

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, DC

In re

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

**Docket No. 21-CRB-0002-PBR
(2023-2027)**

**JOINT PROPOSAL OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS
AND PUBLISHERS AND THE NATIONAL RELIGIOUS
BROADCASTERS NONCOMMERCIAL MUSIC LICENSE COMMITTEE**

The American Society of Composers, Authors and Publishers (“ASCAP”) and the National Religious Broadcasters Noncommercial Music License Committee (“NRBNMLC”) join in a proposal to establish royalty rates pursuant to 17 U.S.C. § 118 for the payment of compulsory ASCAP blanket license royalties by certain noncommercial radio broadcasting entities (the “Religious/Community Noncommercial Radio Stations”) that are not licensed to colleges, universities, or other nonprofit educational institutions and are not affiliated with National Public Radio or qualified to receive funds from the Corporation for Public Broadcasting, for the performance of copyrighted musical compositions in the ASCAP repertory. This proposal covers the years 2023 through 2027.

ASCAP AND THE NRBNMLC

ASCAP is a performing rights society that licenses, on a non-exclusive basis, the non-dramatic public performance right in a repertory of many millions of musical works on behalf of its over 800,000 songwriters, composers and publisher members, including many thousands of

foreign works through ASCAP's reciprocal licensing agreements with foreign performing rights organizations.

The NRBNMLC is a subcommittee of the National Religious Broadcasters Music License Committee, which is a standing committee of the National Religious Broadcasters. The NRBNMLC represents hundreds of noncommercial educational religious radio broadcasters in music licensing matters and has negotiated on their behalf in this proceeding and prior proceedings under Section 118.

In the past several Section 118 rate adjustment proceedings, ASCAP and the NRBNMLC reached agreements and submitted joint proposals regarding ASCAP license fees for the category of Religious/Community Noncommercial Radio Stations, each of which was formally adopted by the Copyright Royalty Tribunal, the Copyright Royalty Judges, and/or the Copyright Office. *See, e.g.*, Notice of Proposed Rulemaking, 1992 Adjustment of the Public Broadcasting Royalty Rates and Terms, Docket No. 92-2-PBRA, 57 Fed. Reg. 55,494, 55,496 (Nov. 25, 1992); Notice of Proposed Rulemaking, Noncommercial Educational Broadcasting Compulsory License, Docket No. 96-6 CARP NCBRA, 62 Fed. Reg. 63,502, 63,504 (Dec. 1, 1997); Notice of Proposed Rulemaking, Noncommercial Educational Broadcasting Compulsory License, Docket No. 2002-4 CARP NCBRA, 67 Fed. Reg. 66,090, 66,090 (Oct. 30, 2002); Final Rule, Noncommercial Educational Broadcasting Compulsory License, Docket No. 2002-4 CARP NCBRA, 67 Fed. Reg. 77,170, 77,171 (Dec. 17, 2002); Final Rule, Noncommercial Educational Broadcasting Statutory License, Docket No. 2006-2 CRB NCBRA, 72 Fed. Reg. 67,646, 67,647 (Nov. 30, 2007); Final Rule, Determination of Reasonable Rates and Terms for Noncommercial Broadcasting, Docket No. 2011-2 CRB NCEB II, 77 Fed. Reg. 71,104, 71,105 (Nov. 29, 2012);

and Final Rule, Determination of Rates and Terms for Public Broadcasting (PB III), 83 Fed. Reg. 2,739 (Jan. 19, 2018).

In the past, the form of a joint proposal has been used in lieu of a voluntary settlement agreement because the NRBNMLC does not represent all of the Religious/Community Noncommercial Radio Stations.

THE PROPOSAL

ASCAP and the NRBNMLC have again reached agreement regarding an adjustment to the ASCAP license fees and hereby submit this Joint Proposal regarding rates under 37 C.F.R. § 381.6 and a carry-forward of 37 C.F.R. §§ 381.1 and 381.2. For the same reasons as in prior proceedings, a Joint Proposal is submitted in lieu of a voluntary settlement agreement.

ASCAP and the NRBNMLC hereby propose a modification of the royalty rates contained in section 381.6(d)(1) for all compositions in the ASCAP repertory. ASCAP and the NRBNMLC propose only two additional minor revisions to the text of section 381.6: section 381.6(d)(4) should be changed to clarify the language and modify the dates to “2023 through 2027.” No other revisions to section 381.6 are proposed regarding the compositions in the ASCAP repertory.¹ The proposed new rates and changes to section 381.6(d)(1) are set forth in Appendix A hereto, and proposed regulatory language for sections 381.1 and 381.2 and pertinent parts of section 381.6 is set forth in Appendix B hereto.

As in the current regulation, the proposed ASCAP blanket license rates are tiered, based on the “60 dBu Contour Population Count” of a Religious/Community Noncommercial Radio

¹ The rates in 37 C.F.R. § 381.6(d)(2) and (3) for public performances of musical compositions in Broadcast Music, Inc.’s and SESAC, Inc.’s repertory and new rates for public performances of musical compositions in Global Music Rights, LLC’s repertory will be addressed separately by the NRBNMLC and each of those entities.

Station covered by the compulsory license. The parties have once again determined that a flat-fee structure is the most suitable rate structure for noncommercial stations. A flat fee structure provides predictability to both copyright licensees and copyright licensors and is particularly suitable for the Religious/Community Noncommercial Radio Stations that are largely dependent on listener donations to fund their operations. It also is simple and efficient to administer.

The term “Population Count” is defined in the proposal to include the number of persons estimated to reside within a station’s “Predicted 60 dBu Contour” based on the most recent available census data as well as the non-duplicative Population Count of any “Translator Station” or “Booster Station” that extends that station’s signal beyond the station’s Predicted 60 dBu Contour. The technical specification “Predicted 60 dBu Contour” is one with which FCC-licensed stations are familiar. The terms “Translator Station” and “Booster Station” are proposed to have the same meanings as set forth in 47 C.F.R. § 74.1201 for FM translator and FM broadcast booster stations, and the term “Predicted 60 dBu Contour” is proposed to be calculated as set forth in 47 C.F.R. § 73.313.

The Joint Proposal includes a new rate tier to cover stations with a 60 dBu Contour Population Count of fewer than 25,000 persons to provide for lower fees for those stations with the lowest potential audience size. As before, a Religious/Community Noncommercial Radio Station may alternatively base its Population Count on the total population in a station’s licensed broadcast contour by using available data from a research company generally recognized in the broadcasting industry (such as Arbitron or BIA). If a Religious/Community Noncommercial Radio Station uses a research company, as stated above, to calculate the total Population Count for a station, it must also add the non-duplicative population in the Predicted 60 dBu Contour for

each Translator Station or Booster Station that extends a station's coverage beyond the station's own Predicted 60 dBu Contour based on the data as provided by the research company.

This Joint Proposal again sets forth reduced rates for those talk-format stations that meet the specific requirements set forth in the proposed regulations to account for those stations' more limited use of music in their programming, and it includes a new rate tier covering talk-format stations with a 60 dBu Contour Population Count of fewer than 25,000 persons. The Joint Proposal also proposes to carry forward unchanged the current reporting provision in section 381.6(f), which is reasonable for these noncommercial stations.

The parties understand that other sections of the regulations are relevant to this proposal, specifically 37 C.F.R. §§ 381.1 and 381.2, which the parties propose be carried forward unchanged (except that in section 381.1, "January 1, 2018" should be changed to "January 1, 2023," and "December 31, 2022" should be changed to "December 31, 2027").

Once more, under the Joint Proposal, a Religious/Community Noncommercial Radio Station shall not pay a separate fee for an in-band, on-channel, digital radio ("HD Radio") signal that is a "simulcast" of the station's analog, over-the-air signal within the same market. But, to the extent that a Religious/Community Noncommercial Radio Station broadcasts different programming by means of its HD Radio signals ("Multicast Signals"), the station must report and pay for each Multicast Signal as a separate station.

ASCAP and the NRBNMLC propose that 37 C.F.R. § 381.6 be revised and the rates adopted as proposed herein.²

² In addition to the NRBNMLC, the only other broadcasting entity that filed a petition to participate in the current Section 118 rate proceeding and is listed on the Participant List that represents radio stations in this category is the Educational Media Foundation ("EMF"), which is a member of the NRBNMLC.

CONCLUSION

ASCAP and the NRBNMLC request that the Copyright Royalty Judges adopt this Joint Proposal for a modification of the fees to be paid by the Religious/Community Noncommercial Radio Stations pursuant to Section 118 of the Copyright Act. ASCAP and the NRBNMLC also request that 37 C.F.R. § 381.6 be amended with the new rates set forth in Appendix A of this Proposal and further amended as provided herein. They further propose that 37 C.F.R. §§ 381.1 and 381.2 be carried forward unchanged except for the date change to section 381.1 noted above.

Respectfully submitted,

<p>AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS</p> <p><i>/s/ Samuel Mosenkis</i> _____ Samuel Mosenkis (NY # 2628915) ASCAP 250 West 57th Street, 14th Floor New York, NY 10107 Telephone: (212) 621-6450 Fax: (212) 787-1381 smosenkis@ascap.com</p> <p>Dated: September 9, 2021</p>	<p>NATIONAL RELIGIOUS BROADCASTERS NONCOMMERCIAL MUSIC LICENSE COMMITTEE</p> <p><i>/s/ Karyn K. Ablin</i> _____ Karyn K. Ablin (DC Bar No. 454473) Fletcher, Heald & Hildreth, PLC 1300 17th Street NW Arlington, VA 22209 (P) 703.812.0400 (F) 703.812.0486 ablin@fhhlaw.com <i>Counsel for the National Religious Broadcasters Noncommercial Music License Committee</i></p>
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EMF joins in this proposal submitted by the NRBNMLC and ASCAP. This Joint Proposal is also supported by the Church Music Publishers' Association, Inc.

APPENDIX A

**Proposed ASCAP Blanket License Fees for Radio Stations
Not Licensed to Colleges, Universities or other Nonprofit Educational Institutions
and Not Affiliated with National Public Radio and Proposed Amendments to 37 C.F.R.
§ 381.6(d)(1)**

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) Music Fees (Stations with 20% or more programming containing Feature Music):

	Population Count	Calendar Years				
		2023	2024	2025	2026	2027
Level 1	0 – 24,999	\$574	\$585	\$597	\$609	\$621
Level 2	25,000 – 249,999	\$754	\$769	\$784	\$800	\$816
Level 3	250,000 - 499,999	\$1,346	\$1,373	\$1,400	\$1,428	\$1,457
Level 4	500,000 - 999,999	\$2,017	\$2,057	\$2,098	\$2,140	\$2,183
Level 5	1,000,000 – 1,499,999	\$2,691	\$2,745	\$2,800	\$2,856	\$2,913
Level 6	1,500,000 – 1,999,999	\$3,363	\$3,430	\$3,499	\$3,569	\$3,640
Level 7	2,000,000 – 2,499,999	\$4,035	\$4,116	\$4,198	\$4,282	\$4,368
Level 8	2,500,000 – 2,999,999	\$4,708	\$4,802	\$4,898	\$4,996	\$5,096
Level 9	3,000,000 and above	\$6,726	\$6,861	\$6,998	\$7,138	\$7,280

(ii) Talk Format Station Fees (Stations with < 20% Feature Music programming):

	Population Count	Calendar Years				
		2023	2024	2025	2026	2027
Level 1	0 – 24,999	\$265	\$270	\$276	\$281	\$287
Level 2	25,000 – 249,999	\$574	\$585	\$597	\$609	\$621
Level 3	250,000 - 499,999	\$574	\$585	\$597	\$609	\$621
Level 4	500,000 - 999,999	\$574	\$585	\$597	\$609	\$621
Level 5	1,000,000 – 1,499,999	\$942	\$961	\$980	\$1,000	\$1,020
Level 6	1,500,000 – 1,999,999	\$1,177	\$1,201	\$1,225	\$1,249	\$1,274
Level 7	2,000,000 – 2,499,999	\$1,412	\$1,440	\$1,469	\$1,498	\$1,528
Level 8	2,500,000 – 2,999,999	\$1,647	\$1,680	\$1,714	\$1,748	\$1,783
Level 9	3,000,000 and above	\$2,354	\$2,401	\$2,449	\$2,498	\$2,548

APPENDIX B

§ 381.1 General.

This part establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 2023, and ending on December 31, 2027. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(c).

§ 381.2 Definition of public broadcasting entity.

As used in this part, the term public broadcasting entity means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in 17 U.S.C. 118(c).

§ 381.6 Performance of musical compositions by other public broadcasting entities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and not affiliated with NPR. In the event that a station owned by a public broadcasting entity broadcasts programming by means of an in-band, on-channel (“IBOC”) digital radio signal and such programming is different than the station’s analog broadcast programming, then any such programming shall be deemed to be provided by a separate station requiring a separate royalty payment.

(b) *Definitions.* As used in paragraphs (d) and (e) of this section, the following terms and their variant forms mean the following:

(1) *Feature Music* shall mean any performance of a musical work, whether live or recorded, that is the principal focus of audience attention. Feature Music does not include bridge, background, or underscore music, themes or signatures, interstitial music between programs such as in public service announcements or program sponsorship identifications, brief musical transitions in and out of program segments (not to exceed 60 seconds in duration), incidental performances of music during broadcasts of public, religious, or sports events, or brief performances during news, talk, religious, and sports programming of no more than 30 seconds in duration.

(2) *Population Count.* The combination of:

(i) The number of persons estimated to reside within a station’s Predicted 60 dBu Contour, based on the most recent available census data; and

(ii) The nonduplicative number of persons estimated to reside in the Predicted 60 dBu Contour of any Translator or Booster Station that extends a public broadcasting entity's signal beyond the contours of a station's Predicted 60 dBu Contour.

(iii) In determining Population Count, a station or a Translator or Booster Station may use and report the total population data, from a research company generally recognized in the broadcasting industry, for the radio market within which the station's community license is located.

(3) *Predicted 60 dBu Contour* shall be calculated as set forth in 47 C.F.R. § 73.313.

(4) *Talk Format Station* shall mean a noncommercial radio station:

(i) Whose program content primarily consists of talk shows, news programs, sports, community affairs or religious sermons (or other non-music-oriented programming);

(ii) That performs Feature Music in less than 20% of its programming annually;
and

(iii) That performs music-oriented programming for no more than four (4) programming hours during the hours from 6:00 a.m. to 10:00 p.m. each Weekday, with no two (2) hours of such programming occurring consecutively, with the exception of up to five (5) Weekdays during the year.

(5) *Weekday* shall mean the 24-hour period starting at 12:00 a.m. through 11:59 p.m. on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays occurring between January 1 of a given year up to and including Thanksgiving day of that year.

(6) *Translator Station* and *Booster Station* shall have the same meanings as set forth in 47 C.F.R. § 74.1201.

(c) *Voluntary license agreements*. Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(d) *Royalty rate*. A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) Music Fees (Stations with 20% or more programming containing Feature Music):

	Population Count	Calendar Years				
		2023	2024	2025	2026	2027
Level 1	0 – 24,999	\$574	\$585	\$597	\$609	\$621
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(ii) Talk Format Station Fees (Stations with < 20% Feature Music programming):

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Level 9	3,000,000 and above	\$2,354	\$2,401	\$2,449	\$2,498	\$2,548

(2) For all such compositions in the repertory of BMI . . .

(3) For all such compositions in the repertory of SESAC . . .

(4) For the performance of all other such compositions in the aggregate, in 2023 through 2027, \$1.

(e) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP[, BMI and SESAC] not later than January 31 of each year. Each annual payment shall be accompanied by a signed declaration stating the Population Count of the public broadcasting entity and the source for such Population Count. An exact copy of such declaration shall be furnished to [each of] ASCAP[, BMI and SESAC]. Upon prior written notice thereof from

ASCAP[, BMI or SESAC], a public broadcasting entity shall make its books and records relating to its Population Count available for inspection. In the event that a public broadcasting entity wishes to be deemed a Talk Format Station, then such entity shall provide a signed declaration stating that Feature Music is performed in less than 20% of its annual programming and that it complies with the caps set forth in paragraph (b)(4) of this section. An exact copy of such declaration shall be furnished to [each of] ASCAP[, BMI and SESAC]. Upon prior written notice thereof from ASCAP[, BMI or SESAC], a public broadcasting entity shall make its program schedule or other documentation supporting its eligibility as a Talk Format Station available for inspection.

(f) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP[, BMI and SESAC], upon request, a music-use report during one week of each calendar year. ASCAP[, BMI and SESAC each] shall not in any one calendar year request more than 10 stations to furnish such reports.

Proof of Delivery

I hereby certify that on Thursday, September 09, 2021, I provided a true and correct copy of the Joint Proposal of the American Society of Composers, Authors and Publishers and the National Religious Broadcasters Noncommercial Music License Committee to the following:

Public Broadcasting Entities, represented by David P Mattern, served via ESERVICE at dmattern@kslaw.com

Powell, David, represented by David Powell, served via ESERVICE at davidpowell008@yahoo.com

Global Music Rights, LLC, represented by Scott A Zebrak, served via ESERVICE at scott@oandzlaw.com

Educational Media Foundation, represented by David Oxenford, served via ESERVICE at doxenford@wbklaw.com

Broadcast Music, Inc., represented by Jennifer T. Criss, served via ESERVICE at jennifer.criss@faegredrinker.com

Church Music Publishers' Association, Inc., represented by Carroll C Rigler, served via ESERVICE at cheshirerigler@shrumhicks.com

SESAC Performing Rights, LLC, represented by John C. Beiter, served via ESERVICE at john@beiterlaw.com

The Harry Fox Agency LLC, represented by John C. Beiter, served via ESERVICE at john@beiterlaw.com

Signed: /s/ Karyn K Ablin