ORIGINAL

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C.

1989-1991 Satellite Carrier Royalty Distribution Proceedings	)	CRT Docket Nos. 91-1-89SCD 91-5-90SCD 92-2-91SCD

COMMENTS ON ENTITLEMENT TO ROYALTIES

The undersigned parties ("Copyright Owners") submit the following comments in response to the Tribunal's ruling at the October 26, 1992 prehearing conference (Transcript at 36-37).

Since the prehearing conference, Copyright Owners have reached a settlement with the Public Broadcasting Service (PBS). The only issue currently before the Tribunal, therefore, is whether the Networks (ABC, CBS, and NBC) may receive any of the royalties paid by satellite carriers to retransmit superstations -- even though none of the programs within the Networks' Phase I claim was broadcast on those superstations. For the same reasons, that certain cable royalty claimants may not share in the cable syndex and 3.75 royalties, the Networks are not entitled to any portion of the superstation royalties.[1]

INTRODUCTION AND SUMMARY

Satellite carriers have paid a total of $8,207,468 in satellite carrier royalties to retransmit superstations during 1989-1991. Carriers have paid a total of $814,332 to retransmit

---

[1] The only programs properly within the Networks' Phase I claim are those "first-run" programs in which the Networks own the relevant copyright. Those programs appear only on network stations and not on superstations. Insofar as the Networks have a Phase II claim for syndicated programming (e.g., "Little House on the Prairie"), they are represented by the Program Suppliers.

network stations during the same period. That disparity is partially explained by the different rates charged for the carriage of network station (3 cents) and superstations (12 cents). 17 U.S.C. § 119(b)(1)(B). It is also attributable to the fact that a network station may be retransmitted only to "white areas" -- those geographic areas that are not served by any other station affiliated with that network -- while superstations are retransmitted on a nationwide basis. 17 U.S.C. § 119(a)(2)(B).

During the legislative process which led to enactment of Section 119, the Networks made a conscious trade-off. To protect the exclusivity they grant to their affiliates, the Networks strongly opposed any retransmission of network stations to areas served by those affiliates. H.R. Rep. No. 887 (Part II), 100th Cong., 2d Sess. 19-21 (1988). Congress accepted the Networks' position, the effect of which has been to restrict the potential reach of the network stations retransmitted by satellite carriers, and thereby to limit the total amount of Section 119 royalties paid for carriage of network stations.

The Networks would now like to have their cake and eat it, too. Having sought the legislative restrictions which effectively reduce the total Section 119 royalties paid for network stations and having agreed to the lower (3 cents) rate for those stations, the Networks now seek to inflate their share of Section 119 royalties at the expense of Copyright Owners.

The programs for which the Networks may properly claim constitute only a portion of the copyrighted works broadcast on

network stations; the works of the Copyright Owners also form an important part of the network stations' broadcasts. Nevertheless, the position of the Networks is that they are eligible to receive not only 100% of the royalties paid for the retransmission of network stations -- thus, including payment for works carried on network stations which the Networks do not own -- but also some as yet unspecified portion of the royalties paid for superstations. Their position is squarely inconsistent with the decisions of the Tribunal and the court of appeals in the 1983 proceeding concerning allocation of 3.75 and syndex royalties.

First, the FCC changed its rules (effective in 1981) to permit cable systems to carry additional commercial distant signals. The Tribunal, acting in accordance with Section 801 of the Copyright Act, determined that cable systems must pay the 3.75 rate for each additional signal carried pursuant to the FCC rule change. In the 1983 cable royalty distribution proceeding, the Tribunal held that PBS is not eligible to receive any portion of the 3.75 royalties because none of its programming appeared on stations for which the 3.75 rate is paid:

> We conclude that noncommercial educational stations could be carried on an unlimited basis prior to the FCC deregulation, and that no cable operator paid the 3.75% rate to carry any noncommercial stations. For this reason, we have concluded that PBS shall receive no allocation from the 3.75% fund.

1983 Cable Royalty Distribution Proceeding Final Determination, 51 Fed. Reg. 12792, 12813 (1986)("1983 Final Determination")(emphasis added). On appeal, the Second Circuit affirmed the Tribunal's decision to establish a separate 3.75 fund, concluding: "[B]ecause

cable carriage of noncommercial educational stations was not limited by the old distant signal rules, PBS is not eligible for royalties at the new 3.75% rate." NAB v. CRT, 809 F.2d 172, 178 n. 7 (2d Cir. 1986).

Second, the FCC also amended its cable rules (effective in 1981) by deleting syndicated exclusivity protection. As a result, cable operators were able to carry distant signal syndicated programs which they previously could not carry. The Tribunal, again acting in accordance with Section 801 of the Act, required cable systems to pay a syndex surcharge for that additional programming.

In the 1983 proceeding, the Tribunal ruled that only the Program Suppliers and the Music Claimants may receive syndex royalties. None of the other parties owned any of the copyrighted works for which syndex royalties were being paid. Thus, the Tribunal determined, the other claimants are not eligible to receive any of the syndex royalties. 1983 Final Determination, 51 Fed. Reg. at 12814; accord NAB v. CRT, 809 F.2d at 178 n. 7.

As that precedent makes clear, claimants are not entitled to receive any royalties paid for the carriage of stations which do not broadcast any of their programming. The Networks, therefore, are not eligible to receive any portion of the Section 119 royalties paid for retransmission of superstations.

DISCUSSION

The networks seek to avoid the statutory eligibility requirement by having the Tribunal treat all satellite carrier

royalties as a single fund to which all owners are equally eligible:

> Indeed, in our view, it's one pot, and that one pot has to be allocated in a proceeding in which all parties have the right to argue for the relative benefits and detriments of their positions ....

Prehearing tr. at 12; see also id. at 13-14 (same). They ignore the Tribunal's rulings with respect to eligibility for 3.75 and syndex royalties. And, they argue that the entire satellite carrier royalty fund should be distributed in the same manner as is the basic cable fund. But differences in ownership eligibility that require different distribution approaches be taken in the two situations.

I. The Satellite Carrier Royalty Payment Plan Differs Significantly From The Basic Cable Royalty Payment Plan

Under Section 111, basic cable royalties are not divided by type of station for reporting, payment or distribution purposes. Indeed, it is extremely difficult to determine the exact amount of basic cable royalties paid for each station retransmitted because of the way in which Section 111 requires cable royalties to be computed and paid. In contrast, Section 119 requires that satellite carriers report and calculate royalties separately and precisely for each station carried. The Section 119 plan is comparable to the cable 3.75 and syndex plans in that reporting and payment calculations under all three are based on individually identified stations.

A. The Amount of Basic Cable Royalties Paid For Any Station Cannot Be Precisely Determined

Under Section 111, basic royalties are calculated using a "distant signal equivalent" ("DSE") factor. Each type of station is assigned a DSE value -- 1.0 DSE for independents and 0.25 DSE for network affiliates and public television (PTV) stations. Larger (Form 3) cable systems (which account for more than 95% of all cable royalties) pay basic royalties based on the total DSE value, using a stepped percentage scale which declines as the number of DSEs increases.[2] See generally, 17 U.S.C. §§ 111(d)(1)(B)(i)-(iv). Smaller (Form 1/2) cable systems pay either $28 per accounting period or a fee based on flat percentage rates, regardless of how many distant signals they carry. 17 U.S.C. §111(d)(1)(C) and (D).

The basic cable payment plan makes assignment of any specific amount of royalties to a particular station problematic. For example, if a system retransmits on a distant basis two network affiliates, two independents, and two PTV stations, for a total of 3.0 DSEs, which station(s) are paid for at the higher rate as the "first" DSE and which stations are paid for at the lower rate as the "second" and "third" DSE? It is extremely difficult to attribute a particular royalty payment to a specific station.

---

[2] The percentages are 0.893% of gross receipts for the first DSE; 0.563% for the second through fourth DSEs; and 0.265% for the fifth and additional DSEs. 37 C.F.R. § 308.2(a) (1991).

B. The Amount of Satellite Carrier Royalties Paid For Any Station Can Be Precisely Determined

Section 119 does not present such problems. Satellite carriers pay a specific amount, based on the number of subscribers per month, for each station retransmitted.[3] 17 U.S.C. § 119(b)(1)(B). The Section 119 statement of account requires a listing by month of the number of subscribers who receive each station. Royalty fees are determined by multiplying the number of subscribers for that station by the appropriate cents per subscriber fee. See PrimeTime 24 1991-2 Statement of Account (attached hereto) (example of satellite carrier filing).

The royalties paid for each station can be readily and precisely identified. See, e.g., Direct Case of The Copyright Owners in CRT Docket No 91-3-SCRA, Exhibit 8 (filed February 6, 1992)(CRT's own fee generation study for 1989, 1990 and first half of 1991 satellite carrier royalties). Because the payments for each station can be readily and precisely ascertained, the Section 119 royalties, unlike the Section 111 basic royalties, can and should be specifically allocated for each station type carried.

II. The Reasoning Supporting Division Of Cable Royalties Into Three Funds -- Distribution Limited To Owners Whose Works Are Actually Carried -- Applies Here

A. The Tribunal's Distribution Authority Under Section 119 Is Identical To Its Section 111 Authority

A very similar issue was presented in the 1983 cable royalty distribution proceeding, the first proceeding in which 3.75 and

---

[3] For 1989-1991, the rates were: 12 cents/subscriber/month for independents and 3 cents/subscriber/month for network affiliates and PTV stations.

syndex royalty fees were distributed. That "Three Funds" issue was whether the basic, 3.75 and syndex royalties should be treated as a single fund or three separate funds for distribution purposes. 51 Fed. Reg. 12792 (April 15, 1986).

It was argued that Section 111 did not authorize separate treatment of basic, 3.75, and syndex royalties for distribution purposes. Id. at 12807. The Tribunal rejected the argument on grounds that it was to "'consider all pertinent data and considerations presented'" in distribution proceedings, that "treating all royalties together would be inadequate, and that a separate analysis for the basic fund, the 3.75% fund, and the [syndex] surcharge would yield better decision-making and is fully warranted." Id.(citing H.R. Rep. No 1476, 94th Cong. 2d Sess. 97).

On appeal, the Second Circuit upheld separate treatment of the three funds, finding, in view of the broad discretion given the Tribunal in structuring distribution, that "[t]he absence of express legislative authorization of separate funds is thus of no consequence." NAB v. CRT, 809 F.2d at 178.

The legislative history of Section 119 contains the same directive to "consider all pertinent data and considerations presented." H.R.Rep. No. 887 (Part I) 100th Cong. 2d Sess. 23 (1988). Under applicable precedent, that specific grant of authority allows the Tribunal to divide cable royalties into separate funds for distribution purposes. It follows that the Tribunal may (and, we submit, should) similarly divide satellite carrier royalties into separate funds.

B. The Tribunal Correctly Found That Dividing Royalties Into Separate Funds Is Not Equivalent To Adopting A Fee Generated Approach For Distribution

In the 1983 cable case, the division of royalties into separate funds was claimed to be the equivalent of a "fee-generated" approach to distribution, an approach which had been repeatedly rejected as the sole basis for distributing cable royalties. 51 Fed. Reg. at 12807. The Tribunal disagreed, and ruled that dividing royalties into basic, 3.75 and syndex funds followed past Tribunal distribution "decisions [which were] based on all the data presented before us, including the amount that program types were carried and the degree to which cable systems were willing to pay for them." Id.

The Second Circuit affirmed the Tribunal's ruling on the Three Funds Issue on grounds that legal and equitable grounds required separate distribution treatment of the different funds:

> Moreover, the establishment of the 3.75% and syndex royalty rates made new distribution criteria imperative. Certain claimants are, in fact, ineligible to receive royalties at the new rate, and distribution of royalties from a single fund would require complex adjustments of awards.

NAB v. CRT, 809 F.2d at 178 (note omitted).

Differing eligibility to receive royalties must be the starting point of any distribution decision -- whether royalties are treated as "one pot" or divided into distinct funds. It is clear, however, that treating each fund separately for distribution purposes is easier than accounting for differing eligibility in distribution of a single fund made of disparate elements.

The division of royalties must be predicated on owner eligibility to share in distribution. Different program types were carried to differing degrees on basic, 3.75 or syndex signals. Some claimants had no programming on 3.75 or syndex stations, and thus were ineligible to share in distribution of those funds. As a result, some claimants received awards from all three funds; some from two; and others from only one. See id. at 12808-12815 and 12818. So, too, is the case here.

Three separate and distinct station types -- independent, network affiliate, and PTV -- are retransmitted by satellite carriers. The amount of carriage of the various Phase I claimants' works differs substantially on each type of station. In cable, the Tribunal found such differences in carriage of copyrighted works essential to making distribution decisions. 51 Fed. Reg. at 12808. It is similarly essential in Section 119 royalty distribution.

The programming for which the Networks claim in Phase I is not broadcast by superstations. Thus, the Networks are not eligible to receive royalties paid for carriage of superstations. As the Second Circuit recognized, ineligibility to receive royalties makes use of separate funds "imperative." NAB v. CRT, 809 F.2d at 178.

III. Dividing The Royalties Into Three Separate Funds Does Not End The Allocation Process Among Claimants

The Networks suggest that the use of three separate funds for satellite carrier royalty distribution purposes constitutes a pay-in/pay-out or fee generation approach, and would result in a mechanical formula for distribution. Nothing could be further from the truth. Division of royalties into three separate funds only

begins the allocation process. Eligible parties must still prove their entitlement to a specific percentage share of each fund through evidence of the value of their works on those stations[4] -- just as claimants prove entitlement to specific percentages of the basic, 3.75 and syndex cable royalty funds.

Division of Section 119 royalties into three separate funds only tells the Tribunal the total amount paid for each type of station. Royalty distribution is based, however, on the value of the different kinds of works available on stations. Each party will have the opportunity to present evidence as to what share of the total royalties paid for that type of station should be assigned to its copyrighted works. As the 1983 cable awards show, the division of royalties into separate funds does not eliminate the need for resolution of how to assign relative values for the works available on each type of station. 51 Fed. Reg.at 12818.[5]

It is a mistake to equate the "time-plus-fee-generated" approach used in the cable proceedings with the determination of the amounts paid by satellite carriers for retransmission of network stations (the "network station fund"). "Time-plus-fee generation" has been used over the years as an attempted way to

---

[4] In the case of the royalties paid for independent superstations and the PTV station retransmitted by satellite carriers, all parties who are eligible to receive those royalties have agreed to the allocation of those funds among themselves. This obviates the need for the Tribunal to allocate those royalties among the claimants.

[5] Indeed, parties have introduced time plus fee generated studies in cases where the Tribunal has divided cable royalties into three separate funds. E.g., 1989 Cable Royalty Final Determination, 57 Fed. Reg. 15286, 15298 (April 27, 1992).

allocate value among programming types, not to divide royalties among station types for purposes of determining claimant eligibility. The time-plus-fee-generated approach was first offered in the 1978 cable royalty proceeding, and the Tribunal recognized that it sought to assign values to programs:

> To measure the benefit to cable systems and place a value on the share due program producers, MPAA proposed the "time plus fee generated" method. This measured the amount of time programs were carried and placed a value on the worth of such programs to cable systems.

1978 Cable Royalty Distribution Determination, 45 Fed. Reg. 63026, 63028 (1980). Use of the term "fee generated" to describe the division of satellite carrier royalties into separate funds determined by station types carried as if it were the same as the "time-pus-fee-generated" approach used in cable distribution, is both inaccurate and misleading.

The "time-plus-fee-generated" approach addresses a different question from that involved in the division of royalties into separate funds. The time-plus-fee-generated approach addresses relative program value, while division of royalties into different funds addresses owner eligibility. The Tribunal found that relative value among program types eligible to receive awards within a particular fund involves marketplace considerations and cannot be limited to a time-plus-fee-generated formula. E.g., 51 Fed. Reg. at 12813.

But eligibility to receive royalties involves only one, quite different issue: whether a claimant's works are offered by a specific station type. If they are not, then the claimant is not

eligible to share in the royalties paid for carriage of that type of station. The Tribunal found that division of royalties into separate funds is essential to resolving eligibility questions. 51 Fed. Reg. at 12807.

Division of royalties by station type and the time-plus-fee-generated analysis thus serve two separate purposes. Division of royalties into separate funds helps the Tribunal determine royalty eligibility questions; time-plus-fee-generated analysis is one means to estimate program values within each fund. The fact that the Tribunal has rejected time-plus-fee-generated (or, as it is also known, the "pay-in/pay-out" approach, 45 Fed. Reg. at 63028) as the only method for determining program value within each fund has no bearing on whether royalties should be divided into separate funds by station types for eligibility purposes.

IV. Response To Commissioner Goodman's Questions

During the prehearing conference, Commissioner Goodman requested that the parties address certain questions in their comments. (Prehearing tr. 39-41).

A. Pay-In/Pay-Out

The first two questions concerned statements made by the Tribunal and the Arbitration Panel regarding pay-in/pay-out during the recent satellite carrier rate adjustment proceedings. See 1991 Satellite Carrier Rate Adjustment Proceeding, 57 Fed. Reg. 19052, 19052 and 19059-60 (1992) (discussions of pay-in/pay-out). Commissioner Goodman also requested comments on the testimony in the rate adjustment proceeding addressing pay-in/pay-out. See

Testimony of Sanford Kryle on behalf of Copyright Owners in CRT Docket No 91-3-SCRA (owner testimony). We deal with these questions collectively.

In the rate adjustment proceeding, the pay-in/pay-out matter was raised in the context of whether the Tribunal should set rates for network stations at the same level as the rates for superstations. The Tribunal's ruling that owners of network programming are entitled to claim Section 119 royalties meant that all the programming on network stations was compensable (and not only the nonnetwork programming, as is the case under Section 111), just as was all the programming on superstations. In view of this parity on the "pay-out" side, it was argued that the rates (or "pay-in") for superstations and network stations should be equal.

The Tribunal found that the rates for the two types of stations did not have to match because "the pay-in may not necessarily correlate to the pay-out." 57 Fed. Reg. at 19052. As we understand the Tribunal's and the Panel's ruling on the issue, Section 119 requires the balancing of several competing factors in setting a final rate for network stations. While parity between the network station rate and the superstation rate might be warranted by one factor (e.g., the fact that all programming on both types of stations was compensable), other factors (e.g., the desire to avoid disruptive impact on carriers) led to a conclusion that the rates could be dissimilar.

That ruling concerning the rate (or "pay-in") for <u>network stations</u> does not control, however, the instant issue, which

addresses a different point: whether the networks are entitled to receive a share of royalties paid for carriage of superstations. Setting a higher rate for network stations would have increased the royalties available for owners of works on those stations, but it would not have entitled owners whose works did not appear on network stations to share in those increased royalties.

Likewise, the decision had nothing to do with the question of whether the networks can receive a share of royalties attributable to superstation carriage when none of their Phase I programming appears on the superstations. In short, the discussion in the rate adjustment proceeding relates to the size of the fund available for owners with works on network stations, not the entitlement of owners to share in distribution.

B. Precedent and Legislative History

Commissioner Goodman asked for comment on the value of precedent in Tribunal proceedings and the effect of congressional statements on the Tribunal's distribution. (Prehearing tr. 39-40). As a general matter, the Tribunal and parties are entitled to rely on past precedent, subject to revisions due to improvements and refinements in testimony and to changed circumstances. NAB v. CRT, 772 F.2d 922, 932 (D.C. Cir. 1985). And, of course, the Tribunal is bound to apply precedent made by the courts of appeals in reviewing the Tribunal's own decisions. Congress, in fact, has directed the Tribunal to consider, in allocating Section 119 royalties, its cable royalty distribution precedent. H.R. Rep. No. 887 (Part I) at 23.

Here, the Tribunal is faced with the same statutory language and legislative history concerning satellite carrier royalty distribution as govern the cable royalty distribution proceedings.[6] The same statutory language and legislative history have already led the Tribunal to divide cable royalties into separate funds for distribution purposes. That decision was upheld, as a matter of law, by the Second Circuit. NAB v. CRT, 809 F.2d at 178.

The Copyright Owners are unaware of any circumstances which require reversal of that precedent here. The same issue -- eligibility to share in distribution -- is being addressed in both situations. The question is a legal one. Congress, when it passed Section 119, was aware of the 1983 cable decision and its affirmance, but made no change in the statutory language or the relevant legislative history. The absence of any difference shows that Congress expected the same procedures to be followed in the satellite carrier distributions. Therefore, the Copyright Owners submit, the Tribunal must follow the established precedent, and divide the Section 119 royalties into separate funds.

CONCLUSION

For the reasons stated, the Tribunal should rule that the Networks are not eligible to receive any of the Section 119 royalties paid for the carriage of superstations. The Tribunal can

---

[6] Compare 17 U.S.C. § 111(b)(3) and H.R. Rep. No. 1476, 94th Cong. 2d Sess. 97 (1976) (cable royalty distributions) with 17 U.S.C. § 119(b)(3) and H.R. Rep. No. 100-887 (I) at 23 (satellite carrier royalty distribution).

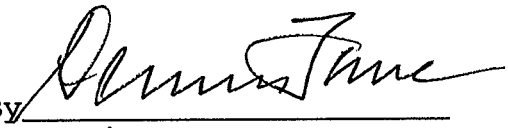
and should divide the satellite carrier royalties by station type to determine claimant eligibility to royalties paid for retransmission of each type of station. There should be three funds created from the satellite carrier royalties: the superstation fund, the PTV station fund, and the network station fund. The amounts in each fund would be the exact amount paid by satellite carriers for retransmission of each station type.

Copyright owners whose works were broadcast on each station type would then be eligible to claim royalties from the fund related to that station type, subject to proof of the value of their works. Owners would not be eligible, however, to receive any share of the funds which were comprised of royalties from stations on which none of the owners' works are carried.

As all claimants eligible to receive the superstation and PTV station funds have reached agreement concerning the allocation of royalties among themselves, the amounts in those funds are not in controversy. Copyright Owners move the Tribunal to declare that the only controversy before it is the distribution of the network station fund.

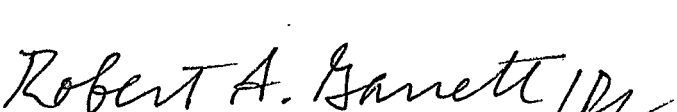
Respectfully submitted,

PROGRAM SUPPLIERS

By 

Dennis Lane
Holland & Knight
888 17th Street, N.W.
Suite 900
Washington, D.C. 20006

JOINT SPORTS CLAIMANTS

By 

Robert Alan Garrett
Terri A. Southwick
Arnold & Porter
1200 New Hampshire Ave.,N.W.
Washington, D.C. 20036

BROADCASTER CLAIMANTS

By John I. Stewart, Jr./DR
John I. Stewart, Jr.
Crowell & Moring
1001 Pennsylvania Ave.,N.W.
Washington, D.C. 20004

SESAC, INC.

By Laurie Hughes/DR
Laurie Hughes
SESAC, Inc.
55 Music Square East
Nashville, TN 37203

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By Fred Koenigsberg/DR
I. Fred Koenigsberg
White & Case
1155 Avenue of the Americas
New York, New York 10036

BROADCAST MUSIC, INC.

By Michael W. Faber/DR
Michael W. Faber
Minaksi Bhatt
Reid & Priest
701 Pennsylvania Ave., N.W.
Washington, D.C. 20004

DEVOTIONAL CLAIMANTS

By Barry Gottfried/DR
Clifford Harrington
Barry Gottfried
Fisher, Wayland, Cooper
& Leader
1255 23rd Street, N.W.
Washington, D. C. 20037

By Richard M. Campanelli/DR
George R. Grange II
Richard M. Campanelli
Gammon & Grange, P.C.
8280 Greensboro Drive
Seventh Floor
McLean, VA 22102-3807

OFFICIAL BUSINESS

UNITED STATES COPYRIGHT OFFICE

Filing Deadline: The Statement of Account must be filed within 30 days after the last day of the accounting period. The filing deadline is July 30 for the January-June accounting period and January 30 for the July-December accounting period.

STATEMENT OF ACCOUNT-

for Secondary Transmissions by SATELLITE CARRIERS FOR PRIVATE HOME VIEWING

General Instructions are at the end of this form [pages i-iii].

FOR COPYRIGHT OFFICE USE ONLY

DATE RECEIVED	AMOUNT
LICENSING DIVISION JAN 2 9 1992 RECEIVED	
	REMITTANCE NUMBER

FORM SC

Return to:
Licensing Division
Copyright Office
Library of Congress
Washington, DC 20557
(202) 707-8150

SPACE A

ACCOUNTING PERIOD COVERED BY THIS STATEMENT: (Check one box and fill in the year)

☐ January 1-June 30,_____ ☒ July 1-December 31, 1991

SPACE B

LEGAL NAME OF SATELLITE CARRIER: Your file is established under this name. Give the full name of the owner of the satellite carrier. If the owner is a subsidiary of another corporation, give the full corporate title of the subsidiary, not that of the parent corporation.

LEGAL NAME OF OWNER OF SATELLITE CARRIER

PrimeTime 24 Joint Venture

BUSINESS NAME OF OWNER, IF DIFFERENT

MAILING ADDRESS

342 Madison Avenue

Suite 1520

New York, NY 10173

Give the legal name as it appears in Space B. PrimeTime 24 Joint Venture

SPACE C

PRIMARY TRANSMITTERS: TELEVISION—In this area, please identify every **television broadcast station** carried by the SATELLITE CARRIER during this accounting period. DO NOT list program services such as HBO, ESPN, or CNN.

- Column 1: List each station's call sign.
- Column 2: Give the number of the channel on which the station's broadcasts are carried in its own community.
- Column 3: Indicate whether the station is a "network" station or a "superstation" by entering the letter "N" (for network) or "S" (for superstation). See page ii of the General Instructions for the meaning of these terms.
- Column 4: Give the location of each station. This should be the community (city and state) to which the station is licensed by the FCC.

1. Call Sign	2. Channel Number	3. Station Type (S or N)	4. Location of Station
WBBM-TV	2	N	Chicago, IL
WABC-TV	7	N	New York, NY
WXIA-TV	11	N	Atlanta, GA

SPACE D—COPYRIGHT ROYALTY FEE

GENERAL: In this space, report the number of subscribers receiving each television broadcast station in Part 1 and then compute the total royalty fee due in Part 2. The subscriber information must be reported for **each month** of the accounting period. The stations should be grouped together according to whether they are "superstations" or "network" stations as identified in Space C.

PART 1—CARRIAGE

- FIRST: Under the headings SUPERSTATIONS and NETWORK STATIONS enter those stations' call signs and the number of subscribers receiving those stations on the last day of **each month** of the accounting period. Then, for each station, total the number of subscribers for all six months of the accounting period and enter that figure under the column labeled TOTAL.
- NEXT: Compute the grand total number of subscribers receiving "superstations" and then the grand total number of subscribers receiving "network" stations.

Give the legal name as it appears in Space B. PrimeTime 24 Joint Venture

SUPERSTATIONS

SUBSCRIBERS FOR EACH MONTH OF THE ACCOUNTING PERIOD

Call signs	Month 1 (Jan./July)	Month 2 (Feb./Aug.)	Month 3 (Mar./Sept.)	Month 4 (Apr./Oct.)	Month 5 (May/Nov.)	Month 6 (June/Dec.)	Total
			N/A				

Grand total "Superstation" subscribers:

NETWORK STATIONS

SUBSCRIBERS FOR EACH MONTH OF THE ACCOUNTING PERIOD

Call signs	Month 1 (Jan./July)	Month 2 (Feb/Aug)	Month 3 (Mar/Sept)	Month 4 (Apr/Oct)	Month 5 (May/Nov)	Month 6 (June/Dec)	Total
WBBM-TV	160,970	165,817	181,919	194,096	205,381	217,683	1,125,866
WABC-TV	160,705	165,524	181,758	193,993	205,321	217,665	1,124,966
WXIA-TV	161,045	165,858	181,974	194,144	205,451	217,742	1,126,214
						187,644	

Grand total "Network" stations subscribers: 3,377,046

PART 2—COMPUTATION OF THE ROYALTY FEE

1. Enter the grand total "Superstations" subscribers here ..... –

2. Multiply line 1 by $0.12 and enter the sum here. x $0.12
This is the royalty fee for carriage of "Superstations" ..... $ –

3. Enter the grand total "Network" stations subscribers here 3,377,046

4. Multiply Line 3 by $0.03 and enter the sum here. x $0.03
This is the royalty fee for carriage of "Network" stations ..... $ 101,311.38

5. Interest Charge. Enter the amount from line 4, Space E, page 4 ..... $ –

6. Add Lines 2, 4, and 5. This is the satellite carrier's total royalty fee ..... $ 101,311.38

Remit this amount in the form of a certified check, cashier's check, or money order payable to the Register of Copyrights or electronic payment. Do not send cash.

Give the legal name as it appears in Space B. PrimeTime 24 Joint Venture

SPACE E—WORKSHEET FOR COMPUTING INTEREST

You must complete this worksheet for those royalty fee payments submitted as a result of a late payment or underpayment. For an explanation of interest assessment, see page (iii) General Instructions.

Line 1. Enter the amount of late payment or underpayment ..... $ ____ - ____

x ____ - ____ %

Line 2. Multiply line 1 by the interest rate* and enter the sum here. ..... ____ - ____

x ____ - ____ days

Line 3. Multiply line 2 by the number of days late ..... ____

x.00274

Line 4. Multiply line 3 by .00274**. Enter the amount here (unless $5.00 or less) and on line 5, part 2, space D, (page 3) ..... $ ____ - ____

(interest charge)

*Contact the Licensing Division at (202)707-8150 for the interest rate for the accounting period in which the late payment or underpayment occurred.

**This is the decimal equivalent of 1/365, which is the interest assessment for one day late.

NOTE: If you are filing this worksheet covering a Statement of Account already submitted to the Copyright Office, please list below the Owner, Address, and Accounting Period as given in the original filing.

SPACE F— Identify an individual to whom we can write or call about this Statement of Account:

G. Todd Hardy (703) 734-4680

NAME TELEPHONE NUMBER

MAILING ADDRESS

Hardy & Ellison

8251 Greensboro Drive #1100

McLean, VA 22102

SPACE G—The Statement of Account must be signed in accordance with Copyright Office regulations.

I, the undersigned Owner or Agent of the Satellite Carrier, or Officer or Partner, if the Satellite Carrier is a corporation or partnership, have examined this Statement of Account and hereby declare under penalty of law that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith. [18 U.S.C., Section 1001(1986)]

HANDWRITTEN SIGNATURE

Janet Foster

TYPED OR PRINTED NAME

President/CEO

TITLE OR CAPACITY

January 1992

DATE

CERTIFICATE OF SERVICE

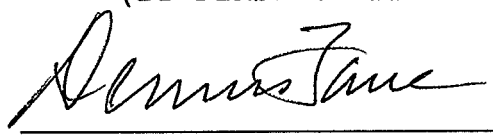
I, Dennis Lane, do hereby certify that I have this 3rd day of November, 1992, caused the foregoing "Comments On Entitlement To Royalties" to be hand delivered to the following persons:

Timothy C. Hester, Esq.
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20044
(BY FIRST CLASS MAIL)

Mark W. Johnson, Esq.
CBS, Inc.
1634 Eye Street, N.W.
Suite 1000
Washington, D.C. 20036

Charlene Vanlier, Esq.
Capital Cities/ABC, Inc.
2445 M Street, N.W.
Washington, D.C. 20037

Julie Sullivan, Esq.
Assistant General Counsel
National Broadcasting Co., Inc.
30 Rockefeller Plaza
New York, NY 10112
(BY FIRST CLASS MAIL)



Dennis Lane

WAS-7411