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March 15, 2022

The Honorable Suzanne Barnett
The Honorable David R. Strickler
The Honorable Steve Ruwe
Copyright Royalty Board
P.O. Box 70977
Washington, DC 20024-0977

Re: *Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords III)*,
Docket No. 16-CRB-0003-PR (2018-2022) (Remand) – Closing Argument Record Citations

Dear Chief Judge Barnett, Judge Strickler, and Judge Ruwe:

I write on behalf of counsel for Amazon.com Services LLC, Google LLC, Pandora Media, LLC, and Spotify USA Inc. (collectively, the “Services”) to provide the Judges with the citations that the Services referenced during the rebuttal phase of closing arguments in the above-captioned proceeding on March 7, 2022.

First, with respect to evidence of the major record companies’ complementary oligopoly power in their license dealings with interactive streaming services, we referred to expert testimony (both at trial and submitted on remand), fact testimony (both at trial and submitted on remand), and agreements between record companies and streaming services that contain provisions that deter price competition, including anti-steering clauses and “most favored nation” requirements, in addition to the admissions from record company witnesses contained in the *Web IV* and *Web V* decisions. Citations to the testimony and documents submitted in this proceeding include:

- Services’ Joint Proposed Findings of Fact and Conclusions of Law, Sections VI.A, IX.B.I (May 11, 2017) (cataloguing testimony, record company agreements, and other evidence);
- Pandora Tr. Ex. 974 (compendium of Pandora license agreements);
- 4/13/17 Tr. 5954:14–18 (Hubbard);
- Written Rebuttal Testimony of Leslie M. Marx, PhD ¶ 82 (Feb. 15, 2017);

- Written Direct Remand Testimony of Christopher Bonavia ¶ 9 (Apr. 1, 2021);
- Written Direct Remand Testimony of George White ¶¶ 4–5 (Apr. 1, 2021);
- Written Supplemental Testimony of Rishi Mirchandani ¶ 24 (Apr. 1, 2021);
- Written Direct Remand Testimony of Leslie M. Marx ¶ 39 (Apr. 1, 2021);
- Written Direct Remand Testimony of Michael L. Katz ¶ 53 (Apr. 1, 2021);
- Written Direct Remand Testimony of Dr. Gregory K. Leonard ¶ 21 (Apr. 1, 2021);
- Written Supplemental Remand Testimony of Leslie M. Marx ¶ 12 (Nov. 15, 2021);
- Written Second Supplemental Remand Testimony of Leslie M. Marx ¶ 31 (Jan. 24, 2022);
- Written Supplemental Remand Testimony of Michael L. Katz ¶¶ 8, 20 (Jan. 24, 2022);
- Second Supplemental Written Remand Testimony of Dr. Gregory K. Leonard ¶¶ 5, 10 n.6 (Jan. 24, 2022);
- Written Supplemental Rebuttal Remand Testimony of Leslie M. Marx ¶ 13 (Feb. 24, 2022);
- Written Supplemental Remand Testimony of Michael L. Katz ¶ 3 (Feb. 24, 2022); and
- Third Supplemental Written Remand Testimony of Dr. Gregory K. Leonard ¶¶ 4–7 (Feb. 24, 2022).

Second, with respect to evaluation of whether proposed rates satisfy Factor D of the Section 801(b)(1) rate-setting standard, we referred Your Honors to the following pages of the Services’ joint briefing on remand:

- Services’ Joint Opening Brief at 29–30 (Apr. 1, 2021);
- Services’ Joint Reply Brief at 36–37, 43 n.12 (July 2, 2021);
- Services’ Joint Supplemental Brief Addressing the Judges’ Working Proposal at 19 (Jan. 24, 2022); and

- Services' Joint Rebuttal Brief Addressing the Judges' Working Proposal at 26–27 (Feb. 24, 2022).

Third, with respect to the evidence supporting the Initial Determination's definition of "Service Revenue," we referred Your Honors to the following pages of the Services' joint briefing on remand:

- Services' Joint Opening Brief at 68–76 (Apr. 1, 2021); and
- Services' Joint Reply Brief at 57–63 (July 2, 2021).

Respectfully submitted,

/s/ Benjamin E. Marks

Benjamin E. Marks

cc: All Participants (via eCRB)

Proof of Delivery

I hereby certify that on Tuesday, March 15, 2022, I provided a true and correct copy of the Services' Letter Providing the Judges with Citations that the Services Referenced During Closing Arguments to the following:

National Music Publishers' Association (NMPA) et al, represented by Benjamin Semel, served via ESERVICE at Bsemel@pryorcashman.com

Johnson, George, represented by George D Johnson, served via ESERVICE at george@georgejohnson.com

Nashville Songwriters Association International, represented by Benjamin K Semel, served via ESERVICE at Bsemel@pryorcashman.com

Signed: /s/ Todd Larson