5% per month, or the highest lawful rate, whichever is lower,~~ equal to the underpayment penalty in 26 U.S.C. § 6621 for any payment and/or statement of account received by the Collective after the due date. Late fees shall accrue from the due date until payment and the related statement of account are received by the Collective.

4.b. Amend § 380.13(e) as shown below:

(e) *Late fees.* A Broadcaster shall pay a late fee for each instance in which any statement of account or any report of use is not received by the Collective in compliance with applicable regulations by the due date. The amount of the late fee shall be equal to the underpayment penalty in 26 U.S.C. § 6621 and shall be applied to the ~~1.5% of a~~ late payment, or ~~1.5% of~~ to the payment associated with a late statement of account or report of use~~, per month, or the highest lawful rate, whichever is lower~~. The late fee shall accrue from the date of the payment, statement of account or report of use until a fully compliant payment, statement of account or report of use is received by the Collective, provided that, in the case of a timely provided but noncompliant statement of account or report of use, the Collective has notified the Broadcaster within 90 days regarding any noncompliance that is reasonably evident to the Collective.

This language replaces the existing late fee of 1.5 percent per month with the underpayment penalty set forth in 26 U.S.C. § 6621(a)(2), (b), (c), which is an annual rate equal to the federal short-term rate as determined by the Secretary of the Treasury plus three (3) percentage points or plus five (5) percentage points where the late payment exceeds $100,000.

5. Amend § 380.6(g) and § 380.15(g) as shown below (the bracketed terms identify text that would differ between the two sections):

> (g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was ~~an~~ a net underpayment (i.e., underpayments less any overpayments) of 10% or more, in which case the [Licensee / Broadcaster] shall, in addition to paying the amount of any net underpayment, bear the reasonable costs of the verification procedure. In the event it is finally determined that there was a net overpayment, the [Licensee / Broadcaster] may deduct the amount of that net overpayment, plus interest calculated at the late payment rate in [§ 380.4(e) / § 380.13(e)], from its next payment(s) due to the Collective until the full amount of the overpayment has been recouped.

The added language recognizes that an audit may reveal overpayments as well as underpayments, clarifies that the costs of the audit will be shifted only if the *net* underpayment was 10 percent or more, and provides the Licensee or Broadcaster with the ability to recover through deductions against future amounts due any net overpayments discovered in the audit.

6. Add as § 380.4(i) and § 380.13(k) the following (the bracketed terms identify text that would differ between the two sections):

> (_) *Overpayments*. If the [Licensee / Broadcaster] determines, within three (3) calendar years of paying to the Collective a monthly amount due, that the [Licensee / Broadcaster] overpaid the royalty payments due under [§ 380.3 / § 380.12], the [Licensee / Broadcaster] may reduce the royalty payments due on its next monthly payment(s) by the amount of the overpayment, plus interest calculated at the late payment rate in [§ 380.4(e) / § 380.13(e)], until the full amount of the overpayment has been recouped. The [Licensee / Broadcaster] shall include in its statement

> of account for each month in which it is deducting amounts to recover an overpayment such information as is necessary to calculate the amount of the overpayment.

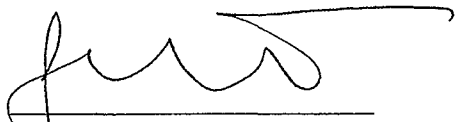
This language gives Licensees and Broadcasters the ability to recover overpayments of royalties due.

7. Add as § 380.9 and § 380.18 the following (the bracketed terms identify text that would differ between the two sections):

> § 380.__ **Notice and Cure**
>
> For any material breach of these regulations by a [Licensee / Broadcaster] that the Collective intends to assert in any way against the [Licensee / Broadcaster], the Collective shall first provide notice of such material breach to the [Licensee / Broadcaster] by certified mail, and the [Licensee / Broadcaster] shall have 30 days from the receipt of such notice of material breach to cure such material breach.

This requires the Collective to provide notice to Licensees and Broadcasters of asserted breaches of the terms of the statutory license and provides Licensees and Broadcasters a period in which to cure the alleged breach without penalty.

Respectfully submitted,



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DECLARATION AND CERTIFICATION OF JOHN THORNE ON BEHALF OF iHEARTMEDIA, INC.

1. I am one of the counsel for iHeartMedia, Inc. in this proceeding.

2. On October 2, 2014, the CRB adopted an Interim Protective Order that limits the disclosure of materials and information marked "RESTRICTED" to outside counsel and their law firm's staff while the CRB considers three specific issues. *See* Interim Protective Order (Oct. 2, 2014). The Interim Protective Order does not define confidential information or state that participants must submit declarations or affidavits identifying the materials they have designated confidential. In requesting a protective order, iHeartMedia, SoundExchange, and several other participants proposed that confidential information may "include information that is commercial or financial information that the Producing Party has reasonably determined in good faith that, if disclosed, would either competitively disadvantage the Producing Party, provide a competitive advantage to another party or entity, or interfere with the ability of the Producing Party to obtain like information in the future." Joint Motion to Adopt Protective Order, Appendix A at III (Sept. 23, 2014). iHeartMedia, SoundExchange, and the other joining participants further proposed that any party producing confidential information must "deliver with all Restricted materials an affidavit or declaration . . . listing all materials marked with the

'Restricted' stamp and the basis for the designation." *Id.* at IV.2. Both provisions were modeled on provisions in protective orders the CRB issued in prior rate determination and distribution proceedings.

3. I submit this declaration listing the information and materials iHeartMedia has designated confidential and the basis for those designations in compliance with Sections III and IV of the Proposed Protective Order or similar provisions in any final protective order the CRB may issue.

4. I have reviewed iHeartMedia's Introductory Memorandum, witness testimony, accompanying exhibits, and Redaction Log. After consultation with my client, I have determined to the best of my knowledge, information and belief that portions of iHeartMedia's Introductory Memorandum, witness testimony, and accompanying exhibits contain confidential information. The confidential information is identified in the attached Redaction Log, redacted in the public copies of iHeartMedia's filing, bracketed in the "RESTRICTED" copies of iHeartMedia's filing, and described in more detail below.

5. The redacted confidential information includes, but is not limited to, testimony and exhibits involving (a) contracts, contractual terms, and contract strategy that are proprietary, not available to the public, competitively sensitive and often subject to express confidentiality provisions with third parties; (b) confidential internal business information, financial projections, financial data, and competitive strategy that are proprietary, not available to the public, and commercially sensitive; and (c) communications between iHeartMedia and content providers concerning activities that, if disclosed, would disrupt ongoing partnerships and collaborations, and interfere with future partnerships and collaborations.

6. If the redacted confidential information were to become public, it would place iHeartMedia at a commercial and competitive disadvantage, unfairly advantage other parties to the detriment of iHeartMedia, and jeopardize iHeartMedia's business interests. Information related to iHeartMedia's confidential contracts or iHeartMedia's relationships with content providers could be used by iHeartMedia's competitors, or by other content providers, to formulate rival bids, bid up iHeartMedia payments, or otherwise unfairly jeopardize iHeartMedia's commercial and competitive interests.

7. With respect to the financial information, I understand that iHeartMedia has not disclosed to the public or the investment community the financial information that it seeks to restrict here, including its internal financial projections and specific royalty payment information. Consequently, neither iHeartMedia's competitors nor the investing public has been privy to that information, which iHeartMedia has treated as highly confidential and sensitive, and has guarded closely. In addition, when iHeartMedia does disclose information about its finances to the market as required by law, iHeartMedia provides accompanying analysis and commentary that contextualizes disclosures by its officers. The information that iHeartMedia seeks to restrict by designating it confidential is not intended for public release or prepared with that audience in mind, and therefore was not accompanied by the type of detailed explanation and context that usually accompanies such disclosures by a company officer. Moreover, the statements and exhibits include information that has not been approved by iHeartMedia's Board of Directors, as such sensitive disclosures usually are, or accompanied by the typical disclaimers that usually accompany such disclosures. iHeartMedia could experience negative market repercussions and competitive disadvantage were this confidential financial information released publicly without proper context or explanation.

8. The written testimony of Steven Cutler, Executive Vice President, Business Development and Corporate Strategy for iHeartMedia, and all but two of the exhibits accompanying his testimony contain information regarding the terms of contracts with record labels, iHeartMedia's internal financial projections, and information concerning iHeartMedia's costs and royalty payments. None of this information is publically known or available. For the reasons discussed in paragraphs 7 and 8, disclosure of the terms of these contracts and non-public financial data would competitively disadvantage iHeartMedia. Mr. Cutler's testimony and the exhibits accompanying his testimony also contain material non-public terms of agreements with record labels that are subject to confidentiality provisions as well as material non-public details of negotiations with record labels.

9. The written testimony of Jeffrey Littlejohn, Executive Vice President for Engineering and Systems Integration for iHeartMedia contains confidential information regarding iHeartMedia's strategy in contract negotiations with record labels and the development of proprietary, patented technology. Disclosure of this information would, for the reasons discussed in paragraph 6 among others, competitively disadvantage iHeartMedia.

10. The written testimony of Tom Poleman, President of National Programming Platforms for iHeartMedia, and three of the exhibits accompanying his testimony contain competitively sensitive information concerning iHeartMedia's ongoing contractual relationships and strategic partnerships with content providers. Disclosure of the details of these contractual relationships and strategic partnerships would cause iHeartMedia competitive harm, and jeopardize iHeartMedia's ongoing relationships with these content providers. In addition, the testimony and exhibits sponsored by Mr. Poleman include non-public communications between iHeartMedia personnel and individual representatives of content providers. Disclosure of these

individuals' communications with iHeartMedia's personnel would jeopardize iHeartMedia's relationships with these individuals, and thereby cause iHeartMedia competitive harm.

11. The written testimony of Professors Fischel and Lichtman and the accompanying exhibits contain material non-public information concerning the particular rates and terms agreed to by specific iHeartMedia direct licensors; material non-public internal financial data concerning iHeartMedia's subscriber counts, royalty payments, and cost structure; and iHeartMedia's internal financial projections and business strategies. None of this information is publically known or available. Disclosure of this information would, for reasons discussed in paragraphs 7 and 8 among others, competitively disadvantage iHeartMedia.

12. The contractual, commercial and financial information described in the paragraphs above and detailed on the accompanying Redaction Log must be treated as restricted confidential information in order to prevent business and competitive harm that would result from the disclosure of such information while, at the same time, enabling iHeartMedia to provide the Judges with the most complete record possible on which to base their determination in this proceeding.

Pursuant to 28 U.S.C. §.1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that the foregoing is true and correct.

October 7, 2014

Respectfully submitted,

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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of	)	
DETERMINATION OF ROYALTY RATES FOR DIGITAL PERFORMANCE IN SOUND RECORDINGS AND EPHEMERAL RECORDINGS (WEB IV)	)	**Docket No. 14-CRB-0001-WR (2016-2020)**

REDACTION LOG FOR THE
WRITTEN DIRECT STATEMENT OF iHEARTMEDIA, INC.

iHeartMedia hereby submits the following list of redactions from its Written Direct Statement filed October 7, 2014, and the undersigned certifies, in compliance with 37 C.F.R. § 350.4(e)(1), and based on the Declaration of John Thorne submitted herewith, that the listed redacted materials are properly designated confidential and "RESTRICTED."

Document	Page/Paragraph/ Exhibit No.	General Description
Testimony of Steven Cutler	Page 3, Paragraph 7, Lines 3-8	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 4, Paragraph 8, Lines 21-25	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's internal projections.
	Page 5, Paragraph 9, Lines 4-6	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.

Document	Page/Paragraph/ Exhibit No.	General Description
	Page 5, Paragraph 10	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 6, Paragraph 11	Contains non-public information concerning iHeartMedia's royalty payments, financial projections, and technology development plans.
	Page 6, Paragraph 12	Contains non-public information concerning iHeartMedia's royalty payments, financial projections, and technology development plans.
	Page 7, Paragraph 13	Contains non-public information concerning iHeartMedia's business strategies for reducing royalty-eligible performances.
	Page 7, Paragraph 14	Contains non-public financial information concerning iHeartMedia's royalty payments.
	Ex. A, Pages 1-5	Contains non-public financial information concerning iHeartMedia's webcasting business and royalty payments.
	Ex. C	Non-public agreement concerning royalty rates.
	Ex. D	Non-public agreement concerning royalty rates.
	Ex. E	Non-public agreement concerning royalty rates.
	Ex. F	Non-public agreement concerning royalty rates.
	Ex. G	Non-public agreement concerning royalty rates.

Document	Page/Paragraph/ Exhibit No.	General Description
	Ex. H	Non-public agreement concerning royalty rates.
	Ex. I	Non-public agreement concerning royalty rates.
	Ex. J	Non-public agreement concerning royalty rates.
	Ex. K	Non-public agreement concerning royalty rates.
	Ex. L	Non-public agreement concerning royalty rates.
	Ex. M	Non-public agreement concerning royalty rates.
	Ex. N	Non-public agreement concerning royalty rates.
	Ex. O	Non-public agreement concerning royalty rates.
	Ex. P	Non-public agreement concerning royalty rates.
	Ex. Q	Non-public agreement concerning royalty rates.
	Ex. R	Non-public agreement concerning royalty rates.
	Ex. S	Non-public agreement concerning royalty rates.
	Ex. T	Non-public agreement concerning royalty rates.
	Ex. U	Non-public agreement concerning royalty rates.

Document	Page/Paragraph/ Exhibit No.	General Description
	Ex. V	Non-public agreement concerning royalty rates.
	Ex. W	Non-public agreement concerning royalty rates.
	Ex. X	Non-public agreement concerning royalty rates.
	Ex. Y	Non-public agreement concerning royalty rates.
	Ex. Z	Non-public agreement concerning royalty rates.
	Ex. AA	Non-public agreement concerning royalty rates.
	Ex. BB	Non-public agreement concerning royalty rates.
	Ex. CC	Non-public agreement concerning royalty rates.
	Ex. DD	Non-public agreement concerning royalty rates.
	Ex. FF	Contains non-public information concerning iHeartMedia's user data, internal projections, and confidential contractual obligations.
Testimony of Tom Poleman	Page 4, Paragraph 13, Lines 5-7	Contains non-public, confidential communications between iHeartMedia personnel and representatives of content providers.
	Page 6, Paragraph 16, Lines 2-6	Contains non-public, confidential communications between iHeartMedia personnel and representatives of content providers.

Document	Page/Paragraph/ Exhibit No.	General Description
	Page 9, Paragraph 19, Lines 2-10	Contains non-public, confidential communications between iHeartMedia personnel and representatives of content providers.
	Page 9, Paragraph 20, Line 2	Incorporates by reference non-public, confidential communications between iHeartMedia personnel and representatives of content providers.
	Page 10, Paragraph 21, Lines 2-7	Contains non-public, confidential communications between iHeartMedia personnel and representatives of content providers.
	Page 10, Paragraph 22, Lines 2-13	Contains non-public, confidential communications between iHeartMedia personnel and representatives of content providers.
	Page 12, Paragraph 26, Line 2-10	Contains non-public, confidential communications between iHeartMedia personnel and representatives of content providers.
	Page 12, Paragraph 27, Line 2-8	Contains non-public, confidential communications between iHeartMedia personnel and representatives of content providers.
	Page 13, Paragraph 29, Line 2-8	Contains non-public, confidential communications between iHeartMedia personnel and representatives of content providers.

Document	Page/Paragraph/ Exhibit No.	General Description
	Page 13, Paragraph 30, Line 1-6	Contains non-public, confidential communications between iHeartMedia personnel and representatives of content providers.
	Ex. B	Contains non-public, confidential communications between iHeartMedia personnel and representatives of content providers and information concerning iHeartMedia's contractual relationships and strategic partnerships with content providers.
	Ex. C	Contains non-public, confidential communications between iHeartMedia personnel and representatives of content providers and information concerning iHeartMedia's contractual relationships and strategic partnerships with content providers.
	Ex. D	Contains non-public, confidential communications between iHeartMedia personnel and representatives of content providers and information concerning iHeartMedia's contractual relationships and strategic partnerships with content providers.

Document	Page/Paragraph/ Exhibit No.	General Description
Testimony of Jeffrey L. Littlejohn	Page 2, Paragraph 3, Lines 1-6, 8-11	Contains non-public information concerning the development of iHeartMedia's proprietary, patented technology.
	Page 2, Paragraph 4	Contains non-public information concerning the capabilities of iHeartMedia's proprietary, patented technology.
	Page 3, Paragraph 5	Contains non-public information concerning iHeartMedia's business strategies for reducing royalties due to SoundExchange.
Testimony of Daniel R. Fischel and Douglas G. Lichtman	Page 8, Paragraph 17, Line 8	Contains non-public information concerning iHeartMedia user data and royalty payments.
	Page 9, Paragraph 19, Line 2	Contains non-public information concerning the royalty rates agreed to by iHeartMedia direct licensors.
	Page 8, FN 13	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 15, Paragraph 32, Lines 4-8	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Pages 15-16, FN 22, 24, 25, 26, 27, 28	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 16, Paragraph 33, Lines 2-6	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's internal financial projections.

Document	Page/Paragraph/ Exhibit No.	General Description
	Page 16, Paragraph 34	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's internal projections.
	Page 17, Paragraph 35, Lines 2-8	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's user data.
	Page 17, Paragraph 36, Lines 2-6	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's user data.
	Page 17, FN 29-30	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 17, FN 31	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 18, Paragraph 37, Lines 3-13	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 18, Paragraph 37, Lines 14-25	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 18, FN 32	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.

Document	Page/Paragraph/ Exhibit No.	General Description
	Page 18, FN 33	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 18, FN 34	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 18, FN 35	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 18, FN 36	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Pages 18-19, FN 37	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 19, Paragraph 37, Lines 26-29	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 19, Paragraph 38, Lines 3-6	Contains non-public information concerning iHeartMedia's internal financial projections.
	Page 19, Paragraph 39, Lines 1-12	Contains non-public information concerning iHeartMedia's internal financial projections.

Document	Page/Paragraph/ Exhibit No.	General Description
	Page 19, FN 38	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 19, FN 39	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 19, FN 40	Contains non-public information concerning iHeartMedia's internal financial projections.
	Page 20, Paragraph 40, Line 8	Contains non-public information concerning iHeartMedia's internal financial projections.
	Page 20, Paragraph 41, Lines 1-10	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's internal financial projections.
	Page 20, FN 41	Contains non-public information concerning iHeartMedia's internal financial projections.
	Page 20, FN 42	Contains non-public information concerning iHeartMedia's internal financial projections.
	Page 20, FN 43	Contains non-public information concerning iHeartMedia's internal financial projections.
	Page 21, Paragraph 42, Lines 1-8	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's internal financial projections.

Document	Page/Paragraph/ Exhibit No.	General Description
	Page 21, FN 44	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's internal financial projections.
	Page 21, FN 45	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's internal financial projections.
	Page 22, Paragraph 43, Line 2	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 23, Paragraph 45, Lines 12-15	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 24, Paragraph 49, Lines 3-7, 8, 9	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's internal financial projections.
	Page 24, Paragraph 50, Lines 1-4, 5	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's internal financial projections.
	Page 24, FN 48	Contains non-public information concerning iHeartMedia's internal financial projections.
	Page 25, Paragraph 50, Line 8	Contains non-public information concerning the royalty rates and

Document	Page/Paragraph/ Exhibit No.	General Description
		other terms agreed to by iHeartMedia direct licensors and iHeartMedia's internal financial projections.
	Page 25, Paragraph 51, Lines 4-7	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 25, Paragraph 52, Line 2, 6	Contains non-public information concerning iHeartMedia's internal projections.
	Page 25, FN 49	Contains non-public information concerning iHeartMedia's internal projections.
	Page 27, Paragraph 55, Lines 1-10	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 28, Paragraph 56, Line 4	Contains non-public information concerning iHeartMedia's user data.
	Pages 28-29, Paragraph 57, Lines 3-10	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 28, FN 51	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's royalty payments.
	Page 28, FN 52	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.

Document	Page/Paragraph/ Exhibit No.	General Description
	Page 29-30, Paragraphs 58-60	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 29, FN 53	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 29, FN 54	Contains non-public information concerning iHeartMedia's webcasting business strategies.
	Page 29, FN 55	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 29, FN 56	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 29, FN 57	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 30, Paragraph 61, Line 3-11	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 30, FN 58	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 30, FN 59	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors and iHeartMedia's royalty payments.

Document	Page/Paragraph/ Exhibit No.	General Description
	Page 30, FN 60	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 30, FN 61	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 31, Paragraph 62, Line 1-6	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors, iHeartMedia's internal financial projections, and iHeartMedia's royalty payments.
	Page 31, Paragraph 63	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors, iHeartMedia's internal financial projections, and iHeartMedia's royalty payments.
	Page 31, FN 62	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Pages 31-32, FN 63	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors, iHeartMedia's user data, and iHeartMedia's royalty payments.

Document	Page/Paragraph/ Exhibit No.	General Description
	Page 32, Paragraph 64, Lines 1-11, 12	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors, iHeartMedia's internal financial projections, and iHeartMedia's royalty payments.
	Page 32, FN 64	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors, iHeartMedia's user data, and iHeartMedia's royalty payments.
	Page 32, FN 65	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors, and iHeartMedia's internal financial projections.
	Page 33, Paragraph 65, Lines 2-9	Contains non-public information concerning iHeartMedia's internal financial projections.
	Page 33, Paragraph 66, Lines 2-8, 9, 10, 10-12	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors, iHeartMedia's internal financial projections, and iHeartMedia's royalty payments.
	Page 34, Paragraph 67, Lines 7, 8	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors, iHeartMedia's internal financial projections, and iHeartMedia's royalty payments.
	Page 44, FN 81, Lines 2-3	Contains non-public information concerning the royalty rates and

Document	Page/Paragraph/ Exhibit No.	General Description
		other terms agreed to by iHeartMedia direct licensors.
	Page 48, Paragraph 91, Lines 6-9	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Page 48, FN 95	Contains non-public information concerning the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Ex. A	Contains non-public information concerning iHeartMedia's user data and internal projections.
	Ex. B	Contains an analysis of non-public information concerning iHeartMedia's internal projections and the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Ex. D	Contains an analysis of non-public information concerning iHeartMedia's internal projections and the royalty rates and other terms agreed to by iHeartMedia direct licensors.
	Appendix C	Incorporates by reference non-public information concerning iHeartMedia's user data, royalty payments, internal projections, and confidential contractual obligations.

October 7, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John Thorne, hereby certify that a copy of the foregoing Written Direct Case of iHeartMedia, Inc. has been served on this 7th day of October 2014 on the following persons:

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