May 22, 2020

VIA E-MAIL

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

Re: Supplement to May 20, 2020 Notice of Ex Parte, *Statutory Cable, Satellite, and DART License Reporting Practices*, Docket No. 2005-6

Dear Ms. Smith:

As described in the May 20, 2020 letter to you from Mary Beth Murphy, representatives of NCTA - The Internet and Television Association ("NCTA") and the Motion Picture Association ("MPA") met by telephone on May 18, 2020 with you and other representatives of the Copyright Office to outline the agreement reached by NCTA and MPA (summarized in the Exhibit attached to the May 20, 2020 letter) comprehensively resolving the issues raised by the Office's Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding.[1] During the meeting, the Copyright Office Representatives asked the representatives of NCTA and MPA to provide the Office with a more comprehensive discussion of the various elements of the NCTA-MPA agreement.

By this letter, NCTA and MPA respond to that request. The first section of the letter expands on the changes that NCTA and MPA suggest the Office should make to the "gross receipts" definition in Section 201.17(b)(1) of the Office's rules. The second section explains further the proposed simplification of Section 201.17(e)(6) of the Office's rules and Space E of the Statement of Account ("SOA") forms. The third section provides additional detail regarding the resolution of the issues as to which there was no substantive disagreement among the parties responding to the NPRM.[2]

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[1] The NCTA-MPA agreement covers the issues as to which there was a lack of consensus in the comments and reply comments, and also issues as to which the commenting parties were essentially in agreement. While the negotiations between NCTA and MPA did not address certain technical rule changes proposed in the NPRM that were not commented upon by any party, NCTA and MPA have no objections to the Office adopting those changes as proposed. *See, e.g.*, "Notice of Proposed Rulemaking" ("NPRM"), *Statutory Cable, Satellite, and DART License Reporting Practices*, 82 Fed. Reg. 56926, 56935 (Dec. 1, 2017) (proposing deletion of outdated references to STELA and certain technical amendments).

[2] Comments and/or reply comments were filed by NCTA, AT&T, and the "Copyright Owners" (jointly Program Suppliers; MPA; Joint Sport Claimants; Office of the Commissioner of Baseball; National Basketball Association, Women's National Basketball Association, National Hockey League, National Football League; NCAA; National Association of Broadcasters; Commercial Television Claimants; Public Television Claimants; Public Broadcasting Service; Canadian Claimants Group; Settling Devotional Claimants; and Devotional Claimants). The other commenting copyright owners did not respond to an invitation to discuss the NCTA-MPA proposal and we are

Furthermore, as indicated in the Exhibit attached to the May 20, 2020 letter, NCTA and MPA recommend that the Office implement the agreed-upon resolution of the issues discussed in this letter by adopting a Final Rule and simultaneously publishing revised instructions directing operators how to report the required information on the current SOA forms. Under this approach, operators would follow these instructions until such time that new SOA forms are promulgated in connection with the Office's modernization project.

I. Revised Definition of Gross Receipts

During the May 18, 2020 *ex parte* meeting, the Copyright Office Representatives asked for an explanation of the differences between the current "gross receipts" definition in 37 C.F.R. § 201.17(b)(1) and the definition proposed by NCTA and MPA. To facilitate the explanation, below is a comparison of the proposed language with the current definition:

Gross receipts for the "basic service of providing secondary transmissions of primary broadcast transmitters" include the full amount of monthly (or other periodic) service fees actually collected from subscribers for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals~~, for additional set fees, and for converter fees. In no case shall gross receipts be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent retransmission.~~ For these purposes, the full amount of such basic service fees includes separately itemized fees that are directly related to the provision of basic service and that a subscriber is required to pay to the cable operator in order to receive basic service, but does not include installation (including connection, relocation, disconnection, or reconnection) fees, equipment fees, or separate charges for services other than the basic service of providing secondary transmissions of primary broadcast transmitters. In cases where other services such as Internet and/or telephony are bundled with a video service that includes the basic service of providing secondary transmissions of primary broadcast transmitters for a single discounted price, gross receipts include only those revenues attributable to basic service. In calculating the amount of such revenues attributable to basic service in those cases, a cable operator shall apply Generally Accepted Accounting Principles to allocate revenue to the individual products and services sold in a bundled offering. All such gross receipts shall be aggregated and the distant signal equivalent (DSE) calculations shall be made against the aggregated amount.~~ Gross receipts for secondary transmission services do not include installation (including connection, relocation, disconnection, or reconnection) fees, separate charges for security, alarm or facsimile services, charges for late payments, or charges for pay cable or other program origination services: Provided That, the origination services are not offered in combination with secondary transmission service for a single fee.~~

We discuss the additions to the current definition seriatim.[3]

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authorized only to report that the Joint Sports Claimants do not support the gross receipts component as it had been explained to them and that none of the other copyright owners have indicated that they support it.

[3] Besides certain additions to the current gross receipts definition, NCTA and MPA suggest deletion of two sentences. First, the sentence "In no case shall gross receipts be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent transmission" refers to a situation that has never been identified as having occurred, much less reported in an SOA, and has proven to be a source of confusion in cable system SOA audits. Second, the last sentence of the current definition would be rendered largely superfluous by the addition of a description of the exclusions from gross receipts earlier in the definition. To the extent the deleted sentence includes

1. *fees "actually collected from subscribers"* The language "actually collected from subscribers" is a variant on language found in the statute, the legislative history, the Copyright Office's NPRM, and the parties' comments. These sources all support the conclusion that gross receipts should be based on the amounts that cable systems actually receive from their subscribers for basic service. First, evidence of Congress's intent is found in 17 U.S.C. § 111(d)(1)(E) & (F), both of which refer to "the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service." The legislative history explaining these subsections reinforces that gross receipts should be based on amounts actually received by cable systems.[4] Second, the NPRM recognized that the numerous pricing variations and individual pricing arrangements that cable systems now employ should be reflected in a proposal "to allow cable operators to report a range of rates that the cable operator *actually charged* on the last day of the accounting period."[5] Third, NCTA's comments referred to the statutory language regarding actual amounts collected, while the Copyright Owners' comments similarly focused on actual amounts received by cable operators as a critical part of the gross receipts calculation.[6]

2. "*For these purposes, the full amount of such basic service fees includes separately itemized fees that are directly related to the provision of basic service and that a subscriber is required to pay to the cable operator in order to receive basic service.*" The Copyright Owners proposed in their initial comments that franchise fees and broadcast TV surcharges collected from subscribers should be included in gross receipts. Both of these are "separately itemized fees" on a cable subscriber's monthly bill.[7]

NCTA opposed the inclusion of franchise fees in gross receipts during the proceeding.[8] NCTA did not comment on broadcast TV surcharges. Despite the position it took in its comments, NCTA agreed to the inclusion in gross receipts of separately itemized fees, including franchise fees and broadcast surcharge fees, as part of an overall resolution that addresses collectively all the issues raised in the rulemaking, including those further described below.

3. *The amount of gross receipts "does not include installation (including connection, relocation, disconnection, or reconnection) fees, equipment fees, or separate charges for services*

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references to services that are no longer expressly mentioned in the definition (such as separate charges for security, alarm or facsimile services, charges for late payments, or charges for pay cable or other program origination services not offered in combination with secondary transmission service for a single fee), they are subsumed within the exclusion of "charges for services other than the basic service of providing secondary transmissions of broadcast transmitters."

[4] *See* H. Rep. No. 94-1476 at 97 (1976) ("Gross receipts under this provision are computed, however, by subtracting from *actual gross receipts collected during the payment period* the amount ….") (emphasis added).

[5] NPRM, 82 Fed. Reg. at 56930-32 (emphasis added).

[6] *See* Comments of NCTA ("NCTA Comments") at 11-12 (filed Oct. 4, 2018) (royalty payment plan "based only on revenues that cable systems actually receive from subscribers who purchase the tier or tiers containing such retransmitted signals."); Comments of Copyright Owners ("Copyright Owners Comments") at 7 (filed Oct. 4, 2018) ("the number of subscribers and the actual rates they pay to receive broadcast signals are the main drivers of Gross Receipts calculations").

[7] *See* Copyright Owners Comments at 10 ("Cable systems increasingly have included a separate line item on monthly subscriber invoices identified as a 'broadcast surcharge.' *** Cable systems also typically include a separate line item on monthly subscriber invoices for 'franchise fees.'")

[8] *See generally* Reply Comments of NCTA ("NCTA Reply Comments") at 6-8 (filed Oct. 25, 2018).

other than the basic service of providing secondary transmissions of primary broadcast transmitters." In the NPRM, the Office proposed changing the reference to "converter fees" in the list of fees that are included in the definition of gross receipts to "fees for any other equipment or device that is necessary to receive broadcast signals that is supplied by the cable operator."[9] In lieu of this change, NCTA and MPA have agreed to add "equipment fees" to the list of fees that are excluded from gross receipts.

Copyright Owners, including MPA, supported in their comments the Office's proposal to change the reference to "converters" to "equipment" and urged the Office to provide guidance regarding the practice of some cable operators of allocating only a portion of equipment revenues to gross receipts.[10] NCTA opposed the inclusion of any equipment fees in gross receipts, arguing in its Reply Comments that Section 111 requires that copyright royalties be based on "actual gross receipts paid by subscribers to a cable system . . . for the basic service of providing secondary transmission of primary broadcast transmitters" and that, "by definition, *equipment* fees are not *service* fees."[11] NCTA also argued that equipment fees were becoming less important in today's markets where cable operators offer free apps to allow subscribers to view broadcast and other video services on different devices.[12] As part of the overall settlement that resolved all the issues raised in the rulemaking, including the status of franchise fees and TV broadcast surcharges, MPA ultimately agreed with NCTA that equipment fees should be excluded from the gross receipts calculation.

4. "*In cases where other services such as Internet and/or telephony are bundled with a video service that includes the basic service of providing secondary transmissions of primary broadcast transmitters for a single discounted price, gross receipts include only those revenues attributable to basic service. In calculating the amount of such revenues attributable to basic service in those cases, a cable operator shall apply Generally Accepted Accounting Principles to allocate revenue to the individual products and services sold in a bundled offering.*" The Office recognized that many cable subscribers now purchase a bundle of video, Internet, and/or telephony services. In light of this development, the Office sought comment on how for cable royalty purposes the subscriber revenues attributable to the basic service of providing secondary transmissions of primary broadcast transmitters should be derived in the case of bundled services.[13]

NCTA devoted a considerable portion of its comments to this issue, and presented the Declaration of William Holder, to support the use of Generally Accepted Accounting Principles ("GAAP") as the appropriate means for determining the price of cable television service sold as

[9] 82 Fed. Reg. at 56937. The Office also sought input on "other suggestions" for improving reporting practices for the Section 111 license. *Id*. at 56927.

[10] Copyright Owners Comments at 10.

[11] NCTA Reply Comments at 8-9 (emphasis in original).

[12] *See generally id*. at 8-12.

[13] *See* 82 Fed. Reg. at 56931 ("Bundling offers certain subscriber benefits, such as price discounts and a single monthly bill. . . . From time to time, the Office receives questions on how to report the price of cable television service in gross receipts on their SOAs when it is sold as part of a bundle of services. The Office is considering whether to amend its regulations to provide specific guidance on how remitters should report cable television services sold as a bundled service.").

part of a bundle of services for purposes of determining gross receipts.[14] MPA, on behalf of Program Suppliers, agreed with NCTA that GAAP is the appropriate means for determining the price of basic service for gross receipts purposes.[15]

The proposed language would incorporate the use of GAAP into the gross receipts definition as the appropriate methodology in the context of a single-priced bundled package of services for determining the subscriber revenues attributable to the basic service for purposes of the gross receipts calculation. As explained more fully in the cited NCTA and MPA comments, circumstances have changed dramatically in how cable systems market and price video services since the prior 1988 Copyright Office guidance on how basic service revenues should be calculated for gross receipts purposes. At that time, video services were not offered in bundled packages with Internet and/or telephony services. Nor had GAAP guidelines for pricing individual components of bundled products been developed and implemented across not only the cable industry, but also a broad spectrum of industries and situations. These changed circumstances justify a new approach to determining gross receipts consistent with the underlying intent of the Section 111 royalty scheme that royalties should be paid only for the basic service of providing secondary broadcast transmissions to subscribers, and not for other services that a cable operator might offer to subscribers. The GAAP guidelines provide a widely accepted and readily verified objective standard for determining the basic service portion of bundled services revenues that, under the proposed language, would be the standard by which cable operators would determine the subscriber revenues from a bundled package that should be allocated to gross receipts.

II. Simplification of Section 201.17(e)(6) of the Office's Rules and Space E of the SOAs.

The Copyright Office Representatives during the May 18, 2020 meeting asked for a more detailed description of the proposed modification of the information that a cable operator should be required to report on Space E of the SOA forms. As explained below, the following amended version of Section 201.17(e)(6) of the Office's rules (and the corresponding modification of Space E) will reduce the cost of complying with the statutory reporting requirements while providing copyright owners with a more meaningful information reported in Space E to compare with the total gross receipts reported in Space K:

*"201.17(e). **Contents.** Each Statement of Account shall contain the following information:*

* * * * *

(6) The designation "Secondary Transmission Service: Subscribers and Rate:

(i) The average monthly number of subscribers during the accounting period who receive and pay the cable system for the basic service of providing secondary transmission of primary broadcast transmitters; and

[14] *See generally* NCTA Comments at 10-18 and the Declaration of William Holder attached thereto.

[15] *See generally* Reply Comments of Program Suppliers (filed Oct. 25, 2018).

> *(ii) The average monthly amount per subscriber collected during the accounting period by the cable system for providing basic service."*[16]

From the perspective of the Copyright Owners, the problem with the current rule is that the rate and subscribership information provided by cable operators on Space E does not provide a useful basis for assessing the accuracy of the total gross receipts reported on Space K. The NPRM took note of this concern and proposed that Section 201.17(e)(6) be amended to require that cable operators disclose more granular information about their service offerings, rates, and subscribership.[17] According to the NPRM, the proposed revisions would allow copyright owners to make a more meaningful comparison between the total gross receipts information reported on Space K and the subscriber and rate information provided on Space E.[18]

NCTA opposed the Office's proposed modifications to Section 201.17(e)(6) and Space E on the grounds that they would impose onerous paperwork burdens on cable operators and potentially disclose competitively sensitive information with no corresponding benefit for copyright owners or the Office.[19] Pointing to the NPRM's express solicitation of suggestions for streamlining or otherwise improving reporting practices, NCTA proposed that the Office bring reporting practices more in line with the intent of Congress as expressed in Section 111(d)(1)(A) of the Act by eliminating all rate reporting from the SOA forms.[20] Specifically, NCTA recommended that the Office revise Section 201.17(e)(6) and Space E so that cable operators are required to report only the number of basic service subscribers as of the last day of the accounting period, with total gross receipts continuing to be reported in Space K.[21]

While disagreeing with NCTA's proposal, the Copyright Owners (including MPA) also took issue with the Office's proposal, questioning whether it would actually provide greater transparency as to how cable systems determine the total gross receipts reported on Space K.[22] Instead, MPA and the other commenting copyright owners suggested that Space E should be modified to require cable operators to report, on a month-by-month basis (rather than semi-annually as is currently the case), (1) the number of subscribers for each category of service containing retransmitted broadcast signals; (2) the published rate card fee for each category; and (3) the average monthly fee actually paid by subscribers to each category.[23] NCTA opposed these additional requirements as resulting in an undue burden and an unwarranted disclosure of proprietary information.[24]

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[16] In addition to replacing Section 201.17(e)(6)(i) and (ii) with the language quoted above, Section 201.17(e)(6)(iii) would be deleted in its entirety.

[17] NPRM, 82 Fed. Reg. at 56927-31.

[18] *Id*. at 56928.

[19] NCTA Comments at 8-9 (citing NPRM, 82 Fed. Reg. at 56927; *see also* NCTA Reply Comments at 11-15.

[20] NCTA Reply Comments at 11 ("Other than information about broadcast signals carried, the semi-annual total of gross receipts and subscribership numbers are the only disclosures required by Section 111(d)(1)(A) of the Copyright Act.").

[21] NCTA Comments at 8.

[22] Copyright Owners Comments at 4.

[23] *Id*. at 6-7.

[24] NCTA Reply Comments at 11-15.

Over the course of negotiating a comprehensive resolution of the issues raised by the NPRM, NCTA and MPA sought to find an approach that would enhance the usefulness of Space E while reducing the administrative burdens imposed on cable operators, copyright owners, and the Copyright Office staff. NCTA and MPA eventually compromised on a middle ground that draws both from the Copyright Owners' suggestion that the information reported on Space E include an operator's "average monthly fee actually paid by subscribers" and from NCTA's suggestion to eliminate unnecessarily detailed and burdensome reporting of rate and subscriber data by "subscriber category." The resulting compromise requires both the number of subscribers and the per subscriber amount collected by the cable operator for providing basic service to be reported on an "average monthly" basis. Finally, NCTA and MPA suggest that the instructions to Space E would include the following guidance:

> "**Average Monthly Number of Subscribers"** Report below the "average monthly number of subscribers" to the system's secondary transmission service for the accounting period. Calculate by (i) adding together the sum of the number of standard residential subscribers for each month of the accounting period and the sum of the number of bulk residential and commercial subscribers (calculated on an equivalent billing unit basis) for each month of the accounting period and (ii) dividing that amount by six (6). Perform these calculations on a system-wide basis.
>
> "**Average Monthly Rate**" Report below the per subscriber "average monthly rate" for the accounting period. Calculate by (i) adding together the monthly fees for the basic service of providing secondary transmissions of primary transmitters actually received by the system from subscribers for each month of the accounting period; (ii) dividing that amount by the aggregate number of subscribers to the basic service for each month; (iii) adding together the resulting average monthly per subscriber fee for basic service for each month of the accounting period; and (iv) dividing that amount by six (6). Perform this per subscriber average monthly rate calculation on a system-wide basis using the monthly amounts actually received by the system that are attributable to secondary transmission service as set forth in 37 C.F.R. 201.17(b)(1) and the number of subscribers for each month of the accounting period.[25]

III. Issues As To Which the Commenting Parties Agree.

In order to reach a comprehensive resolution of the issues raised in the NPRM, NCTA and MPA have included in their agreement proposed recommendations for Copyright Office action on those issues as to which the commenting parties took a common position.

Elimination of Space F. In response to the request in the NPRM for "suggestions on streamlining or otherwise improving reporting practices for the section 111 license,"[26] NCTA argued that the Office should eliminate Space F in its entirety because the information required by Space F (and Section 201.17(e)(8) of the Office's rules) neither relates to the basic service of

[25] A revised format for Space E agreed to by NCTA and MPA is attached hereto. NCTA and MPA have no objection to the Office also incorporating the instruction described above into the amended version of Section 201.17(e)(6). *See, e.g.*, 37 C.F.R § 201.17(e)(6)(iii)(A) & (B) (explaining how operators are to complete Space E).

[26] NPRM, 82 Fed. Reg. at 56927.

providing secondary transmissions of broadcast stations nor is mandated by Section 111(d)(1)(A) of the Act.[27] Copyright Owners did not object to the elimination of Space F, agreeing with NCTA that, "by definition, the Space F information is not pertinent to either the gross receipts determination or the royalty fee calculation."[28] Consistent with this recommendation, the Office should not only delete Space F (and all references thereto) from the SOA forms, but also remove Section 201.17(e)(8) from its rules.

Definition of Cable System. The NPRM proposed amending the definition of "cable system" in the Office's rules to reflect case law suggesting that "internet-based retransmission services are excluded from the section 111 compulsory license" as well as the Office's position that, for the purpose of Section 111, the term "cable system" is limited to facilities that provide only "localized retransmissions of limited availability."[29] All parties addressing this issue noted that the Office's current "cable system" definition tracks the controlling definition of "cable system" in Section 111 of the Copyright Act and that the Office and the courts have adopted consistent interpretations of that statutory definition.[30] Consequently, the commenting parties agreed that there is no need for the Office to amend the "cable system" definition in its rules.[31]

Headend Location. The NPRM discussed but decided against proposing to require operators to report headend location information on the SOA forms.[32] All parties commenting on this issue agreed with the Office that because the "artificial fragmentation" that a headend location reporting requirement was intended to address "no longer appears to be a pressing concern," there is no need to adopt such a requirement.[33] Thus, the Office should reaffirm its conclusion.

Reporting of County Name. The NPRM proposed to revise Space D to require that cable operators report the name of the "county" for each community listed on the SOA.[34] All of the commenting parties supported this proposal.[35] Therefore, the Office should implement it. Such implementation would not require a revision to the Office's rules, but would require modification

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[27] NCTA Comments at 9-10 (the information required by Space F "does not relate to the provision of secondary transmissions of broadcast service and thus its collection is neither mandated by Section 111(d)(1)(A) of the Act nor relevant to cable operators' payments of royalties pursuant to the compulsory license").

[28] Copyright Owners Reply Comments at 6 ("Copyright Owners also do not object to NCTA's proposal 'to eliminate in its entirety Space F and make the conforming modifications to its rules.'"). AT&T did not address the elimination of Space F.

[29] NPRM, 82 Fed. Reg. at 56931.

[30] NCTA Comments at 18 ("the Office's current 'cable system' definition essentially tracks the statutory definition"); Copyright Owners Comments at 12 ("an amendment to the *regulatory* definition would not amount to a substantive change to the *statutory* definition and is presently unnecessary to ensure that the *statutory* definition continues to be interpreted as the Office has interpreted in the past") (emphasis in original).

[31] NCTA Comments at 18-19 ("NCTA believes that the best course is for the Office to leave unchanged the current language of its rule defining the term 'cable system.'"); Copyright Owners Comments at 13 (""while the proposed amendment appears to be an accurate representation of the Office's longstanding position, its inclusion seems to be unnecessary at this time.") AT&T did not address this issue.

[32] NPRM, 82 Fed. Reg. at 56932-33.

[33] NCTA Comments at 19-20 (citing NPRM, 82 Fed. Reg. at 56932; Copyright Owners Comments at 13 (same). AT&T did not address this issue.

[34] NPRM, 82 Fed. Reg. at 56933.

[35] NCTA Comments at 21; AT&T Comments at 7; Copyright Owners Comments at 13-14.

of the SOA forms to change the "CITY OR TOWN" column on Space D to "CITY/TOWN (COUNTY)." In addition, the Office should revise the first sentence of the instructions on page 1b of the SOA forms as follows:

> **Instructions**: List each separate community served by the cable system, followed in parentheses by the name of the county in which the community is located.

Definition of Community. For reasons similar to those given for not supporting the addition of a headend location reporting requirement to the SOA forms, the NPRM reached the tentative conclusion that the definition of the term "community" should not be replaced with a franchise area definition.[36] All of the parties addressing this issue agreed with the Office.[37] Thus, the Office should reaffirm its tentative conclusion.

Grade B Contour. The NPRM solicited comment on whether the Office should amend its rules and SOA forms to remove references to the Grade B contour.[38] NCTA initially was concerned that these amendments might have more significant substantive ramifications.[39] It appears, however, that these changes would only eliminate from the rules and the Form SA3 a handful of specific Grade B references, to which NCTA is not opposed.[40] Accordingly, the parties addressing the Grade B issue all support the Office's limited proposal to eliminate references to the "Grade B contour" in Sections 201.17(i)(l)(ii) and 201.17(i)(2)(ii) and, with respect to the DSE Schedule in Form SA3, references to the "Grade B contour" in Parts 7 and 9 (and the instructions for those Parts) and the "G" category in Part 6, Block B.[41]

Interest Payments & Infringement Liability. The NPRM stated that "[t]he Office's current regulations require cable operators to pay interest on late or underpaid royalty payments," and that the Copyright Act does not require the Office to determine the scope of liability for copyright infringement. Instead, liability for infringement is "more properly reserved for the courts."[42] Additionally, the NPRM proposed modifying the rules to state that for underpayments or late payments, interest will begin to accrue on the first day after the close of the SOA filing period.[43] All parties agree with the Office's proposed treatment of interest payments and infringement liability.[44] Implementation of the Office's proposal can be accomplished by a change

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[36] NPRM, 82 Fed. Reg. at 56933.

[37] NCTA Comments at 19-20 ("NCTA also agrees with the Office's tentative conclusion that the definition of the term 'community' should not be amended to reflect the operator's 'franchise area.'"); Copyright Owners Comments at 14 ("Copyright Owners do not object to the Office's tentative conclusion not to replace 'the community unit definition with a franchise area definition.'"). AT&T did not address this issue.

[38] NPRM, 82 Fed. Reg. at 56934.

[39] NCTA Comments at 21-23.

[40] Copyright Owners Reply Comments at 6-7.

[41] To avoid any confusion, NCTA and MPA ask that the Office state in its order adopting these changes that, in the unlikely event a cable operator needs to continue relying on a station's Grade B contour to establish its "permitted" status, the operator may report that reliance under the existing "O – Other" designation in Part 6, Block B.

[42] NPRM, 82 Fed. Reg. at 56935.

[43] *Id.* at 56938.

[44] AT&T Comments at 7 ("The Copyright Office should refrain from interjecting itself in a matter better addressed by the courts."); Copyright Owners Reply Comments at 2 ("Although Copyright Owners did not address this matter

to Section 201.17(l)(5) of the Office's rules as proposed in the NPRM. The "Interest Charges for Underpayment and Late Payments" section on page viii of the SOA forms' General Instructions should be revised to conform to the amended rule.

SOA Close Out. The NPRM proposed "to close out SOA examination if a filer fails to reply to an Office correspondence request after 90 days from the date of the last correspondence from the office."[45] All parties commenting on this issue agreed with the Office's proposal.[46] Therefore, the Office should adopt the revision to Section 201.17(l)(6) of the Office's rules proposed in the NPRM. The SOA forms would not need to be changed.

Electronic Fund Transfer Payments. The NPRM proposed amending its regulations to require that supplemental royalty fees and filing fees be paid via electronic funds transfer.[47] None of the commenting parties disagreed with this proposal, provided that the Office continue to consider requests from small operators for a waiver of this requirement.[48] This revision involves amendment of Section 201.17(k)(1) of the Office's rules as proposed in the NPRM. No changes to the SOA forms would be required.

NCTA and MPA appreciate the opportunity to provide this expanded explanation to the Office and look forward to a resolution of this long-pending proceeding. We are available to answer any remaining questions and would be happy to meet with Office staff, as well as with any other participants in this proceeding

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

/s/ Dennis Lane
STINSON LLP
1775 Pennsylvania Avenue, NW
Suite 800
Washington, D.C. 20001-1431
Attorney for Motion Picture Association

cc: Anna Chauvet, Esq.
David Welkowitz, Esq.
Service List

[in initial comments], they do not object to the Office's proposed treatment [of interest payments and infringement liability]."); NCTA Comments at 23-24.

[45] NPRM, 82 Fed. Reg. at 56935, 56938.

[46] AT&T Comments at 8 ("AT&T agrees that 90 days is a reasonable amount of time for the filer to respond."); Copyright Owners Comments at 14-15 ("Copyright Owners support the proposal 'to close out SOA examination if a filer fails to reply to an Office correspondence request after 90 days from the date of the last correspondence from the Office.'"). NCTA did not address this issue.

[47] NPRM, 82 Fed. Reg. at 56936, 56938.

[48] AT&T Comments at 9 ("This proposal is reasonable as are the Copyright Office's proposals to require filers to pay supplemental royalty fees and filing fees only by electronic funds transfer or EFT"); NCTA Comments at 24 ("NCTA does not oppose this technical amendment but suggests that the Office continue to allow waivers of payment via EFT for systems filing on Form 1 and Form 2."). The Copyright Owners did not address this issue.

Proposed Revision to Space E of SA3

Name	LEGAL NAME OF OWNER OF CABLE SYSTEM:

E

Secondary Transmission Service: Subscribers and Rate

SECONDARY TRANSMISSION SERVICE: SUBSCRIBERS AND RATE

In General: The information in space E should cover the retransmission of television and radio broadcasts by your system to all subscribers, regardless of category, including standard residential, bulk residential, and commercial subscribers.

"**Average Monthly Number of Subscribers**" Report below the "average monthly number of subscribers" to the system's secondary transmission service for the accounting period. Calculate by (i) adding together the sum of the number of standard residential subscribers for each month of the accounting period and the sum of the number of bulk residential and commercial subscribers (calculated on an equivalent billing unit basis) for each month of the accounting period and (ii) dividing that amount by six (6). Perform these calculations on a system-wide basis.

"**Average Monthly Rate**" Report below the per subscriber "average monthly rate" for the accounting period. Calculate by (i) adding together the monthly fees for the basic service of providing secondary transmissions of primary transmitters actually received by the system from subscribers for each month of the accounting period; (ii) dividing that amount by the aggregate number of subscribers to the basic service for each month; (iii) adding together the resulting average monthly per subscriber fee for basic service for each month of the accounting period; and (iv) dividing that amount by six (6). Perform this per subscriber average monthly rate calculation on a system-wide basis using the monthly amounts actually received by the system that are attributable to secondary transmission service as set forth in 37 C.F.R. 201.17(b)(1) and the number of subscribers for each month of the accounting period.

Average Monthly Number of Subscribers	Average Monthly Rate

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

  Stephen K. Marsh
  stephen.marsh@marshpllc.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
  John I Stewart, Jr.
  jstewart@crowell.com

- **PUBLIC TELEVISION CLAIMANTS**
  PUBLIC BROADCASTING SERVICE
  Scott Griffin
  rsgriffin@pbs.org

- **CANADIAN CLAIMANTS GROUP**
  L. Kendall Satterfield
  lksatterfield@satterfield-pllc.com

- **DEVOTIONAL CLAIMANTS**
  SETTLING DEVOTIONAL CLAIMANTS
  Arnold P. Lutzker
  arnie@lutzker.com