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

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| **In the Matter of:**<br><br>**Determination of Royalty Rates and Terms for Making and Distributing Phonorecords *(PHONORECORDS V)*** | **Docket No. 25-CRB-0013-PR (2028 – 2032)** |
| **In the Matter of:**<br><br>**Determination of Royalty Rates and Terms for Satellite Radio and "Preexisting" Subscription Services *(PSS/SDARS IV)*** | **Docket No. 25-CRB-0014-SR/PSSR (2028 – 2032)** |
| **In the Matter of:**<br><br>**Determination of Royalty Rates and Terms for Performance or Display of Nondramatic Musical Works and Pictorial, Graphic, and Sculptural Works by Public Broadcasting Entities *(PB V)*** | **Docket No. 25-CRB-0015-PB (2028 – 2032)** |

**The Participants' Joint Submission Regarding Order 6 in Phono V, Order 4 in PSS/SDARS IV, and Order 3 in PB V, Regarding Scheduling Orders**

The undersigned participants in the above-captioned proceedings submit this joint filing in response to the Judges' August 20, 2026 Order directing the parties to submit a joint proposed schedule for these three concurrent proceedings.[1] Section I contains the participants' joint position that no hearing in any proceeding should begin earlier than mid-to-late March 2027. After conferring, the participants were unable to reach agreement on the order in which the Judges should schedule the hearings in the three proceedings. Section II sets forth the view of each proceeding's participants regarding the appropriate sequencing of the hearings and other case scheduling deadlines.

## I. Consistent with the Judges' Scheduling of Hearings in *Phonorecords III, SDARS* III, and *PBR III*, No Hearing In Any Case Should Start Before March 2027 Because It Would Be Inefficient

The Judges' Order Regarding Scheduling directed the parties to these three proceedings, in proposing dates for the remaining case events up to and including the hearing start dates, to "review the scheduling orders in Phonorecords III, SDARS III and PBR III."[2] Those orders confirm that none of the hearings across these three proceedings should start before March 2027. While the Judges initially scheduled the *SDARS III* hearing to begin on February 27, 2017, to be followed by *Phonorecords III* on March 6, 2017, and then *PBR III* on April 24, 2017, that is not when those hearings occurred.[3] Because the original schedule gave the *SDARS III* participants

[1] Order 6 in Phono V, Order 4 in PSS/SDARS IV, and Order 3 in PB V, Regarding Scheduling Orders, Dkt. Nos. 25-CRB-0013-PR (2028-2032), 25-CRB-0014-SR/PSSR (2028-2032), 25-CRB-0015-PB (2028-2032), at 2 n.2 (Aug. 20, 2026) ("Order Regarding Scheduling").

[2] *Id.* at 2 n.2.

[3] *See* Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, Dkt. No. 16-CRB-0001-SR/PSSR (2018-2022) (Mar. 14, 2016); Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, Dkt. No. 16-CRB-0003-PR (2018-2022) (Feb. 19, 2016) ("*Phonorecords III Scheduling Order*");

only one month to complete rebuttal discovery before the hearing, the Judges ultimately moved the *SDARS III* hearing so that it began in mid-April, after the *Phonorecords III* hearing, but before the then-scheduled start of the *PBR III* hearing.[4] In addition, the March 6, 2017 start date for the *Phonorecords III* hearing forced the parties to take depositions while the hearing was ongoing, resulting in at least one discovery dispute submitted to the Judges in the midst of the hearing.[5]

The same issues that made a late February hearing date impracticable in 2017 apply equally to the hearings that will occur in 2027. Written direct statements are currently due in all three proceedings on October 5, 2026. Therefore, barring any amendments to the respective case schedules, the deadline for amended written direct statements is December 21, 2026.[6]

The participants in all three proceedings anticipate that written rebuttal statements from both fact and expert witnesses, as well as rebuttal discovery, will be necessary — as they were in

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Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, Dkt. No. 16-CRB-0002-PBR (2018-2022) (Mar. 25, 2016) ("*PB III Scheduling Order*").

[4] Order for Further Proceedings and Case Scheduling, Dkt. No. 16-CRB-0003-PR (2018-2022) (June 28, 2016) ("*SDARS III Modified Scheduling Order*"). Notices of partial settlement were filed in *PBR III* "between July and November 2016." Order Requiring Submission of Proposed Regulations by National Public Radio and Public Broadcasting System, Dkt. No. 16-CRB-0002-PBR (2018-2022) (Oct. 19, 2017).

[5] *See* Omnibus Motion to Compel the Deposition of Joshua Gans, Dkt. No. 16-CRB-0003-PR (2018-2022) (Mar. 6, 2017).

[6] *See* Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, Ex. A, Dkt. No. 25-CRB-0013-PR (2028-2032), at 5 (Mar. 2, 2026) ("*Phonorecords V Scheduling Order*"); Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, Ex. A, Dkt. No. 25-CRB-0014-SR/PSSR (2028-2032), at 5 (Mar. 2, 2026) ("*SDARS IV Scheduling Order*"); Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, Ex. A, Dkt. No. 25-CRB-0015-PB (2028-2032), at 5 (Mar. 2, 2026) ("*PB V Scheduling Order*").

prior *Phonorecords* and *SDARS* proceedings.[7] Past practice in those proceedings suggests that *at least* five weeks — until at least January 25, 2027 — are required for the parties to complete their written rebuttal statements.[8] Rebuttal discovery cannot commence until written rebuttal statements are filed. And parties and witnesses in each of the proceedings have historically found it more efficient to depose witnesses who provide both written direct and written rebuttal statements (nearly all of them) a single time, after the submission of written rebuttal statements. This typically requires the parties to prepare for and complete approximately 20 depositions (covering both fact and expert witnesses) in the span of a month, with the effect that the rebuttal discovery period is typically more intense for participants and witnesses than the direct discovery period.

The Judges will benefit if the parties receive sufficient time to prepare for and complete those depositions — and bring any discovery disputes to the Judges — in advance of the hearing. The Judges' receipt of evidence in these hearings will benefit if rebuttal discovery has completed

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[7] *See*, *e.g.*, Order Extending Deadline for Written Rebuttal Statements, Dkt. No. 21-CRB-0001-PR (2023-2027) (Mar. 14, 2022) (modifying schedule in *Phonorecords IV* with adjusted deadlines for written rebuttal statements and rebuttal discovery); Joint Motion for Issuance of Schedule for Rebuttal Discovery and Other Pre-Trial Matters, Dkt. No. 16-CRB-001-SR/PSSR (2018-2022) (Feb. 13, 2017) (motion by "all of the participants" to *SDARS III* proceeding seeking schedule for rebuttal discovery).

[8] *See, e.g.*, *Phonorecords III Scheduling Order* at 5 (establishing end of direct discovery period on December 2, 2016 and deadline for written rebuttal statements on January 20, 2017); *SDARS III Modified Scheduling Order* at 2 (establishing end of direct discovery period on December 21, 2016 and deadline for written rebuttal statements on February 17, 2017); *PB III Scheduling Order* at 6 (establishing end of direct discovery period on December 6, 2016 and deadline for written rebuttal statements on February 10, 2017); Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, Dkt. No. 21-CRB-0002-PBR (2023-2027), at 5 (Feb. 9, 2021) (establishing end of direct discovery period on November 9, 2021 and deadline for written rebuttal statements on December 27, 2021 in *PB IV*); Order Granting Joint Motion to Modify the Case Scheduling Order, Dkt. No. 21-CRB-0001-PR (2023-2027) (Aug. 3, 2021) (establishing end of direct discovery period on December 23, 2021 and deadline for written rebuttal statements of January 31, 2022 in *Phonorecords IV*).

in each proceeding before the hearing in that proceeding commences. Further, as the *SDARS III* experience illustrates, setting these hearing dates too early now risks forcing adjustments to the schedule later, which increases uncertainty and further decreases the efficiency of all three proceedings.

In sum, as the hearing dates in the *Phonorecords III*, *SDARS III*, and *PBR III* proceedings show, given the statutory and regulatory requirements, the earliest a hearing in any of these proceedings could start is mid-to-late March 2027.

## II. The Scheduling Proposals of the Participants In Each Proceeding

### A. The *Phonorecords V* Participants Request that the Hearing in Their Matter Should Occur No Earlier Than April 5, 2027, and that the Judges Adopt the Dates Those Parties Negotiated

Earlier this year, all participants in *Phonorecords V* — both the Services and the Copyright Owners — worked collaboratively over multiple weeks to produce a proposed schedule for the Judges' consideration. The participants submitted that proposed schedule to the Judges by email on June 26, 2026.[9] For the Judges' convenience, it also appears below:

| Case Event | April Hearing |
|---|---|
| Begin Preliminary Disclosure and Discovery | June 15, 2026 |
| Deadline for Production of Preliminary Disclosures and Discovery | August 10, 2026 |
| Written Direct Statements and Commencement of Discovery Period | October 5, 2026 (earliest business day date permitted by statute) |
| End of Direct Discovery Period | December 4, 2026 |
| Amended Written Direct Statements (if any) | December 21, 2026 |

[9] Although Pandora Media, LLC agreed to the proposed schedule the participants submitted to the Judges in June and agrees that April 5, 2027 is the earliest realistic starting point for the *Phonorecords V* hearing, it does not join the other *Phonorecords V* participants in the rest of this portion of the submission.

| Case Event | April Hearing |
|---|---|
| Deadline for Written Rebuttal Statements and Commencement of Rebuttal Discovery Period | February 1, 2027 |
| Settlement Conference Period | January 25, 2027 - February 15, 2027 |
| Joint Settlement Conference Report | February 16, 2027 |
| End of Written Discovery For Rebuttal Discovery Period | March 16, 2027 |
| Prehearing Conference | March 16, 2027 |
| Parties jointly file Motions in Limine Packets (Motion, Response, Proposed Order) | March 22, 2027 |
| Exchange of witness and exhibit lists | March 22, 2027 |
| Confer and file joint final exhibit list | March 26, 2027 |
| Confer and file joint witness list | March 29, 2027 |
| File copies of all exhibits on exhibit list | March 31, 2027 |
| Hearing | April 5, 2027 |
| Proposed Findings and Conclusions | At Judges' Discretion |
| Responsive Findings and Conclusions | At Judges' Discretion |
| Closing Arguments | At Judges' Discretion |
| Initial Determination | Not later than December 17, 2027 |

Given the extensive discovery and significant work required to prepare for the hearing in this proceeding, the participants proposed a hearing start date of April 5, 2027. The *Phonorecords V* participants request that the Judges adopt their jointly proposed schedule. While the *Phonorecords V* participants are willing to be flexible and cooperative on scheduling matters, the complexity and scope of the *Phonorecords V* proceeding make April 2027 the earliest realistic start date for the hearing.

The practical demands of the *Phonorecords V* proceeding demonstrate that a hearing in that proceeding should occur no earlier than April 5, 2027. For instance, the *Phonorecords III* hearing began on March 8, 2017.[10] That early date meant both the participants and the Judges were concurrently resolving and completing lingering discovery issues — including taking

[10] *See* Final Determination, Dkt. No. 16-CRB-0003-PR (2018-2022), at 5 (Nov. 30, 2018).

depositions (and filing at least one motion to compel a deposition) — while the hearing was ongoing.[11] In contrast, the hearing in *Phonorecords IV* was scheduled to begin on September 7, 2022, nearly six months later than in *Phonorecords III*.[12] The *Phonorecords V* participants are not seeking a Fall 2027 hearing, given the Judges' statutory deadlines. But given the expanding scope of the *Phonorecords* proceeding over the past decade, it is impractical to again accelerate the hearing to March or earlier.

For those reasons, the Judges should set hearing dates for *SDARS IV* and *PBR V* that accommodate an April 5, 2027 hearing date for *Phonorecords V*. As between *SDARS IV* and *PBR V*, the participants in *Phonorecords V* take no position on the appropriate dates for the other two hearings — except that any need to conduct hearings in those proceedings should not be a basis for setting the *Phonorecords V* hearing to begin before April 5, 2027. If the Judges believe that scheduling *PBR V* and *SDARS IV* after *Phonorecords V* would interfere with that April date, they should set one or both of those hearings to occur before *Phonorecords V*. Past proceedings suggest *PBR V* has the greatest likelihood of settling early — both *PBR III* and *PBR IV* settled before the participants submitted written direct statements.[13] Given the likelihood of early

[11] *See, e.g.,* Omnibus Motion to Compel the Deposition of Joshua Gans, Dkt. No. 16-CRB-0003-PR (2018-2022) (Mar. 6, 2017).

[12] *See* Order on Hearing Schedule and Related Matters, Dkt. No. 21-CRB-0001-PR (2023-2027), at 1 n.1 (Aug. 26, 2022).

[13] *See* Order Requiring Submission of Proposed Regulations by National Public Radio and Public Broadcasting System, Dkt. No. 16-CRB-0002-PBR (2018-2022) (Oct. 19, 2017) (noting that "participants filed notices of settlement or partial settlement piecemeal between July and November 2016" and "[n]o participant filed a Written Direct Statement"); Final Rule, Determination of Rates and Terms for Public Broadcasting (PB IV), 88 Fed. Reg. 41827, 41827 (June 28, 2023) (noting that *PB IV* participants "filed notices of settlement and proposed rates and terms" in "July 2021, September 2021, November 2021, and December 2022").

settlement, it would disserve judicial economy to use the prospect of an unlikely *PBR V* hearing as a basis for accelerating the *Phonorecords V* hearing to an impracticable earlier date.

As for *SDARS IV*, *Phonorecords V* involves more parties, will include more witnesses, and — if past proceedings are any indication — will involve more complicated discovery disputes. For instance, *SDARS III* involved written direct statements from 28 witnesses, 20 written rebuttal statements, and generated only 12 motions related to discovery disputes. In contrast, *Phonorecords IV* featured 34 written direct witness statements and 36 rebuttal witness statements. The discovery in *Phonorecords IV* also proved to be more complex, resulting in at least 36 discovery dispute-related motions, including motions to compel, motions for sanctions, motions to strike testimony, and disputes over subpoenas. The Judges decided many of those disputes in May 2022, and some were still pending as the September 2022 hearing date approached. The continued growth and importance of on-demand music streaming suggests that *Phonorecords V* will continue that trend.

Finally, in 2016, when these proceedings last occurred concurrently, the Judges originally scheduled the *SDARS III* hearing to occur *before* the hearing in *Phonorecords III*. The Judges only moved the *SDARS III* hearing to after *Phonorecords III* because the original hearing date was too early to adequately accommodate all the events in the case schedule — not because the *SDARS III* hearing required more time than the *Phonorecords III* hearing. The Judges' initial inclination to stagger the proceedings so that the *SDARS* hearing came before the *Phonorecords* hearing was correct then and remains so now.

In sum, the *Phonorecords V* proceeding is the largest, most complex, and most time-consuming proceeding of the three. With the largest financial stakes, it stands to be the most hard-fought, with greater consequences for a rushed proceeding. The *Phonorecords V*

participants have been negotiating for months and have carefully crafted a proposed schedule that balances the participants' need for time to prepare their cases for trial with the Judges' need for time to prepare their determination. The Judges should not unduly compress this proceeding to allow more time for two other less-complicated proceedings — one of which will almost certainly settle.

### B. *PSS/SDARS IV*: The Hearing in This Proceeding Should Begin in Early May 2027, After the *Phonorecords V* Hearing

The participants in the *PSS/SDARS IV* proceeding, joined by Pandora Media, LLC (a participant in *Phonorecords V*), respectfully propose that the hearing in this proceeding begin in early May 2027, after the hearing in *Phonorecords V*.[14] The joint proposed schedule that the *Phonorecords V* participants circulated in August 2026 contemplates a *Phonorecords V* hearing beginning on April 5, 2027, a date the *SDARS IV* participants do not oppose. That date reflects the practical constraints on all three proceedings: as Section I explains, no participant can be ready for a hearing before March 2027 — and because written rebuttal discovery will continue well into March under any realistic schedule (under the *Phonorecords V* participants' proposed schedule, into mid-March), early April is as a practical matter the earliest either the *Phonorecords V* or *SDARS IV* hearing could begin.

On the back end, the initial determinations are due not later than December 17, 2027, which, consistent with timing in the 2017 hearing cycle, means the hearings must conclude by roughly mid-June 2027.[15] With the *Phonorecords V* and *SDARS IV* hearings expected to run

[14] As used in this Section II.B, "participants" refers to Sirius XM Radio LLC, Music Choice, and the SoundExchange Joint Petitioners. George Johnson, also a participant in this proceeding, joins Section II.A above from the *Phonorecords V* participants.

[15] The other components of these proceedings are unlikely to need much hearing time. Several *Phonorecords V* participants have reached a proposed settlement of the Subpart B rates, which

approximately four to five weeks each, as the *Phonorecords III* and *SDARS III* hearings did, a *Phonorecords V* hearing beginning on April 5 will conclude in late April or early May 2027. That leaves early to mid-May as effectively the only remaining slot for the hearing in the *SDARS IV* proceeding. Nor could the *SDARS IV* hearing simply take the April slot instead: for the reasons explained below, the rebuttal schedule an early-April hearing would require is not workable for the *SDARS IV* participants.

*First*, lead counsel for both Sirius XM and the SoundExchange Joint Petitioners have a previously scheduled federal trial set to run from January 11, 2027, to approximately January 28, 2027. Requiring counsel (as well as Sirius XM in-house counsel and senior executives) to prepare and finalize written rebuttal statements here while in the midst of that other trial (as would be required for a hearing starting in late March or early April) is not practicable.[16] The *Phonorecords V* participants, by contrast, have proposed precisely that timeline for themselves.[17] The schedule the *SDARS IV* participants seek — with written rebuttal statements due on February 10, 2027 — involves only a modest lengthening of the rebuttal statement deadline, but an important one given counsel's January trial commitment. Under our proposed schedule, written rebuttal statements would still be due in early February (only a week after the

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remains pending before the Judges, and the settling participants are not expected to file direct cases or go to hearing. *See* Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations, Dkt. No. 25-CRB-0013-PR (2028-2032) (June 29, 2026). The public broadcasting proceedings have usually settled without a hearing, as *PBR III* did last cycle. In the rare likelihood that a *PB V* hearing is needed, it could come before or after the hearings addressed here.

[16] The interval between the December 21, 2026 deadline for amended written direct statements and an early-February rebuttal deadline is approximately six weeks, spans the winter holidays, and cannot practically be shortened.

[17] *See supra* Part II.A (written rebuttal statements due February 1, 2027).

*Phonorecords V* participants' proposed deadline) leaving sufficient time following the close of counsel (and Sirius XM's) other trial. The later hearing date then affords a commensurate period of time to complete rebuttal discovery, just as was the case in *SDARS III*.[18]

*Second*, Sirius XM is the only participant represented by the same counsel in more than one of these proceedings: it appears directly in *SDARS IV*, and in *Phonorecords V* through its affiliate Pandora Media, LLC. Its strong preference is for the *Phonorecords V* proceeding to occur in the April window proposed by the participants there, with *PSS/SDARS IV* to follow. In *Phonorecords V*, Pandora is one of several Part C services sharing the service-side presentation (and rebuttal and cross-examination of the NMPA's case); in *SDARS IV*, by contrast, Sirius XM will present the SDARS case, and respond to SoundExchange's SDARS case, alone.[19] Sequencing the shared case first and the solo case second places the risk of compression where it can more practically and fairly be absorbed.

*Third*, the uncertain delivery date for the *Web VI* determination points in the same direction. Like the *SDARS IV* proceeding, *Web VI* will set royalty rates and terms for statutory sound recording licenses under Sections 112(e) and 114(f) of the Copyright Act, and both SoundExchange and Sirius XM are participants in *Web VI*. As we have previously pointed out, there has historically been "meaningful factual, legal, and economic overlap" between the *Web* and *PSS/SDARS* proceedings, and delivery of the *Web VI* determination after the written direct phase here may accordingly "increase the need for supplemental fact and expert testimony," an

[18] *See SDARS III* Modified Scheduling Order, Attach. A (rebuttal statements due February 17, 2017; hearing commencing April 19, 2017). The *SDARS III* hearing also followed the *Phonorecords III* hearing.

[19] In this light, suggestions that *Phonorecords V* is "complicated" by having a larger number of service-side parties cuts in favor of that proceeding starting *before* rather than after the SDARS/PSS proceeding. *See* point four, *infra*.

eventuality the Judges have recently recognized.[20] Scheduling the SDARS IV hearing in a later slot relative to the other proceedings addresses that concern: it leaves additional room for any supplemental submissions the *Web VI* determination may warrant, without requiring mid-course adjustments of the kind that proved disruptive last cycle. *Phonorecords V*, by contrast, sets mechanical royalty rates and terms for musical works under Section 115 of the Copyright Act—a different right payable to songwriters and publishers rather than to sound recording owners—rendering the *Web VI* determination less impactful (and less likely to require supplemental filings) than in *SDARS IV*.

*Fourth*, the two proceedings are also differently constituted. Because the *Phonorecords V* Part C services all operate under the same Section 115 license and will pay a single schedule of rates, the service-side work there, as noted above, will be divided among numerous similarly situated services and their separate counsel. Those participants themselves have already proposed an April 5 hearing start. *SDARS IV*, by contrast, will involve two separate rate determinations for two separately defined categories of statutory licensees — satellite digital audio radio services ("SDARS") and preexisting subscription services ("PSS") — with Sirius XM as the only SDARS licensee, Music Choice as the only PSS licensee, and no meaningful overlap between their cases. Each service will thus litigate its entire case — every rebuttal submission, every deposition, every hearing witness — on its own. Because rates and terms for

[20] *See* Joint Letter re *Web VI* Determination and Schedule, Dkt. No. 25-CRB-0014-SR/PSSR (2028-2032), at 1-2 (July 27, 2026) ("Joint Letter"); *see also* Order Regarding Scheduling at 2 n.1 (denying the Joint Letter's scheduling requests without prejudice and stating that the Judges "will consider subsequent requests to submit supplemental briefing as may be necessary").

the two services are determined separately, material parts of their preparation cannot be streamlined through the kind of coordination available to the *Phonorecords V* services.[21]

In sum, the calendar, the previously scheduled January trial, and the anticipated *Web VI* determination all point to the same sequencing: a hearing that follows *Phonorecords V*, with written rebuttal statements due on essentially the same February timeline and sufficient time thereafter to complete rebuttal discovery. The later hearing slot will allow the participants to present the Judges with a complete record — precisely the outcome Section I explains these schedules should protect.

Accordingly, the *PSS/SDARS IV* participants respectfully request that the Judges schedule the hearing in this proceeding to begin on May 3, 2027, or upon the conclusion of the *Phonorecords V* hearing, whichever is later,[22] with the interim deadlines as set forth below.

| **Case Event** | **May Hearing** |
|---|---|
| Written Direct Statements and Commencement of Discovery Period | October 5, 2026 (earliest business day date permitted by statute) |
| End of Direct Discovery Period | December 4, 2026 |
| Settlement Conference Period | December 5, 2026–December 28, 2026 |
| Amended Written Direct Statements (if any) | December 21, 2026 |
| Joint Settlement Conference Report | December 28, 2026 |

[21] As noted above, a count of named participants measures the wrong thing: fewer participants here means more work per participant, not less. A simple count also understates the parties before the Judges in *SDARS IV*: the SoundExchange Joint Petitioners alone comprise SoundExchange, the three major record companies, independent labels, and the unions and organizations that represent recording artists.

[22] For ease of reference, the proposed schedule identifies May 3, 2027 as the hearing start date, with the hearing to begin upon the conclusion of the *Phonorecords V* hearing if later. The *SDARS IV* participants defer to the Judges' preference as to the precise start date, and the interim deadlines can be conformed to the date the Judges select.

| Case Event | May Hearing |
|---|---|
| Deadline for Written Rebuttal Statements and Commencement of Rebuttal Discovery Period | February 10, 2027 |
| End of Written Discovery For Rebuttal Discovery Period | March 26, 2027 |
| Prehearing Conference | April 9, 2027 |
| Parties jointly file Motions in Limine Packets (Motion, Response, Proposed Order) | April 9, 2027 |
| Exchange of witness and exhibit lists | April 16, 2027 |
| Confer and file joint final exhibit list | April 22, 2027 |
| Confer and file joint witness list | April 22, 2027 |
| File copies of all exhibits on exhibit list | April 28, 2027 |
| Hearing Start | May 3, 2027 (or after conclusion of Phono V, whichever is later) |
| Proposed Findings and Conclusions | At Judges' Discretion |
| Responsive Findings and Conclusions | At Judges' Discretion |
| Closing Arguments | At Judges' Discretion |
| Initial Determination | Not later than December 17, 2027 |

* Deadline for responding to written discovery requests during the rebuttal discovery period that are timely served, as established by stipulations to be negotiated among the participants.

### C. Scheduling Proposal of the *PB V* Participants

Consistent with the Judges' sequencing of the *Phonorecords III*, *SDARS III,* and *PBR III* proceedings, where *PBR III* was scheduled last, the *PB V* participants propose that the Judges again set the *PB V* hearing to occur last — in May 2027. This proposal recognizes that the public broadcasting proceeding has a long history of settling, which furthers the strong "emphasis on negotiated settlements in [the] governing statute."[23] At the same time, the proposal

[23] *See* Order Postponing Case Schedule, Dkt. No. 16-CRB-0002 PBR (2018-2022), at 1 (July 22, 2016).

takes into account that the participants have sometimes needed additional time to be able to reach those settlements and avoid the need for the Judges to conduct a hearing. If the public broadcasting participants reach voluntary settlements, this proposal also will give the Judges additional time to prepare the initial determinations for the other two proceedings. Further, even if some participants are unable to settle, the record in *PB V* likely will be smaller than the record in the other proceedings, so the Judges will need less time with that record to reach any final determination.

Three independent reasons counsel in favor of scheduling *PB V* last. *First* — and of critical importance — scheduling the *PB V* proceeding last best reflects the importance that the Judges have placed on encouraging participants to reach voluntary settlements instead of relying on litigated outcomes. In *PB III*, the Judges "acknowledge[d] the emphasis on negotiated settlements in their governing statute" and expressly found that "[n]egotiated settlements are in the best interests of both copyright owners and licensees."[24] In recognition of this bedrock principle, the Judges repeatedly have amended the case schedules in public broadcasting proceedings to encourage such settlements, which often has relieved the participants of the need even to file written direct statements. In *PB III*, for example, the Judges "amended the case schedule twice to accommodate ongoing negotiations."[25] Similarly, in *PB IV*, the Judges repeatedly extended the deadline for filing written direct statements — from September 10, 2021, to October 11, 2021, to November 1, 2021, to November 22, 2021, to December 6, 2021

[24] *See id.*

[25] Determination of Rates and Terms for Public Broadcasting (*PB III*), 82 Fed. Reg. 51589, 51590 (Nov. 7, 2017) (citing Order for Further Proceedings and Modified Case Schedule (Aug. 12, 2016)); *see id.* ("No participant filed a written direct statement.") (citing Order Requiring Submission of Proposed Regulations by National Public Radio and Public Broadcasting System at 1 (Oct. 19, 2017)).

— to facilitate the negotiation of settlements among all participants.[26] Those extensions bore fruit, enabling all eleven participants to reach voluntary settlements in the proceeding without even having to file written direct statements.[27] Those settlements also removed the need for the Judges to conduct a hearing, analyze the record, and issue an adjudicated determination in that proceeding.

By contrast, scheduling *PB V* first, or even second, among the three proceedings at issue here would materially impede the participants' ability to settle by forcing them prematurely to shift their limited resources to litigation. As noted above, it frequently has taken additional time beyond the original case scheduling order for the numerous participants, each with unique interests (even within licensees and licensors), to negotiate settlements. The Judges consistently have facilitated the participants' ability to reach those settlements by giving them the breathing room in the schedule to do so. Accelerating the *PB V* schedule before the *Phonorecords V* or *PSS/SDARS IV* schedules would run counter to the Judges' robust and successful track record of

[26] *See* Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, Dkt. No. 21-CRB-0021-PBR (2023-2027), at 5 (Feb. 9, 2021) (setting deadline of September 10, 2021, for filing written direct statements); Order Granting Joint Mot. To Postpone Submission of Written Direct Statements, Dkt. No. 21-CRB-0021-PBR (2023-2027), at 1 (Sept. 10, 2021) (extending written direct statement deadline to October 11, 2021); Order Granting Second Joint Mot. To Postpone Submission of Written Direct Statements, Dkt. No. 21-CRB-0021-PBR (2023-2027), at 1 (Oct. 14, 2021) (further extending written direct statement deadline to November 1, 2021); Order Granting Joint Mot. To Postpone Submission of Written Direct Statements, Dkt. No. 21-CRB-0021-PBR (2023-2027), at 1 (Nov. 3, 2021) (further extending written direct statement deadline to November 22, 2021); Order Granting Joint Mot. To Postpone Submission of Written Direct Statements, Dkt. No. 21-CRB-0021-PBR (2023-2027), at 1 (Dec. 1, 2021) (further extending written direct statement deadline to December 10, 2021).

[27] There were twelve parties who filed petitions to participate, but "[t]he Judges received no notice of settlement or

proposed rates and terms from participant David Powell." *See id.* n.1.

encouraging the participants to settle. And it would be particularly unfortunate to force the *PB V* licensee participants, which are mission-focused non-profit entities with limited resources, to redirect those limited resources toward litigation instead of using those funds to fulfill their public service-oriented missions.

*Second*, the *PB V* participants' proposal is consistent with the Judges' scheduling orders in *Phonorecords III*, *SDARS III*, and *PBR III*, where the Judges scheduled *PBR III* last.[28] Indeed, even when the *SDARS III* hearing was moved back, the Judges still scheduled that proceeding before the *PBR III* proceeding.[29] The *PB V* participants thus propose a hearing commencement date of May 17, 2027, which is precisely the same day of the year on which the *PB III* proceeding was scheduled to commence.

*Third*, as noted above, past public broadcasting proceedings have resulted in settlements, obviating the need for a hearing.[30] The *PB V* proceeding is therefore unique among the three rate-setting proceedings to be completed next year. Unlike the *PSS/SDARS IV* and *Phonorecords V* proceedings — which will have to go forward, regardless of when they are scheduled — there is a strong likelihood that the Judges will not need to hold the *PB V* hearing at all. And even if

[28] *Order Regarding Scheduling* at 2 n2.

[29] *Compare SDARS III Modified Scheduling Order* at 2 (rescheduling *SDARS III* hearing to April 19, 2017) *with PB III Scheduling Order* at 6 (originally scheduling *PB III* hearing for April 24, 2017), Order Postponing Case Schedule, Dkt. No. 16-CRB-0002 PBR (2018-2022), at 1 (July 22, 2016) (rescheduling *PB III* hearing to May 15, 2017), *and* Order for Further Proceedings and Modified Case Schedule, Dkt. No. 16-CRB-0002 PBR (2018-2022), at 3 (Aug. 12, 2016) (rescheduling *PB III* hearing to May 17, 2017).

[30] *See* Noncommercial Educational Broadcasting Statutory License, Final Rule (*PB I*), 72 Fed. Reg. 67646 (Nov. 30, 2007); Determination of Reasonable Rates and Terms for Noncommercial Broadcasting (*PB II*), 77 Fed. Reg. 71104 (Nov. 29, 2012); Determination of Rates and Terms for Public Broadcasting (*PB III*), 82 Fed. Reg. 51589 (Nov. 7, 2017); Determination of Rates and Terms for Public Broadcasting (*PB IV*), 88 Fed. Reg. 41827 (June 28, 2023).

all participants do not reach settlement, the scope of the proceeding and the related record is likely to be significantly smaller than the other two proceedings if at least some participants settle. This further counsels in favor of scheduling the *PB V* proceeding last, as the Judges will need the least amount of time to prepare the *PB V* initial determination.

For all of the foregoing reasons, the public broadcasting participants propose the following schedule, consistent with the schedule set by the Judges in *PBR III*. In addition to providing dates for the remainder of the schedule, this proposed schedule also provides a modest extension of the written direct statement deadline to "accommodate ongoing negotiations."[31] Further, it proposes dates for conducting rebuttal discovery, which has proven invaluable to participants in testing the claims made by opposing participants in written rebuttal statements.

| ***PB V* Proposed Proceeding Schedule**<br>Docket No. 25-CRB-0015-PB (2028-2032) | |
|---|---|
| **CASE EVENT** | **Date** |
| Non-Settling Parties file Written Direct Statements; Commencement of Discovery Period | November 3, 2026 |
| End of Discovery | January 4, 2027 |
| Settlement Conference Period | January 11 - February 1, 2027 |
| Deadline to file Amended Written Direct Statements | January 19, 2027 |
| Deadline for Joint Settlement Conference Report | February 8, 2027 |
| Deadline for Written Rebuttal Statements | March 2, 2027 |
| Commencement of Rebuttal Discovery | March 5, 2027 |
| End of Rebuttal Discovery | May 3, 2027 |
| Hearing | May 17, 2027 |
| Proposed Findings and Conclusions | TBD |
| Responsive Findings and Conclusions | TBD |
| Closing Arguments | TBD |
| Initial Determination | Not later than December 17, 2027 |

[31] Determination of Rates and Terms for Public Broadcasting (*PB III*), 82 Fed. Reg. 51589, 51590 (Nov. 7, 2017).

DATED: September 3, 2026

Respectfully submitted,

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# Proof of Delivery

I hereby certify that on Thursday, September 03, 2026, I provided a true and correct copy of the The Participants' Joint Submission Regarding Order 6 in Phono V, Order 4 in PSS/SDARS IV, and Order 3 in PB V, Regarding Scheduling Orders to the following:

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Spotify USA Inc., represented by Sarang V. Damle, served via E-Service at sy.damle@lw.com

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