

ORIGINAL

DEC 1 1988

Before The
Copyright Royalty Tribunal
Washington, D.C.

In The Matter of:)
Modification of Rules of Procedure) CRT Docket No. 88-3 RM

REPLY COMMENTS OF
NATIONAL PUBLIC RADIO

Because some of the comments on the above-referenced proposed rulemaking filed by other interested parties raise new issues that may affect National Public Radio ("NPR"), it submits these brief additional comments.

The thrust of many of the comments is that any discretion that could be exercised by the Tribunal should be eliminated. NPR believes that extreme formality is unwise as a matter of policy and unfounded as a matter of law. Administrative agencies are intended to operate with flexibility. They are not courts but, rather, alternative adjudicative bodies that are to operate less formally in dealing with complex matters. In NPR's view, the Tribunal should have rules that permit it the flexibility to respond effectively to the complexity of its task. Two proposals in the comments of other interested parties would impose on the Tribunal an overly formalistic approach to its proceedings.

1. Section 301.44(ff): Rebuttal

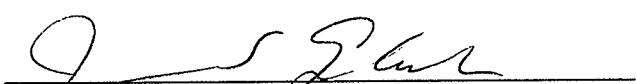
The Sports Claimants would require that each party provide transcript citations to demonstrate the propriety of proposed rebuttal. Even judicial proceedings do not impose such a requirement. Parties should simply file their rebuttal cases;

others may object on the ground that rebuttal is improper and only then would there be a dispute as to whether prior testimony justifies rebuttal. In addition, rebuttal should be permitted not only in response to a direct case but in response to points that have emerged during cross-examination. For example, in cross-examination of an MPAA witness by PBS, damaging testimony as to the value of sports programming might be elicited, to which the Sports Claimants should be entitled to respond.

2. Sections 301.66(a), 301.74(a)

Public Broadcasting Service states that it cannot "conceive of a valid policy reason" to retain the Tribunal's policy of publishing proposed determinations. The valid policy reason is that such a rule permits the Tribunal to correct inadvertent errors. Given the crush of Tribunal business and the complexity of its task, mistakes can occur. On occasion, for example, the calculation of distributions has been corrected upon publication of a proposed action. The Tribunal should continue its practice and should reserve its discretion to conduct further proceedings if necessary.

Respectfully submitted



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Date: December 29, 1988

CERTIFICATION OF SERVICE

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