

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 BROADCAST MUSIC, INC.  
AND THE NATIONAL RELIGIOUS  
BROADCASTERS NONCOMMERCIAL MUSIC LICENSE COMMITTEE**

Broadcast Music, Inc. (“BMI”) and the National Religious Broadcasters Noncommercial Music License Committee (the “NRBNMLC”) join in a proposal to establish royalty rates pursuant to 17 U.S.C. § 118 for the payment of compulsory BMI 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 BMI repertory. This proposal covers the years 2023 through 2027.

**BMI AND THE NRBNMLC**

BMI is a performing rights organization that licenses, on a non-exclusive basis, the public performance right in over 17 million non-dramatic musical works on behalf of its over 1.1 million affiliated songwriters, composers, and publishers, including many thousands of foreign

works through BMI'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, BMI and the NRBNMLC reached agreements and submitted joint proposals regarding BMI 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 (the "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); Final Rule, Determination of Rates and Terms for Public Broadcasting (PB III), Docket No. 16-

CRB-0002-PBR (2018-2022) (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**

In prior filings submitted to the Judges in the above-captioned proceeding, BMI and the NRBNMLC noted that, while they had not yet reached an agreement, they were continuing to negotiate. *See* Notice of Broadcast Music, Inc. Regarding Settlement and Status Report (May 18, 2021) at 3 (“While [BMI and the NRBNMLC] have not yet reached an agreement in principle, they continue to negotiate in good faith.”); Joint Notice Regarding Status of Settlement Negotiations (May 18, 2021) at 1 (“While the NRBNMLC has made progress in these negotiations [with BMI], it is not yet in a position to report a settlement ....”). BMI and the NRBNMLC are pleased to notify the Judges that they have reached an agreement regarding an adjustment to the BMI 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.

BMI and the NRBNMLC hereby propose a modification of the royalty rates contained in section 381.6(d)(2) for all compositions in the BMI repertory and to the related terms in section

381.6.<sup>1</sup> The proposed new rates and changes to section 381.6(d)(2) are set forth in Appendix A

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<sup>1</sup> The rates in 37 C.F.R. § 381.6(d)(1) and (3) for public performances of musical compositions in the repertory of the American Society of Composers, Authors and Publishers (“ASCAP”) and of SESAC Performing Rights, LLC will be addressed in separate joint proposals submitted by the NRBNMLC and each of those entities and are not a subject of this joint proposal. The NRBNMLC represents that it will also be submitting a separate joint proposal with Global Music Rights, LLC (“GMR”) that adds proposed rates in 37 C.F.R. § 381.6(d)(4) for public performances of musical compositions in the repertory of that entity, which is similarly not a subject of this joint proposal between BMI and the NRBNMLC.

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.

In the proposed new rates, BMI and the NRBNMLC have agreed to a new, lowest tier of rates for the stations with the smallest population count of 0-24,999. This tier, the “new” Level 1, is applicable to both the music format stations and to talk format stations, *i.e.*, stations with less than 20% of Feature Music programming (as defined in section 381.6(b)(1)). This “new” Level 1 divides the population count tier identified previously as Level 1 into two separate tiers, with Level 2 now reflecting the proposed rates for stations with the population count of 25,000 to 249,999. The population counts for the remaining tiers shown in Appendix A and Appendix B are unchanged, with only the tier number increasing to reflect the additional lowest tier included with this joint proposal. As a result, Appendix A and Appendix B include 9 tiers of population counts for stations under section 381.6, whereas only 8 tiers existed in prior regulations.

This Joint Proposal again sets forth a reduced rate for those talk-format stations that meet the requirements set forth in the proposed regulations to account for those stations’ more limited use of music in their programming. The Joint Proposal also proposes to carry forward the current reporting provision in section 381.6(f) unchanged. That provision is reasonable for noncommercial stations and has worked well over the numerous years that it has been in place.

BMI and the NRBNMLC jointly propose only one additional minor revision to the text of section 381.6: the dates in current section 381.6(d)(4) should be changed to “2023 through 2027.” No other revisions to section 381.6 are proposed regarding the compositions in the BMI repertory.<sup>2</sup>

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<sup>2</sup> The NRBNMLC, ASCAP, and GMR have proposed, in the ASCAP-NRBNMLC and GMR-NRBNMLC Joint Proposals submitted in this proceeding on September 9, 2021, that the language in current section 381.6(d)(4) should be revised, but BMI does not support such revision.

As in the current regulation, the proposed BMI blanket license rates are tiered, based on the “60 dBu Contour Population Count” of a Religious/Community Noncommercial Radio Station covered by the compulsory license. The parties have 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. 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.

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.

BMI and the NRBNMLC propose that 37 C.F.R. § 381.6 be revised and the rates adopted as proposed herein.<sup>3</sup>

### **CONCLUSION**

BMI and the NRBNMLC request that the 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. BMI and the NRBNMLC also request that 37 C.F.R. § 381.6 be amended with the new rates 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.

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<sup>3</sup> 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 represented by the NRBNMLC. EMF joins in this proposal submitted by the NRBNMLC and BMI.

Respectfully submitted,

**BROADCAST MUSIC, INC.**

**NATIONAL RELIGIOUS  
BROADCASTERS NONCOMMERCIAL  
MUSIC LICENSE COMMITTEE**

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Dated: September 10, 2021

**APPENDIX A**

**Proposed BMI 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)(2)**

**(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:**

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

Tier	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):**

Tier	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 . . .

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

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

Tier	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
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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):

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

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

(4) . . .

(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.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of September, 2021, a copy of the foregoing Joint Proposal of Broadcast Music, Inc. and the National Religious Broadcasters Noncommercial Music License Committee was filed electronically using eCRB, which will automatically provide electronic service copies to all counsel and *pro se* participants who are registered to use eCRB. *See* 37 C.F.R. § 303.6(h)(1).

/s/ Jennifer T. Criss \_\_\_\_\_  
Jennifer T. Criss

# Proof of Delivery

I hereby certify that on Friday, September 10, 2021, I provided a true and correct copy of the Joint Proposal of Broadcast Music, Inc. and the National Religious Broadcasters Noncommercial Music License Committee to the following:

American Society of Composers, Authors and Publishers, represented by Sam Mosenkis, served via ESERVICE at smosenkis@ascap.com

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

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

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

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

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

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

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

Signed: /s/ Jennifer T. Criss