



United States

Copyright Royalty Board

Library of Congress
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www.loc.gov/crb

March 27, 2017

VIA ELECTRONIC MAIL

**RE: *In re Determination of Rates and Terms for Satellite Radio and
"Preexisting" Subscription Services (SDARS III)***

TO: Addressees Listed Below

Counsel and Mr. Johnson, as we discussed during the pre-hearing telephone conference last Friday, March 24, we are providing excerpts from (1) the Phonorecords III January 2017 prehearing order and (2) a February 2017 order entered in this SDARS III proceeding. The excerpts follow some proposed language that the Copyright Royalty Judges (Judges) will insert into the SDARS III prehearing order on agreement of counsel.

Another item we will add to the SDARS III prehearing order that we failed to mention during the telephone conference is the elimination of trial briefs. By the commencement of the hearing, the Judges will have received and reviewed the Written Direct and Written Rebuttal statements of all parties and will be familiar with the competing rates and terms proposals of all participants. Further, the Judges will hear opening statements before the presentation of evidence. The Judges are convinced that time that might be spent on trial briefs would surely be better spent in preparing for the presentation of evidence.

The Judges look forward to receiving your proposed prehearing order and to seeing you all in person beginning in mid-April. Please forward this communication to associate counsel and co-counsel as appropriate.

Very truly yours,

/s/

Suzanne M. Barnett
Chief Copyright Royalty Judge

Attachment

ADDRESSEES:

R. Bruce Rich, bruce.rich@weil.com
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George D. Johnson,
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Proposed portion of SDARS III Prehearing Order

The Participants must exchange pretrial motions in the nature of motions *in limine*, e.g., motions to strike or limit testimony, objections to exhibits, challenges to experts' qualifications, before submitting the motions to the Judges. After a party delivers a motion to all other participants, the responding party must submit any response to the moving party within three business days of receipt of the motion. Three business days following this exchange, the moving party must submit its motion, the response, and its reply to the Judges in one document. The reply shall be limited to an identification of issues remaining unresolved after the parties have reviewed both the motion and the response, if any. Each submission must also contain at least one proposed order in Word format.

Participants must submit initial prehearing motions to the Judges by April 7, 2017. The Judges shall deem waived any preliminary issue not presented in writing on or before April 7, 2017, with the exception of (1) objections to evidence based on relevance and (2) objections arising from late discovery or revelation of information that could not have been discovered or should have been revealed before the conclusion of formal discovery.

Excerpt from January 23, 2017 Phonorecords III Order
(re rebuttal discovery)

The Participants must exchange motions to compel the production of documents before submitting the motions to the Judges. After a movant serves another Participant with a motion to compel the responding Participant must submit any response to the motion to the movant within three business days of receipt of the motion. The next business day following this exchange, the movant must submit its motion to compel and the response to the Judges in one document.

Participants must have submitted initial motions to compel to the Judges by January 23, 2017. The Participants must file expeditiously subsequent motions to compel, based on disputes that first arise after January 23, 2017, after they have identified the discovery dispute and the affected Participants have met and conferred regarding any disputes without resolution.

Excerpt from February 22, 2017 SDARS III Order
(re rebuttal discovery)

Participants must exchange motions to compel before submitting the motions to the Judges. After a moving party delivers a motion to compel, the responding participant must submit any response to the motion to the moving party within three business days of receipt of the motion. The next business day following this exchange, the moving party must submit its motion to compel and the response to the Judges in one document.