

Mary Beth Murphy

Vice President & Deputy General Counsel

o (202) 222-2449 e mbmurphy@ncta.com

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VIA E-MAIL

Suzanne Wilson, Esq.
General Counsel
U.S. Copyright Office
Library of Congress
101 Independence Avenue, SE
Washington, DC 20559-6003

**Re: Notice of Ex Parte, *Statutory Cable, Satellite, and DART License Reporting Practices*,
Docket No. 2005-6**

Dear Ms. Wilson:

NCTA – The Internet & Television Association (“NCTA”) submits this notice of a telephonic *ex parte* meeting held on September 9, 2022 in the above-captioned Copyright Office rulemaking proceeding. The participants in the meeting on behalf of NCTA were Mary Beth Murphy of NCTA, Seth Davidson of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. and Robert Scott of Davis Wright Tremaine LLP (the “Cable Representatives”). Participating from the Copyright Office were you, David Welkowitz, and Jordana Rubel (the “Office Representatives”).

The September 9, 2022 meeting was requested by the Cable Representatives in response to a July 13, 2022 email from the Office addressed to Ms. Murphy and Dennis Lane, counsel for the Motion Picture Association (“MPA”). In the email, the Office noted that “it would be useful to us to determine whether there had been any developments relevant to the issues” in the above-referenced rulemaking since September 2020 (the date of the most recent *ex parte* meeting) in the proceeding. The Office invited Ms. Murphy and Mr. Lane to request an *ex parte* meeting to discuss any updates or additional information regarding several specific questions posed in the July 13, 2022 email.

During the September 9, 2022 meeting, the Cable Representatives addressed those questions as follows:

1. Since your last *ex parte* call with the Office on this rulemaking, have your positions on the issues on which you have previously commented changed?

The Cable Representatives noted at the outset of the meeting that its positions on the issues in this proceeding have not changed. More specifically, the Cable Representatives reminded the Office Representatives that NCTA and MPA had reached an agreement in May 2020 (described in several joint ex parte communications with the Office) on a comprehensive resolution of those issues.¹ Moreover, the Cable Representatives noted that, upon receiving the Office's invitation, they had contacted Mr. Lane, who indicated that he had no objection to the Cable Representatives informing the Office that MPA's position on the issues, as expressed in the May 2020 agreement, had not changed and that MPA shares NCTA's desire that the Office conclude this proceeding promptly consistent with the terms of that agreement. Finally, the Cable Representatives noted that, as indicated in previous ex parte communications with the Office, the NCTA-MPA agreement reflects concessions made by both parties with the intention that the agreement would be adopted by the Office in its entirety.

2. Since your last ex parte call with the Office on this rulemaking, has the technology of providing cable services changed in any manner that significantly affects your previous comments on the issues in this rulemaking, in particular
 1. The structure of Space E
 2. Inclusion of equipment/broadcast/franchise fees in gross receipts
 3. Calculation of gross receipts for bundled offerings

The Cable Representatives responded to this question by stating that, as a general proposition, the technology of providing cable services has not changed in any manner that significantly affects our previous comments on the issues in the rulemaking, including the structure of Space E, the calculation of gross receipts for bundled offerings, and the inclusion of broadcast surcharge and franchise fees in gross receipts. With specific reference to status of "equipment revenues," the Cable Representatives noted that the position taken by NCTA and MPA in their May 2020 agreement is that categorically excluding equipment revenues from the definition of reportable gross receipts is supported by Section 111's plain language and legislative history, as well as the history of the Office's regulations implementing Section 111, and is consistent with the ordinary practice in the cable industry of treating service and equipment as separate products.

The Cable Representatives also noted that the cable industry has increased its deployment and support of free "apps" that allow subscribers to obtain access to retransmitted encrypted broadcast signals via Smart TVs, tablets, streaming devices, smartphones, personal computers, and other customer-owned equipment. As previous ex parte communications from NCTA and MPA state, even if the Office declined to categorically exclude equipment fees from gross receipts, such fees should be reportable only if, and to the extent that, the cable operator

¹ The terms of the NCTA-MPA Agreement are described in the "Notice of Ex Parte" filed jointly by NCTA and MPA on May 20, 2020, the "Supplement" to that notice, filed jointly by NCTA and MPA on May 22, 2020, and the "Notice of Ex Parte" filed jointly by NCTA and MPA on July 30, 2020.

mandates that video subscribers lease or purchase, from the operator, equipment necessary to decrypt retransmitted broadcast signals in order to obtain access to the basic service tier. In response to a question posed by the Office Representatives, we can confirm that many operators, including NCTA's larger members, permit subscribers to use an app to access basic cable service without having to lease a set-top device from the cable operator.² Even if a subscriber to such a cable operator opts not to use the available free app (or to lease a box in addition to using the free app), none of that operator's equipment revenues should be reportable since the lease of equipment is neither necessary nor required by the operator to gain access to the retransmitted broadcast signals.

3. If the Office decides to require cable operators to file electronic spreadsheets, how much lead time would those who now file in paper reasonably need to comply?

The Cable Representatives responded that the amount of time for a cable operator to switch to a new electronic spreadsheet-based form would vary depending on the number of statements of account a particular operator files, the complexity of the forms it files (in terms of number of communities served, channel line-ups, etc.), the resources available to prepare new filings, and the extent to which the new electronic spreadsheet has an interface that accommodates both small and large cable operators. The Cable Representatives urged the Office not to delay completion of the pending rulemaking until after a new electronic version of the form is adopted. By completing the rulemaking first, the Office will be able to incorporate in the new form any revisions necessitated by any rule changes, thereby avoiding the cost and disruption of operators having to switch to a new form more than once. In order to ensure a smooth transition to a new form, the Cable Representatives urged the Office (i) to give all stakeholders the opportunity to view and comment on any new form before it is adopted and (ii) to establish a phased-in transition whereby operators would have at least one accounting period after the new form is ready for use in which either the new form or the current form can be filed. The Cable Representatives noted in this regard that the Office can adapt the current form to any of the changes under consideration in the pending rulemaking by revising the instructions without directly modifying the form itself.

4. Are there parts of the Statement of Account form that you believe could be simplified (without changing the substance of the information that is requested)?
 1. Are there sections of the Statement of Account (not including the Sports Surcharge Addendum) that are not used by filers? If so, can you explain why those spaces are not used?
 2. Are there any instructions on the Statement of Account that filers find are particularly difficult to understand?

² See Comments of NCTA – The Internet & Television Association, GN Docket No. 22-203, at 30-31 (filed July 1, 2022). Apps are available for use by “basic-only” subscribers as well as by subscribers who take additional video programming offerings.

The Cable Representatives addressed these questions by referring back to previous joint ex parte submissions by NCTA and MPA which explain that certain portions of the statement of account form, such as Space E and Space F, can and should be simplified or eliminated. The Cable Representatives also noted their understanding that due to changes in FCC rules and cable system carriage practices, operators no longer complete Space I (“Substitute Carriage: Special Statement and Program Log”) and Space J (“Part Time Carriage Log”) of the SA3 form, as well as Parts 3 (“Computation of DSEs for Stations Carried on a Part Time Basis Due to Lack of Activated Channel Capacity”) and 4 (“Computation of DSEs for Substitute-Basis Stations”) and the related worksheet on page 14 of the DSE Schedule. The Cable Representatives also understand that cable operators rarely, if ever, have occasion to complete Space H (“Primary Transmitters: Radio”) or Space P (“Special Statement Concerning Gross Receipts Exclusions”), although the Licensing Division presumably has access to more comprehensive information about the use (or non-use) of these parts of the form. Finally, in response to a question from the Office Representatives regarding NCTA’s position on eliminating references to the “Grade B contour” in the form, NCTA confirmed its position as reflected in the May 22, 2020 “Supplement” filed jointly by NCTA and MPA.

With respect to the form instructions, the Cable Representatives explained that the statement of account forms have been used for decades and operators understand how to complete the forms. Apart from revisions to the instructions that may be needed to implement the changes in the forms as proposed by NCTA and MPA in the pending rulemaking, the Cable Representatives do not believe the Office needs to make any other changes in the instructions.

The Cable Representatives appreciate the Office’s consideration of the matters discussed herein and are available to respond to any follow-up questions the Office might have going forward.

Respectfully submitted,

/s/ Mary Beth Murphy

Mary Beth Murphy
NCTA – The Internet & Television Association
25 Massachusetts Avenue, NW – Suite 100
Washington, D.C. 20001-1431

cc: David Welkowitz, Esq.
Jordana Rubel
Service List

SERVICE LIST

- **AT&T SERVICES, INC.**
Cathy Carpino
cathy.carpino@att.com
- **JOINT SPORTS CLAIMANTS
OFFICE OF THE
COMMISSIONER OF
BASEBALL**
Michael Kientzle
Michael.Kientzle@arnoldporter.com

Daniel A. Cantor
Daniel.Cantor@arnoldporter.com
- **PROGRAM SUPPLIERS**
[Dennis Lane](#)
Dennis.lane@stinson.com
- **NATIONAL BASKETBALL
ASSOCIATION, WOMEN'S
NATIONAL BASKETBALL
ASSOCIATION, NATIONAL
HOCKEY LEAGUE, NATIONAL
FOOTBALL LEAGUE**
Phillip R. Hochberg
Phochberg@shulmanrogers.com
- **NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION**
Ritchie T. Thomas
Ritchie.Thomas@squirepb.com
- **COMMERCIAL TELEVISION
CLAIMANTS
NATIONAL ASSOCIATION OF
BROADCASTERS**
David Ervin
dervin@crowell.com
- **PUBLIC TELEVISION
CLAIMANTS
PUBLIC BROADCASTING
SERVICE**
Scott Griffin
rsgiffin@pbs.org
- **CANADIAN CLAIMANTS
GROUP**
L. Kendall Satterfield
lksatterfield@satterfield-pllc.com
- **DEVOTIONAL CLAIMANTS
SETTLING DEVOTIONAL
CLAIMANTS**
Arnold P. Lutzker
arnie@lutzker.com