

Before the  
**UNITED STATES COPYRIGHT ROYALTY JUDGES**  
Washington, D.C.

**In the Matter of**

**DETERMINATION OF RATES AND TERMS  
FOR DIGITAL PERFORMANCE OF SOUND  
RECORDINGS AND MAKING OF  
EPHEMERAL COPIES TO FACILITATE  
PERFORMANCES (WEB VI)**

**Docket No. 23-CRB-0012-WR  
(2026-2030)**

**INTRODUCTORY MEMORANDUM TO THE WRITTEN DIRECT  
STATEMENT OF SIRIUS XM RADIO LLC AND PANDORA MEDIA, LLC**

Sirius XM Radio LLC (“Sirius XM”), together with its wholly owned subsidiary Pandora Media, LLC (“Pandora”), hereby submits its Written Direct Statement to the Copyright Royalty Judges pursuant to 37 C.F.R. § 351.4. Sirius XM/Pandora’s rate proposal for the statutory license at issue in this proceeding, the written direct testimony of Sirius XM/Pandora witnesses, its designations of witness testimony from prior Copyright Royalty Board proceedings, and its accompanying exhibits are provided in the subsequent tabs of this submission.

**SUMMARY OF TESTIMONY**

Under the statutory license provisions that govern this proceeding, the Judges are tasked with determining reasonable rates and terms for noninteractive webcasting services to publicly perform sound recordings protected under U.S. copyright law and to make ephemeral recordings to facilitate those performances. As the Judges clarified in the *Web IV* proceeding and affirmed in the *Web V* proceeding, the rate-setting task at hand is to establish the price that would result from negotiations between a willing buyer and a willing seller under conditions of “workable” or (equivalently) “effective” competition. Those precedents make plain that the willing buyer in the hypothetical market is a noninteractive webcaster that streams music to users subject to the

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“sound recording performance complement” and other limits of the statutory license, and the willing seller is a single record company that offers a blanket license to publicly perform its complete repertoire of sound recordings and to make ephemeral copies to facilitate those performances.<sup>1</sup>

As this is the sixth proceeding to set statutory license rates for noninteractive webcasting (and fifth before the Copyright Royalty Board), the participants have the benefit of the Judges’ substantial prior guidance with respect to how to determine reasonable rates. Through the *Web IV* and *Web V* proceedings in particular—each comprising dozens of witnesses, thousands of pages of written testimony and briefing, and multi-week trials—the Judges have utilized a benchmarking approach for determining reasonable rates, with alignment as to both the type of negotiated agreements chosen as benchmarks as well as various methods for adjusting those rates for application to the target statutory service market. At this point, there should be no dispute that agreements between interactive music streaming services and record companies can be used as benchmarks to set rates for noninteractive statutory webcasters, but that adjustments to those interactive service benchmark rates are needed (i) to obtain rates that account for the complementary oligopoly power that major record companies have over interactive services that elevates the benchmark rates over the rates that would be found in a workably competitive market; (ii) to reflect the more limited rights available to noninteractive services under the statutory license than are available to interactive services under their agreements with record companies, which limitations make the statutory license less valuable to the user; and (iii) to account for more technical issues like the “skips” adjustment, which addresses the fact that

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<sup>1</sup> Consistent with past practice, Sirius XM/Pandora proposes different rates for advertising-supported services and subscription services, and the rates proposed for each category cover both the public performance and ephemeral recording rights at issue.

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statutory services pay for all performances, whereas interactive services typically pay only for performances of 30 seconds or more.

That benchmarking approach is precisely the approach recommended by Professor Fiona Scott Morton, the Theodore Nierenberg Professor of Economics at the Yale School of Management, whom Sirius XM/Pandora has retained as its principal testifying economist in this proceeding. In her written direct testimony, Professor Scott Morton examines the noninteractive music streaming marketplace, the interactive music services marketplace, and the recorded music industry more broadly, and she offers three primary observations based on that examination. First, the recorded music industry has enjoyed significant growth over the past decade, with industry-wide revenues doubling over that period. Second, and notwithstanding that general trend, the market for noninteractive webcasting services in particular has been stagnant at best, without any meaningful market entry. Pandora remains the country's largest noninteractive internet radio service even though the number of users who listen actively each month has declined from more than 81 million in 2014 to approximately [REDACTED] today. Sirius XM has more subscribers with access to its streamed content than it did a decade ago as a result of its decision to bundle streaming with its satellite radio packages, but the number of subscribers who actually use Sirius XM's streaming service remains small in relation to its satellite radio subscriber base and even smaller in relation to leading interactive subscription services like Spotify Premium and Apple Music. Third, the structural characteristics of the unregulated market in which interactive music streaming services license sound recordings from record companies that led to the Judges' conclusions in previous Copyright Royalty Board determinations that the benchmark market is not workably competitive have, if anything, *moved further away* from a competitive structure as a result of further record company consolidation.

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Professor Scott Morton next considers what effect workable competition would have on market rates for noninteractive webcasters like Pandora and Sirius XM. She observes that buyers in other markets with the ability to steer business among competing suppliers are able to achieve lower rates through steering or the threat of steering, and that the same mechanisms that the major record companies that dominate the market for sound recordings regularly use to prevent such steering by music streaming services—including anti-steering provisions and “most favored nation” clauses—often result in antitrust enforcement efforts when they are used to prevent competitive pricing in other markets. She then examines whether and to what extent statutory webcasters have the ability to steer. At her request and subject to instructions she provided, Pandora’s data science team conducted updated and expanded versions of the steering experiments conducted in 2014 that informed the Judges’ adjustments for effective competition in *Web IV* and *Web V*. Those experiments show that Pandora continues to have the ability to steer performances away from the repertoire of individual record companies— [REDACTED] —and toward the repertoire of other record companies at the levels previously tested without any statistically significant impact on listenership for its noninteractive service. Even at levels of steering that are twice as high as the highest level tested in *Web IV* (60% vs. 30%), the impact on listening hours (the chief metric by which Pandora evaluates changes to its song selection algorithms) is *less than one percent*. Professor Scott Morton relies on the results of those experiments to calculate an appropriate rate adjustment for effective competition.

Professor Scott Morton then assesses reasonable rates for the license at issue using a benchmarking approach and analytical framework similar to the one adopted by the Judges in *Web IV* and *Web V* and supported by other experts in past proceedings. She takes as benchmarks recent license agreements between leading interactive services and record companies. She

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determines the effective rates paid under those agreements by subscription on-demand services (with respect to the statutory subscription service rate) and by advertising-supported interactive services (with respect to the statutory rate for ad-supported webcasters), and then adjusts those rates to account for salient differences between the interactive service market and the statutory webcaster market. The adjustments she makes include adjustments for effective competition, for the differences in the degree of interactivity the benchmark services offer to consumers relative to the noninteractive functionality offered by a statutory webcaster, and for other more technical differences such as skip rates and the use of spatial audio technology. Applying this approach to the current marketplace, she shows that the prevailing rates for noninteractive webcasting—which are significantly higher than the statutory rates from just four years ago—are too high and that a significant reduction is warranted for the upcoming license period.

Professor Scott Morton relies on three new sources of evidence in reaching her conclusions about reasonable rates. First, the updated and expanded steering experiments she asked Pandora to perform show that a larger adjustment for effective competition is warranted today relative to the adjustments for effective competition that the Judges adopted in *Web IV* and *Web V*. Second, Professor Scott Morton relies on a consumer survey conducted by Professor Ronald Wilcox, the NewMarket Corporation Professor of Business Administration at the Darden School of Business at the University of Virginia, to determine diversion ratios between statutory services and other sources for listening to music. Professor Wilcox’s consumer survey, while quite similar to the one conducted by Professor Dominique Hanssens that the Judges utilized in *Web V*, shows that the opportunity cost to a record company of licensing a statutory webcaster like Pandora is even lower today than it was five years ago. Third, Professor Scott Morton has available to her more recent license agreements than the ones that informed the Judges’

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determination in *Web V*. Based on this evidence, Professor Scott Morton concludes that the reasonable rate for an advertising-supported noninteractive service is in the range between \$0.0016 and \$0.0021 per performance and the reasonable rate for a subscription noninteractive service is in the range between \$0.0018 and \$0.0021 per performance. Accordingly, Sirius XM/Pandora proposes that the statutory rates be set at \$0.0018 per performance for advertising-supported services and at \$0.0020 per performance for subscription services.

Professor Scott Morton's and Professor Wilcox's expert testimony is accompanied by fact testimony from four Company witnesses: Jennifer Witz, the Chief Executive Officer of Sirius XM Holdings Inc.; Sasha Eysymontt, Sirius XM's Senior Vice President, Product Management; William ("W.B.") Peale, Product Lead, Algorithmic Programming at Pandora; and Cary Krefetz, Sirius XM's Senior Vice President, Corporate Controller. The written direct testimony of these witnesses and the testimony of witnesses from prior proceedings that has been designated by Sirius XM/Pandora for use here are summarized individually in the following sections of this memorandum.

### **Fact Witness Summaries**

#### **Jennifer Witz**

Jennifer Witz is the Chief Executive Officer of Sirius XM Holdings Inc. Ms. Witz joined Sirius XM in 2002 and previously served in a variety of marketing and finance roles, including as President, Sales, Marketing and Operations and as Chief Marketing Officer. She became the Chief Executive Officer of Sirius XM in 2021. Ms. Witz provided written and oral testimony in the *Web V* proceeding, some of which, as described below, has been designated for use in this proceeding. In her written direct testimony here, Ms. Witz: (i) describes the evolution of Sirius XM's and Pandora's streaming service offerings since she last testified in *Web V*; (ii) addresses Pandora's and Sirius XM's roles in the broader music streaming marketplace; and (iii) explains Introductory Memorandum to the Written Direct Statement of Pandora Media, LLC and Sirius XM Radio LLC, Docket No. 23-CRB-0012-WR (2026-2030) (WEB VI)

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that the dramatic increases in the statutory royalty rates since 2020—nearly 30% for subscription services and nearly 40% for advertising-supported services—significantly exceed the advertising revenue and subscription fee increases Pandora and Sirius XM have been able to achieve. Ms. Witz also explains why a per-performance rate remains the appropriate fee structure for statutory webcasting.

### **Sasha Eysymontt**

Sasha Eysymontt is Senior Vice President, Product Management for Sirius XM. He has worked for Sirius XM since August 2022. In his role, Mr. Eysymontt is chiefly responsible for the product design and development of the Sirius XM and Pandora streaming services. Mr. Eysymontt’s written direct testimony describes: (i) Sirius XM’s and Pandora’s product offerings, including their noninteractive streaming services and the types of content offered within each, (ii) the strategic role of the Company’s streaming offerings and how it is changing, particularly on the Sirius XM side; (iii) a recent company initiative referred to as the “Atlas” project, which involved a complete overhaul of Sirius XM’s streaming offering and its related technical infrastructure. Mr. Eysymontt also comments on Sirius XM’s and Pandora’s respective roles in the broader digital music landscape.

### **W.B. Peale**

W.B. Peale is Product Lead, Algorithmic Programming at Pandora, a position he has held since joining Pandora in November 2018. In his role, Mr. Peale leads the design and development of the song-selection algorithms that drive Pandora’s radio programming, enabling listeners to discover new songs and artists and continually improving their listening experience through insights, experimentation, and innovation. As part of his responsibilities, he works closely with Pandora’s Science team, a group of more than 60 data scientists who work with Pandora engineers to execute experiments that measure how changes and potential changes to

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features of the Pandora service impact listener satisfaction, listening time, user retention, and other metrics tracked by the company.

In his written direct testimony, Mr. Peale first describes Pandora's radio algorithms and the sophisticated machine learning and engineering processes that Pandora utilizes to identify songs that the listener will love. Mr. Peale explains how those processes would enable Pandora, should it so choose, to play more or fewer tracks from a given record company without degrading the consumer experience. He then describes the experiments conducted at the direction of Professor Scott Morton and under his supervision to measure whether and to what extent such steering would impact the key listener metrics that Pandora tracks for its advertising-supported internet radio service in the ordinary course of its business. These steering experiments tested the effects of decreasing spins of a particular record company by 15%, 30%, 45%, or 60% or of increasing spins by 30%, with separate experiments for each of [REDACTED]. As Mr. Peale reports, the results of the updated experiments reveal that most of the experiments had no statistically significant impact, and even when steering away from [REDACTED] by as much as 60%, Pandora experienced a less than 1% decrease in listener hours and other key metrics Pandora monitors in the ordinary course of its business.

### Cary Krefetz

Cary Krefetz is Senior Vice President, Corporate Controller at Sirius XM, a position he has held since 2023. In that role, his responsibilities cover internal and external reporting, financial controls, oversight and development of the Company's accounting policies and procedures, and other areas of Sirius XM's finance organization. Mr. Krefetz leads Sirius XM's Audit Committee and has experience with audits involving Sirius XM in a number of different contexts. In his written direct testimony, Mr. Krefetz addresses the changes to the terms of the statutory license that Sirius XM/Pandora is proposing, including (i) changes to the audit process

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that will make it more objective, transparent, and efficient, (ii) an adjustment to the interest rate charged in the event of underpayments to make that rate more reasonable, and (iii) tolling of interest on audit underpayments in the event of auditor delays.

**Expert Witness Summaries**

**Fiona Scott Morton**

Fiona Scott Morton is the Theodore Nierenberg Professor of Economics at the Yale School of Management, where she has taught since 1999. Professor Scott Morton has also taught at the business schools of Stanford University and the University of Chicago. In 2011-2012, she served as the Deputy Assistant Attorney General for Economic Analysis with the Antitrust Division of the U.S. Department of Justice. In her role as the chief economist in the Antitrust Division, she advised the Assistant Attorney General for Antitrust on a wide range of enforcement matters and competition policy issues and played a leading role in formulating the Antitrust Division's position on a wide range of competition policy issues. Professor Scott Morton teaches courses in the area of competitive strategy and competition economics and policy. Her primary area of academic research is empirical Industrial Organization, the sub-field of microeconomics that includes competition economics and the study of firm behavior.

In her written direct testimony, as noted above, Professor Scott Morton first examines the music industry landscape in which statutory webcasting services and observes that: (i) there has been substantial growth in record company revenues in recent years; (ii) during that same time period, the market for webcasting services has been stagnant; and (iii) the structural characteristics of the market that led the Judges to conclude in *Web IV* and *Web V* that the market in which interactive services license sound recordings from record companies is not workably competitive have, if anything, moved further away from a competitive structure. Professor Scott Morton then examines what it means to have a workably competitive market and the effect of Introductory Memorandum to the Written Direct Statement of Pandora Media, LLC and Sirius XM Radio LLC, Docket No. 23-CRB-0012-WR (2026-2030) (WEB VI)

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workable competition on negotiated rate outcomes. She discusses the experiments conducted by Pandora's data science team at her direction that empirically measure the extent to which Pandora can steer performances (and therefore royalties) toward or away from a given record company. In the final section of her testimony, she identifies the recent license agreements between record companies and music streaming services that serve as her rate-setting benchmarks, drawing on economic theory, the steering experiments conducted by Pandora at her request, and the consumer survey conducted by Professor Wilcox to adjust those benchmarks as needed to establish the range of reasonable rates and the appropriate royalty structure for the license at issue in this proceeding.

### **Ronald Wilcox**

Dr. Ronald Wilcox is the NewMarket Corporation Professor of Business Administration at the Darden School of Business at the University of Virginia, where he has served on the faculty since 2001. Dr. Wilcox teaches courses on marketing and pricing in the MBA and Executive MBA programs at Darden, and he is renowned as an expert in marketing research, marketing analytics, customer relationship management, and branding, among other topics. In his written direct testimony here, Professor Wilcox describes a consumer survey he conducted in connection with this proceeding to determine whether and to what extent listeners to Pandora's internet radio service would turn to alternative sources of music in response to a degradation of their listening experience. Based on that survey, Professor Wilcox concludes that only a very small fraction of users of Pandora's advertising-supported internet radio service who would decrease their use of Pandora in response to a degradation of their listening experience would divert to a new subscription music service (*i.e.*, one that would lead to material new revenue for record companies), whereas most would either opt for an alternative free streaming service, such

as YouTube Music, Spotify’s advertising-supported service, or a noninteractive statutory service, or listen to music via an on-demand subscription for which they are already paying .

**Summaries of Designated Testimony from Prior Proceedings**

Sirius XM/Pandora is also designating witness testimony from prior Copyright Royalty Board proceedings, including (together with applicable hearing testimony):

**Written Direct Testimony of Jennifer Witz in *Web V* ¶¶ 1–37**

As noted above, Jennifer Witz is the Chief Executive Officer of Sirius XM Holdings Inc. At the time of the *Web V* proceeding, she was Sirius XM’s President, Sales, Marketing and Operations. In her written direct testimony for *Web V*, she described: (i) the development of Sirius XM’s unique internet radio product; (ii) the content then available on the service, which included numerous exclusive, non-music offerings; (iii) the historically ancillary and still-evolving role of Sirius XM’s streaming radio product in relation to its core satellite radio business; and (iv) Sirius XM’s rationale for acquiring Pandora.

**Written Direct Testimony of Steven Blatter in *Web V* ¶¶ 1–17 and *SDARS II* ¶¶ 1-58**

Steven Blatter is Sirius XM’s Senior Vice President and General Manager of Music Programming. Mr. Blatter testified on behalf of Sirius Satellite Radio Inc. in the *SDARS I* proceeding (prior to its merger with XM Satellite Radio Inc.) and on behalf of Sirius XM in *SDARS II*, *SDARS III*, and *Web V*. In his written direct testimony in *Web V* and *SDARS II* designated here, he described the range and coverage of the Sirius XM internet radio music channels, the development of those channels, the differences between Sirius XM streaming radio, terrestrial radio, and on-demand streaming, and the promotional benefits of Sirius XM that are valued by recording artists, artist managers, and recording companies. He also described the Company’s music channel lineup and programming offerings and various features of Sirius XM’s service that have an immense promotional impact on music purchasing and consumption.

**Written Direct Testimony of Christopher Phillips in *Web V* ¶¶ 1–25, 29–43**

Christopher Phillips was Pandora’s Chief Product Officer from October 2014 until May 2021. During his tenure, Mr. Phillips was responsible for defining and leading Pandora’s overall digital product and technology strategy and roadmap, which delivered the overall Pandora listener, creator, and digital monetization experiences. Mr. Phillips testified on behalf of Pandora in *Phonorecords III* and in *Web V*. In his designated *Web V* written testimony, he described: (i) Pandora, its noninteractive, advertising supported music streaming service, and the role of internet radio in the digital music landscape; (ii) the evolution of Pandora’s product offerings since the *Web IV* proceeding and its development of interactive streaming products to complement its noninteractive service; (iii) Pandora’s efforts to develop the market for internet audio advertising, optimize the delivery of advertising to its listeners, and maximize revenues and use of its services; (iv) the promotional tools Pandora has offered to artists and record labels to connect with fans and increase their other sources of revenue; and (v) Pandora’s acquisition by Sirius XM.

**Written Direct Testimony of Timothy Westergren in *Web IV***

Mr. Westergren founded Pandora and has served in the past as its Chief Executive Officer and as a member of its Board of Directors, among other roles. In his written direct testimony in *Web IV*, he described the founding of Pandora, the key milestones in Pandora’s early history, including the enormous effort and ingenuity required to develop Pandora’s Music Genome Project (“MGP”), and the ways the MGP works with Pandora’s other playlist algorithms to provide the optimal “lean back” radio-like listening experience.

**Written Direct Testimony of Stephan McBride in *Web IV* ¶¶ 1–22 & Appendix A**

Dr. McBride formerly served as Senior Scientist, Economics, at Pandora and was a member of Pandora’s science team. In his written direct testimony in *Web IV*, he described, *inter* Introductory Memorandum to the Written Direct Statement of Pandora Media, LLC and Sirius XM Radio LLC, Docket No. 23-CRB-0012-WR (2026-2030) (WEB VI)

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*alia*, a series of experiments conducted by Pandora in 2014 to measure the effect of steering performances toward or away from particular record companies on listenership.

September 13, 2024

Respectfully submitted,

*/s/ Benjamin Marks*

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**Before the  
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FOR DIGITAL PERFORMANCE OF SOUND  
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(WEB VI)**

**Docket No. 23-CRB-0012-WR  
(2026-2030)**

**PROPOSED RATES AND TERMS OF SIRIUS XM RADIO LLC  
AND PANDORA MEDIA, LLC.**

Pursuant to 37 C.F.R. § 351.4(b)(3), Sirius XM Radio LLC (“Sirius XM”) and Pandora Media, LLC (“Pandora”) jointly propose that the Copyright Royalty Judges set the royalty rate for Eligible Transmissions of sound recordings by nonsubscription commercial webcasters under the statutory license provided by 17 U.S.C. § 114(d) at \$0.0018 and set the royalty rate for Eligible Transmissions of sound recordings by subscription commercial webcasters at \$0.0020. Sirius XM/Pandora’s rate proposal maintains the same royalty structure adopted in both *Web IV* and *Web V*: a unitary per-performance royalty that covers both the performance rights and the ephemeral copying rights at issue in this proceeding, with different rates for subscription services and nonsubscription ad-supported services.

Sirius XM/Pandora proposes that the governing regulatory terms set forth in 37 C.F.R. § 380 be continued, with references to specific calendar years updated to reflect the 2026-2030 license period as appropriate, and with the following changes to section 380.6 (as identified in blue bold text):

(a) **General.** This section prescribes procedures by which any entity entitled to receive payment or distribution of royalties may verify payments or distributions by auditing the payor or distributor. The Collective may audit a Licensee's payments of royalties to the Collective, and a Copyright Owner or Performer may audit the Collective's distributions of royalties to the owner or performer. Nothing in this section shall preclude a verifying entity and the payor or distributor from agreeing to verification methods in addition to or different from those set forth in this section.

(b) **Frequency of auditing.** The verifying entity may conduct an audit of each licensee only once a year for any or all of the prior three calendar years. A verifying entity may not audit records for any calendar year more than once.

(c) **Notice of intent to audit.** The verifying entity must file with the Copyright Royalty Judges a notice of intent to audit the payor or distributor, which notice the Judges must publish in the Federal Register within 30 days of the filing of the notice. Simultaneously with the filing of the notice, the verifying entity must deliver a copy to the payor or distributor.

(d) **The audit.** The audit must be conducted during regular business hours by a Qualified Auditor who is not retained on a contingency fee basis and is identified in the notice. The auditor shall determine the accuracy of royalty payments or distributions, including whether an underpayment or overpayment of royalties was made. **In the event the Licensee makes Eligible Transmissions subject to voluntary agreements with Copyright Owners as contemplated in Section 380.1(d) (whether direct licenses, waivers of royalties, or similar arrangements), the auditor shall not seek to review or ascertain the legal sufficiency of the voluntary agreements, the coverage of which shall remain solely a matter between the distributor and Copyright Owners.** An audit of books and records, including underlying paperwork, performed in the ordinary course of business according to generally accepted auditing standards by a Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(e) **Audit-related communications.** **With respect to an audit of a Licensee by the Collective, all communications between the Qualified Auditor and Collective related to the audit shall be provided to the Licensee within five days of the commencement of the audit (with respect to communications preceding that date) and thereafter within five days of any communication (with respect to communications during the course of or after the audit). Neither the Qualified Auditor nor Collective shall withhold any such communications based on an assertion of attorney-client, work product, or other privilege.**

~~(e)~~(f) **Access to third-party records for audit purposes.** The payor or distributor must use commercially reasonable efforts to obtain or to provide access to any

relevant books and records maintained by third parties for the purpose of the audit.

**(g) Duty of auditor to consult.** The auditor must produce a written report to the verifying entity. Before rendering the report, unless the auditor has a reasonable basis to suspect fraud on the part of the payor or distributor, the disclosure of which would, in the reasonable opinion of the auditor, prejudice any investigation of the suspected fraud, the auditor must review tentative written findings of the audit with the appropriate agent or employee of the payor or distributor in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the payor or distributor reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit. The auditor must include in the written report information concerning the cooperation or the lack thereof of the employee or agent.

**(h) Audit results; underpayment or overpayment of royalties.** If the auditor determines the payor or distributor underpaid royalties, the payor or distributor shall remit the amount of any underpayment determined by the auditor to the verifying entity, together with interest at **a rate equal to the prime rate quoted in the “Money Rate” section of the Wall Street Journal, or any other similarly reputable published source, calculated on the basis of a 365-day year, and accrued from and after the date the payment was originally due.** In the absence of mutually-agreed payment terms, which may, but need not, include installment payments, the payor or distributor shall remit promptly to the verifying entity the entire amount of the underpayment determined by the auditor. If the auditor determines the payor or distributor overpaid royalties, the verifying entity shall not be required to remit the amount of any overpayment to the payor or distributor, **but** the payor or distributor shall **be entitled** to offset or take a credit for the overpayment **against future statutory royalty payments. The accrual of any interest payments due under this paragraph shall be tolled by the following time periods: (i) if the auditor fails to commence the audit within 90 days of the notice of audit, by the number of days beyond 90 days that the audit was not commenced; and (ii) where the auditor fails to respond to distributor’s provision of audit-relation information within 60 days with either (a) a good-faith request for additional necessary information or (b) delivery of the initial audit report, by the number of days beyond 60 days that the auditor failed to respond.**

**(i) Paying the costs of the audit.** The verifying entity must pay the cost of the verification procedure, unless the auditor determines that there was a net underpayment (i.e., underpayments less any overpayments) of 10% or more, in which case the payor or distributor must bear the reasonable costs of the verification procedure, in addition to paying or distributing the amount of any underpayment.



**(j)** Retention of audit report. The verifying party must retain the report of the audit for a period of not less than three years from the date of issuance.

September 13, 2024

Respectfully submitted,

*/s/ Benjamin Marks*

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**Docket No. 23-CRB-0012-WR  
(2026-2030)**

**INDEX OF WITNESS TESTIMONY  
FOR SIRIUS XM RADIO LLC AND PANDORA MEDIA, LLC**

<b>Witness</b>	<b>Title</b>
Jennifer Witz	Chief Executive Officer, Sirius XM Radio LLC.
Sasha Eysymontt	Senior Vice President, Product Management, Sirius XM Radio LLC.
William (“W.B.”) Peale	Product Lead, Algorithmic Programming, Pandora Media, LLC
Cary Krefetz	Senior Vice President, Corporate Controller, Sirius XM Radio LLC
Fiona Scott Morton	Theodore Nierenberg Professor of Economics, Yale School of Management
Ronald Wilcox	NewMarket Corporation Professor of Business Administration, University of Virginia, Darden School of Business

<b>Designated Witnesses from Web V (Docket No. 19-CRB-005-WR (2021-2025))</b>	
Jennifer Witz Written Direct Testimony ¶¶ 1–37 & Hearing Testimony	(Then) President, Sales, Marketing and Operations, Sirius XM Radio LLC
Steven Blatter Written Direct Testimony ¶¶ 1–17	Senior Vice President and General Manager of Music Programming, Sirius XM Radio LLC
Christopher Phillips Written Direct Testimony ¶¶ 1–25, 29–43 & Hearing Testimony	(Former) Chief Product Officer, Pandora Media, LLC
<b>Designated Witnesses from Web IV (Docket No. 14-CRB-0001-WR (2016-2020))</b>	
Timothy Westergren Written Direct & Hearing Testimony	(Former) Chief Executive Officer, Pandora Media, LLC
Stephan McBride Written Direct Testimony ¶¶ 1–22 & Appendix A & Hearing Testimony	(Former) Senior Scientist, Economics, Pandora Media, LLC
<b>Designated Witness from SDARS II (Docket No. 2011-1 CRB PSS/Satellite II)</b>	
Steven Blatter Written Direct Testimony ¶¶ 1–58 & Hearing Testimony	Senior Vice President and General Manager of Music Programming, Sirius XM Radio LLC

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**INDEX OF EXHIBITS SUBMITTED ON BEHALF OF  
SIRIUS XM RADIO LLC AND PANDORA MEDIA, LLC**

<b>Exhibit No.</b>	<b>Sponsoring Witness</b>	<b>Description</b>	<b>Bates No.</b>
SXM-PAN Dir. Ex. 001	Jennifer Witz	April 2023 BPET Report ( <b>Restricted</b> )	SIRIUSXM00002632
SXM-PAN Dir. Ex. 002	Jennifer Witz	Morgan Stanley Research, 9th Annual AlphaWise Audio Entertainment Survey ( <b>Restricted</b> )	SIRIUSXM00010347
SXM-PAN Dir. Ex. 003	Sasha Eysymontt	Sirius XM Channel Guide	N/A
SXM-PAN Dir. Ex. 004	W.B. Peale	SiriusXM Algorithmic Programing Overview July 2023 ( <b>Restricted</b> )	N/A
SXM-PAN Dir. Ex. 005	Cary Krefetz	Complaint from Sirius XM Radio Inc. v. Adeptus Partners, LLC; Lewis Stark	N/A

**Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Washington, D.C.**

**In the Matter of**

**DETERMINATION OF RATES AND TERMS  
FOR DIGITAL PERFORMANCE OF SOUND  
RECORDINGS AND MAKING OF  
EPHEMERAL COPIES TO FACILITATE  
PERFORMANCES (WEB VI)**

**Docket No. 23-CRB-0012-WR  
(2026-2030)**

**DECLARATION AND CERTIFICATION OF TODD D. LARSON  
(On behalf of Sirius XM Radio LLC and Pandora Media, LLC)**

1. I am counsel for Sirius XM Radio LLC (“Sirius XM”) and its wholly owned subsidiary, Pandora Media, LLC (“Pandora”) (collectively, the “Company”), in the above-captioned case. I respectfully submit this declaration and certification pursuant to the terms of the Protective Order issued September 6, 2024 (“Protective Order”). I am authorized by the Company to submit this Declaration on the Company’s behalf.

2. I have reviewed the introductory memorandum to the written direct statement, witness written direct testimony, exhibits and appendices, and designated testimony submitted in this proceeding. I have also reviewed the definitions and terms provided in the Protective Order. After consultation with my client, I have determined to the best of my knowledge, information, and belief that portions of the Company’s written direct statement contain “confidential information” as defined by the Protective Order (“Restricted Material”). The Restricted Material is shaded in the Company’s restricted e-filing, and described in more detail below.

3. Such Restricted Material includes, but is not limited to, testimony and exhibits involving (a) contracts and contractual terms that are proprietary, not available to the public, and highly competitively sensitive; and (b) highly confidential internal business information,

financial projections, financial data, usage and performance data, and competitive research and strategy that are proprietary, not available to the public, and commercially sensitive.

4. If this contractual, strategic, and financial information, or the usage and performance data, were to become public, it would place the Company at a commercial and competitive disadvantage, unfairly advantage other parties to the detriment of Sirius XM and Pandora, and interfere with the ability of Sirius XM and Pandora to obtain like information from other participants of this proceeding or entities in the future. Information related to confidential contracts or relationships with third-party content providers could be used by the Company's terrestrial radio and internet-based competitors, or by other content providers, to formulate rival bids, drive up payments, or otherwise unfairly jeopardize the Company's commercial and competitive interests.

5. With respect to the financial and business analytic information in the Restricted Material, I understand that the Company has not disclosed to the public or the investment community the information that it seeks to restrict here (including spending and investment projections, specific royalty payment information, detailed user and subscriber counts, performance data, and the like). As a result, neither the Company's competitors nor the investing public has been privy to that information, which the Company has viewed as highly confidential and sensitive, and has guarded closely. In addition, when Sirius XM does disclose information about the Company's finances to the market as required by law, it provides accompanying analysis and commentary that contextualizes disclosures by its officers. The information that the Company seeks to restrict under the Protective Order, while truthful and accurate to the best of each witness's knowledge, was not intended for public release or prepared with that audience in mind, and therefore was not accompanied by the type of detailed

explanation and context that usually accompanies such disclosures by a company officer. Moreover, the statements and exhibits containing the information have not been approved by Sirius XM's Board of Directors, as such sensitive disclosures usually are, or accompanied by the typical disclaimers that usually accompany such disclosures. The Company could experience negative market repercussions, competitive disadvantage, and even possible legal exposure were this confidential information released publicly without proper context or explanation.

6. Certain additional material has also been marked as Restricted where the material was so designated by SoundExchange, Inc. ("SoundExchange") when disclosed.

7. The written direct testimony of Jennifer Witz, Chief Executive Officer of Sirius XM Radio LLC, and the exhibits sponsored by Ms. Witz, contain highly confidential, competitively sensitive information concerning Sirius XM's subscriber and usage data, financial data, proprietary research findings, and advertising revenue metrics. This information is not publicly known or available, and its disclosure would competitively disadvantage or otherwise harm the Company for the reasons described above.

8. The written direct testimony of Sasha Eysymontt, Senior Vice President, Product Management at Sirius XM Radio LLC, and the exhibits sponsored by Mr. Eysymontt, contain highly confidential, competitively sensitive information concerning Sirius XM's subscriber and usage data and internal spending details and projections. This information is not publicly known or available, and its disclosure would competitively disadvantage or otherwise harm the Company for the reasons described above.

9. The written direct testimony of W.B. Peale, Product Lead, Algorithmic Programming at Pandora Media, LLC, and the exhibits sponsored by Mr. Peale, contain highly confidential, competitively sensitive information concerning the operation of Pandora's song-

selection algorithms and non-public (blind) experiments conducted among Pandora listener groups. This information is not publicly known or available, and its disclosure would competitively disadvantage or otherwise harm the Company with customers and rival streaming services.

10. The written direct testimony of Cary Krefetz, Senior Vice President, Corporate Controller at Sirius XM Radio LLC, and the exhibits sponsored by Mr. Krefetz, contain highly confidential, competitively sensitive information concerning non-public contract provisions. This information is not publicly known or available, and its disclosure would competitively disadvantage or otherwise harm the Company for the reasons described above.

11. The written direct testimony of Fiona Scott Morton, Theodore Nierenberg Professor of Economics at Yale School of Management, contains highly confidential, competitively sensitive information concerning proprietary contract provisions, sensitive financial data, and Sirius XM's subscriber and usage data, as well as information that has been identified as restricted by SoundExchange. This information is not publicly known or available, and its disclosure would competitively disadvantage or otherwise harm the Companies for the reasons described above.

12. The written direct testimony of Ronald T. Wilcox, NewMarket Corporation Professor of Business Administration at Darden Graduate School of Business at University of Virginia, contains highly confidential, competitively sensitive information concerning Sirius XM's proprietary market research data. This information is not publicly known or available, and its disclosure would competitively disadvantage or otherwise harm the Company for the reasons described above.



13. The Company’s Introductory Memorandum to the Written Statement contains information that has been designated as Restricted where it appears in the witness written direct testimony, exhibits, and appendices.

14. In addition to the written direct testimony, exhibits, and appendices described above, the Company has submitted designated testimony from Docket No. 19-CRB-005-WR (“Web V”) for Jennifer Witz, Steven Blatter, and Christopher Phillips. The Company has also submitted testimony from Docket No. 14-CRB-0001-WR (“Web IV”) for Timothy Westergren and Stephen McBride and from Docket No. 2011-1 CRB PSS/Satellite II (“SDARS II”) for Steven Blatter. The Company seeks restricted status solely for the portions of that testimony that were previously granted restricted status in the prior proceedings.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

September 13, 2024

Respectfully submitted,

/s/ Todd Larson

Todd Larson (N.Y. Bar No. 4358438)

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*Counsel for Sirius XM Radio LLC and Pandora  
Media, LLC*

# Proof of Delivery

I hereby certify that on Tuesday, September 17, 2024, I provided a true and correct copy of the Sirius XM & Pandora Written Direct Statement, Vol. I (Public) to the following:

College Broadcasters, Inc., represented by Seth D. Greenstein, served via E-Service at sgreenstein@constantinecannon.com

Educational Media Foundation, represented by Keenan P Adamchak, served via E-Service at kadamchak@wbklaw.com

George Johnson dba Geo Music, represented by George D Johnson, served via E-Service at george@georgejohnson.com

National Religious Broadcasters Music License Committee, represented by Karyn K Ablin, served via E-Service at ablin@fhhlaw.com

Public Broadcasting Entities, represented by David P Mattern, served via E-Service at dmattern@kslaw.com

SoundExchange Joint Petitioners, represented by Scott Edelman, served via E-Service at sedelman@milbank.com

SoundExchange, Inc., represented by Steven R. Englund, served via E-Service at SEnglund@jenner.com

The National Association of Broadcasters, represented by Joseph R. Wetzel, served via E-Service at joe.wetzel@lw.com

Word Collections, Inc., represented by Eric B Goldberg, served via E-Service at eric@wordcollections.com

Signed: /s/ Todd Larson