ORIGINAL

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C. 20036

In the Matter of	)	
	)	CRT Docket 81-1
1980 Cable Royalty Fund Distribution Proceeding	)	

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters (NAB), by its attorneys, submits these comments in reply to the May 7, 1982, comments on procedural issues filed by other parties participating in this proceeding.

NAB shares the view expressed by other claimants, particularly Public Broadcasting Service ("PBS") and Joint Sports, that the parties in this proceeding ought not to be required to reinvent the wheel. There is no justification for precluding anyone from relying on previous years' records, and there is no reason to require the Tribunal and the other parties to analyze evidence that substantially duplicates evidence already in prior years' records. The Tribunal should exclude any data that are not substantially different from or do not lead to materially different conclusions than data submitted in the 1978 or 1979 proceedings.

NAB does not, however, agree with those claimants who have requested the Tribunal to prohibit the introduction of evidence on new subjects or evidence that might yield new insights. It is particularly important that the 1980 record be complete, since it is the first proceeding following the decision of the Court of Appeals on the 1978 royalty distribution proceeding. For example, the Court has now held that broadcasters have a copyrightable interest in their compilations of broadcast days. To prevent parties from introducing new kinds of evidence, especially in view of the holdings of the Court of Appeals, would raise serious due process concerns.

PBS and Joint Sports have each suggested that parties be required to designate, before hearing, the portions of prior years' records on which they intend to rely. NAB does not think such a procedure is workable or wise. It cannot be predicted in advance what references to previous years' records will be useful for the Tribunal. The Tribunal should not bar itself from taking cognizance of relevant and material record evidence, whether or not it was predesignated. Parties should be able to refer to any relevant record evidence in conducting cross-examination of witnesses. It is impossible to know what will be relevant -- and thus to designate portions of previous records -- before the witness testifies.

NAB continues to believe that a partial distribution of 1980 royalties before the conclusion of this proceeding would not make good sense. The sole purpose of this proceeding is to determine how the fund should be distributed. To distribute royalties now would require guesswork about the outcome of the proceeding before it even begins.

A partial distribution would raise very substantial practical and procedural problems. First of all, the identities of all parties who will present evidence in this year's proceeding are unknown. If new parties appear in Phase II of the 1980 proceeding, as they did in the 1979 proceeding, then a premature distribution of a portion of the fund to other claimants in the same Phase I category based on last year's list of royalty recipients would severely prejudice their rights to receive royalty awards. Moreover, a partial distribution would unfairly subsidize the case presentation of some parties and not others. NAB remains of the view that any partial distribution at this time would be unauthorized, unwise and unworkable.

NAB agrees with most commenters that there should not be any changes in Phase I categories. In response to the suggestion of Superstation, Inc. that any party should be entitled to participate and introduce evidence in Phase I and that each party should have the option at the conclusion of the presentation of direct evidence to decide whether it wants a Phase I or a Phase II

award, NAB believes the issues of participation in Phase I and the establishment of Phase I categories are fundamentally different. Every claimant has always been free to participate in Phase I. There was nothing to prohibit Superstation from introducing evidence in last year's proceeding.

The Tribunal should not, however, be required to make a Phase I award to all Phase I participants. It makes no sense for the Tribunal to make separate Phase I awards to claimants who fall squarely into an established category. If, for example, a syndicator represented in Phase II last year by MPAA were to participate in Phase I this year, there would be no reason to establish a separate Phase I category for that syndicator. To establish separate categories for all Phase I parties would have the effect of forcing claimants to participate in Phase I and make the Tribunal's two phase procedure meaningless. The Tribunal should continue its practice of designating Phase I categories along program type lines.

Respectfully submitted,

THE NATIONAL ASSOCIATION OF BROADCASTERS

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CERTIFICATE OF SERVICE

I, Clarice L. Shearer, certify that I have this 21st day of May, 1982, caused copies of "Reply Comments of the National Association of Broadcasters" to be served by mail, first class, postage prepaid, on the following:

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May 21, 1982

The Honorable Frances Garcia
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Dear Chairperson Garcia:

Transmitted herewith for filing with the Tribunal, on behalf of the National Association of Broadcasters (NAB), are an original and ten copies of the "Reply Comments of the National Association of Broadcasters."

If there are any questions concerning this matter, please communicate with this office.

Respectfully submitted,

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Enclosures