

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

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| In the Matter of |) | |) |
| |) | |) |
| Distribution of the |) | Docket No. | 16-CRB-0009-CD (2014-17) |
| 2014, 2015, 2016, and 2017 |) | | |
| Cable Royalty Funds |) | | |
| |) | | |

PROGRAM SUPPLIERS’ SUPPLEMENTAL REBUTTAL TESTIMONY RESPONDING TO JSC SUPPLEMENTAL PRODUCTION

Pursuant to *Order 28 Revising Hearing Schedule And Related Prehearing Matters* (eCRB no. 27490) (February 24, 2023), Program Suppliers hereby submit the Supplemental Rebuttal Testimony of Jeffery A. Stec, Ph.D. (“Stec SRT”), attached hereto as Exhibit A.

The Stec SRT responds to the supplemental discovery production that Program Suppliers received from the Joint Sports Claimants on March 2, 10, and 13, 2023, in response to the Copyright Royalty Judges’ *Order 27 On PTV Motion To Compel JSC To Produce Documents* (eCRB no. 27470) (February 14, 2023) (“Order 27”).¹ Because JSC’s supplemental production was designated as RESTRICTED, subject to both the Protective Order entered in this proceeding on February 17, 2022 (“Protective Order”) and the additional restrictions set forth in Order 27, Program Suppliers have designated the Stec SRT as RESTRICTED, subject to both the

¹ Program Suppliers understand that JSC plans to produce additional discovery documents in response to Order 27 on March 16, 2023. Program Suppliers therefore reserve the right to amend the Stec SRT or file a second Supplemental Rebuttal Testimony addressing any additional documents that JSC produces in discovery, as permitted by Order 28 and the Judges.

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Protective Order and the additional restrictions set forth in Order 27.² A public, redacted copy of the Stec SRT and will be filed concurrently with the RESTRICTED version.

Respectfully submitted,

/s/ Gregory O. Olaniran

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Dated: March 16, 2023

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² Program Suppliers are also filing Exhibit 3.0 to the Stec SRT separately in its native form, also as a RESTRICTED document subject to both the Protective Order and Order 27. Stec SRT Exhibit 3.0 is redacted in its entirety from the public version of the Stec WRT.

EXHIBIT A

REDACTED PUBLIC VERSION

**Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of

Distribution of the

**2014, 2015, 2016, and 2017
Cable Royalty Funds**

Docket No. 16-CRB-0009-CD (2014-17)

SUPPLEMENTAL REBUTTAL TESTIMONY OF JEFFERY A. STEC, Ph.D.

March 16, 2023



I. Introduction

I was asked by the Motion Picture Association, Inc. (“MPA”) and MPA-represented Program Suppliers to address the appropriateness of certain methodologies put forth by experts retained by the Joint Sports Claimants (“JSC”) and the Commercial Television Claimants (“CTV”). These methodologies were proposed to allocate the 2014-2017 cable royalty funds collected by the U.S. Copyright Office of the Library of Congress. More specifically, I was asked to address: 1) the direct testimony of James M. Trautman and Dr. Nancy A. Mathiowetz as it pertains to survey methods of the Bortz Survey and its economic appropriateness;¹ and 2) the direct testimony of Robert A. Papper as it pertains to his reliance on the 2014, 2015, 2016, and 2017 Radio Television Digital News Association/Hofstra University Annual Surveys (“RTDNA Surveys”).² I addressed these testimonies in my Rebuttal Testimony of Jeffery A. Stec, Ph.D. dated November 2, 2022 (the “Stec WRT”). In the Stec WRT, I also provided a summary of my professional and educational background, as well as a background for this litigation.

I understand that, on March 2, 2023, JSC produced additional information from the files of Mr. Trautman and his colleagues related to the Bortz Survey. I also understand that, on March 10 and 13, 2023, JSC made additional productions of files that were in the possession of Mr. Trautman and his colleagues. I refer to these productions, collectively, as the “March 2023 JSC Productions” herein.³ The March 2023 JSC Productions included unredacted individual Bortz Survey responses and summary survey data that identified the individuals who purportedly completed the 2014-2017 Bortz Surveys, among other things.⁴ I examined the March 2023 JSC

¹ See Cable Operator Valuation of Distant Signal Non-Network Programming: 2014-17, Bortz Media & Sports Group, Inc., July 1, 2022, and corrected September 26, 2022, pp. 1-2 (“Bortz Survey”) and Written Direct Testimony of Nancy Mathiowetz, Ph.D., July 1, 2022, and corrected September 26, 2022, p. 11 (“Mathiowetz WDT”).

² See Written Direct Statement of the Joint Sports Claimants, dated July 1, 2022, and corrected September 26, 2022 (“JSC WDT”); Written Direct Testimony of Robert A. Papper, dated June 30, 2022 (“Papper WDT”).

³ I also understand that JSC has informed the parties that it intends to make another production on March 16, 2023, which is the due date of this supplemental rebuttal testimony. Accordingly, I reserve the right to further supplement my testimony following a review of such documents, as may be necessary and permitted by the Copyright Royalty Judges.

⁴ See JSC 00054465-7898 and JSC 00080944-947.

Productions to determine if Mr. Trautman reached his intended target population and to determine the quality of the interviewers' record collection of the respondents' data.

II. Summary of Conclusions

The March 2023 JSC Productions corroborate many of the opinions I expressed in the Stec WRT, and reveal additional, substantial problems with the Bortz Survey and Mr. Trautman's testimony. Specifically, following my review of the March 2023 JSC Productions, I have concluded as follows:

- According to Mr. Trautman's testimony, he sought to have the Bortz Survey administered to the persons "most responsible for programming carriage decisions made" by each system. Yet Mr. Trautman's process of identifying appropriate respondents was flawed and improperly implemented. Mr. Trautman has, by his admission, long recognized that the "industry source[]" he used to first identify respondents – the *Television & Cable Factbook* (the "Factbook") – was "[REDACTED]" for that task, yet continued to rely on it for the 2014-2017 Bortz Surveys. His admission was corroborated and reinforced in the process of collecting data for the Bortz Surveys. Indeed, the significant majority of survey respondents – between 91.0% and 94.1% of the respondents during the period – were not the individuals identified in the *Factbook* but were instead identified and selected by unidentified employees of the cable systems. Because Mr. Trautman did not attempt to determine or verify whether or how these respondents were the persons "most responsible for programming carriage decisions," there is no way to determine whether the respondents were appropriately identified.
- The errors in the Bortz Survey sample selection process were compounded by interviewer error. The interviewers retained by Bortz failed to accurately document and maintain survey response information. Specifically, the interviewers failed to record respondents' names, job titles, or phone numbers accurately or consistently. The interviewers also failed to document their own names or the dates that the interviews were conducted consistently or clearly. Interviewer-related error was

apparent in 91.6% of Bortz Survey responses for 2017, and between 64.5% and 78.9% of the responses for 2014 to 2016.

Individually and together, these problems undermine the validity and reliability of the Bortz Survey, and further reinforce my opinion that the results of the Bortz Survey are unreliable for allocation of the 2014-2017 cable royalties to the individual programming categories.

III. The Bortz Survey Failed to Reach the Identified Target Population.

A. Mr. Trautman Knew that the Stated Process for Identifying the Target Population – the *Factbook* – Was Unreliable.

According to Mr. Trautman, “[i]nterviewers were instructed to ask first for the system executive identified in advance from industry sources as most likely to have responsibility for programming decisions.”⁵ The only “industry source[.]” Mr. Trautman identified for providing such “advance” information was the *Factbook*.⁶ Mr. Trautman instructed the interviewers as follows:

ASK TO SPEAK WITH LISTED RESPONDENT [identified from the *Factbook*]. IF UNAVAILABLE, CONFIRM HE / SHE IS PERSON MOST RESPONSIBLE FOR PROGRAMMING CARRIAGE DECISIONS FOR THE SYSTEM AND ARRANGE CALL BACK. IF NOT, ASK TO SPEAK WITH THE PERSON MOST RESPONSIBLE FOR PROGRAMMING CARRIAGE DECISIONS FOR THE SYSTEM.

Thus, if the person identified in the *Factbook* was either not reached or was not the person “most responsible for programming carriage decisions,” the interviewer would ask for the responsible person. During this initial exchange, the confirmation of (or the referral to) the person most responsible is made by the recipient of the initial telephone call -- someone whose status within, or depth of knowledge of, the cable system’s operations is unknown to the interviewer. And if the next person identified as “most responsible” was either not reached or not “most responsible,” this process continued until the interviewer reached someone who some unidentified person had identified as purportedly “most responsible” for carriage decisions.⁷

⁵ Bortz Survey, Appendix A, p. A-17.

⁶ Bortz Survey, Appendix A, p. A-17. Mr. Trautman failed to provide any evidence that these are the executives who were the “most responsible” for carriage decisions at their respective cable systems.

⁷ Bortz Survey, Appendix A, p. A-17.

As the March 2023 JSC Production reveals, Mr. Trautman was aware, by the time the 2014-2017 Bortz Surveys began, that the process of identifying individuals through the *Factbook* was unreliable. In a 2013 email, he admitted that “[REDACTED]”
[REDACTED]
[REDACTED]”⁸

B. The Bortz Survey Respondents Were Identified Through an Undocumented and Unreliable Process.

Mr. Trautman’s 2013 acknowledgement that the persons identified in the *Factbook* were “[REDACTED]” proved true for the 2014-2017 Bortz Surveys. As the data in the March 2023 JSC Productions reveal, between 91.0% and 94.1% of the completed surveys in each year were completed by someone other than the person identified in the *Factbook*.⁹ This means that Mr. Trautman completed surveys with only between 5.9% and 9.0% of the respondents he initially identified from “industry sources” as the person “most responsible for programming carriage decisions made by the system.”¹⁰

A substantial majority of the respondents in each year were not selected by “industry sources,” by Mr. Trautman, or by interviewers he employed. Instead, they were selected by the person or persons the interviewer reached at each cable system. This person could have been a receptionist or an administrator that may have no knowledge of “the person most responsible for programming carriage decisions for the system.”¹¹ Mr. Trautman failed to provide any information on the person or persons in the selection process who ultimately identified the “person most responsible” at each of the cable systems, and therefore there is no way to know if they were qualified to do so. That is because Mr. Trautman put no process in place and provided no evidence that he verified that these persons were qualified to make these determinations.

⁸ JSC 00082116.

⁹ See Exhibit 1.0. Specifically, 94.1% of completed surveys in 2014 were completed by someone other than the respondent identified in the *Factbook*, 92.9% in 2015, 91.0% in 2016, and 92.2% in 2017. These include instances where the original respondent from the *Factbook* was crossed off on the survey form and a new respondent was written in.

¹⁰ See Exhibit 1.0. Although Mr. Trautman provided his method of selecting these respondents, he failed to provide any evidence that these are the executives who were the “most responsible” for carriage decisions at their respective cable systems.

¹¹ Bortz Survey, Appendix B, p. B-2.

Mr. Trautman should have instructed his interviewers to keep a record of each person that was contacted at each cable system, which would have included the name, position, and phone number of the first person contacted, as well as the same information for each subsequent person until the final person was reached. But because he did not include such an instruction, and there are no records of this chain of contacts, Mr. Trautman has almost no knowledge on how at least 91.0% to 94.1%¹² of his sample¹³ was selected in each year. For these respondents, there is no way to determine how they were selected, who selected them (or what position the selector held), whether they were the appropriate persons to respond to the survey, or what positions they actually held within the cable system.¹⁴

According to AAPOR's Standards for Minimal Disclosure, "good professional practice imposes the obligation upon all public opinion and survey researchers to disclose sufficient information about how the research was conducted to allow for independent review and verification of research claims, regardless of the methodology used in the research."¹⁵ AAPOR describes that any report of research should include identification of the population under study, and "be specific about the decision rules used to define the population when describing the study population."¹⁶ Mr. Trautman provided none of this information, which is necessary to evaluate his survey. Therefore, it is impossible to determine if the results of the Bortz Surveys are reliable or not.

C. Mr. Trautman Failed to Verify that the Respondents Were the Persons "Most Responsible" for Carriage Decisions

Mr. Trautman also failed to include any questions or instructions to the interviewer that would have allowed her/him to verify the identity of the respondent, the respondent's position

¹² Exhibit 1.0. Specifically, 94.1% of completed surveys in 2014 were completed by someone other than the respondent identified in the *Factbook*; 92.9% in 2015; 91.0% in 2016; and 92.2% in 2017.

¹³ Mr. Trautman ostensibly attempted to complete a census of his identified population for each of the years 2015-2017. However, he did not complete the census; and, instead, he completed surveys with a non-random sample of respondents. *See* Bortz Survey, p. 21 and FN 31.

¹⁴ For the respondents reached from the *Factbook*, the *Factbook* confirms the individual and their position within the cable system.

¹⁵ <https://www.aapor.org/Standards-Ethics/AAPOR-Code-of-Ethics/Survey-Disclosure-Checklist/Disclosure-Standards.aspx>.

¹⁶ <https://www.aapor.org/Standards-Ethics/AAPOR-Code-of-Ethics/Survey-Disclosure-Checklist/Disclosure-Standards.aspx>.

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within the cable system, or that the respondent was the person “most responsible” for carriage decisions at their cable system. Such instructions and questions should have been included in the survey that was used by the interviewer. Instead, as identified above, the survey questionnaire only instructed the interviewer to ask for the “person most responsible for programming carriage decisions for the system.” These instructions did not ask the interviewer to confirm, by any other means, that the person was in fact the “person most responsible,” or instruct the interview to write down the first and last name of the respondent or the respondent’s position within the cable system for any type of verification or quality control.¹⁷ Mr. Trautman also failed to provide any interviewer instructions or written communications that identify that he instructed the interviewer to do so. This is further confirmed by my understanding that the only written materials the interviewers relied on were the surveys and the instructions provided within the surveys.¹⁸

Since Mr. Trautman only reached between 5.9% and 9.0% of his intended target population, Mr. Trautman should have attempted to verify the person or persons to whom the interviewer spoke and each of their positions within the cable system.¹⁹ Mr. Trautman has conducted this survey for at least 40 years and has access to the information that has been produced for the 2014 to 2017 survey and each of the previous surveys he conducted.²⁰

In fact, Mr. Trautman was aware, since 2013, that the “industry source[.]” he relied upon to identify survey respondents was “[REDACTED]” at identifying survey respondents.²¹ At some point he should have included instructions in his survey to verify that the person is the “person most responsible.”

Given the vague instructions in the survey, the poor record keeping by the interviewers, which is discussed below, and the time that has elapsed since these surveys were conducted, it is unlikely that these surveys could now be validated to confirm that the respondents took the survey and that they were in fact the “person[s] most responsible for programming carriage

¹⁷ Bortz Survey, Appendix B, p. B-2.

¹⁸ See Opposition of the Joint Sports Claimants to Public Television’s Motion to Compel, Trautman Decl. ¶ 9 (November 28, 2022).

¹⁹ See Exhibit 1.0.

²⁰ Bortz Survey, Appendix A, p. A-1.

²¹ JSC 00082116.

decisions for the system.” Mr. Trautman failed to provide any evidence that these respondents or the respondents from the *Factbook* are the executives who were the “most responsible” for carriage decisions at their respective cable systems, which undermines his results. Ultimately, as a result, Mr. Trautman failed to provide “direct evidence of the value judgments of the actual buyers (CSOs) in the hypothetical marketplace that the Judges must construct.”²²

IV. The Bortz Survey Suffers from Interviewer-Related Error

Mr. Trautman states in his written testimony that “Bortz Media retained Sandra Grossman (formerly of THA Research) to conduct telephone interviewing for the 2014-17 cable operator surveys.”²³ All of the survey interviews from 2014 through 2017 were conducted by Ms. Grossman and her team.²⁴ When conducting surveys by interview, “[a]nother] key responsibility of the interviewers is to administer the survey instrument and to do so in an unbiased manner while correctly recording the responses obtained from the respondent into the survey instrument.”²⁵ Since the interviewer is the conduit between the survey questions and the respondent, “they can also be an important source of error in the survey process.”²⁶ Based on the March 2023 JSC Productions, it appears that the recording of respondent data was systematically inconsistent and deficient.²⁷

1. The Interviewers Who Conducted the Bortz Survey Failed to Identify Whether Survey Respondents Were Qualified to Answer on Behalf of Their Cable Systems

As discussed above, for a substantial majority of respondents, Mr. Trautman did not determine who selected them or how the selected respondents were the persons “most responsible” for carriage decisions at their respective cable systems. This problem is exacerbated by the interviewers who conducted the Bortz Surveys. These interviewers failed to accurately

²² Bortz Survey, p. 38.

²³ Bortz Survey, Appendix A, p. A-15.

²⁴ Bortz Survey, Appendix A, p. A-15. *See also*, JSC 00081366-67.

²⁵ Carley-Baxter, Lisa. “Interviewer,” *Encyclopedia of Survey Research Methods*, Paul J. Lavrakas, Editor, SAGE Publications, Inc., Thousand Oaks, CA, 2008, p. 364.

²⁶ Moore, Danna L. and John Tarnai. “Interview Training,” *Encyclopedia of Survey Research Methods*, Paul J. Lavrakas, Editor, SAGE Publications, Inc., Thousand Oaks, CA, 2008, p. 382.

²⁷ It appears that interviewer-related error [REDACTED]

[REDACTED] *See* JSC 00082319.

maintain records of the survey respondents' information. Therefore, there is limited information to even identify the respondent, let alone whether they were the "most responsible" for carriage decisions at their cable system. Mr. Trautman also failed to provide any instructions or questions that would allow the interviewer to verify whether the respondents who completed the survey were qualified to do so. Figure 1 below is instructive.

Figure 1: 2015 Survey Respondent²⁸

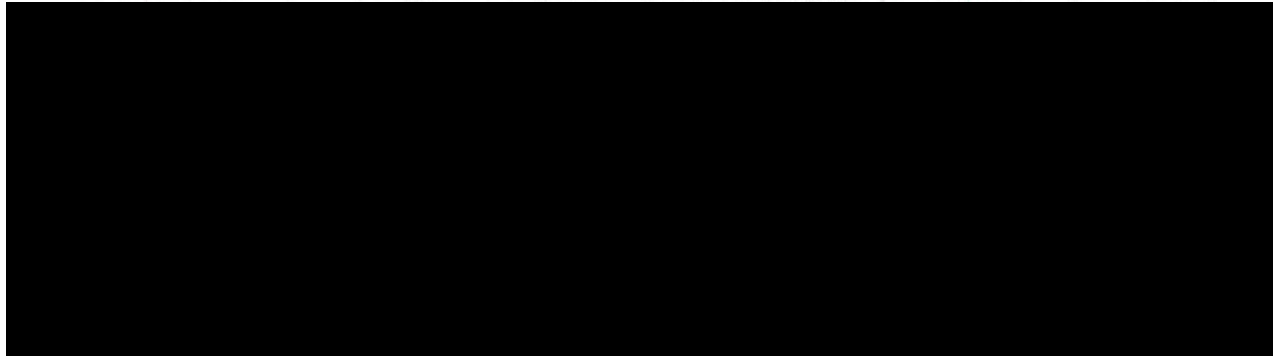


Figure 1 indicates the respondent appears to be "[REDACTED]," but the job title appears to be from the initial contact's job title and not [REDACTED]'s job title. There is no indication how or why the interviewer was changed from "[REDACTED]" to "[REDACTED]" or how the interviewer identified and or verified that [REDACTED] was the employee who was the "most responsible" for carriage decisions at his cable system. This is just one example of the problem with Mr. Trautman's failure to provide clear instructions for his survey.

After reviewing the unredacted surveys produced by Mr. Trautman, it is clear that the data suffers from poor record keeping by the interviewers tasked with reaching the appropriate respondents and recording the survey data. The interviewers failed to provide any information on whether or not the respondent was qualified to answer the survey questions presented to them, and in many instances failed to even provide the job title for the person responding to the survey.

By not recording respondents' positions, it is impossible to determine whether these representatives were qualified representatives at each cable system to answer the questions posed in the Bortz Survey. I found that the individual Bortz Survey's included either no position, multiple positions, or relied on the position for the initial contact and did not record a position for

²⁸ JSC 00055435.

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the respondent who completed the survey for between 7.0% and 50.0% of the surveys administered from 2014 to 2017.²⁹

I also found that 83 of the 745 surveys for the 2014-2017 period were completed by respondents that were identified to have more two or more positions within their cable system. The table below provides all the job titles that were allegedly held by a single respondent in each year that this respondent completed the survey, all of which are inconsistent with his actual title of “Marketing Operations Manager-Programming.”³⁰

Table 1: [REDACTED]’ Positions

| Year | Name ³¹ | Position |
|------|--------------------|--------------|
| 2014 | [REDACTED] | Area VP |
| 2014 | [REDACTED] | VP |
| 2014 | [REDACTED] | Regional VP |
| 2014 | [REDACTED] | Sr Reg VP |
| 2014 | [REDACTED] | VP Marketing |
| 2015 | [REDACTED] | Mktg |
| 2015 | [REDACTED] | VP Mktg |
| 2015 | [REDACTED] | VP |
| 2015 | [REDACTED] | Mktg Sales |
| 2015 | [REDACTED] | Regional VP |
| 2016 | [REDACTED] | Reg Mktg |
| 2016 | [REDACTED] | Regional Dir |
| 2016 | [REDACTED] | MKtg |
| 2017 | [REDACTED] | Area VP |
| 2017 | [REDACTED] | Regional VP |
| 2017 | [REDACTED] | VP |

This demonstrates substantial interviewer-related error in failing to record relevant data and elevates the likelihood of respondent-related error in the form of unqualified respondents answering the Bortz Survey.

²⁹ Exhibit 1.0. This includes 50.0% of completed surveys in 2014, 7.6% in 2015, 7.0% in 2016, and 25.1% in 2017.

³⁰ [https://www.linkedin.com/in/\[REDACTED\]](https://www.linkedin.com/in/[REDACTED])

³¹ The respondent names recorded for [REDACTED] across all of the surveys he completed included: “[REDACTED],” “[REDACTED],” “[REDACTED],” and “[REDACTED].” See Exhibit 3.0. The issue of improper recording of respondents’ names is discussed in the section below.



2. Interviewer-Related Error in the Bortz Survey Makes It Impossible to Validate the Results of the Bortz Survey, Rendering its Conclusions Unreliable

Not only did the interviewers who conducted the Bortz Survey fail to ensure the respondents were qualified for the survey, the results of the Bortz Survey cannot be validated because of the poor record keeping. This poor record keeping took on multiple forms, including a failure to record the respondents’ first and last names, phone numbers, and positions held, and a failure to record the interviewer’s name or the interview date. This interviewer-related error is pervasive throughout the Bortz Survey and makes it impossible to validate the survey results.

First, I found errors related to the entry of respondents’ names. These errors are also an example of interviewer-related error and were likely caused by the lack of interviewer instructions and training, as discussed above. Once again, this makes it impossible to validate who completed each survey. I found that between 0.0% and 5.6% of surveys conducted did not include the cable system respondent’s first or last name at all or recorded only initials.³² I also found that between 0.6% and 7.3% of surveys conducted did not include the cable system respondent’s first name at all or recorded only an initial for their first name.³³ Additionally, I found that between 23.5% and 83.2% of the surveys did not include the cable system respondent’s last name at all, or recorded only an initial for their last name.³⁴ Table 2 below includes examples of the names recorded for the 2017 Bortz Survey.

Table 2: Partial Names Recorded for the 2017 Survey Respondents

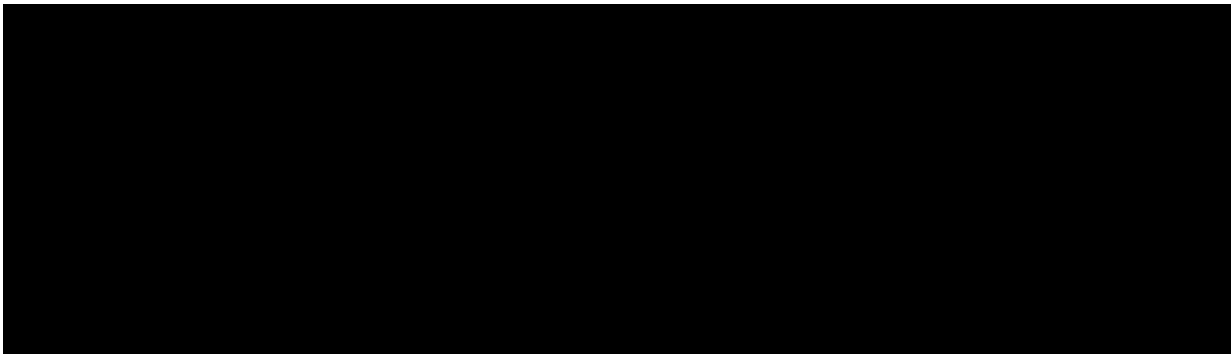
| Respondent | Respondent | Respondent | Respondent | Respondent | Respondent |
|------------|------------|------------|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

³² Exhibit 1.0. This includes 0.0% of completed survey in 2014, 3.0% in 2015, 2.0% in 2016, and 5.6% in 2017.
³³ Exhibit 1.0. This includes 0.6% of completed surveys in 2014, 5.6% in 2015, 2.5% in 2016, and 7.3% in 2017.
³⁴ Exhibit 1.0. This includes 23.5% of completed surveys in 2014, 34.5% in 2015, 62.8% in 2016, and 83.2% in 2017.

| Respondent | Respondent | Respondent | Respondent | Respondent | Respondent |
|------------|------------|------------|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

Also, while, it is hard to quantify exactly, based on the number of surveys with crossed off information written on the survey form, it is clear that the phone numbers collected for certain respondents were not recorded, and/or it has not been identified which phone number is the correct contact number for each respondent. Figure 2 below provides an example of how respondent phone numbers were recorded and how difficult it is to determine the correct phone number for the respondent.

Figure 2: Survey Example of a 2015 Respondent’s Phone Numbers³⁵



I found that 210 out of the 745 completed interviews contained multiple phone numbers,³⁶ but that the interviewers arbitrarily recorded only one contact number for each survey respondent in the Bortz Survey data. Based on the interviewer instructions, this appears to be another issue caused by the lack of direction and training for the survey interviewers who conducted the Bortz Survey.

Additionally, I found instances in which the date of the interview and the interviewer’s names were not completed. This example of interviewer-related error is problematic as it is impossible to validate who conducted the survey and when they conducted the survey. This also does not follow the instructions set forth on the form used by Mr. Trautman. In reviewing the

³⁵ JSC 00055382. The only phone number entered in the survey data for [REDACTED] in 2015 was [REDACTED].

³⁶ Exhibit 1.0. This includes multiple phone numbers recorded for the respondent who completed the survey, or respondents who were listed in the *Factbook* but did not complete the survey.

surveys, I found that between 0.5% and 3.0% of surveys did not have an interview date³⁷ and that between 0.5% and 5.1% of surveys did not have the name of the survey interviewer written on the form.³⁸

In all, interviewer-related error and record keeping issues impact between 64.5% and 91.6% of responses to the Bortz Survey.³⁹ As was discussed above, this interview-related error decreases the validity of the Bortz Survey and contributes to the likelihood of respondent-related error in the survey.

Further, the 2016 and 2017 Bortz Surveys were conducted significantly later in time than the 2014 and 2015 surveys as demonstrated by the Table below.

Table 3: Percentage of Surveys Completed After One Year

| Survey Year | CSOs Responding | CSOs Responding after 1 year | CSOs Responding less than 1 year | Percentage after 1 year |
|-------------|-----------------|------------------------------|----------------------------------|-------------------------|
| 2014 | 170 | 76 | 55.3% | 44.7% |
| 2015 | 197 | 97 | 50.8% | 49.2% |
| 2016 | 199 | 137 | 31.2% | 68.8% |
| 2017 | 179 | 127 | 29.1% | 70.9% |

This evidence suggests that the Bortz Survey was not always completed in the same time frame following each year from 2014 to 2017, which undermines the validity of the survey and increases the likelihood of recall bias, which I discussed in my Stec WRT.⁴⁰ As an example, for 2017, 70.9% of the surveys were conducted over a year after the year in question; for that same year, the Bortz interviewers failed to collect respondents' names in 152 out of 179 surveys.⁴¹

As the above evidence demonstrates, interview dates, interviewer names, the respondents' names, positions, and phone numbers were not properly recorded. This limits the ability to identify these respondents or to verify that these respondents are the employees who

³⁷ Exhibit 1.0. This includes 0.6% of completed surveys in 2014, 3.0% in 2015, 0.5% in 2016, and 0.6% in 2017.

³⁸ Exhibit 1.0. This includes 2.4% of completed surveys in 2014, 5.1% in 2015, 0.5% in 2016, and 2.2% in 2017.

³⁹ Exhibit 1.0. This includes 75.3% of completed surveys in 2014, 64.5% in 2015, 78.9% in 2016, and 91.6% in 2017. This is composed of unique Bortz Survey records in cases where one or more instances of interviewer-related error occurred, including: the respondent's first or last name not being recorded; the individual survey containing multiple phone numbers; the respondent's position not being recorded; multiple positions being recorded for a given respondent; the interviewer assigning the initial respondent from the *Factbook's* position to the ultimate survey respondent; or the interviewer failing to record the interviewer's name or the date the survey took place.

⁴⁰ Stec WRT, pp. 30-31.

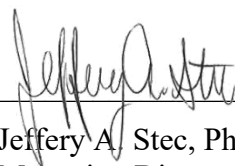
⁴¹ Exhibit 1.0 and Exhibit 2.0.

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were the “most responsible” for carriage decisions at their respective cable systems. Systematic errors in the recording of survey data, can “play havoc with the accuracy of resulting estimates.”⁴² This can undermine the validity and reliability of the survey itself.

I declare under penalty of perjury that the foregoing testimony is true and correct, and of my personal knowledge.

Executed on March 16, 2023



Jeffery A. Stec, Ph.D.
Managing Director
Berkeley Research Group

⁴² Carter, Woody. “Interviewer-Related Error,” *Encyclopedia of Survey Research Methods*, Paul J. Lavrakas, Editor, SAGE Publications, Inc., Thousand Oaks, CA, 2008, p. 378.

Exhibit 1.0

In the Matter of Distribution of the 2014, 2015, 2016 and 2017 Cable Royalty Funds

Exhibit 1.0

Bortz Survey Results - Analysis of Unredacted Bortz Survey Data and Surveys

| Survey Sample Source | Analysis of the Source of Each Respondent Mr. Trautman Relied Upon ⁽¹⁾ | | | | | Percentage of Respondents from Each Source Mr. Trautman Relied Upon ⁽¹⁾ | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|------------|------------|------------|------------|-------------------------------------------------------------------------------------------------------------------------------|-------|-------|-------|-------|
| | 2014 | 2015 | 2016 | 2017 | Total | 2014 | 2015 | 2016 | 2017 | Total |
| Factbook accurately identified CSO respondent | 10 | 14 | 18 | 14 | 56 | 5.9% | 7.1% | 9.0% | 7.8% | 7.5% |
| Factbook did not identify CSO respondent | 160 | 183 | 181 | 165 | 689 | 94.1% | 92.9% | 91.0% | 92.2% | 92.5% |
| Interviewer Error in Record Keeping | Number of Respondents for Whom Bortz Survey Interviewers Failed to Collect Relevant Respondent Information ⁽¹⁾ | | | | | Percentage of Respondents for Whom Bortz Survey Interviewers Failed to Collect Relevant Respondent Information ⁽¹⁾ | | | | |
| | 2014 | 2015 | 2016 | 2017 | Total | 2014 | 2015 | 2016 | 2017 | Total |
| CSO respondent's first name was not recorded | 1 | 11 | 5 | 13 | 30 | 0.6% | 5.6% | 2.5% | 7.3% | 4.0% |
| CSO respondent's last name was not recorded | 40 | 68 | 125 | 149 | 382 | 23.5% | 34.5% | 62.8% | 83.2% | 51.3% |
| Either the CSO respondent's name was not recorded on the survey or only their initials were recorded | 0 | 6 | 4 | 10 | 20 | 0.0% | 3.0% | 2.0% | 5.6% | 2.7% |
| CSO respondent's position was not recorded | 5 | 0 | 0 | 3 | 8 | 2.9% | 0.0% | 0.0% | 1.7% | 1.1% |
| Multiple CSO respondent's positions were recorded | 40 | 12 | 14 | 17 | 83 | 23.5% | 6.1% | 7.0% | 9.5% | 11.1% |
| Two or more CSO respondent's names were recorded on individual survey | 3 | 6 | 6 | 2 | 17 | 1.8% | 3.0% | 3.0% | 1.1% | 2.3% |
| Interviewer failed to record interview date | 1 | 6 | 1 | 1 | 9 | 0.6% | 3.0% | 0.5% | 0.6% | 1.2% |
| Interviewer failed to record interviewer name | 4 | 10 | 1 | 4 | 19 | 2.4% | 5.1% | 0.5% | 2.2% | 2.6% |
| Multiple CSO phone numbers were recorded | 57 | 83 | 60 | 10 | 210 | 33.5% | 42.1% | 30.2% | 5.6% | 28.2% |
| CSO respondent had either no recorded position, multiple positions, or relied on the position for the initial contact and did not record the respondent's position | 85 | 15 | 14 | 45 | 159 | 50.0% | 7.6% | 7.0% | 25.1% | 21.3% |
| Unique Surveys Impacted by Interviewer Error | 128 | 127 | 157 | 164 | 576 | 75.3% | 64.5% | 78.9% | 91.6% | 77.3% |
| Total Number of Surveys per Year | 170 | 197 | 199 | 179 | 745 | | | | | |

Note:

(1) See Exhibit 3.0.

Exhibit 2.0

In the Matter of Distribution of the 2014, 2015, 2016 and 2017 Cable Royalty Funds

Exhibit 2.0

Bortz Survey Results - Percentage of Respondents that Completed the Survey More than a Year After the Program Year ⁽¹⁾

| Survey Year | Total Number of CSOs Responding | Number of CSOs Responding After 1 Year | Percentage Completed Before 1 year | Percentage Completed After 1 year |
|----------------------|--------------------------------------------|---------------------------------------------------|-----------------------------------------------|----------------------------------------------|
| 2014 | 170 | 76 | 55.3% | 44.7% |
| 2015 | 197 | 97 | 50.8% | 49.2% |
| 2016 | 199 | 137 | 31.2% | 68.8% |
| 2017 | 179 | 127 | 29.1% | 70.9% |
| Total Surveys | 745 | 437 | 41.3% | 58.7% |

Note:

(1) See Exhibit 3.0.

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Exhibit 3.0

REDACTED

CERTIFICATE OF SERVICE

I certify that on March 16, 2023, I caused a copy of the foregoing to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

/s/ Lucy Holmes Plovnick

Lucy Holmes Plovnick

Proof of Delivery

I hereby certify that on Thursday, March 16, 2023, I provided a true and correct copy of the Public Version--Program Suppliers' Supplemental Rebuttal Testimony Responding To JSC Supplemental Production to the following:

Commercial Television Claimants / National Association of Broadcasters, represented by David J Ervin, served via E-Service at dervin@crowell.com

Devotional Claimants, represented by Matthew J MacLean, served via E-Service at matthew.maclean@pillsburylaw.com

ASCAP, represented by Sam Mosenkis, served via E-Service at smosenkis@ascap.com

Broadcast Music, Inc. (BMI), represented by Jennifer T. Criss, served via E-Service at jennifer.criss@dbr.com

Major League Soccer, L.L.C., represented by Edward S. Hammerman, served via E-Service at ted@copyrightroyalties.com

Public Television Claimants, represented by Ronald G. Dove Jr., served via E-Service at rdove@cov.com

SESAC Performing Rights, LLC, represented by Timothy L Warnock, served via E-Service at twarnock@loeb.com

Canadian Claimants, represented by Lawrence K Satterfield, served via E-Service at lksatterfield@satterfield-pllc.com

Joint Sports Claimants, represented by Michael E Kientzle, served via E-Service at michael.kientzle@arnoldporter.com

Multigroup Claimants, represented by Brian D Boydston, served via E-Service at brianb@ix.netcom.com

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

National Public Radio, represented by Gregory A Lewis, served via E-Service at
glewis@npr.org

Signed: /s/ Lucy H Plovnick