

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, DC

Received
OCT 15 2013
Copyright Royalty Board

_____)
In the Matter of)
)
Digital Performance in Sound Recordings) Docket No. 2009-1 CRB
and Ephemeral Recordings) Webcasting III (on remand)
)
_____)

COLLEGE BROADCASTERS, INC.'S
COMMENT IN RESPONSE TO SEPTEMBER 17, 2013 NOTICE

College Broadcasters, Inc. ("CBI") respectfully submits this comment in response to the September 17, 2013 notice ("Notice") of the Copyright Royalty Judges ("Judges") that invited all parties to comment on the Judges' intention to conduct further proceedings on paper. While CBI agrees that there is no need to re-open the record already before the judges, that record warrants the joint settlement ("Settlement") submitted by CBI and SoundExchange to be summarily adopted, just like the settlement between SoundExchange and the National Association of Broadcasters ("NAB Settlement"), without the need for any more briefing by any party. *See* Notice at 8.

The Settlement established rates and terms for the class of webcasters known as "Non-Commercial Educational Webcasters." ("NEWs"). *See* 76 Fed. Reg. at 13038-39. The Judges duly published this Settlement pursuant to 17 U.S.C. § 801(b)(7)(A)(i) and received one comment, from Intercollegiate Broadcasting System, Inc. ("IBS"), ostensibly objecting to it. *Id.* Subsequently, however, IBS clarified that it was not objecting to the Settlement itself but rather to the possibility that the Judges might

determine to use similar rates terms and terms to govern the proposed separate classes of webcasters ("small and very small webcasters") IBS was advocating for as part of the full Section 803 proceeding. *Id.* at FN 19 ("We have no objection to the terms that are there as long as they don't apply to our small stations.")

By IBS's own words there was "no objection" to the Settlement, and thus there was no discretionary determination made by the Judges then as to what effect to give to the IBS objection that would require revisiting now as part of the remand. While the Judges noted in their determination that IBS had not provided "a proper objection raised under section 801(b)(7)(A)(ii)" sufficient to preclude the Settlement's adoption, *id.*, IBS's overt clarification that it was not, in fact, objecting to the Settlement made such a determination by the Judges unnecessary and even superfluous. The record would not have supported any other conclusion then, nor would it now.

With there having been ample time to develop that record, CBI concurs with the Judges that there is no reason to re-open it. *See* Notice at 7-8. The time for objections has come and gone, none have been made, and the Judges are well equipped to summarily re-adopt this Settlement, just as they did with NAB, without requiring any party to expend resources litigating an already-settled issue. Notice at 8. Accordingly, CBI respectfully asks the Judges to summarily readopt the Settlement.

Dated: September 27, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David D. Golden', is written over a horizontal line.

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DECLARATION OF SERVICE

I, David D. Golden, hereby declare:

I am over eighteen years of age and not a party to the within cause. My business address is Constantine Cannon LLP, 1301 K St. N.W., Suite 1050 East, Washington, DC 20005. On September 27, 2012, I caused a copy of COLLEGE BROADCASTERS, INC.'S COMMENT IN RESPONSE TO SEPTEMBER 17, 2013 NOTICE to be served by electronic mail, on each of the following parties:

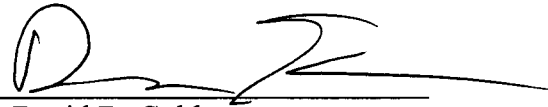
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I declare under penalty of perjury that the foregoing is true and correct. Executed
on September 27, 2013 at Washington, District of Columbia.



David D. Golden