

STATEMENT AND TESTIMONY
OF NATIONAL PUBLIC RADIO
BEFORE THE COPYRIGHT ROYALTY TRIBUNAL

My name is Carol A. Moody. I am currently the Coordinator for Copyright and Program Rights of National Public Radio (NPR) and a former employee of the United States Copyright Office. NPR is a private non profit membership organization consisting of the licensees of more than 220 public radio stations. NPR and its member stations produce a unique variety of public affairs, cultural and entertainment programming. Our commitment and congressional mandate require that we provide a significant alternative to programming which is available in the commercial marketplace.

In order to be eligible for NPR membership (or for general support and special grants distributed by the Corporation for Public Broadcasting (CPB)) public stations must meet minimum criteria relating to facilities, power, staffing, budget and programming set by CPB. (Exhibit A) Of the almost 900 noncommercial FM stations licensed by the FCC in 1978, almost all of the public stations meeting the CPB support criteria were members of NPR. NPR operates a program tape service made up of selected program offerings for those stations which are not eligible for NPR membership.

I am appearing today in a dual role, both on behalf of NPR as a program producer, and on behalf of those NPR member stations which have authorized NPR to represent their claims in these proceedings. I have submitted a copy of the NPR claims filed with the Tribunal in July, 1979. (Exhibit B)

The purpose of this testimony is to present the rationale and information to support public radio's claims. It is basic to our claim that the Tribunal know that we are committed to spending maximum resources on program production. Since Congress concluded that it would be unduly burdensome to require cable system owners to negotiate with every copyright owner whose work was subject to secondary transmissions, it is our hope that the Tribunal understand NPR's limited resources for lengthy negotiations and fact finding in these proceedings. Yet we are willing to provide any additional available documentation or witnesses should you require it.

CABLE CARRIAGE OF RADIO SIGNALS

It is useful to recognize certain generalizations regarding cable carriage of radio which data will support. Cable retransmission of radio signals is a major and growing part of the service offered by most cable systems. Because it is a local medium, there are a greater number of radio stations averaging more hours of local programming potentially available for cable carriage than there are television signals. A cable system carrying radio signals is more likely to use the complete radio signal and less likely to originate its own audio programming than to originate its own video.

While data on cable carriage of radio signals is limited in availability we substantiate our position with one of the few pieces of publicly-available data--a 1977 FCC proceeding¹ on radio cable

^{1/} Report and Order on Docket 19418, FCC 78-57, 67 FCC 2d 491 (Feb. 7, 1978) 43 Fed. Reg. 5012.

carriage which includes a 1976 study by the NAB Cable Radio Committee. Approximately 70% of those stations ^{75%} *Survey 30/1/77* surveyed reported cable importation of distant radio signals into their local markets. 54% reported video origination to 18% audio origination. Since cable has mushroomed over the past years; this estimate of the prevalence of radio cable carriage is likely to be a modest one.

The FCC statistics from that proceeding further substantiate the point that cable carriage of radio signals is extensive. They show that 51% of all cable television systems in 1977, also carried allband FM signals. In larger cable communities, of particular concern to NPR, 56% of the cable systems carried allband FM signals, 27% carried selected signals. It is significant that only 10% carried no radio signals at all. In 1978 the carriage must have been at least as great. It is also significant that FM signals were being carried in 100% of the cases where distant radio signals were being imported by cable systems.

In summary these statistics tell us that radio stations, especially FM stations, represent a significant source of programming material transmitted by cable systems.

NPR PROGRAM SERVICE CLAIM

The standing of NPR's program service in this proceeding is most akin to that of an independent producer, distributor or syndicator which has full ownership of the programs being distributed. At

this level, NPR's program service claim is based on the same principles of law as the other program suppliers in these proceedings. According to Corporation for Public Broadcasting (CPB) statistics, the NPR program service distributed 1,470 hours of broadcast programming in 1978 which represented 21.7% of the programming aired by the average public radio station.² This programming included offerings such as NPR's nightly ninety minute news magazine program, "All Things Considered," original documentaries in the "Options" series and original dramas. A listing of regular NPR programs during calendar 1978 has been submitted with this statement. (Exhibit C)

According to the recent Carnegie Commission Report,³ approximately 50% of the 365 Census Bureau Standard Metropolitan Statistical Areas (SMSA's) had access to over the air public radio service. In other words, the only means by which public radio service could reach the other 50% would be from cable importation of public radio signals.

NPR LOCAL STATION CLAIMS

Congressional and CPB qualification requirements insure high quality, original programming from NPR stations by setting minimum budgets and staff levels, and community advisory boards. Some of

2/ Corporation for Public Broadcasting, Public Radio Programming Content by Category Fiscal Year 1978, Washington, D.C. 1979, p. 45.

3/ A Public Trust, The Report of the Carnegie Commission on Public Broadcasting, p. 198.

the essential standards for public radio station qualification include: a minimum 18-hour daily operational schedule; and good quality alternative programming which serves demonstrated community needs of an educational, informational and cultural nature.

NPR represents the claims of sixty-one of our member stations which have met the above qualifications and have met the Tribunal's requirements of identifying at least one original program being retransmitted by a cable system into distant markets. Of those, there were twenty-one identifications of select signal carriage. Extensive background material on these claims is already a part of the record in these proceedings.

According to the CPB study for 1978, the average public radio station produced over 59% of its total broadcast hours or 4,023 original broadcast hours in 1978⁴. Considering the amount of hours of radio carriage by cable systems, our stations' original programming has enhanced a great deal of cable carriage.

CONCLUSION

NPR requests that the Tribunal allocate substantial royalties for cable system use of works produced by NPR and public radio stations. We believe that our claim for compensation for cable carriage is simple. We create and distribute programs. Those works enhance

^{4/} CPB Report, supra, note 2, at 43.

commercial cable systems' offerings. NPR programming represents 21.7% of the actual hours broadcast by public radio in 1978. Original local broadcast hours represents 59.4%. Cost of producing that unique programming is high, because by mandate, it is an economically non-viable alternative to commercial programming.

Surplus revenues--which would be distributable profits for commercial stations--are immediately put back into public radio programming. This claim is supported by the CPB statistics which show that those stations with higher budgets produced more original programming, while those with lower budgets depended more on the NPR program service.⁵

Thus, we ask that the Tribunal distribute to NPR and its member claimants the royalties deserved from the use of our original works by cable systems throughout the country. Those royalties would likewise go immediately to our member claimants and NPR's Program Service in order to compensate public radio's service to the American public. With public service, rather than profit, as our objective, the compensation received from cable carriage royalties would provide a public return on the monies committed by Congress and the public for the growth of public radio.

5/ Id. at 8.



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MAR 17 1980

DO NOT TAKE

March 14, 1980

Mary Lou Burg, Chairman
Copyright Royalty Tribunal
1111 20th St., NW
Room 450
Washington, D.C. 20036

Re: Cable Royalty Evidentiary Hearings

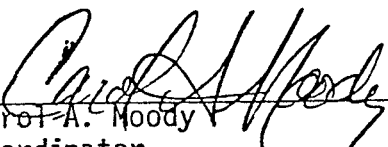
Dear Chairman Burg:

National Public Radio (NPR) respectfully requests the opportunity to testify at the evidentiary hearings on the above referenced proceedings scheduled for March 24, 26, April 8, 22, 1980 in Washington, D.C.

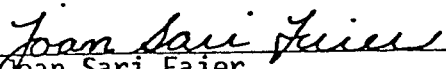
NPR requests a maximum of thirty minutes in which to testify. The enclosed testimony represents a claim for NPR produced programming and the locally produced programming of individual member stations which have authorized our representation in these proceedings. In view of our dual status as claimants, we respectfully request a time for presentation following program producers and preceding broadcasters.

Enclosed is a copy of our written testimony with supporting exhibits.

Sincerely yours,



Carol A. Moody
Coordinator
Copyright and Program Rights



Joan Sari Faier
Legal Assistant

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