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

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| ***In re*** | ) | |
| **Distribution of 2014-2017 Cable Royalty Funds** | ) | **Consolidated Docket No. 16-CRB-0009-CD/SD (2014-2017)** |
| ***In re*** | ) | |
| **Distribution of 2014-2017 Cable Royalty Funds** | ) | |

**MULTIGROUP CLAIMANTS' REPLY TO THE SETTLING DEVOTIONAL CLAIMANTSOPPOSITION TO MULTIGROUP CLAIMANTS FIRST AND SECOND MOTION TO COMPEL PRODUCTION OF DOCUMENTS IN RESPONSE TO MULTIGROUP CLAIMANTS' REQUEST NUMBERS 1 AND 11.**

## A. Introduction.

Multigroup Claimants ("MGC") hereby Replies to the Opposition filed by the Settling Devotional Claimants ("SDC") to MGC's First and Second Motions to Compel Responses to its Requests for Documents, number 1 and 11.

## B. Argument.

### 1. Request 1.

As the moving and opposition make clear, MGC's Request Number 1 seeks the documentation underlying the testimony of Dr. Leslie Marx in the Allocation Phase proceedings for the claims years at issue herein. The SDC designated that testimony herein, and produced such testimony, which, as has been explained, makes MGC privy to what Dr. Marx said in the

Allocation Proceeding, but, not privy to the data or documentation supporting Dr. Marx' testimony. Therefore, MGC has demanded that the SDC produce that documentation from the Allocation Proceeding upon which such designated testimony from the Allocation Proceeding was based.

In its response, the SDC asserts, "[n]o SDC witness in this proceeding has relied on the data underlying Dr. Marx's testimony", even though the SDC and its witness Dr. Erdem have *explicitly* relied on the conclusions from such data, and designated such testimony. As described, the SDC formally objected on the grounds that (1) a "collateral attack" by MGC on testimony by a CTV witness is prohibited because the CTV witness is not present in this Distribution Proceeding, and (2) because the CTV have ostensibly objected to the production of such documentation.

The SDC's first point is a non-starter because MGC has no intention of attacking Dr. Marx testimony. The second should be over-ruled because since the SDC have designated the testimony at issue in support of the SDC's WDS, the documentation in support of it is germane to this Distribution Proceeding and therefore must be produced, notwithstanding any objection by any party.

In its Opposition, the SDC mildly continue to assert their straw-man "collateral attack" point, with no real response to MGC's rejoinder that it will make no collateral attack, and press the point they raised in the meet and confer process that the documents underlying Dr. Marx testimony "do not underlie any SDC witness's written direct testimony," and therefore lie "firmly outside the scope of discovery." Opposition, page 7.

However, as is obviously undisputed, the SDC designated Dr. Marx' testimony in support

of its WDS here, in this proceeding. As such, how can it be said that the documents that underlie Dr. Marx' testimony do not also underlie and/or support the SDC WDS? Logically, as in the transitive property in mathematics (if A = B, and B = C, then A = C) they do, and therefore must be produced.

The SDC also state that the Commercial Television Claimants ("CTV") have objected to the production of these documents. That begs the question as to whether or not CTV can block access to these documents when CTV used them and entered them into the record in the Allocation Phase. To the extent CTV did so, CTV surrendered the right to keep them secret from subsequent parties like MGC – who are subject to the *identical* protective order as parties to the Allocation Phase proceeding[1] -- who face the use of CTV witness testimony based on such documents in a later case. To allow such a restriction exacts a serious price on such a subsequent party's ability to defend itself or utilize such prior testimony when the underlying documents are kept hidden.

If the production of such documents is to be prevented based on the objection of the party who proffered the relevant testimony in a prior proceeding, at the very least, that should at least limit, or entirely exclude the use of the prior designated testimony in the subsequent proceeding to maintain a level playing field between the designating party, who has full knowledge and access to the underlying documents, and the non-designating party, who, by virtue of not having the underlying documents, only has "half a loaf" of the material at issue.

The SDC try to characterize this issue as the same as that which arose in the 2010-2013 proceeding (Order Granting in Part and Denying in Part Motions to Quash Discovery Request of

1 See *Protective Order* (Feb. 17, 2022), explicitly naming MGC as a party subject thereto.

Multigroup Claimants, Consolidated Dkt. No. 14-CRB-0010-CD/SD (2010-2013) (March 26, 2018)). As the SDC well know, this issue is wholly unlike the issue there because here the SDC have designated the Allocation Phase material sought in discovery as supporting the SDC WDS. Tellingly, in that Order the CRB Judges *qualifiedly* rejected MGC's attempt to obtain Allocation Phase documents because "MGC … failed to assert, let alone establish, how allocation phase documents, data, theories, or methodologies are 'related to' the Written Direct Testimony ("WDT") of any SDC witness in the Distribution phase." Quoted in the SDC Opposition at pages 7-8. Obviously, MGC has no such difficulty here, as the SDC itself has invoked the Allocation Phase material in support of its' WDS.

Accordingly, good cause exists, and basic fairness demands to allow MGC to see the documentation underlying Dr. Marx' testimony (and *ergo*, Dr. Erdem's critique thereof), thereby preserving a level playing field.

**2. Request 11.**

As set forth in the moving papers and Opposition, Request 11 seeks to obtain the specific "portion of past records" that the SDC WDS relies upon from the voluminous prior testimony transcripts designated by the SDC in support of its WDS.

As explained in MGC's moving papers, the purpose of this request is quite innocent and should not put any significant burden on the SDC: the transcripts are voluminous, so in order to understand what specific testimony on particular issues within those transcripts the SDC rely upon in this proceeding, as opposed to the hundreds if not thousands of pages of testimony that are irrelevant, MGC has demanded that the SDC produce the specific portions of those

witnesses' testimony upon which the SDC's Written Direct Statement therein relies.

As noted in the moving papers, and as the SDC continue to assert in the Opposition, the SDC object to this request on the grounds that it is an "interrogatory", not a document request. On its face that misrepresents the facts: the request is a request for specific documents, not a request for information. The fact that the document request might achieve the same goal as an "interrogatory" does not transform it into one.

The SDC's only real argument to this is that it complied with the rule that the entirety of such transcripts must be produced, which is true. However, that does not mean that there is anything wrong, unjustified or burdensome with being compelled to also produce just those discrete portions of prior testimony that are relevant to the present WDS.

Moreover, requiring a party to produce the discrete portions of prior testimony would be consistent with the first sentence of Section 351.4(b)(2): "[e]ach participating party may designate a **portion** of past records". [emphasis added]. Clearly, the rule contemplates the designating party making it clear what, out of voluminous pages of text, it is using in a present proceeding. On the flip side, what interests are "protected" by not requiring this to be done? All it means is that the non-designating party is put to the burdensome task of combing through the voluminous records to fine the few kernels of potentially relevant material, all without knowing to what portion of the material the designating party relies, or to what portion of the material the non-designating party need address. The point of discovery, and the point of upholding objections to document production, is obviously not to promote such non-sense in the pursuit of tactical gamesmanship. Such is particularly the case when producing the discrete relevant material is no burden on the designating party. Presumably, the SDC had a purpose in

designating the prior testimony and knows what in the prior testimony is germane to this proceeding.

Under the circumstances, there is no good cause to allow the SDC to play "hide the ball" about what it is in the designated testimony the SDC is actually relying on herein.

**C. The SDC Inaccurately Describes Its Tardy Discovery Responses.**

The SDC's response presents a circumstance as to the mutually agreed upon discovery schedule that is nothing more than fabrication. Other than documents underlying witness testimony that were to be produced on July 17, 2026, all other responsive documents were to be produced on July 30, 2026. See Exh. 1 (highlighted). MGC complied, the SDC did not. The SDC failed to produce *any* of the MGC-requested documents for another four weeks, until August 28, 2026 at 4:45 pm. See Exh. 2. The timing of such production was by design, i.e., conspicuously the date set as the "End of discovery on WDS-D" ordered by the Judges. See *Public Order 3 for Further Distribution Phase Proceedings* (Jan. 25, 2026). No "agreement" ever existed for the SDC to delay its production beyond July 30, 2026, but the SDC's delay was clearly intended as a means to frustrate MGC's ability to begin its assessment of the SDC data, which still cannot be completed, and/or bring discovery motions.

Second, the SDC protests that its "privilege log" was produced by a mutually agreed date, the same day as MGC's motions.[2] Again, the SDC misrepresents the facts. No agreement ever

2 MGC provided courtesy copies of its first and second discovery motions on September 18, 2026, at 9:35 am and 1:48 pm, respectively, to which the SDC only then emailed its privilege log at 5:52 pm. See Exhs. 3, 4, 5.

existed for a privilege log to be produced subsequent to July 30, 2026, nor can the SDC establish that a privilege log was produced other than at its own leisure, after MGC raised the issue in its two discovery motions.

Although secondary to the substantive issues, these facts do reflect on the credibility of the parties, the timing of MGC's motions, and the SDC's gamesmanship.

**D.** Conclusion.

Under such circumstances, the Judges should order the SDC to produce the documents sought in Requests 1 and 11.

Dated: October 6, 2026

_____/s/_____
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of October, 2026, a copy of the foregoing was sent by electronic mail to the parties listed on the attached Service List.

_____/s/_____
Brian D. Boydston, Esq.

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# Proof of Delivery

I hereby certify that on Tuesday, October 06, 2026, I provided a true and correct copy of the MULTIGROUP CLAIMANTS' REPLY TO THE SETTLING DEVOTIONAL CLAIMANTSOPPOSITION TO MULTIGROUP CLAIMANTS FIRST AND SECOND MOTION TO COMPEL PRODUCTION OF DOCUMENTS IN RESPONSE TO MULTIGROUP CLAIMANTS' REQUEST NUMBERS 1 AND 11. to the following:

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