

RECEIVED
 Public Information Office
 AUG 12 2014
 COPYRIGHT OFFICE

Before the
 UNITED STATES COPYRIGHT ROYALTY JUDGES
 The Library of Congress

)
In re)
)
DETERMINATION OF ROYALTY RATES)
AND TERMS FOR NEW SUBSCRIPTION)
SERVICES FOR DIGITAL PERFORMANCE)
RIGHT IN SOUND RECORDINGS AND)
EPHEMERAL RECORDINGS)
 _____)

Docket No. 14-CRB-0002-NSR
(2016-2020)

)
In re)
)
DETERMINATION OF ROYALTY RATES)
AND TERMS FOR EPHEMERAL)
RECORDING AND DIGITAL)
PERFORMANCE OF SOUND RECORDINGS)
(WEB IV))
 _____)

Docket No. 14-CRB-0001-WR
(2016-2020)

AMENDED JOINT COMMENTS OF SOUNDEXCHANGE AND SIRIUS XM
REGARDING CASE SCHEDULE

SoundExchange, Inc. (“SoundExchange”) and Sirius XM Radio Inc. (“Sirius XM”)¹ appreciate the concerns raised by the Copyright Royalty Judges (“Judges”) in the Order Soliciting Comments Regarding Case Scheduling issued on August 1, 2014. In light of those concerns, these participants propose that the Judges adopt the schedule attached in Appendix A (“Proposed NSR Schedule”) for the above-captioned proceeding.

¹ SoundExchange and Sirius XM consulted with the participants in the *Web IV* proceeding and understand those participants will file a separate statement indicating their lack of objection to the schedule proposed herein. SoundExchange and Sirius XM also contacted Spotify USA Inc. to invite its input, and while it did not indicate any opposition to these comments, it did not opt to join the submission either.

The Proposed NSR Schedule aligns the hearing dates with the unified hearing dates proposed by the participants in the *Web IV* proceeding, with the addition of two days (June 1-2, 2015) to accommodate the likely additional witnesses.² It also synchronizes the deadlines for amended rebuttal statements and *in limine* motions in advance of the hearing. See Order Soliciting Comments Regarding Case Scheduling, at 1, Aug. 1, 2014. This would promote certain efficiencies for both the Judges and the three remaining participants in the *New Subscription Services* proceeding, all of whom are also participants in the webcasting proceeding. Notice of Further Proceedings, Aug. 5, 2014.

The Proposed NSR Schedule preserves the December 1, 2014, date for the filing of written direct statements that the Judges set in the original *New Subscription Services* case scheduling order. See Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, at Ex. A, Apr. 30, 2014. Because the voluntary negotiation period ended on August 1, 2014, the deadline for the filing of written direct statements can be “not earlier than 4 months . . . after the end of the voluntary negotiation period.” 37 C.F.R. § 351.4(a). Furthermore, since the original case scheduling order issued, the parties have structured their preparation on the understanding that, if written direct statements are necessary, those statements would be due no earlier than December 1, 2014; preserving that filing date is thus consistent with both existing regulations and the parties’ expectations. Finally, preserving that deadline would provide more time for the parties to attempt to reach a settlement and avoid full-blown litigation, as has happened in prior proceedings involving this particular statutory license.

² The Proposed NSR Schedule sets the closing arguments on July 25, 2015, a day after those proposed in *Web IV*. Given the large number of parties in *Web IV*, it appears likely that the closing arguments for that proceeding may take up all or most of July 24.

Given the later filing date for written direct statements, and the coordination of the hearing dates with *Web IV*, the remainder of the Proposed NSR Schedule is substantially more compressed than the schedule proposed in the *Web IV* Joint Motion. The impact of this compression, however, should largely be limited to the participants in the *New Subscription Services* proceeding themselves. The Proposed NSR Schedule avoids scheduling conflicts for the Judges, and should not impact the other participants in *Web IV* at all. In addition, *New Subscription Services* involves a different set of licenses and issues and is much more limited in scope and participants than *Web IV*. Accordingly, should the *New Subscription Service* participants fail to settle, those participants should be able to move forward according to the Proposed NSS Schedule even with its tighter deadlines.

For these reasons, the undersigned participants request the Judges adopt the Proposed NSS Schedule for the *New Subscription Services* proceeding.

Respectfully submitted,

Dated: August 12, 2014

By: Cynthia Greer /zk

Cynthia Greer
Sirius XM Radio Inc.
1500 Eckington Place, NE
Washington, DC 20002
cynthia.greer@siriusxm.com
P: 202-380-1476
F: 202-380-4592

Patrick Donnelly
Sirius XM Radio Inc.
1221 Avenue of the Americas
36th Floor
New York, NY 10020
patrick.donnelly@siriusxm.com
Tel: 212-584-5100
Fax: 212-584-5200

Sirius XM Radio Inc.

By: Glenn D. Pomerantz /zk

Glenn D. Pomerantz (CA Bar 112503)
Kelly M. Klaus (CA Bar 161091)
Anjan Choudhury (DC Bar 497271)
MUNGER, TOLLES & OLSON LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
Glenn.Pomerantz@mto.com
Kelly.Klaus@mto.com
Anjan.Choudhury@mto.com

Counsel for SoundExchange, Inc.

AMENDED APPENDIX A

Proposed *New Subscription Services* Schedule

Case event	Date
Initiation (publication in FR)	January 3, 2014
Deadline for Petition to Participate	February 3, 2014
Commencement of Voluntary Negotiation Period	May 1, 2014
End of Voluntary Negotiation Period	August 1, 2014
IF PARTIES DO NOT SETTLE or if the Judges decline to adopt the settlement	
Order for Further Proceedings	August 5, 2014
Parties File Written Direct Statements	December 1, 2014
Commencement of Direct-Phase Discovery Period ³	December 3, 2014
End of Direct-Phase Discovery Period	February 4, 2015
Post-Discovery Settlement Conference Period	February 4-9, 2015
Deadline for Joint Settlement Conference Report	February 11, 2015
Deadline to File Amended Written Direct Statement	February 19, 2015
Deadline to File Written Rebuttal Statement	March 4, 2015
Commencement of Rebuttal-Phase Discovery Period	March 6, 2015
End of Rebuttal-Phase Discovery Period	March 23, 2015
Deadline to File Amended Written Rebuttal Statement	April 7, 2015
IF PARTIES DO NOT SETTLE	
Deadline to File Motions in Limine	April 10, 2015
Unified Hearing ⁴	commencing on April 27, 2015 and completed no later than June 2, 2015
Proposed Findings of Fact and Conclusions of Law	June 23, 2015
Reply Findings of Fact and Conclusions of Law	July 17, 2015
Closing Argument	July 25, 2015
Initial Determination	not later than December 15, 2015

³ If the participants do not settle, they can propose specific deadlines for the direct-phase discovery period to the Judges by November 4, 2014.

⁴ During this interval, the Judges may schedule a prehearing conference. See 37 C.F.R. § 351.8.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on August 12, 2014, I caused a copy of the
AMENDED JOINT COMMENTS OF SOUNDEXCHANGE AND SIRIUS XM
REGARDING CASE SCHEDULE to be served by EMAIL and U.S. FIRST CLASS MAIL, if
requested, to the Participants as indicated below:

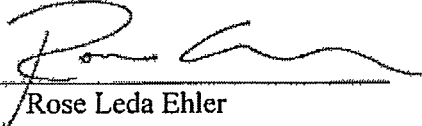
Participants

<p>Christopher Harrison Pandora Media, Inc. 2101 Webster Street, Suite 1650 Oakland, CA 94612 charrison@pandora.com Telephone: (510) 858-3049 Facsimile: (510) 451-4286 <i>Pandora Media, Inc.</i></p>	<p>R. Bruce Rich, Todd Larson Sabrina Perelman, Jacob Ebin WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, NY 10153 r.bruce.rich@weil.com todd.larson@weil.com Sabrina.Perelman@weil.com jacob.ebin@weil.com Telephone: (212) 310-8170 Facsimile: (212) 310-8007 <i>Counsel for Pandora Media, Inc.</i></p>
<p>Mark Hansen, John Thorne Evan Leo, Kevin Miller, Caitlin Hall KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C. 1615 M Street, NW, Suite 400 Washington, DC 20036 Mhansen@khhte.com Jthorne@khhte.com eleo@khhte.com kmiller@khhte.com chall@khhte.com Telephone: (202) 326-7900 Facsimile: (202) 326-7999 <i>Counsel for Clear Channel Communications, Inc.</i></p>	<p>Janet Malloy Link Donna Schneider Clear Channel Communications, Inc. 75 Rockefeller Plaza, 23rd Floor New York, NY 10018 JanetLink@clearchannel.com DonnaSchneider@clearchannel.com Telephone: (210) 832-3318 Facsimile: (210) 832-3122 <i>Clear Channel Communications, Inc.</i></p>
<p>David Golden CONSTANTINE CANNON LLP 1301 K Street, NW, Suite 1050 East Washington, DC 20005 dgolden@constantinecannon.com Telephone: (202) 204-3500 Facsimile: (202) 204-3501 <i>Counsel for College Broadcasters Inc. (CBI)</i></p>	<p>Catherine Gellis P.O. Box 2477 Sausalito, CA 94966 cathy@cgcounsel.com Telephone: (202) 642-2849 <i>Counsel for College Broadcasters Inc. (CBI)</i></p>

<p>David Rahn Custom Channels.net, LLC 2569 Park Lane, Suite 104 Lafayette, CO 80026 <u>dave@customchannels.net</u> Telephone: (303) 588-2824 <i>Custom Channels.net, LLC</i></p>	<p>Jeff Yasuda Feed Media, Inc. 3945 Freedom Circle, Suite 540 Santa Clara, CA 95054-1225 <u>jeff@feed.fm</u> Telephone: (650) 479-4881 Facsimile: (415) 449-6947 <i>Feed Media, Inc.</i></p>
<p>Karyn Ablin Jennifer Elgin WILEY REIN LLP 1776 K St. N.W. Washington, DC 20006 <u>kablin@wileyrein.com</u> <u>jelgin@wileyrein.com</u> Telephone: (202) 719-7000 Facsimile: (202) 719-7049 <i>Counsel for National Religious Broadcasters NonCommercial Music License Committee (NRBNMLC)</i></p>	<p>Russ Hauth, Executive Director Harv Hendrickson, Chairman 3003 Snelling Avenue, North Saint Paul, MN 55113 <u>russh@salem.cc</u> <u>hphendrickson@unwsp.edu</u> Telephone: (651) 631-5000 Facsimile: (651) 631-5086 <i>National Religious Broadcasters NonCommercial Music License Committee (NRBNMLC)</i></p>
<p>Bruce Joseph, Karyn Ablin Michael Sturm, Jillian Volkmar WILEY REIN LLP 1776 K Street, NW Washington, DC 20006 <u>bjoseph@wileyrein.com</u> <u>kablin@wileyrein.com</u> <u>msturm@wileyrein.com</u> <u>JVolkmar@wileyrein.com</u> Telephone: (202) 719-7000 Facsimile: (202) 719-7049 <i>Counsel for National Association of Broadcasters (NAB)</i></p>	<p>Jane Mago, Esq. Suzanne Head 1771 N Street, NW Washington, DC 20036 <u>jmago@nab.org</u> <u>shead@nab.org</u> Telephone: (202) 429-5459 Facsimile: (202) 775-3526 <i>National Association of Broadcasters (NAB)</i></p>
<p>Gary Greenstein WILSON SONSINI GOODRICH & ROSATI 1700 K Street, NW, 5th Floor Washington, DC 20006 <u>ggreenstein@wsgr.com</u> Telephone: (202) 973-8849 Facsimile: (202) 973-8899 <i>Counsel for CMN, Inc., 8tracks, Inc., and Feed Media, Inc.</i></p>	<p>Nick Krawczyk, Chief Executive & Creative Officer CMN, Inc. 7201 Wisconsin Avenue, Suite 780 Bethesda, MD 20814 <u>nick@crystalmedianetworks.com</u> Telephone: (240) 223-0846 <i>CMN, Inc.</i></p>

<p>David Porter, Chief Executive Officer 8tracks, Inc. 51 Sharon Street San Francisco, CA 94114 dp@8tracks.com Telephone: (415) 948-4216 <i>8tracks, Inc.</i></p>	<p>Gregory A. Lewis National Public Radio, Inc. 1111 North Capital Street, NE Washington, DC 20002 glewis@npr.org Telephone: (202) 513-2050 Facsimile: (202) 513-3021 <i>National Public Radio, Inc. (NPR)</i></p>
<p>Kenneth L. Steintal Joseph R. Wetzel Ethan Davis KING & SPALDING LLP 101 Second Street, Suite 2300 San Francisco, CA 94105 ksteinthal@kslaw.com jwetzel@kslaw.com edavis@kslaw.com Telephone: (415) 318-1200 Facsimile: (415) 318-1300 <i>Counsel for Beats Music, LLC, Amazon.com, Inc., National Public Radio, Inc. and Rhapsody International, Inc.</i></p>	<p>Thomas Cheney idobi Network LLC 1941 Vermont Avenue NW Washington, DC 20001 tom@idobi.com Telephone: (202) 297-6977 <i>idobi Network LLC</i></p>
<p>James Duffett-Smith Jared Grusd Spotify USA Inc. 45 W. 18th Street, 7th Floor New York, NY 10011 james@spotify.com jared@spotify.com Telephone: (917) 565-3894 Facsimile: (917) 207-3543 <i>Spotify USA Inc.</i></p>	<p>Rusty Hodge SomaFM.com LLC 2180 Bryant Street, Suite 208 San Francisco, CA 94110 rusty@somafm.com Telephone: (415) 552-7662 <i>SomaFM.com LLC</i></p>
<p>David Oxenford WILKINSON BARKER KNAUER, LLP 2300 N Street, NW, Suite 700 Washington, DC 20037 doxenford@wbklaw.com Telephone: (202) 373-3337 Facsimile: (202) 783-5851 <i>Counsel for Digitally Imported Inc., AccuRadio, LLC, and Educational Media Foundation</i></p>	<p>Ari Shohat Digitally Imported, Inc. 3457 Ringsby Court, Suite 212 Denver, CO 80216 ari@di.fm Telephone: (303) 997-2202 Facsimile: (303) 997-1058 <i>Digitally Imported, Inc.</i></p>

<p>Kevin Blair Brian Gantman Educational Media Foundation 5700 West Oaks Boulevard Rocklin, CA 95765 <u>kblair@kloveair1.com</u> <u>bgantman@kloveair1.com</u> Telephone: (916) 251-1600 Facsimile: (916) 251-1731 <i>Educational Media Foundation</i></p>	<p>Lisa Widup, Robert Windom David Weiskopf Apple Inc. 1 Infinite Loop Cupertino, CA 95014 <u>lwidup@apple.com</u> <u>windom@apple.com</u> <u>dweiskopf@apple.com</u> Telephone: (408) 974-4954 Facsimile: (408) 974-9105 <i>Apple Inc.</i></p>
<p>Dale M. Cendali Claudia Ray Bonnie Jarrett Kirkland & Ellis LLP 601 Lexington Avenue New York, NY 10022-4611 <u>dale.cendali@kirkland.com</u> <u>claudia.ray@kirkland.com</u> <u>bonnie.jarrett@kirkland.com</u> Telephone: (212) 446-4800 Facsimile: (212) 446-4900 <i>Counsel for Apple Inc.</i></p>	<p>Lee Knife Digital Media Association 1050 17th Street, NW Washington, DC 20036 <u>lknife@digimedia.org</u> Telephone: (202) 639-9509 Facsimile: (202) 639-9504 <i>Digital Media Association (DiMA)</i></p>
<p>William Malone 40 Cobbler's Green 205 Main Street New Canaan, CT 06840 <u>Malone@alum.mit.edu</u> Telephone: (203) 966-4770 <i>Counsel for Harvard Radio Broadcasting Co., Inc. (WHRB) and Intercollegiate Broadcasting System, Inc. (IBS)</i></p>	<p>George Johnson GEO Music Group 23 Music Square East, Suite 204 Nashville, TN 37203 <u>george@georgejohnson.com</u> Telephone: (615) 242-9999 <i>GEO Music Group</i></p>


Rose Leda Ehler

MUNGER, TOLLES & OLSON LLP

560 MISSION STREET
TWENTY-SEVENTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105-2907
TELEPHONE (415) 512-4000
FACSIMILE (415) 512-4077

355 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-1560
TELEPHONE (213) 683-9100
FACSIMILE (213) 687-3702

August 12, 2014

RONALD L OLSON
ROBERT E DENHAM
JEFFREY I WENDBERGER
CARY D LERMAN
GREGORY P STONE
BRAD D BRIAN
BRADLEY S PHILLIPS
GEORGE M GARVEY
WILLIAM D TEMKO
STEPHEN M KRISTOVICH
JOHN W SPIEGEL
TERRY E SANCHEZ
STEVEN M PERRY
MARK B HELM
JOSEPH D LEE
MICHAEL R DOYEN
MICHAEL E SOLOFF
GREGORY D PHILLIPS
KATHLEEN M MCDOWELL
GLENN D POMERANTZ
THOMAS B WALPER
PATRICK J CAFFERTY, JR
JAY M FUJITANI
O'MALLEY M MILLER
SANDRA A SEVILLE-JONES
MARK H EPSTEIN
HENRY WEISSMANN
KEVIN S ALLRED
BART H WILLIAMS
JEFFREY A HECHTZ
JUDITH T K TANO
KRISTIN LINSLEY MYLES
MARC T G DWORSKY
JEROME C ROTH
STEPHEN D ROBE
JEFFREY L BLEICH
GARTH T VINCENT
TED DANE
STUART N SENATOR
MARTIN D BERN
DANIEL P COLLINS
ROBERT L DELL ANGELO
BRUCE A ABBOTT
JONATHAN E ALTMAN
MARY ANN TODD
MICHAEL J OSULLIVAN
KELLY M KLAUS
DAVID B GOLDMAN

KEVIN S MASJDA
HOJDON HWANG
PETER A DETRE
DAVID H FRY
LISA J DEMSKY
MALCOLM A HEINICKE
GREGORY J WEINGART
TAMERLIN J GODLEY
JAMES C RUTTEN
RICHARD ST JOHN
ROH T K SINGLA
LUI S LI
CAROLYN HOECKER LUEDTKE
C DAVID LEE
MARK H K M
BRETT J RODDA
SEAN ESKOVITZ
FRED A ROWLEY JR
KATHERINE M FORSTER
BLANCA FROMM YOUNG
RANDALL G SOMMER
MARIA SEPERIAN
MANUEL F CACHAN
ROSEMAR E T RING
JOSEPH J YBARRA
TODD J RODEN
TRUC T DO
MELINDA EADES LEMCENE
SETH GOLDMAN
GRANT A DAVIS DENNY
JONATHAN M BLAVIN
DANIEL B LEVIN
MIRIAM K M
MISTY M SANFORD
KATHERINE KU
HAILYN J CHEN
DETHANY W KRISTOVICH
SUSAN R SZADO
KIMBERLY A CHI
JACOB S KRDIKAMP
ER C P TUTTLE
HEATHER E TAKAHASHI
KEITH R D HAMILTON, II
SORAYA C KELLY
JEFFREY V WJ
ALISSA BRANHAM
ADAM R LAWTON
JENNY H HONG

A PROFESSIONAL CORPORATION

AARON SEIJI LOWENSTEIN
LAURA D SMOLOWE
MATTHEW A MACDONALD
MARGARET G MARASCHINO
ESTHER H SUNG
BENJAMIN J MARO
MICHAEL J MONGAN
KYLE A CASAZZA
ERIN J COX
CLAIRE YAN
ALLISON S WOODS
JESLYN A MILLER
MARK R SAYSON
CHRISTIAN K WREDE
PETER E GRATZINGER
ANJAN CHOUDHURY
JEREMY A LAWRENCE
BENJAMIN E FREDMAN
CHRISTOPHER M LYNCH
RAY S SEILE
NICHOLAS C SOLTMAN
ADAM I KAPLAN
AMELIA LB SARGENT
KENNETH M TRUJILLO-JAMISON
BRYAN H HECKENLIVELY
LAURA W RTH
JASHINE M ROBERTS
JENNIFER A JONES
LAURA K LIN
KYLE W MACH
JEFFREY M SOSFSKY
GREGORY M SERG
ACHYUT J PHADKE
DAVID A TAYLOR
NEWMAN NAHAS
TINA W ARROYO
MARI OVERBECK
JESSE MAX CREED
JOHN M GILDERSLEEVE
ERIC K CHIU
SARAH L GRAHAM
JESSICA BARCLAY-STROBEL
ZACHARY M BRIERS
JENNIFER M BRODER
CHRISTINA P MONIODIS
JOHN P MITTELBACH
SARAH GARBER
SAMUEL T GREENBERG
CAROLINE M M KAY

EMILY B VIGLIETTA
WILLIAM J EDELMAN
KEVIN L BRADY
EMILY RD MURPHY
ELLEN MEDLIN RICHMOND
NICOLE S PHILLIS
JORDAN D SEGALL
DANIEL J HARRIS
VICTORIA A DEGTAREVA
WESLEY T L BURRELL
CHRISTA L CULVER
ANTA J GOLDBSTEIN
KAREN A LORANG
KURUVILLA J DASA
MATTHEW D ROWEN
KEVIN H SCOTT
JUSTIN P RAHIAEL
HANNAH E SHEARER
ELIA HERRERA
ROBERT W GRAY, JR
THOMAS P CLANCY
JOSHUA PATASHNIK
ERIC C TUNG
GUHA KRISHNAMURTHI
JOSHUA S MELTZER
SARA E CROLL
ANDREW G PROUT
THANE REHN
ADAM B WEISS
ROSE LEDA EHLEH
AMY L GREYWITT
ANDREW Z WOLSTAN

OF COUNSEL
RICHARD D ESBENSHADEI
ROBERT K JOHNSON
ALAN V FRIEDMAN
RONALD K MEYER
ALLISON B STEIN
SUSAN E NASH
WILLIANA CHANG
MIRANDA KANE
BRAD SCHNEIDER

E. LEROY TOLLES
(1922-2008)

WRITER'S DIRECT LINE
(213) 683-9107
(213) 683-5107 FAX
anjan.choudhury@mto.com

United States Copyright Royalty Judges
Copyright Royalty Board
James Madison Memorial Building
101 Independence Avenue, SE
Washington, DC 20559-6000

Re: *In the Matters of Determination of Royalty Rates for Digital Performance in Sound Recordings and Ephemeral Recordings, Docket No. 14-CRB-0001-WR ("Web IV") & Determination of Royalty Rates for New Subscription Services for Digital Performance Right in Sound Recordings and Ephemeral Recordings, Docket No. 14-CRB-0002-NSR ("New Subscription III")*

Dear Copyright Royalty Judges:

Please find enclosed the Amended Joint Comments of SoundExchange and Sirius XM Regarding Case Schedule. The August 11, 2014 filing inadvertently included the wrong Appendix A. The enclosed Amended Appendix A reflects the schedule that SoundExchange and Sirius XM propose for adoption in the *New Subscription Service* proceedings.

Furthermore, the enclosed Amended Appendix A reflects the schedule to which the Webcasting IV participants who filed Joint Comments Regarding Case Schedule had no objection. Please consider their August 11, 2014 filing in connection with the enclosed Amended Joint Comments of SoundExchange and Sirius XM Regarding Case Schedule and accompanying Amended Appendix A.

24309726.1

MUNGER, TOLLES & OLSON LLP

United States Copyright Royalty Judges
August 12, 2014
Page 2

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

MUNGER, TOLLES & OLSON LLP


Anjan Choudhury

Encls.

cc: Sirius XM Radio, Inc.
Participants