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DEC 8 1990

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C.

In the Matter of
Adjustment of Cable
Copyright Royalty Rates

) CRT Docket No. _____
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PETITION OF JOINT SPORTS CLAIMANTS TO
INCREASE ROYALTY RATES

Pursuant to Sections 801(b)(2)(A) and (C), and 804(a) and (b) of the Copyright Act of 1976, 17 U.S.C. §§ 801(b)(2)(A) and (C) and 804(a) and (b), Major League Baseball, the National Basketball Association, the National Hockey League, and the National Collegiate Athletic Association ("Joint Sports Claimants" or "JSC"), on their own behalf and on behalf of their member clubs, hereby petition the Copyright Royalty Tribunal ("Tribunal") to initiate proceedings to adjust the cable copyright royalty rates set forth in Sections 308.2(a) and (c) of the Tribunal's Rules, 37 C.F.R. §§ 308.2(a) and (c). As the copyright owners of numerous non-network professional and collegiate sports telecasts carried on distant signals, the JSC have a significant interest in the royalty rates in which an adjustment is sought.

The instant Petition seeks three separate rate adjustments.

First, JSC seek an increase in the base and 3.75 royalty rates pursuant to Sections 801(b)(2)(A) and 804(a) of the Copyright Act, 17 U.S.C. §§ 801(b)(2)(A) and 804(a), to reflect national monetary inflation and changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions. The request for an adjustment is based in part on the increased use by cable operators of "tiering," *i.e.*, the segregation of broadcast signals on a single, low-priced tier, which typically has fewer subscribers. The effect of tiering basic subscriber rates is to artificially depress and thus unreasonably diminish the "gross receipts" used to calculate the base and 3.75 royalties. See H. R. Rep. No. 94-1476, 94th Cong., 2d Sess., reprinted in 1976 U.S. Code Cong. & Admin. News 5659, 5791 (recognizing that an inflation adjustment is appropriate when cable systems reduce the basic charge as an inducement for individuals to become subscribers and such a "shift of revenue sources . . . den[ies] copyright owners the level of royalty fees for secondary transmissions contemplated by this legislation.").

Second, JSC seek an increase in the 3.75 rate under Section 804(b) of the Copyright Act, 17 U.S.C. §

804(b), which authorizes the Tribunal to reconsider the 3.75 rate at five-year intervals beginning in 1985. The 3.75 rate was adopted more than eight years ago and substantial changes in cable marketing and increased programming costs require the upward adjustment of the 3.75 rate to ensure it remains "reasonable," as required by Section 801(b)(2)(B) of the Copyright Act, 17 U.S.C. § 801(b)(2)(B).

Third, JSC seek an adjustment in the base and the 3.75 rates to make them "reasonable" in light of the recent changes in the FCC syndicated exclusivity blackout rules. The Tribunal stated in its recently-concluded proceeding to adjust the syndex rates that it would consider the impact of the FCC's action on the base and 3.75 rates (including the effect of the Commission's substitution rules) in a separate proceeding. See Adjustment of the Syndicated Exclusivity Surcharge, 55 Fed. Reg. 33604 (1990).

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December 28, 1990

CERTIFICATE OF SERVICE

I, Patricia Copeland, do hereby certify that I have this 28th day of December, 1990, mailed by First Class, United States mail, postage paid, the foregoing "Petition of Joint Sports Claimants to Increase Royalty Rates", to the persons on the attached list.


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