

Before the  
COPYRIGHT ROYALTY TRIBUNAL  
Washington, D.C.

In the matter of )  
 )  
 ) Docket No. CRT 79-1  
Distribution of )  
Cable Royalty Fees )

MOTION FOR A RULING CONCERNING  
THE SHARE OF THE ROYALTY POOL  
TO WHICH NCAA IS ENTITLED

The Joint Sports Claimants hereby request the Tribunal to rule that the National Collegiate Athletic Association ("NCAA") is entitled to no more than \$3,382.79 of the 1978 cable royalty pool -- the precise amount which the NCAA requested in its claims filed in July 1978 and July 1979.

As discussed below, the NCAA has no authority to claim royalties attributable to all collegiate telecasts; its authority extends to nothing more than the handful of telecasts in which it and two of the approximately 862 collegiate athletic associations own the copyright. The Joint Sports Claimants urge that the Tribunal expeditiously grant this motion so as to avoid any needless expenditure of time and effort during Phase II comparing the telecasts of

the Joint Sports Claimants with the collegiate telecasts which were not encompassed within the claims originally filed by the NCAA.

I. BACKGROUND

In its Phase I decision the Tribunal determined that the Joint Sports Claimants and NCAA were collectively entitled to 12% of the royalty pool. The Tribunal, however, did not indicate how this 12% was to be divided between the two groups of claimants. As the Tribunal is aware, the Joint Sports Claimants have agreed on a distribution among the four professional sports leagues which they represent (Major League Baseball, National Basketball Association, National Hockey League and North American Soccer League), and each of the leagues has agreed upon a distribution among its member clubs (some 89 in number). No agreement, however, has been reached between the Joint Sports Claimants and the NCAA.

In an effort to avoid a Phase II controversy, the Joint Sports Claimants offered to settle with the NCAA on the basis of the data contained in their A.C. Nielsen audience viewing study -- a study upon which both groups relied

during Phase I.<sup>\*/</sup> The Nielsen study shows that all of the non-network collegiate sports telecasts had a distant cable audience which accounted for 3.6% of the total sports audience; application of this figure to the 12% awarded by the Tribunal would result in an NCAA share of 0.432% of the entire pool or more than \$60,000. As discussed below, this share is considerably greater than that to which the NCAA can properly claim an entitlement given the de minimis nature of the interests it is authorized to represent (i.e., itself and only two of the approximately 862 collegiate athletic associations). This share also represents the maximum of any reasonable award that could be made, utilizing the criteria announced in the Tribunal's Phase I decision, for all collegiate telecasts, the vast bulk of which the NCAA cannot properly claim.

Nevertheless, the NCAA demanded a share equal to 25% of the 12% awarded sports, or 3% of the entire royalty pool -- more than 100 times what it originally valued its claim to be.

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<sup>\*/</sup> Indeed, as the NCAA itself advised the Tribunal, "the Nielsen Study in evidence is entitled to receive great weight in the Tribunal's deliberations." "Phase I Post-Hearing Brief of the National Collegiate Athletic Association" at p.50. See also "Proposed Findings of Fact and Conclusions of Law of the National Collegiate Athletic Association" at pp.15-17.

Its only purported justification rested upon a time-based comparison between what it believes to be the total number of all collegiate sporting events and the sporting events in which professional clubs represented by the Joint Sports Claimants had supposedly participated. The NCAA's latest estimate of the value of its claim, based solely upon a factor to which the Tribunal has attached only minimal significance (i.e., time), has necessitated the instant motion and, unless the motion is granted, further proceedings during Phase II.

## II. ARGUMENT

Throughout the Phase I proceedings the NCAA had consistently echoed the position advanced by the Joint Sports Claimants that time alone does not provide an adequate basis for distributing the royalty pool. But now that the sports royalties must be divided, the NCAA has conveniently abandoned this position in favor of one which, it believes, will garner a greater slice of the pie for it.

The NCAA's "time" figures, which themselves take no account of actual cable carriage of sports programming, are

not only wrong as a matter of fact<sup>\*/</sup> but inconsequential as well; the Tribunal has already ruled that time is no more than a secondary consideration. When one looks at what the Tribunal has determined to be the primary considerations (value and harm), it is quite apparent that the NCAA has no support whatsoever for its outlandish demand of 25% of the total sports royalties.

Indeed, the Nielsen study demonstrates that the very conclusions applicable to broadcasters' local programming apply to collegiate programming as well, i.e., that during an average quarter hour, the distant cable audience for a professional sports event is almost four times greater than that for a collegiate sports event; and (2) the total audience for collegiate sports events is less than one-half of the total time. When these facts are considered in light of the other proof submitted by the Joint Sports Claimants

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<sup>\*/</sup> The Joint Sports Claimants are prepared to show that, based upon their Nielsen data, qualifying collegiate sports telecasts occupied only 7.7% of the total sports time. This study, of course, unlike the NCAA's bare allegations, takes account of actual CATV carriage of sports programming. See also Tr. 4/9 at p.148 (testimony of MPAA's Mr. Cooper) (referring to the MPAA's time-based study, Mr. Cooper noted, in response to a question from NCAA's counsel, that "[v]ery few entries were made in terms of college sports. Primarily, in college sports it seemed to be distributed on the part of network programming.").

(which focused upon professional sports programming) and the total failure of the NCAA during the proceedings to do anything more than assimilate the proof of other parties,<sup>\*/</sup> the 0.432% of the entire royalty pool suggested by the Nielsen data represents the maximum award for all collegiate sports.

The claim actually filed by the NCAA cannot, however, be distorted so as to reflect an entitlement to this entire sum. The very narrow scope of the NCAA's claim is best demonstrated by their own filings before the Tribunal --

- In a memorandum filed with the Tribunal on November 15, 1979, the NCAA indicated that there are at least 725 four-year colleges and universities, 71 collegiate conferences and 66 other institutions and organizations involved in collegiate athletics. The NCAA further noted that in some cases it is the copyright owner of collegiate sports telecasts; in other cases, one of the 862-collegiate athletic associations is the copyright owner.
- In its claim for the first half of 1978, the NCAA sought royalties only for "NCAA-copyrighted works." (Exhibit 1) In its claim for the second half of 1978, the NCAA expanded its request to include "NCAA-, BCAA- (Boston College Athletic Association), or University of Kentucky-copyrighted works." (Exhibit 2) In the latter filing, the NCAA identified itself as a claimant "on its own behalf and on behalf of Boston College Athletic Association and

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<sup>\*/</sup> See Joint Sports Claimants Proposed Findings and Conclusions at 53-56, 68.

the University of Kentucky Athletics Association."

- None of the over 860 other collegiate athletic associations not encompassed within the NCAA's claims has ever filed its own claim covering the first or second half of 1978.
- The NCAA valued its first-half 1978 claim to be precisely \$1,953.90 (Exhibit 3) and its second-half 1978 claim to be \$1,428.89 (Exhibit 2). To arrive at these figures, the NCAA employed a formula which was based upon the two telecasts it identified in its first-half 1978 claim, and the three telecasts identified in its second-half 1978 claim.

In its original filings the NCAA did not so much as suggest that it had authority to claim for anything other than the telecasts in which it and (for second-half 1978) only two of the 862 collegiate athletic associations owned the copyright. Quite to the contrary, the \$3,382.79 value which the NCAA placed upon its claim and the fact that it separately identified the two colleges on whose behalf it was acting (Boston College and the University of Kentucky) clearly demonstrate that it understood the de minimis nature of the claim it was authorized to prosecute.

No one, of course, is suggesting that the NCAA's claim should be limited because of an inartfully drafted pleading.

The point, rather, is that the NCAA, when it filed its claim, had authority to act only for itself and (with respect to second-half 1978) only two collegiate institutions. The NCAA's claims are limited to the copyrighted programs within that sphere, and it has no greater right to the unclaimed collegiate sports telecasts than, for example, the Joint Sports Claimants.

The fact that the NCAA had counsel in the hearing room who questioned the witnesses of other parties provides no basis for allowing the NCAA belatedly to expand its claim. Equally unavailing are the NCAA's attempts to alter the scope of its original claim by seeking -- well after this claim had been filed -- "assignments" of royalty claims from various colleges.<sup>\*/</sup> Any such post hoc "assignment" cannot, for at least two reasons, be relied upon to inflate the NCAA's royalty award. First, none of these institutions filed timely claims for 1978 royalties, as required by the Copyright Act and the rules of the Tribunal, and thus they have nothing to assign. Second, the authority to represent these institutions did not exist at the time that the claims were required to have been filed under the Act and the Tribunal's

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<sup>\*/</sup> Indeed, as recently as last month the NCAA was still soliciting these authorizations. (See Exhibit 4.)



rules. To hold otherwise would mean that any person might file a claim for all otherwise unclaimed programming and then attempt to legitimize this claim by receiving belated authorizations.<sup>\*/</sup>

### III. CONCLUSION

In sum, the NCAA's claim is limited to those 1978 collegiate sports telecasts in which it owns the copyright and to those second-half 1978 collegiate sports telecasts in which Boston College and the University of Kentucky are the copyright owners. The NCAA has valued those telecasts at \$3,382.79, which seems generous indeed in view of the NCAA's total failure to present any independent evidence in this proceeding and the fact that only a relative handful of telecasts are involved. Indeed, if the formula which produced this \$3,382.79 figure were utilized for all of the over 750 collegiate sporting events alleged by the NCAA to

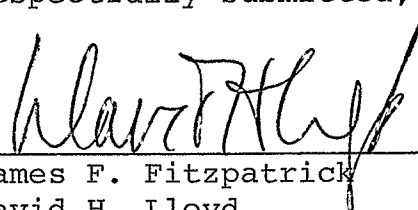
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<sup>\*/</sup> The Tribunal, of course, recognized the impropriety of this action when it required that any joint claim "include a concise statement of the authorization for the filing of the joint claim." 47 C.F.R. § 302.2. This provision was adopted, at the request of the professional sports leagues, to prevent the very conduct in which the NCAA is engaged. See 43 Fed. Reg. 24528 (June 6, 1978). There is no statement in the NCAA's claims which indicates that it is authorized to claim for anything more than those works in which it (and for second-half 1978) Boston College and the University of Kentucky actually own the copyright.

have been televised and retransmitted by cable, college sports along might well be entitled to more than the 12% share which the Tribunal awarded all sports.


The Tribunal should therefore rule that the \$3,382.79 originally sought by the NCAA sets the outer limit of its claim. Such a ruling is required as a matter of law, and to issue the ruling now will greatly simplify the Phase II hearings and avoid burdening the record with extraneous material.

Respectfully submitted,



James F. Fitzpatrick  
David H. Lloyd  
Robert Alan Garrett  
Vicki J. Divoll

ARNOLD & PORTER  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 872-6878



Philip R. Hochberg  
VORYS, SATER, SEYMOUR & PEASE  
1828 L Street, N.W.  
Washington, D.C. 20036  
(202) 296-2929

Of Counsel:

Alexander H. Hadden  
Office of the Commis-  
sioner of Baseball  
15 West 51st Street  
New York, New York 10019

Attorneys for the Joint Sports  
Claimants

Dated: August 13, 1980

27 JUL 1978

## COX, LANGFORD &amp; BROWN

21 DUPONT CIRCLE, N. W.

WASHINGTON, D. C. 20036

TELEPHONE (202) 862-7000

CABLE "COXFIRM" TELEX "CLXB 440003"

PHILIP B. BROWN  
ROBERT D. PAPKIN  
J. EDWARD DAY  
MICHAEL SCOTT  
RITCHIE T. THOMAS  
CHARLES E. ALLEN  
STEPHEN M. TURNER  
RICHARD F. PFIZENMAYER  
EDWARD W. SAUER  
JOHN M. COOPER  
CHARLES E. RAINS  
DANIEL P. MESSING

W. JOHN KENNEY  
JOHN LANSDALE  
JOHN N. NASSIKAS  
HENRY W. LAVINE  
WILLIAM C. COLLISHAW  
JOHN D. CUMMINS  
JOHN C. BATES, JR.  
WILLIAM D. KRAMER  
HEATHER M. KIRKWOOD  
WILLIAM K. BLACK  
CHARLES M. CARRON  
ROLAND L. MARCOTTE

OF COUNSEL  
MARIE LOUISE LOPICAN

CLEVELAND OFFICE:  
SQUIRE, SANDERS & DEMPSEY  
1800 UNION COMMERCE BUILDING  
CLEVELAND, OHIO 44115  
(216) 696-9200

EUROPEAN OFFICE:  
AVENUE LOUISE, 165 BOX 15  
1050 BRUSSELS, BELGIUM  
TELEPHONE 648.17.17

ATTORNEY'S DIRECT DIAL

862-7036

July 26, 1978

Dear Sirs:

Enclosed is an original and one copy of the Claim to copyright royalty fees for cable system transmissions during the period January 1 through June 30, 1978, filed on behalf of The National Collegiate Athletic Association.

We request that the copy be stamped as filed with the Tribunal and the stamped copy returned to us at the above address for our files. Please advise us if additional copies of the Claim are desired for use by the Tribunal, and we will be happy to provide them.

Sincerely yours,



Ritchie T. Thomas

Copyright Royalty Tribunal  
1111 20th Street, N.W.  
Washington, D. C. 20036

Enclosures

BEFORE THE COPYRIGHT ROYALTY TRIBUNAL  
WASHINGTON, D. C.

CLAIM TO CABLE ROYALTY FEES FOR SECONDARY TRANSMISSIONS  
DURING THE PERIOD JANUARY 1 THROUGH JUNE 30, 1978  
ON BEHALF OF  
THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Pursuant to Section 111 of the Act for General Revision of the Copyright Law (17 USC § 111), and the Regulations of the Copyright Royalty Tribunal (37 CFR Part 302), The National Collegiate Athletic Association (NCAA) hereby submits the following claim for cable royalty fees arising from the secondary transmission to the public of primary broadcast transmissions embodying performances or displays of NCAA-copyrighted works during the period January 1 through June 30, 1978, inclusive.

1. Full Legal Name of Claimant:

The National Collegiate Athletic Association

2. Full Address of Claimant:

U. S. Highway 50 and Mall Avenue  
P. O. Box 1906  
Shawnee Mission, Kansas 66222

3. General Statement of the Nature of the Copyrighted Works Whose Secondary Transmission Provides the Basis of the Claim:

Motion pictures and other audiovisual works as defined in 17 USC § 101.

4. Identification of At Least One Secondary Transmission Establishing a Basis for the Claim:

On March 12, 1978, primary transmissions were made on a nonnetwork basis embodying performances or displays of the following two NCAA-copyrighted works:

1978 National Collegiate Basketball  
Championship -- Missouri v. Utah

1978 National Collegiate Basketball  
Championship -- Creighton v. DePaul

These works were produced by the NCAA and all actions required by the Copyright Law to be taken in order for the NCAA to secure copyright in these broadcasts were taken. The primary transmissions were made over the following television broadcast stations licensed by the Federal Communications Commission:

<u>Game</u>	<u>Broadcast Stations</u>
Missouri v. Utah	KUTV, Salt Lake City, Utah KOMU, Columbia, Missouri KMTC, Springfield, Missouri KMBC, Kansas City, Missouri WIBW, Topeka, Kansas
Creighton v. DePaul	WMAQ, Chicago, Illinois KMTV, Omaha, Nebraska

The NCAA has determined from official Federal Communications Commission records that the cable systems listed below had authority to make secondary transmissions of these telecasts beyond the local service area of the primary transmitters, as those terms are defined in Section 111(f) of the Copyright Law.

It has not been feasible for the NCAA more specifically to identify each cable system that in fact made such secondary transmissions, because those data are not presently available to the public and will not be available until the August, 1978 filing of Statements of Account by cable systems required by regulations of the Register of Copyrights. Certain of the below-listed systems have advised counsel to the NCAA that they in fact carried the telecasts concerned, and those systems are identified by asterisks. The NCAA believes that a substantial number of the other cable systems listed below made secondary transmissions of the specified primary transmissions:

and, although it is impractical to attempt to verify this until the Statements of Account are filed, the NCAA intends each cable system listed as an example of a qualifying secondary transmission. Accordingly, the NCAA submits the following listing in compliance with the requirements of 37 CFR §302.3(d):

Cable Systems Entitled to Make Secondary Transmissions  
of the Primary Transmissions of Missouri v. Utah  
Beyond the Local Service Areas of the Primary Transmitters

American Television and Communications Corp., Chanute, Kansas  
American Television and Communications Corp., Independence, Kansas  
American Television and Communications Corp., Neodesha, Kansas  
American Television and Communications Corp., Parsons, Kansas  
Cablecom-General Inc., Abilene, Kansas  
Cablecom-General Inc. Clay Center, Kansas  
Cablecom-General Inc. Concordia, Kansas  
Karlen Communications, Inc., Hoisington, Kansas  
Karlen Communications Inc., Larned, Kansas  
Community Antenna Systems Inc., Council Grove, Kansas  
Warner Cable Corp., Russell, Kansas  
Fort Cablevision Inc., Fort Scott, Kansas  
Ft Riley Cable TV Service Inc., Fort Riley, Kansas  
Ft Riley Cable TV Service Inc., Ogden, Kansas  
Kays Inc., Hays, Kansas  
Kansas State Network Inc., Herington, Kansas  
Iola Cable TV Inc., Humboldt, Kansas  
Iola Cable TV Inc., Iola, Kansas  
Junction City Television Inc., Grandview Plaza, Kansas  
Junction City Television Inc., Junction City, Kansas  
Manhattan Cable TV Service Inc., Manhattan, Kansas  
Beatrice Cable TV Co Inc., Marysville, Kansas  
Pittsburg Cable TV Inc., Pittsburg, Kansas  
Salina Cable TV System Inc., Salina, Kansas  
Wamego Community Antenna System Inc., Wamego, Kansas  
Minneapolis Cable Inc., Minneapolis, Kansas  
General Communications Inc., Gas, Kansas  
Republican Valley Cable Inc., Clyde, Kansas  
Republican Valley Cable Inc., Clifton, Kansas  
Beatrice Cable TV Co Inc., Marshall, Kansas  
American Television and Communications Corp., Boonville, Missouri  
American Television and Communications Corp., Maryville, Missouri  
Cablecom-General of Kirksville Inc., Kirksville, Missouri  
Warner Cable Transmission Corp., El Dorado Springs, Missouri  
Warner Cable Corp., Fairfax, Missouri  
Warner Cable Corp., Rock Port, Missouri  
Warner Cable Corp., Tarkio, Missouri  
TCI Cable vision Inc., Jefferson City, Missouri  
TCI Cablevision Inc., Moberly, Missouri  
Nevada TV Cable Co Inc., Nevada, Missouri  
Cable TV System Inc of Bethany, Bethany Missouri  
Princeton Cablevision Inc., Princeton, Missouri  
Grant City Cablevision Inc., Grant City, Missouri  
American Television and Communications Corp., Falls City, Nebraska  
Huntsville TV Cable Inc., Huntsville, Arkansas  
Twin Lakes Television Corp., Berryville, Arkansas

Twin Lakes Television Corp., Eureka Springs, Arkansas  
Texas Community Antennas Inc., Johnson, Arkansas  
Texas Community Antennas, Inc., Springdale, Arkansas  
\*Village CATV Inc., Bella Vista Village, Arkansas  
Consolidated Cable TV Inc., Clinton, Arkansas  
Ind. Co Cable TV Inc., Evening Shade, Arkansas  
Marmac Cable TV Inc., Ash Flat, Arkansas  
Carthage Cablevision Inc., Carthage, Missouri  
Warner Cable Transmission Corp., El Dorado Springs, Missouri  
Warner Cable Corp., Waynesville, Missouri  
\*Rolla Cable System Inc., Rolla, Missouri  
Cablevision of Missouri Inc., Eldon, Missouri  
Rolla Cable System Inc., Northweye, Missouri  
Versailles Totalvision Inc., Versailles, Missouri  
Midwest Diversified Communications Inc., Lake Ozark, Missouri  
Midwest Diversified Communications Inc., Camdenton, Missouri  
Vinita Cablevision Inc., Vinita, Oklahoma  
American Television Communications Corp., Chillicothe, Missouri  
Cablecom-General Inc., Brookfield, Missouri  
Cablecom-General of Kirksville Inc., Kirksville, Missouri  
Warner Cable Corp., Warsaw, Missouri  
Warner Cable Corp., Windsor, Missouri  
\*Knob Noster Cable Inc., Knob Noster, Missouri  
Jim Scott & Associates Inc., Lebanon, Missouri  
Cablecom-General Inc., Trenton, Missouri  
\*Warr nsburg Cable Inc., Warrensburg, Missouri  
Missouri Valley Communications Inc., Lexington, Missouri  
Missouri Valley Communications Inc., Carrollton, Missouri  
Missouri Valley Communications Inc., Concordia, Missouri  
Knob Noster Cable Inc., Whiteman, Missouri  
CATV of Higginsville Inc., Higginsville, Missouri  
Missouri Valley Communications Inc., Richmond, Missouri  
Mid-America CATV Systems Inc., Marceline, Missouri  
Mid-America CATV Systems Inc., Carrollton, Missouri  
American Television and Communications Corp., Chanute, Kansas  
American Television and Communications Corp., Neodesha, Kansas  
American Television and Communications Corp., Parsons, Kansas  
Mickelson Media Inc., Atchison, Kansas  
\*Belleville Community Antenna System Inc., Belleville, Kansas  
Cablecom-General Inc., Beloit, Kansas  
Karlen Communications Inc., Hoisington, Kansas  
Karlen Communications Inc., Larned, Kansas  
Coffeyville Cable TV Inc., Coffeyville, Kansas  
Warner Cable Corp., Russell, Kansas  
Eureka Cable TV Inc., Eureka, Kansas  
Fort Cablevision Inc., Fort Scott, Kansas  
Fredonia Cable TV Inc., Fredonia, Kansas  
Kays Inc., Hays, Kansas  
Iola Cable TV Inc., Humboldt, Kansas  
Iola Cable TV Inc., Iola, Kansas  
Kansas City Cable Inc., Kansas City, Kansas  
Salina Cable TV System Inc., Salina, Kansas  
Telecable of Overland Park Inc., Overland Park, Kansas  
Coffeyville Cable TV Inc., Cherryvale, Kansas  
Coffeyville Cable TV Inc., Caney, Kansas  
Hudson, Larry D et al, Osawatomie, Kansas  
Community TCI of Kansas Inc., Leavenworth, Kansas  
Six Star Cablevision of Kansas City Inc., Kansas City, Kansas  
Six Star Cablevision of Desoto Inc., De Soto, Kansas  
Six Star Cablevision of Gardner Inc., Gardner, Kansas  
Community TCI of Kansas Inc., Fairway, Kansas

Six Star Cablevision of Bonner Springs Inc., Bonner Springs, Kansas  
Community TCI of Kansas Inc., Lenexa, Kansas  
Telecable of Overland Park Inc., Lenexa, Kansas  
Telecable of Overland Park Inc., Leawood, Kansas  
Telecable of Overland Park Inc., Mission, Kansas  
Telecable of Overland Park Inc., Roeland Park  
Telecable of Overland Park Inc., Fairway, Kansas  
Telecable of Overland Park Inc., Shawnee, Kansas  
Telecable of Overland Park Inc., Prairie Village, Kansas  
Telecable of Overland Park Inc., Merriam, Kansas  
Cable TV of Paola Inc., Paola, Kansas  
Minneapolis Cable Inc., Minneapolis, Kansas  
General Communications Inc., Gas, Kansas  
Cable TV of Paola Inc., La Cygne, Kansas  
Tri-River Cable Inc., Hillsboro, Kansas  
American Television and Communications Corp., Maryville, Missouri  
Warner Cable Corp., Fairfax, Missouri  
Warner Cable Corp., Rock Port, Missouri  
Warner Cable Corp., Tarkio, Missouri  
American Television and Communications Corp., Maryville, Missouri  
Warner Cable Corp., Fairfax, Missouri  
Warner Cable Corp., Tarkio, Missouri  
American Television and Communications Corp., Falls City, Nebraska  
Beatrice Cable TV Company Inc., Beatrice, Nebraska  
T-V Transmission Inc., Auburn, Nebraska  
T-V Television Inc., Fairbury, Nebraska  
T-V Transmission Inc., Humboldt, Nebraska  
T-V Transmission Inc., Pawnee City, Nebraska  
T-V Transmission Inc., Table Rock, Nebraska  
T-V Transmission Inc., Tecumseh, Nebraska

Cable Systems Entitled to Make Secondary Transmissions  
of the Primary Transmission of Creighton v. DePaul Beyond  
the Local Service Areas of the Transmitters

Warner Cable Transmission Corp., Rochelle, Illinois  
Liberty TV Cable Inc., Charleston, Illinois  
Kankakee TV Cable Co Inc., Limestone, Illinois  
Sammons Communications of Illinois Inc., Bruce, Illinois  
Television Transmission Co Inc., Spring Valley, Illinois  
Cable Television Co of Illinois Inc., Chenoa, Illinois  
Paston Community Antenna System Inc., Paston, Illinois  
Television Transmission Co Inc., Bureau, Illinois  
Piper City Cable TV Inc., Piper City, Illinois  
Vista Cable Inc., Monon, Indiana  
Drake, Earl, Benton, Michigan  
Four Flags TV Co Inc., Howard, Michigan  
Warner Cable Corp., Guthrie Center, Iowa  
Warner Cable Transmission Corp., Sac City, Iowa  
Creston Cablevision Inc., Creston, Iowa  
Kay B L Vision Inc., Storm Lake, Iowa  
Carroll Cable Co Inc., Carroll, Iowa  
Magic Valley Cable Vision Inc., Filer, Idaho  
Magic Valley Cable Vision Inc., Kibbey, Idaho  
Magic Valley Cable Vision Inc., Twin Falls, Idaho  
Warner Cable Corp., Hiawatha, Kansas  
Beatrice Cable TV Co Inc., Marysville, Kansas  
Washington Cable TV Inc., Washington, Kansas

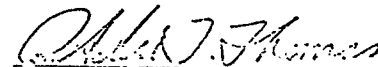


Beatrice Cable TV Co Inc., Marshall, Kansas  
Mid South Telecasters Inc., Covington, Louisiana  
Grant City Cablevision Inc., Grant City, Missouri  
Apollo Communications Inc., South Sioux City, Nebraska  
T-V Transmission Inc., Fairbury, Nebraska  
T-V Transmission, Inc., York, Nebraska

This listing is submitted solely in response to the requirement for identification of an illustrative secondary transmission establishing a basis for this claim. It is not intended, and should not be understood, to be a complete or final listing of qualifying secondary transmissions of NCAA works.

CERTIFICATE OF DEPOSIT

Pursuant to 37 CFR § 302.8, I hereby certify that the foregoing claim submitted on behalf of The National Collegiate Athletic Association was addressed to the Copyright Royalty Tribunal, 1111 Twentieth Street, N. W., Washington, D. C. 20036 and deposited with the United States Postal Service on July 26, 1978 with sufficient postage as first class mail. I further certify that this law firm is counsel to the NCAA and that I am authorized to submit this claim on that organization's behalf.



Ritchie T. Thomas  
Cox, Langford & Brown  
21 Dupont Circle, N. W.  
Washington, D. C. 20036

Counsel to The National Collegiate  
Athletic Association

Dated: July 26, 1978

CITY OF WASHINGTON )  
DISTRICT OF COLUMBIA) ss:

Before me this day came Ritchie T. Thomas, personally known to me, who, after being duly sworn, affirmed that the

statements made in the foregoing Certificate of Deposit are true, correct and complete to the best of his information and belief.

SWORN AND SUBSCRIBED TO before me this 26<sup>th</sup> day of July, 1978.

Sharon M. Harris  
Sharon Harris, Notary Public

My Commission Expires 26, 1980

BEFORE THE COPYRIGHT ROYALTY TRIBUNAL  
WASHINGTON, D.C.

RECEIVED JUL 3 1978  
156

CLAIM TO CABLE ROYALTY FEES  
FOR SECONDARY TRANSMISSIONS DURING THE PERIOD  
JULY 1 THROUGH DECEMBER 31, 1978

Pursuant to Section 111 of the Act for General Revision of the Copyright Law (17 U.S.C. § 111), and the Regulations of the Copyright Royalty Tribunal (37 C.F.R. Part 302), the National Collegiate Athletic Association (NCAA) hereby submits the following claim on behalf of itself, the Boston College Athletic Association, Chestnut Hill, Massachusetts 02167 (BCAA), and the University of Kentucky Athletics Association, Memorial Coliseum, Lexington, Kentucky 40506, for cable royalty fees arising from the secondary transmissions embodying performances or displays of NCAA-, BCAA-, or University of Kentucky-copyrighted works during the period July 1 through December 31, 1978, inclusive.

1. Full Legal Name of Claimant:

The National Collegiate Athletic Association [on its own behalf and on behalf of Boston College Athletic Association and the University of Kentucky Athletics Association]

2. Full Address of Claimant:

U. S. Highway 50 and Nall Avenue  
P. O. Box 1906  
Shawnee Mission, Kansas 66222

3. General Statement of the Nature of the Copyrighted Works Whose Secondary Transmission Provides the Basis of the Claim:

Motion pictures and other audiovisual works as defined in 17 U.S.C. § 101.

4. Identification of At Least One Secondary Transmission Establishing a Basis For The Claim:

On October 14 and December 6, 1978, primary transmissions were made on a non-network basis embodying performances or displays of the following two BCAA-copyrighted works:

October 14, 1978 - Football Game  
with Tulane University

December 6, 1978 - Basketball Game  
with Providence College

On September 16, 1978 primary transmissions were made on a non-network basis embodying a performance of the following University of Kentucky copyrighted work:

September 16, 1978 - Football Game  
with the University of South Carolina

These works were produced by authority, respectively, of BCAA and the University of Kentucky, and all actions required by the Copyright Law to be taken to secure copyright in these broadcasts were taken. The primary transmissions of the BCAA copyrighted games were made over WLVI, UHF Channel 56, Cambridge, Massachusetts. The primary transmission of the University of Kentucky game was made over WKYT, Lexington, Kentucky.

NCAA and BCAA have determined from official Federal Communications Commission records that the cable systems listed in Attachment A had authority to make secondary transmissions of the above-described telecasts of BCAA works beyond the local service area of the primary transmitters, as those terms are defined in Section 111(f) of the Copyright Law. NCAA and BCAA have also determined that Warner Cable Corporation of Berlin, N.H. has indicated in its Statement of Account filed with the Register of Copyright that it regularly carries the signal of WLVI presumably including these telecasts.

NCAA and the University of Kentucky have determined from official Federal Communications Commission records that the cable systems listed in Attachment B had authority to make secondary transmissions of the above-described telecast of the University of Kentucky work beyond the local service area of the

primary transmitter, as those terms are defined in Section 111(f) of the Copyright Law. They have also been advised that Tower Cablevision Inc. of Ashland, Kentucky regularly carries the signal of WKYT, presumably including this telecast.

The above statements are submitted solely in response to the requirement for identification of an illustrative secondary transmission establishing a basis for this claim. They are not intended, and should not be understood, to be a complete or final listing of qualifying secondary transmissions of NCAA, BCAA, or University of Kentucky works.

5. Estimated Compulsory License Fees

\$ 200.62	BCAA works
<u>1,228.27</u>	University of Kentucky works
\$1,428.89	Total

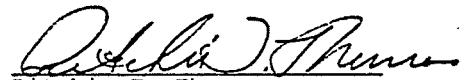
6. Justification of Estimated License Fees

The estimates set forth above were calculated by first determining, as to each of the telecasts, which, of the cable systems shown on the most recent FCC TV Station Authorization Report for the primary transmitter concerned had authority to carry that station's signals on a permissive basis, and then computing the total number of subscribers listed for those systems -- 183,498 in the case of WLVI and 51,833 in the case of WKYT. These potential distant cable audiences for the broadcasts concerned were the equivalent of 10.031 percent of the WLVI broadcast market and 24.57 percent of the WKYT market respectively. Accordingly, these percentages were applied to the fees paid for the broadcast rights to the events concerned, yielding reasonable, market-based cable license fees. While NCAA, BCAA and the University of Kentucky believe that this methodology is the appropriate way to determine the fee in this instance, they reserve the right to use other methods of computing copyright royalty fees in other cases, as may appear appropriate in the circumstances.

NCAA was authorized to file this claim on behalf of BCAA by a letter dated April 9, 1979 from Mr. William J. Flynn, Director of Athletics of Boston College, and on behalf of the University of Kentucky in a telephone conversation of July 30, 1979 with Mr. Cliff Hagan, its Director of Athletics.

CERTIFICATE OF DELIVERY

Pursuant to 37 C.F.R. § 302.8, I hereby certify that the foregoing claim submitted on behalf of the National Collegiate Athletic Association, the Boston College Athletic Association, and the University of Kentucky Athletics Association was hand delivered to the Copyright Royalty Tribunal, 1111 Twentieth Street, N.W., Washington, D.C. 20036 on July 31, 1979. I further certify that this law firm is authorized to submit this claim on those organizations' behalf.

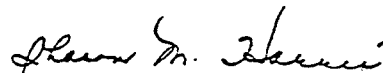
  
Ritchie T. Thomas  
SQUIRE, SANDERS & DEMPSEY  
21 Dupont Circle, N.W.  
Washington, D.C. 20036

Dated: July 31, 1979

CITY OF WASHINGTON       )  
DISTRICT OF COLUMBIA   ) ss:

Before me this day came Ritchie T. Thomas, personally known to me, who, after being duly sworn, affirmed that the statements made in the foregoing Certificate of Delivery are true, correct and complete to the best of his information and belief.

SWORN AND SUBSCRIBED TO before me this 31st day of July, 1979.

  
Sharon Harris, Notary Public  
My Commission Expires March 24, 1980

# ATTACHMENT A

Cable Systems Authorized to Carry WLVI, Cambridge, Massachusetts,  
Beyond the Signal Area of Its Transmitter

MONTVILLE	CT	EASTERN CONNECTICUT CABLE TELEVISION INC
WATERFORD	CT	EASTERN CONNECTICUT CABLE TELEVISION INC
MORRIS	CT	CENTURY NORTH CT
LISCON	CT	CENTURY NORTH CT
FRANKLIN	CT	CENTURY NORTH CT
SPRINGFIELD	CT	CENTURY NORTH CT
BOZON	CT	CENTURY NORTH CT
NEW HAVEN	CT	SYSTEMS CABLE TV INC
HONOLULU	CT	SYSTEMS CABLE TV INC
WEST HAVEN	CT	SYSTEMS CABLE TV INC
PLAINFIELD	CT	EASTERN CONNECTICUT CABLE TELEVISION INC
BRIDGEPORT	CT	BRIDGEPORT CABLE TELEVISION ASSOCIATES
STRATFORD	CT	BRIDGEPORT CABLE TELEVISION ASSOCIATES
ORANGE	CT	TELEVISION CABLE
WOODBRIDGE	CT	TELEVISION CABLE
MILFORD	CT	TELEVISION CABLE
MALLINGFORD	CT	COMMUNITY TELEVISION SYSTEMS INC
MADISON	CT	COMMUNITY TELEVISION SYSTEMS INC
EAST HAVEN	CT	COMMUNITY TELEVISION SYSTEMS INC
BRIDGEPORT	CT	COMMUNITY TELEVISION SYSTEMS INC
NORTH BRADFORD	CT	COMMUNITY TELEVISION SYSTEMS INC
NORTH HAVEN	CT	COMMUNITY TELEVISION SYSTEMS INC
GUILFORD	CT	COMMUNITY TELEVISION SYSTEMS INC
GROTON	CT	PERCY, L. L. ET AL
LEDYARD	CT	PERCY, L. L. ET AL
STONINGTON	CT	PERCY, L. L. ET AL
VOLUNTOON	CT	PERCY, L. L. ET AL
NORTH STONINGTON	CT	PERCY, L. L. ET AL
GRISWOLD	CT	PERCY, L. L. ET AL
PRESTON	CT	EASTERN CONNECTICUT CABLE TELEVISION INC
NEW LONDON	CT	CENTURY NORTH CT
EAST HADDAM	CT	COASTAL CABLE TV INC
HADDAM	CT	CENTURY CABLE MANAGEMENT CORP
OLD LYME	CT	CENTURY CABLE MANAGEMENT CORP
LYME	CT	CENTURY CABLE MANAGEMENT CORP
SALEM	CT	CENTURY CABLE MANAGEMENT CORP
YESTMOUTH	MA	CABLE COU CABLEVISION CORP
LEE	MA	PIONEER VALLEY CABLEVISION INC
WARREN	MA	PIONEER VALLEY CABLEVISION INC
WASHIC	MA	CABLE COU CABLEVISION CORP
CHATHAM	MA	CABLE COU CABLEVISION CORP
HARDWICK	MA	PIONEER VALLEY CABLEVISION INC
ORLEANS	MA	CABLE COU CABLEVISION CORP
AUBURN	MA	CABLE VISION INC
LEWISTON	MA	CABLE VISION INC
DIXFIELD	MA	NEW ENGLAND CABLEVISION INC
MEXICO	MA	NEW ENGLAND CABLEVISION INC
NORWAY	MA	NEW ENGLAND CABLEVISION INC
PARIS	MA	NEW ENGLAND CABLEVISION INC
AUGUSTA	MA	STATE CABLE TV CORP
FARMINGDALE	MA	STATE CABLE TV CORP
GARDINER	MA	STATE CABLE TV CORP
MALDEN	MA	STATE CABLE TV CORP
JAY	MA	NEW ENGLAND CABLEVISION INC
LIVERMORE FALLS	MA	NEW ENGLAND CABLEVISION INC
LIVERMORE	MA	NEW ENGLAND CABLEVISION INC
RANDOLPH	MA	NEW ENGLAND CABLEVISION INC
WATERVILLE	MA	STATE CABLE TV CORP
FAIRFIELD	MA	BETTER CABLE TV INC

WINSLOW	NH	BETTER CABLE TV INC
ROSELAND	NH	FLINN COMMUNICATIONS CORP
SANFORD	NH	YOUNG CABLE CO
ELIOT	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
SACO	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
SOUTH BERNICK	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
BERNICK	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
TOPSHAM	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
BRUNSWICK	NH	CASCO CABLE TELEVISION INC
KITTERY	NH	CASCO CABLE TELEVISION INC
DIDSBURY	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
OLD ORCHARD BEACH	NH	YOUNG CABLE CO
PORTLAND	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
SOUTH PORTLAND	NH	PUBLIC CABLE CO INC
OWING	NH	PUBLIC CABLE CO INC
HILTON	NH	BETTER CABLE TV INC
SKOWHEGAN	NH	DEE LINE INC
FARMINGTON	NH	DEE LINE INC
ANDSON	NH	DEE LINE INC
MADISON	NH	DEE LINE INC
OWLS HEAD	NH	FLINN COMMUNICATIONS CORP
LISDON	NH	CABLEVISION INC
WEST BATH	NH	CASCO CABLE TELEVISION INC
WEST PERU	NH	NEW ENGLAND CABLEVISION INC
BATH	NH	CASCO CABLE TELEVISION OF BATH MAINE INC
WESTBORO	NH	NEW ENGLAND CABLEVISION INC
SCARBOROUGH	NH	PUBLIC CABLE CO INC
CAPE ELIZABETH	NH	PUBLIC CABLE CO INC
CAMDEN	NH	FLINN COMMUNICATIONS CORP
ROCKPORT	NH	FLINN COMMUNICATIONS CORP
DETON	NH	BETTER CABLE TV INC
YARMOUTH	NH	NEW ENGLAND CABLEVISION INC
CUMBERLAND	NH	NEW ENGLAND CABLEVISION INC
FALMOUTH	NH	PUBLIC CABLE CO INC
VASSALBORO	NH	BETTER CABLE TV INC
GORHAM	NH	PUBLIC CABLE CO INC
CLAREMONT	NH	WARRER CABLE CORP
LACONIA	NH	COMMUNITY TV CORP
BERLIN	NH	WARRER CABLE CORP
GORHAM	NH	WARRER CABLE CORP
CONCORD	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
MANOVER	NH	THIN STATE CABLE TV INC
LEESON	NH	THIN STATE CABLE TV INC
NEWPORT	NH	THIN VALLEY TV INC
MANCHESTER	NH	UNITED CABLE CO OF NEW HAMPSHIRE INC
PORTSMOUTH	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
GOFFSTOWN	NH	UNITED CABLE CO OF NEW HAMPSHIRE INC
BEDFORD	NH	UNITED CABLE CO OF NEW HAMPSHIRE INC
SIMPSON	NH	THIN VALLEY TV INC
LEERY	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
SALEM	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
NEWCASTLE	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
HUDSON	NH	RUSSON CABLEVISION CORP INC
MERRIMACK	NH	SOUTHERN CABLEVISION CORP INC
AMHERST	NH	MILFORD CABLEVISION CORP
DOVER	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
SOMERSHORTH	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
PETERBOROUGH	NH	YOUNGS COMMUNITY TELEVISION CORP
HOOKSETT	NH	UNITED CABLE CO OF NEW HAMPSHIRE INC
PENDROKE	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
CONWAY	NH	NEW ENGLAND CABLEVISION INC
MILFORD	NH	MILFORD CABLEVISION CORP
BOSCAWEN	NH	CONTINENTAL CABLEVISION OF NEW HAMPSHIRE INC
ENFIELD	NH	THIN STATE CABLE TV INC
ELMONT	NH	COMMUNITY TV CORP
NEW MARKET	NH	CABLEVISION SERVICE CO INC
MEREDITH	NH	COMMUNITY TV CORP
GLENS FALLS	NY	CLASSIC CABLESYSTEMS CORP
LAKE GEORGE	NY	CLASSIC CABLESYSTEMS CORP
LAKE GEORGE	NY	CLASSIC CABLESYSTEMS CORP
SOUTH GLENS FALLS	NY	CLASSIC CABLESYSTEMS CORP
HARRENSBURG	NY	CLASSIC CABLESYSTEMS CORP



## ATTACHMENT B

[illegible]

SARATOGA SPRINGS	NY	SARATOGA CABLE TV CO INC
QUEENSBURY	NY	COLONIAL CABLEVISION INC
KINGSBURY	NY	COLONIAL CABLEVISION INC
FORT BENNET	NY	COLONIAL CABLEVISION INC
HUDSON FALLS	NY	COLONIAL CABLEVISION INC
FORT EDWARD	NY	COLONIAL CABLEVISION INC
CHARLESTON	PA	CENTRE UNITED CORP
WESTERLY	RI	WESTERLY CABLE TV INC
HARTFORD	UT	THIN STATE CABLE TV INC
EDMUNDSVILLE	UT	EMCO CATV INC
STRATTON	UT	EMCO CATV INC
BRAND	UT	VERMONT TELEVISION CORP
STRATTON MOUNTAIN	UT	EMCO CATV INC
BIRCH HILL	UT	EMCO CATV INC
WEATHERSFIELD	UT	WATER CABLE CORP
NORWICH	UT	THIN STATE CABLE TV INC
BAKES TOWN	UT	VERMONT TELEVISION CORP
WILLIAMSTOWN	UT	VERMONT TELEVISION CORP

RECEIVED JUL 3 1978

BEFORE THE COPYRIGHT ROYALTY TRIBUNAL  
WASHINGTON, D.C.Supplemental Filing of  
The National Collegiate Athletic Association

Pursuant to § 302.5 of the Copyright Royalty Tribunal Regulations, the National Collegiate Athletic Association (NCAA) submits this Supplemental Filing to provide additional information regarding its Claim to Cable Royalty Fees for Secondary Transmissions During the Period January 1 through June 30, 1978 filed with the Tribunal on July 26, 1978.

1. Estimated Amount of Royalty Fees to which the NCAA believes it is entitled:

\$1,953.90


2. Justification

The estimate set forth above was calculated by first determining, as to each of the telecasts listed in the Claim filed by the NCAA with the Tribunal on July 26, 1978, which of the cable systems shown on the FCC TV Station Authorization Reports for the broadcast station concerned had authority to carry that station on a permissive basis, and then computing the total number of subscribers listed for those systems. That number was then expressed as a percentage of the total broadcast market for the station, and this percentage was then applied to the royalty fees charged by the NCAA to the broadcaster in each case. The estimate given above is the total of these individual charges. While the NCAA believes that this methodology is the appropriate way to determine the fee in this instance, it reserves the right to use other methods of computing copyright royalty fees in other cases, as may appear appropriate in the circumstances.

CERTIFICATE OF DEPOSIT

Pursuant to 37 C.F.R. § 302.8, I hereby certify that the foregoing claim submitted on behalf of the National Collegiate

Athletic Association was delivered by hand to the Copyright Royalty Tribunal, 1111 Twentieth Street, N.W., Washington, D.C. 20036 on July 31, 1979. I further certify that this law firm is authorized to submit this claim on those organizations' behalf.

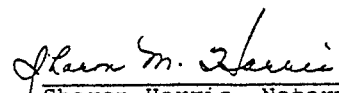
  
Ritchie T. Thomas  
SQUIRE, SANDERS & DEMPSEY  
21 Dupont Circle, N.W.  
Washington, D.C. 20036

Dated: July 31, 1979

CITY OF WASHINGTON        )  
DISTRICT OF COLUMBIA    ) ss:

Before me this day came Ritchie T. Thomas, personally known to me, who, after being duly sworn, affirmed that the statements made in the foregoing Certificate of Deposit are true, correct and complete to the best of his information and belief.

SWORN AND SUBSCRIBED TO before me this 31st day of July, 1979.

  
Sharon Harris, Notary Public  
My Commission Expires March 14, 1980

## SQUIRE, SANDERS &amp; DEMPSEY

21 DUPONT CIRCLE, N. W.

WASHINGTON, D. C. 20036

TELEPHONE (202) 862-7000

CABLE "COXFIRM" TELEX "CLXB 440003"

DIRECT DIAL NUMBER

(202) 862-7384

55 EAST BROAD STREET  
COLUMBUS, OHIO 432152 SOUTH BISCAYNE BOULEVARD  
MIAMI, FLORIDA 33131800 N. P. COMMERCE B. B. NO.  
COLUMBUS, OHIO 43215  
AVENUE COL. SE. 88-871 S  
MIAMI BEACH, FLORIDA 33131

July 7, 1980

Re: 1978 and 1979 Copyright Royalty Fees  
for Nonnetwork Telecasts of University

---

Dear \_\_\_\_\_

Pursuant to our telephone conversation this afternoon, I enclose the following documents:

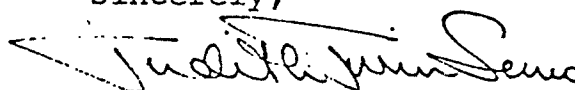
- a. a draft of an authorization letter authorizing us to file a claim on behalf of \_\_\_\_\_ for 1979 copyright royalty fees;
- b. a blank form for information concerning 1979 nonnetwork telecasts; and
- c. a sample assignment form with respect to 1978 nonnetwork broadcasts.

The authorization letter should be retyped on your stationery, signed and returned to us immediately, along with the information concerning 1979 telecasts. The assignment form does not need to be retyped. You may simply complete the form, sign and date it. Please return the assignment to us with the authorization letter and 1979 information.

Please call me if you have any questions.

Thank you very much for your cooperation and assistance.

Sincerely,



Judith Jurin Semo

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of August, 1980, copies of the foregoing Motion for a Declaratory Ruling Concerning Entitlement of NCAA To CATV Royalties, were served upon parties to this proceeding at the addresses shown, by first class mail, postage prepaid:

Arthur Scheiner, Esquire  
Wilner & Scheiner  
1200 New Hampshire Avenue N.W.  
Suite 300  
Washington, D.C. 20036

Judith Jurin Semo, Esquire \*

Squire, Sanders & Dempsey  
21 Dupont Circle, N.W.  
Washington, D.C. 20036

Charles T. Duncan, Esquire  
Peabody, Rivlin, Lambert &  
Meyers  
1150 Connecticut Avenue N.W.  
Washington, D.C. 20036

Gordon T. King, Esquire  
Coudert Brothers  
200 Park Avenue  
New York, New York 10017

Jacqueline Weiss, Esquire  
Public Broadcasting Service  
475 L'Enfant Plaza West S.W.  
Washington, D.C. 20024

Albert F. Ciancimino, Esquire  
SESAC, Incorporated  
10 Columbus Circle  
New York, New York 10019

Gene A. Bechtel, Esquire  
Arent, Fox, Kintner, Plotkin  
& Kahn  
1815 H Street, N.W.  
Washington, D.C. 20006

Edward W. Chapin, Esquire  
Broadcast Music, Inc.  
320 West 57th Street  
New York, New York 10019

Jeffrey D. Southmayd, Esquire  
Fisher, Wayland, Southmayd &  
Cooper  
1100 Connecticut Avenue N.W.  
Washington, D.C. 20036

Bernard Korman, Esquire  
ASCAP  
One Lincoln Plaza  
New York, New York 10023

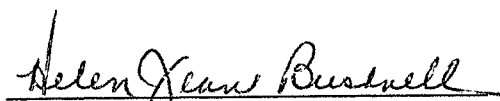
\* Served by hand.

Richard Dannay, Esquire  
Schwab, Goldberg, Price &  
Dannay  
1185 Avenue of the Americas  
New York, New York 10036

Mr. D.E. Lytle  
Corporate Program Services  
Canadian Broadcasting Company  
Post Office Box 8478  
Ottawa, Ontario  
CANADA K1G 3J5

James J. Popham, Esquire  
National Association of Broad-  
casters  
1771 N Street N.W.  
Washington, D.C. 20036

Janice F. Hill, Esquire  
National Public Radio  
2025 M Street, N.W.  
Washington, D.C. 20036

  
Helen Jean Bushnell