

OFFICE COPY

APR 17 1985

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

1985 Cable Royalty Inflation )  
Adjustment Proceeding ) Docket No. CRT 85-2-CC

NOTICE OF INTENTION TO PARTICIPATE AND  
COMMENTS OF CABLE REPRESENTATIVES AND  
COPYRIGHT OWNERS

Pursuant to the Tribunal's notice of March 19, 1985 (50 Fed. Reg. 10989), the National Cable Television Association and Community Antenna Television Association ("Cable Representatives") and the Motion Picture Association of America, Inc., Major League Baseball, National Basketball Association, North American Soccer League, National Hockey League, National Collegiate Athletic Association, American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc. and National Association of Broadcasters ("Copyright Owners") hereby file their notice of intention to participate in any proceeding held in the captioned docket. This filing serves also as the Cable Representatives' and Copyright Owners' comments in support of Settlement Agreement resolving this matter.

The Cable Representatives and Copyright Owners agree to the Tribunal's modification of the Settlement Agreement to require a "cut-off" for Form 1 cable systems of \$75,800 or less in semi-annual gross receipts. As the notice reflects, this represents the unrounded figure that results from the inflation adjustment required by the Act. The parties believe this more accurate

representation of the "cut-off" is consistent with the intention of the parties in reaching this settlement. Accordingly, the Cable Representatives and Copyright Owners accept this modification as part of their agreement.

The notice solicited comments "as to whether good cause exists to make the final rules effective with the publishing of the final rulemaking order in the Federal Register." A final regulation may become immediately effective with its publication under 5 U.S.C. §553(d)(3) (Administrative Procedure Act) where "good cause" is shown. In analyzing the good cause question, it is important to place the proposed regulations in context. The Settlement Agreement calls for the inflation adjusted rates and "cut-offs" to be effective as of the first accounting period of 1985. Royalty fee payments by cable systems for this period are not due until August 29, 1985. It is necessary, however, for the Copyright Office to revise its statement of account forms to reflect the proposed changes. The Copyright Office has advised informally that an orderly processing of the revised statement of account forms requires a final regulation change in early May, 1985.

The primary purpose for the requirement of Section 553 of a thirty-day interval between publication and effectiveness is to "afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of the rules may prompt." S. Doc. No. 248, 79th Cong., 2d Sess. 201 (1946). In this instance, the terms of the inflation rate adjustment were jointly proposed by

representatives of the affected parties themselves. Furthermore, these terms were publicly disclosed at the outset of the CRT proceeding. Thus immediate effectiveness of this proposed regulation will not contravene the purpose of the thirty-day interval.

The Tribunal has opened the Agreement to a full notice and comment period for all parties to express their views. This period allows full ventilation of any issues concerning the proposed regulations prior to their becoming effective with publication. Under all the circumstances of this proceeding, such notice and comment procedure fulfills the public disclosure requirements of the APA, and thus removes any concern over this aspect of effectiveness with publication of the new regulations.

Finally, the Act authorizes, starting in 1980, inflation adjustments on a five year schedule. One factor leading to a settlement was the fact that the proposed rates and "cut-offs" could be integrated in an orderly fashion as part of the reporting and filing of fees for the first accounting period of 1985. Without such a process, the Copyright Office must issue supplemental statements of account seeking to recover the inflation adjustment. The supplemental statement of account procedure, the costs of which are borne by Copyright Owners, places an added burden on the Office, and on cable systems; moreover, it would effectively diminish the value of the Agreement to the Copyright Owners. These complications can be avoided entirely by allowing the regulations to become effective with their publications in the Federal Register.

Court cases interpreting Section 553(d)(3) have found that good cause exists where, among other things, there was widespread prior notice of the proposed change to the affected parties, and where administrative convenience and efficiency were promoted by effectiveness at an early date. Clay Broadcasting Corp. v. U.S., 464 F.2d 1313 (5th Cir. 1972), rev'd on other grounds sub nom. NCTA v. U.S., 415 U.S. 336 (1974); Wells v. Schweiker, 536 F. Supp. 1314 (E.D. La. 1982). Courts have looked also to the fact that no party suffered hardship as a result of the shortened period and that immediate effectiveness assisted implementation. Nance v. EPA, 645 F.2d 701 (9th Cir. 1981) cert. denied, 454 U.S. 1081 (1982). Such factors are present in this matter:

For the reasons we stated at the time the Settlement Agreement was filed, Cable Representatives and Copyright Owners submit that the inflation adjustments, as modified by the Tribunal, should be adopted as a reasonable resolution of this proceeding and as consistent with the purposes of the Copyright Act. Cable Representatives and Copyright Owners submit also that good cause exists under 5 U.S.C. §553(d)(3) to make the proposed regulations effective immediately upon their publication in the Federal Register.

NATIONAL CABLE TELEVISION  
ASSOCIATION, INC.

By Robert St. John Roper / SO  
Robert St. John Roper  
LeBoeuf, Lamb, Liby &  
MacRae  
1333 New Hampshire  
Avenue, N.W.  
Washington, D.C. 20036

Respectfully submitted,

COMMUNITY ANTENNA TELEVISION  
ASSOCIATION

By Stephen R. Effros / SO  
Stephen R. Effros  
Community Antenna Tele-  
vision Association  
3977 Chain Bridge Road  
Fairfax, Virginia 22030

MAJOR LEAGUE BASEBALL

By Robert Alan Garrett  
Robert Alan Garrett  
Arnold & Porter  
1200 New Hampshire  
Avenue, N.W.  
Washington, D.C. 20036

MOTION PICTURE ASSOCIATION  
OF AMERICA, INC.

By Dennis Lane  
Dennis Lane  
Wilner & Scheiner  
1200 New Hampshire  
Avenue, N.W.  
Washington, D.C. 20036

NATIONAL BASKETBALL  
ASSOCIATION AND NORTH  
AMERICAN SOCCER LEAGUE

By Philip R. Hochberg  
Philip R. Hochberg  
Baraff, Koerner,  
Olender & Hochberg  
2033 M Street, N.W.  
Washington, D.C. 20036

NATIONAL HOCKEY LEAGUE

By Robert W. Coll  
Robert W. Coll  
McKenna, Wilkinson  
& Kittner  
1150 Seventeenth Street, N.W.  
Washington, D.C. 20036

NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION

By Michael Scott  
Michael Scott  
Squire, Sanders  
& Dempsey  
1201 Pennsylvania  
Avenue, N.W.  
Washington, D.C. 20004

NATIONAL ASSOCIATION OF  
BROADCASTERS

By John I. Stewart  
John I. Stewart  
Crowell & Moring  
1100 Connecticut Ave., N.W.  
Washington, D.C. 20036

AMERICAN SOCIETY OF  
COMPOSERS, AUTHORS AND  
PUBLISHERS

BROADCAST MUSIC, INC.

BY Bernard Korman / dr  
Bernard Korman  
ASCAP  
One Lincoln Plaza  
New York, New York 10023

BY Charles T. Duncan / dr  
Charles T. Duncan  
Reid & Priest  
1111 - 19th Street, N.W.  
Suite 1100  
Washington, D.C. 20036

SESAC, INC.

BY Nicholas Arcomano / dr  
Nicholas Arcomano  
Vice President and Counsel  
SESAC  
10 Columbus Circle  
New York, New York 10019

Dated: April 17, 1985