

PUBLIC VERSION

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

In the Matter of)

ADJUSTMENT OF RATES AND TERMS FOR)
PREEXISTING SUBSCRIPTION SERVICES)
AND SATELLITE DIGITAL AUDIO RADIO)
SERVICES)

Docket No. 2006-1 CRB DSTRA

**WRITTEN REBUTTAL STATEMENT
OF SOUNDEXCHANGE, INC.**

Volume 1 of 6

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July 24, 2007

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for the Written Rebuttal Statement of SoundExchange, Inc.
2006-1 CRB DSTRA

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ADJUSTMENT OF RATES AND TERMS)	Docket No. 2006-1 CRB DSTRA
FOR PREEXISTING SUBSCRIPTION)	
SERVICES AND SATELLITE DIGITAL)	
AUDIO RADIO SERVICES)	
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**INTRODUCTORY MEMORANDUM TO THE WRITTEN REBUTTAL CASE OF
SOUNDEXCHANGE, INC.**

SoundExchange, Inc. (“SoundExchange”), through its undersigned counsel, respectfully submits this Introductory Memorandum to its written rebuttal case in accordance with 37 C.F.R. § 351.4 and § 351.11. This Memorandum will describe the contents of SoundExchange’s written rebuttal case and briefly summarize the testimony of its witnesses.

CONTENTS OF SOUNDEXCHANGE'S WRITTEN REBUTTAL CASE

Volume 1 contains: (A) this Introductory Memorandum; (B) the Second Amended Rate Proposal and draft proposed regulations for SoundExchange; (C) an Index of SoundExchange’s Written Rebuttal Testimony; (D) an Index of the Exhibits to SoundExchange’s Written Rebuttal Testimony; (E) the Declaration and Rule 11 Certification of Michael DeSanctis, attaching a redaction log, as required by Section 10 of the Protective Order in this proceeding; and (F) a Certificate of Service.

Volume 2 contains the written rebuttal testimony of SoundExchange’s ten witnesses.

Volumes 3 and 4 contain the exhibits to SoundExchange’s rebuttal case, Exhibit Numbers SX 201 RP through SX 258 RR. Exhibits with the suffix “RR” (“Rebuttal Restricted”)

have been marked as Restricted pursuant to the Protective Order, and exhibits with the suffix “RP” (“Rebuttal Public”) do not contain Restricted information.

Volume 5 contains the written direct testimony and exhibits, oral direct testimony, oral cross-examination testimony, and exhibits admitted on cross-examination of SoundExchange witnesses Jonatha Brooke, Cathy Fink and Harold Bradley from Docket No. 2005-1 CRB DTRA, which SoundExchange is designating in this proceeding pursuant to 37 C.F.R. § 351.4(b)(2).

Volume 6 contains the written rebuttal testimony and exhibits, oral rebuttal testimony, oral rebuttal cross-examination testimony, and exhibits admitted on rebuttal cross-examination of SoundExchange witness Michael Pelcovits from Docket No. 2005-1 CRB DTRA, which SoundExchange is designating in this proceeding pursuant to 37 C.F.R. § 351.4(b)(2).

Pursuant to 37 C.F.R. § 350.4(a), § 351.4, and the Copyright Royalty Judges’ Orders dated August 18, 2006 and September 28, 2006, SoundExchange is filing an original, five copies, and an electronic copy of the materials in Volumes 1 - 6. SoundExchange will also file public versions of its written rebuttal case pursuant to the terms of the Protective Order.

SUMMARY OF THE WRITTEN TESTIMONY OF SOUNDEXCHANGE’S REBUTTAL WITNESSES

SoundExchange’s written rebuttal case includes the written testimony of the following expert and fact witnesses.

A. Expert Witnesses

Steven Herscovici, Ph.D., is a Managing Principal in the Boston office of Analysis Group, Inc., an economic and financial research and consulting firm. His testimony evaluates the arguments made by Dr. John R. Woodbury on behalf of XM and Sirius concerning the four statutory objectives established by Congress for determining an appropriate copyright royalty

rate in this proceeding. He analyzes each of the four statutory factors. He concludes that a marketplace royalty rate negotiated and agreed to by the parties in the free market would satisfy the first three 801(b) statutory objectives in this case. With respect to the fourth statutory factor — to minimize the disruptive impact on the structure of the industries — Dr. Herscovici concludes that the concerns expressed by the Librarian in the 1996 proceeding involving the Pre-existing Subscription Services (“PSS”) that one or more of the PSS was at risk of exiting the industry simply do not apply to the Services today. Rather, his analysis indicates that the recording industry is in a more fragile state today than it was at the time of the previous proceeding, and that the fourth statutory factor does not favor the Services as it did the PSS a decade ago.

Sean Butson, CFA, is a Chartered Financial Analyst with over a decade of experience in both debt and equity capital markets, and with a particular expertise in analysis of the satellite radio industry. He previously submitted testimony in SoundExchange’s direct case, and submits rebuttal testimony to address two sets of claims made by SDARS witnesses Karmazin, Frear, Vendetti and Musey. First, Mr. Butson explains why these witnesses’ claims about the relevance of past losses by the SDARS are not relevant to the issues presented in this proceeding, which concerns royalties in 2007-2012 and is not intended to allow the SDARS to offset past losses against artificially low royalties. Second, Mr. Butson explains why Mr. Musey’s analysis based on the extent to which rates set in this proceeding will affect the future SDARS’ stock price is relevant only to the SDARS’ stockholders, and is not relevant to setting a rate in this proceeding. Instead, this Court should consider whether the rate allows the SDARS to earn money over the longer term. Using updated models of the SDARS’ future financial performance that are based on the consensus views of analysts covering the SDARS and on financial projections that the

SDARS rely upon internally, Mr. Butson shows that SoundExchange's proposed rate does allow the SDARS to earn revenue over the longer term.

Michael Pelcovits, Ph.D., submitted testimony in SoundExchange's direct case, and submits rebuttal testimony to address claims made by the SDARS' economic expert Dr. John Woodbury. Dr. Pelcovits testifies that the PSS are a poor benchmark for the SDARS service because the PSS rate is not a market rate, because Dr. Woodbury incorrectly finds that music has a "commodity" price identified in the PSS rate, and because the PSS rate is based on the musical works rate, which is itself an inappropriate benchmark. Dr. Pelcovits establishes a per-play equivalent for the parties' rate proposals, and discusses how the SoundExchange rate could be stated as a per-broadcast per-customer rate. Dr. Pelcovits then summarizes and discusses the significance of the evidence establishing that listening to the SDARS has a net substitutional effect on the purchase of CDs. Finally, Dr. Pelcovits updates the surplus analysis from his direct testimony in light of Mr. Butson's updated financial models.

Janusz Ordovery, Ph.D., is a professor of economics at New York University, and former Deputy Assistant Attorney General for Economics at the Antitrust Division of the United States Department of Justice. Dr. Ordovery previously submitted testimony in SoundExchange's direct case, and submits rebuttal testimony to address claims made by the SDARS' economic expert Dr. John Woodbury. Dr. Ordovery demonstrates that the PSS are a poor benchmark for the SDARS service because the PSS rate is not necessarily a market rate, because the PSS service is too dissimilar from the SDARS service to serve as an appropriate benchmark, and because Dr. Woodbury's use of the PSS rate as establishing the "commodity" price of sound recordings is both empirically and theoretically unsound. Finally, Dr. Ordovery demonstrates that Dr. Woodbury's use of the musical works royalty as a benchmark is similarly flawed -- it too is not

the product of unfettered market negotiations, and marketplace evidence establishes that the sound recording royalty is more valuable than the musical works royalty.

Yoram Wind, Ph.D., is Lauder Professor and Professor of Marketing at the Wharton School at the University of Pennsylvania. He previously submitted testimony in SoundExchange's direct case, and submits rebuttal testimony to address the claims made by the SDARS that their services promote the sale of CDs and other forms of recorded music. He presents the results of a survey that he designed and conducted which show that the SDARS services, in fact, substitute for CD sales and other forms of recorded music.

George Mantis is the President of The Mantis Group, Inc., a marketing research and consulting firm located in Chicago, Illinois. He has over 30 years of experience designing, executing, and reporting on surveys conducted for consumer and industrial product and service firms. He submits rebuttal testimony to address the claims made by the SDARS that their services promote the sale of CDs. He presents the results of a survey that he designed and conducted which show that the SDARS services, in fact, substitute for CD sales.

Bruce Elbert, President of Application Technology Strategy, Inc. is one of the nation's leading experts in satellite technology. His testimony shows that the SDARS' satellite technology is far less innovative and less risky than the SDARS claim. He explains that private businesses have designed, launched and operated satellites for forty years. He identifies numerous examples of precursor satellite systems that were able to carry out missions very similar to XM's and Sirius's goals, and that included the important technological elements used by the Services' satellites, including companies Iridium and GlobalStar, direct broadcast satellite, or "DBS," companies such as DirecTV and DISH Network, the WorldSpace broadcasting system, and significant experiments conducted by NASA. Mr. Elbert responds to the Services'

claims that their satellites were the first to introduce certain unique technological elements, by identifying the other satellite systems that preceded or paved the way for the elements included in the Services' satellites. Mr. Elbert also describes the significant advantages the Services gain by using satellites.

B. Fact Witnesses

Mark Eisenberg is Senior Vice President, Business and Legal Affairs, Global Digital Business Group, at SONY BMG Music Entertainment ("SONY BMG"). In response to the SDARS' use of the musical works rate as a benchmark, Mr. Eisenberg explains the completely different markets and market structures for sound recordings and musical works. He provides market data demonstrating the higher rates that sound recording copyright owners receive when compared to musical works copyright owners in every market where blanket licenses for those two distinct goods are negotiated. In every market, either sound recording copyrights are valued several times more highly than the musical works copyright, or the royalty structures in the different markets are so different that they defy meaningful comparison. Mr. Eisenberg also discusses the gross margin that Sony BMG makes on CD sales and the way in which that margin affects the license rates for a service that is known to substitute for CD sales.

Charles Ciongoli is Senior Vice President, Finance, for Universal Music Group, Inc. ("UMG") and has knowledge of the finances of both UMG's U.S. record label and music publishing operations. He rebuts the SDARS' proposed musical works benchmark. His testimony discusses the fundamental differences between the sound recording and music publishing businesses that render attempts to equate the two inapt. Whereas record companies engage in the vast majority of investment in finding and developing talent and creating, marketing, and distributing copyrighted sound recordings -- from which both record companies

and musical publishers benefit -- music publishers engage in little such investment. Using actual financial data, he shows that UMG's record label operations involve much greater levels of investment and risk than Universal Publishing's music publishing operations. This market structure explains in part why, in virtually every market, sound recording copyright owners receive significantly greater compensation than musical works copyright owners. As Mr. Ciongoli testifies, that fact reflects the relative roles of the two copyright owners in the distribution of music. Record companies take the major risks, make the vast majority of the investment, and commensurately receive higher royalty rates. By contrast, music publishers ride on the coattails of record companies and earn lower royalty rates to offset their much lower costs.

Barrie L. Kessler is Chief Operating Officer of SoundExchange. Her testimony responds to the proposed terms submitted by XM and Sirius. She testifies that with regard to late fees, confidentiality, and audits and verification of payments, SoundExchange proposes terms that are substantially similar to the terms adopted by the Court in Docket No. 2005-1 CRB DTRA. She explains that consistency of terms across licenses will make SoundExchange's administration of the SDARS' compliance with the licenses simpler and more efficient. Ms. Kessler also explains that obtaining census reporting from the SDARS is critical to the accurate collection and distribution of royalties. In particular, she opposes the SDARS' proposal not to report their use of sound recordings on certain non-music channels and not to report certain sound recordings played as part of programming provided to the SDARS by third parties, and explains that under the statutory license the SDARS should be required to report all sound recordings played on all channels. Finally, Ms. Kessler shows that the proposed definition of "Gross Revenues" in the SDARS' proposed rates and terms is too broad

Respectfully submitted,

By 

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Counsel for SoundExchange, Inc.

July 24, 2007

**BEFORE THE
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Washington, D.C.**

In the Matter of)

ADJUSTMENT OF RATES AND TERMS FOR)
PREEXISTING SUBSCRIPTION SERVICES)
AND SATELLITE DIGITAL AUDIO RADIO)
SERVICES)

Docket No. 2006-1 CRB DSTRA

SECOND AMENDED RATE PROPOSAL FOR SOUNDEXCHANGE, INC.

Pursuant to 37 C.F.R. § 351.4(a)(3), SoundExchange, Inc. (“SoundExchange”), through its undersigned counsel, hereby proposes the following rates for (1) the digital audio transmission of sound recordings by an eligible preexisting satellite digital audio radio service provider (“SDARS”) operating under the statutory licenses set forth in 17 U.S.C. §§ 114(j)(10); 801(b)(1), 804(b)(3); and (2) the making of ephemeral phonorecords necessary to facilitate transmissions by eligible SDARS, 17 U.S.C. § 112(e), during the period January 1, 2007 through December 31, 2012. Pursuant to 37 C.F.R. § 351.4(a)(3), SoundExchange reserves the right to alter or amend its rate proposal prior to or at the time of submission of findings and conclusions if warranted by the record.

I. ROYALTY RATES

Each transmitting entity providing satellite digital audio radio services shall pay a monthly fee (“Royalty”) (to cover both the 17 U.S.C. § 114(d)(2) performance license and the § 112(e)(1) license for making ephemeral copies) as follows:

- 1) The Royalty Amount. For each month, the Royalty shall equal the greater of (i) or (ii) below, as (ii) is adjusted pursuant to the CPI Increase set out in (3) below:

a) For every month after the SDARS has publicly reported that its number of Subscriptions is a number less than 9 million Subscriptions:

i) 8% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

ii) \$0.85 per month per Subscription.

b) For every month after the SDARS has publicly reported that its number of Subscriptions is a number equal to or more than 9 million Subscriptions and less than 11 million Subscriptions:

i) 10% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

ii) \$1.15 per month per Subscription.

c) For every month after the SDARS has publicly reported that its number of Subscriptions is a number equal to or more than 11 million Subscriptions and less than 13 million Subscriptions:

i) 12% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

ii) \$1.45 per month per Subscription.

d) For every month after the SDARS has publicly reported that its number of Subscriptions is a number equal to or more than 13 million Subscriptions and less than 15 million Subscriptions:

i) 14% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

ii) \$1.80 per month per Subscription.

e) For every month after the SDARS has publicly reported that its number of Subscriptions is a number equal to or more than 15 million Subscriptions and less than 17 million Subscriptions:

i) 17% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

ii) \$2.25 per month per Subscription.

f) For every month after the SDARS has publicly reported that its number of Subscriptions is a number equal to or more than 17 million Subscriptions and less than 19 million Subscriptions:

i) 20% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

ii) \$2.65 per month per Subscription.

g) For every month after the SDARS has publicly reported that its number of Subscriptions is a number equal to or more than 19 million Subscriptions:

i) 23% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

ii) \$3.00 per month per Subscription.

2) Subscription. For purposes of the calculation of the royalty amount set out in (1) above, a "Subscription" means the number of ending or total ending subscribers reported by an SDARS in its publicly filed 10-Q or 10-K report.

3) CPI Increases. Each year of the license period, beginning on January 1, 2008, the per subscriber rate shall increase according to the percent change in the CPI-U from November 1 of the year two years prior to the year in which payments are to be

made to November 1 of the year prior to the year in which payments are to be made. For example, in January 2008 the rate shall be adjusted based on the percentage increase in the CPI-U from November 1, 2006 through November 1, 2007.

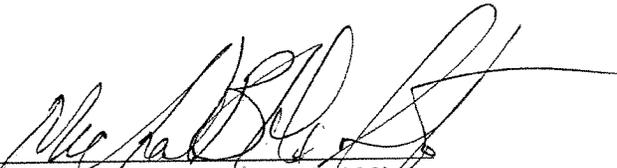
4) Ephemeral Fees. With respect to each of the rates specified above, the royalty payable under 17 U.S.C. § 112(e) for the making of ephemeral copies used solely by the SDARS Service to facilitate transmissions for which it pays royalties shall be deemed to be included within, and to comprise 8.8% of, such royalty payments.

5) Services Covered. For purposes of this section, SDARS shall include the services offered by XM Satellite Radio, Inc., and Sirius Satellite Radio, Inc., their successors and assigns (if such successors and assigns are preexisting satellite digital audio radio services as defined in § 114(j)(10)), to the extent those services are making digital audio transmissions of sound recordings subject to § 114(j)(10). Any other services offered by either entity shall not be covered by the rates set forth in this proposal.

II. TERMS

SoundExchange proposes terms as described in the written direct and rebuttal statements of Barrie Kessler and as set forth in the attached Proposed Regulatory Language for Terms for Preexisting Satellite Digital Audio Radio Services. Pursuant to Section 351.4(a)(3), SoundExchange reserves the right to propose alternative or additional terms prior to or at the time of submission of findings and conclusions.

Respectfully submitted,

By 

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Dated: July 23, 2007

**REGULATORY LANGUAGE IMPLEMENTING SOUNDEXCHANGE'S PROPOSED
RATES AND TERMS**

**PART 38_ -- RATES AND TERMS FOR SUBSCRIPTION TRANSMISSIONS AND THE
REPRODUCTION OF EPHEMERAL RECORDINGS BY PREEXISTING SATELLITE
DIGITAL AUDIO RADIO SERVICES**

§ 38_.1 General

(a) Scope. This part 38_ establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by Licensees in accordance with the provisions of 17 U.S.C. § 114, and the making of Ephemeral Recordings by Licensees in accordance with the provisions of 17 U.S.C. § 112(e), during the period January 1, 2007, through December 31, 2012.

(b) Legal compliance. Licensees relying upon the statutory licenses set forth in 17 U.S.C. § 112 and § 114 shall comply with the requirements of those sections, the rates and terms of this part, and any other applicable regulations.

(c) Relationship to voluntary agreements. Notwithstanding the royalty rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and Licensees shall apply in lieu of the rates and terms of this part to transmission within the scope of such agreements.

§ 38_.2 Definitions

For purposes of this part, the following definitions shall apply:

(a) "Collective" is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the 2007-2012 license period, the Collective is SoundExchange, Inc.

(b) "Copyright Owners" are sound recording copyright owners who are entitled to royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. § 112(e) and § 114(f).

(c) "Ephemeral Recording" is a phonorecord created for the purpose of facilitating a transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. § 114(f), and subject to the limitations specified in 17 U.S.C. § 112(e).

(d) "Licensee" is a person that has obtained a statutory license under 17 U.S.C. § 114, and the implementing regulations, to make transmissions over a preexisting satellite digital audio radio service ("SDARS") (as defined in 17 U.S.C. 114(j)(10)), and has obtained a statutory license under 17 U.S.C. § 112(e), and the implementing regulations, to make Ephemeral Recordings for use in facilitating such transmissions.

(e) "Performers" means the independent administrators identified in 17 U.S.C. § 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. § 114(g)(2)(D).

(f) "Qualified Auditor" is a Certified Public Accountant.

(g) "Revenue" is all revenue paid or payable to an SDARS that arises from the operation of the SDARS service, including but not limited to subscription revenue, advertising and sponsorship revenue, and all other revenue related to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10), and excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services, as defined in 17 U.S.C. § 114(j)(10).

(h) "Subscription" is, as used in Section 38_3(a)(1), the number of ending or total ending subscribers reported by an SDARS in its publicly filed 10-Q or 10-K report, or, in the event that an SDARS ceases to be publicly traded, such other public report as possesses similar indicia of reliability.

(i) "Term" means the period commencing January 1, 2007 and continuing through December 31, 2012.

§ 38_3 Royalty fees for the public performance of sound recordings and for ephemeral recordings

(a) Royalty rates and fees for eligible digital transmissions of sound recordings made pursuant to 17 U.S.C. § 114 by means of digital audio transmissions through a Licensee's SDARS, and the making of ephemeral recordings pursuant to 17 U.S.C. § 112 to facilitate digital audio transmissions through a Licensee's SDARS, are as follows:

(1) The Royalty Amount. For each month, a Licensee shall pay a monthly fee ("Royalty") equal to the greater of (i) or (ii) in subparts (a) through (g) below, as appropriate, as (ii) is adjusted pursuant to the CPI Increase set out in (2) below:

(a) For every month the SDARS has publicly reported that its number of Subscriptions is a number less than 9 million Subscriptions:

(i) 8% of all revenue paid or payable to the SDAR, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

(ii) \$0.85 per month per Subscription.

(b) For every month after the SDARS has publicly reported that its number of Subscriptions is a number equal to or more than 9 million Subscriptions and less than 11 million Subscriptions:

(i) 10% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

(ii) \$1.15 per month per Subscription.

(c) For every month after the SDARS has publicly reported that its number of Subscriptions is a number equal to or more than 11 million Subscriptions and less than 13 million Subscriptions:

(i) 12% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

(ii) \$1.45 per month per Subscription.

(d) For every month after the SDARS has publicly reported that its number of Subscriptions is a number equal to or more than 13 million Subscriptions and less than 15 million Subscriptions:

(i) 14% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

(ii) \$1.80 per month per Subscription.

(e) For every month after the SDARS has publicly reported that its number of Subscriptions is a number equal to or more than 15 million Subscriptions and less than 17 million Subscriptions:

(i) 17% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

(ii) \$2.25 per month per Subscription.

(f) For every month after the SDARS has publicly reported that its number of Subscriptions is a number equal to or more than 17 million Subscriptions and less than 19 million Subscriptions:

(i) 20% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

(ii) \$2.65 per month per Subscription.

(g) For every month after the SDARS has publicly reported that its number of Subscriptions is a number equal to or more than 19 million Subscriptions:

(i) 23% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of preexisting satellite digital audio radio services as defined in 17 U.S.C. § 114(j)(10); or

(ii) \$3.00 per month per Subscription.

(2) CPI Increases. Each year of the license period, beginning on January 1, 2008, the per subscriber rate shall increase according to the percent change in the CPI-U from November 1 of the year two years prior to the year in which payments are to be made to November 1 of the year prior to the year in which payments are to be made. For example, in January 2008 the rate shall be adjusted based on the percentage increase in the CPI-U from November 1, 2006 through November 1, 2007.

(3) Ephemeral Fees. With respect to each of the rates specified above, the royalty payable under 17 U.S.C. § 112(e) for the making of ephemeral copies used solely by the SDARS Service to facilitate transmissions for which it pays royalties shall be deemed to be included within, and to comprise 8.8% of, such royalty payments.

(4) Services Covered. For purposes of this section, SDARS shall include the services offered by XM Satellite Radio, Inc., and Sirius Satellite Radio, Inc., their successors and assigns (if such successors and assigns are preexisting satellite digital audio radio services as defined in § 114(j)(10)), to the extent those services are making digital audio transmissions of sound recordings subject to § 114(j)(10). Any other services offered by either entity shall not be covered by the rates set forth herein.

§ 38_.4 Terms for making payment of royalty fees and statements of account

(a) Payment to the Collective. A Licensee shall make the royalty payments due under § 38_.3 to the Collective.

(b) Designation of the Collective.

(1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Licensees due under § 38_.3 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. § 112(e) or § 114.

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Royalty Judges designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. § 112(e) or § 114 that have themselves authorized such Collective.

(ii) The Copyright Royalty Judges shall publish in the Federal Register within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) Monthly payments. A Licensee shall make any payments due under § 38_.3 on a monthly basis on or before the 45th day after the end of each month, except that payments due under § 38_.3 for the period beginning January 1, 2007, through the last day of the month in which the Copyright Royalty Judges issue their final determination adopting these rates and terms shall be due 45 days after the end of such period. All payments shall be rounded to the nearest cent.

(d) Late payments, statements of account and reports of use. A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment and/or statement of account and/or report of use received by the Collective after the due date. Late fees shall accrue separately for each of the above components (payment, statements of account, and reports of use) from the due date until each such component is properly received by the Collective.

(e) Statements of account. Any payment due under § 38_.3 shall be accompanied by a corresponding statement of account. A statement of account shall contain the following information:

- (1) Such information as is necessary to calculate the accompanying royalty payment;
- (2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;
- (3) The handwritten signature of a duly authorized agent of the Licensee;
- (4) The printed or typewritten name of the person signing the statement of account;
- (5) The date of signature;
- (6) The title or official position held in the partnership or corporation by the person signing the statement of account;
- (7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

“I, the undersigned officer or representative of the Licensee, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.”

(f) Distribution of royalties.

(1) The Collective shall promptly distribute royalties received from Licensees to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Licensee equally based upon the information provided under the reports of use requirements for Licensees contained in § 38_.9 of this chapter.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (f)(1) of this section within 3 years from the date of payment by a Licensee, such royalties shall be handled in accordance with Section 38_.8.

(g) Retention of records. All books and records (including but not limited to source data) of a Licensee and of the Collective relating to calculation, payment and distribution of royalties shall be kept for a period of not less than the prior 3 calendar years.

§ 38_.5 Confidential information

(a) Definition. For purposes of this part, “Confidential Information” shall include the statements of account and any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) Exclusion. Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) Use of Confidential Information. In no event shall the Collective use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(d) Disclosure of Confidential Information. Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of

performing such duties during the ordinary course of their work and who require access to the Confidential Information;

(2) An independent and Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to verification of a Licensee's statement of account pursuant to § 38_.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to § 38_.7;

(3) Copyright Owners and Performers, including their designated agents, whose works have been used under the statutory licenses set forth in 17 U.S.C. § 112(e) and § 114(f) by the Licensee whose Confidential Information is being supplied, subject to an appropriate confidentiality agreement, and including those employees, agents, attorneys, consultants and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate confidentiality agreement, for the purpose of performing their duties during the ordinary course of their work and who require access to the Confidential Information; and

(4) In connection with future proceedings under 17 U.S.C. § 112(e) and § 114(f) before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts.

(e) Safeguarding of Confidential Information. The Collective and any person identified in paragraph (d) of this section shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to the Collective or person.

§ 38_.6 Verification of royalty payments

(a) General. This section prescribes procedures by which the Collective may verify the royalty payments made by a Licensee.

(b) Frequency of verification. The Collective may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) Notice of intent to audit. The Collective must file with the Copyright Royalty Judges a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the Federal Register a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all parties.

(d) Acquisition and retention of report. The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of

not less than 3 years.

(e) Acceptable verification procedure. An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) Consultation. Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) Costs of the verification procedure. The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 38_.7 Verification of royalty distributions

(a) General. This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty distributions made by the Collective; provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or Performer and the Collective have agreed as to proper verification methods.

(b) Frequency of verification. A Copyright Owner or Performer may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) Notice of intent to audit. A Copyright Owner or Performer must file with the Copyright Royalty Judges a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the Federal Register a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) Acquisition and retention of report. The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) Acceptable verification procedure. An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards

by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) Consultation. Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) Costs of the verification procedure. The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 38_.8 Unclaimed funds

If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this part, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. § 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State, including but not limited to state escheat statutes.

§ 38_.9 Reports of use

(a) Reports of Use. Licensees shall deliver to SoundExchange on a monthly basis notice of use of their sound recordings on all channels.

(b) Delivery and Format. Licensees shall deliver Reports of Use to SoundExchange by no later than the 45th day after the close of each month. Unless otherwise agreed to by a Licensee and the Collective, Reports of Use shall be delivered and formatted in accordance with the Copyright Royalty Judges' regulations for the delivery and format of Reports of Use of sound recordings for the statutory licenses issued on October 6, 2006 and embodied at 79 Fed. Reg. 59010.

(c) Content.

(1) A "Report of Use of Sound Recordings under Statutory License" shall be identified as such by prominent caption or heading, and shall include census reporting of a Licensee's actual playlist for each channel and each day of the reported month. Each playlist shall include a consecutive listing of every recording actually transmitted, including musical, spoken word and comedy recordings, and shall contain the following information in the following order for all sound recordings, including sound recordings played on news, talk, sports or other non-music

channels, and including sound recordings played in programming provided to a Licensee by a third party:

- (A) The name of the service or entity;
- (B) The channel;
- (C) The sound recording title;
- (D) The featured recording artist, group, or orchestra;
- (E) The retail album title;
- (F) The marketing label of the commercially available album or other product on which the sound recording is found;
- (G) The catalog number;
- (H) The International Standard Recording Code (ISRC) embedded in the sound recording, where available and feasible;
- (I) Where available, the copyright owner information provided in the copyright notice on the retail album or other product (e.g., following the symbol © (the letter P in a circle) or, in the case of compilation albums created for commercial purposes, in the copyright notice for the individual sound recording;
- (J) The date of transmission;
- (K) The time of transmission; and
- (L) The release year of the retail album or other product (as opposed to an the individual sound recording), as provided in the copyright notice on the retail album or other product (e.g., following the symbol © (the letter C in a circle), if present, or otherwise following the symbol © (the letter P in a circle).

(d) Signature. Reports of Use shall include a signed statement by the appropriate officer or representative of the Licensee attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the Service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Report, and by the date of signature.

(e) Documentation. Licensees shall, for a period of at least three years from the date of delivery of the Report of Use, keep and retain a copy of the Report of Use.

(f) Late reports of use. Licensees shall pay late fees of 1.5% per month of the revenue owed for the period to which the report of use corresponds, or the highest lawful rate, whichever is lower,

for any report of use received by the Collective after the due date. Late fees shall accrue from the due date until the report of use is received by the Collective.

Index of Witness Statements

Tab	Witness	Title
1	Steven Herscovici	Managing Principal, Analysis Group, Inc.
2	Sean Butson	Consultant and Chartered Financial Analyst
3	Michael Pelcovits	Principal, Microeconomic Consulting & Research Associates, Inc.
4	Janusz Ordover	Professor of Economics and former Director of the Masters in Economics Program at New York University
5	Yoram (Jerry) Wind	Lauder Professor of Marketing, Wharton School of Business, University of Pennsylvania
6	George Mantis	President, The Mantis Group, Inc.
7	Bruce R. Elbert	President, Application Technology Strategy, Inc.
8	Mark Eisenberg	Senior Vice President, Business and Legal Affairs, Global Digital Business Group, Sony BMG Music Entertainment
9	Charles Ciongoli	Executive Vice President and Chief Financial Officer, Universal Music Group North America
10	Barrie Kessler	Chief Operating Officer, SoundExchange, Inc.

Index of SoundExchange Public Exhibits

Exhibit No.	Sponsored By	Description
SX Exhibit 201 RP	Elbert	Rusch slideshow presentation (SDARS CRB 00003250 et seq.)
SX Exhibit 203 RP	Wind	Billboard.biz article: "NARM Coverage: Are Digital Music Service[s] Discouraging Music Sales?" (Apr. 30, 2007)
SX Exhibit 208 RP	Ordover	Music Choice On Demand web page
SX Exhibit 209 RP	Ordover	Excerpts from the oral testimony of Dr. Tasneem Chipty in Docket No. 2005-5 CRB DTNSRA
SX Exhibit 210 RP	Ordover	Monthly Retail Price for Audio Interactive Subscription Services
SX Exhibit 211 RP	Ordover; Butson	Sirius press release: "SIRIUS Satellite Radio Reports Strong First Quarter 2007 Results" (May 1, 2007)
SX Exhibit 212 RP	Ordover	XM press release: "XM Satellite Radio Holdings Inc. Announces First Quarter 2007 Results" (Apr. 26, 2007)
SX Exhibit 215 RP	Butson	Analyst report re XM by Barrington Research (Goss) (Apr. 27, 2007)
SX Exhibit 216 RP	Butson	Analyst report re XM by Bear Stearns (Peck) (Apr. 27, 2007)
SX Exhibit 217 RP	Butson	Analyst report re XM by Deutsche Bank (Dix) (Apr. 27, 2007)
SX Exhibit 218 RP	Butson	Analyst report re XM by Lehman Brothers (Jayant) (Apr. 27, 2007)
SX Exhibit 219 RP	Butson	Analyst report re XM by Stifel Nicolaus (Spring) (Apr. 27, 2007)
SX Exhibit 220 RP	Butson	Analyst report re XM by Wachovia (Wlodarczak) (Apr. 27, 2007)
SX Exhibit 221 RP	Butson	Analyst report re XM by Wedbush Morgan Securities (Kidd) (Apr. 27, 2007)
SX Exhibit 222 RP	Butson	Analyst report re XM by Morgan Stanley (Swinburne) (Apr. 30, 2007)
SX Exhibit 223 RP	Butson	Analyst report re Sirius by Barrington Research (Goss) (May 1, 2007)
SX Exhibit 224 RP	Butson	Analyst report re Sirius by Wedbush Morgan (Kidd) (May 1, 2007)
SX Exhibit 225 RP	Butson	Analyst report re Sirius by Deutsche Bank (Dix) (May 2, 2007)
SX Exhibit 226 RP	Butson	Analyst report re Sirius by Lehman Brothers (Ratcliffe) (May 2, 2007)

SX Exhibit 227 RP	Butson	Analyst report re Sirius by Wachovia (Wlodarczak) (May 2, 2007)
SX Exhibit 228 RP	Butson	Analyst report re Sirius by Stifel Nicolaus (Spring) (May 7, 2007)
SX Exhibit 229 RP	Butson	Analyst report re Sirius by Morgan Stanley (Swinburne) (May 11, 2007)
SX Exhibit 230 RP	Butson	Analyst report re Sirius by Bear Stearns (Peck) (June 4, 2007)
SX Exhibit 231 RP	Butson	Sirius press release: "Sirius Reports Fourth Quarter and Full Year 2006 Results" (Feb. 27, 2007)
SX Exhibit 232 RP	Butson	Sirius Satellite Radio Q1 2007 Earnings Call Transcript (May 1, 2007)
SX Exhibit 233 RP	Butson	Sirius Satellite Radio Q4 2006 Earnings Call Transcript (Feb. 26, 2007)
SX Exhibit 234 RP	Butson	XM press release: "XM Satellite Radio Holdings Inc. Announces First Quarter 2007 Results" (Apr. 26, 2007)
SX Exhibit 235 RP	Butson	XM press release: "XM Satellite Radio Holdings Inc. Announces Fourth Quarter and Full Year 2006 Results" (Feb. 26, 2007)
SX Exhibit 236 RP	Butson	XM Satellite Radio Q1 2007 Earnings Call Transcript
SX Exhibit 237 RP	Butson	XM Satellite Radio Q4 2006 Earnings Call Transcript
SX Exhibit 238 RP	Butson	Supplement to "Automotive News Global Market Data Book" (June 25, 2007)
SX Exhibit 249 RP	Butson	Sirius Satellite Radio Inc. Form 10-K annual report for 2006
SX Exhibit 250 RP	Butson	XM Satellite Radio Holdings Inc. Form 10-K annual report for 2006
SX Exhibit 251 RP	Butson	Sirius Satellite Radio Inc. Form 10-Q quarterly report for Q1 2007
SX Exhibit 252 RP	Butson	XM Satellite Radio Holdings Inc. Form 10-Q quarterly report for Q1 2007

Index of SoundExchange Restricted Exhibits
Not included in Public Version

Exhibit No.	Sponsored By	Description
SX Exhibit 202 RR	Elbert	"XM Satellite Radio Technical Overview" slideshow presentation (XMCRB 0021578 et seq.)
SX Exhibit 204 RR	Wind	NARM survey data relied upon
SX Exhibit 205 RR	Ordover	Excerpts from Written Direct Testimony of George G. Strong Jr., and Music Choice Ex. 36
SX Exhibit 206 RR	Ordover	Excerpts from the Written Direct Testimony of David J. Del Beccaro
SX Exhibit 207 RR	Ordover	Music Choice Financials, 1996-2010 (Strong Dep. Ex. 10)
SX Exhibit 213 RR	Ciongoli	Universal Music Group US Only Income Statement, 1999-2006 Actuals
SX Exhibit 214 RR	Ciongoli	Universal Music Publishing Group, US - Publishing, Full Year Historical Results and Historical Overhead Expense, 1999-2006
SX Exhibit 239 RR	Butson	xSIRIUS.xls (PL, BS, CF, and Metrics tabs) from Sirius documents produced in native format
SX Exhibit 240 RR	Butson	Liquidity analysis current.xls (XM and SIRI tab) from Sirius documents produced in native format
SX Exhibit 241 RR	Butson	Music Royalties.xls (Summary tab) from Sirius documents produced in native format
SX Exhibit 242 RR	Butson	Debt.xls (Summary tab) from Sirius documents produced in native format
SX Exhibit 243 RR	Butson	Activation Revenue.xls (Summary tab) from Sirius documents produced in native format
SX Exhibit 244 RR	Butson	DTC Revenue.xls (Subs tab) from Sirius documents produced in native format
SX Exhibit 245 RR	Butson	OEM Revenue.xls (All OEM, Bundled, Subs, and Summary tabs) from Sirius documents produced in native format
SX Exhibit 246 RR	Butson	Retail Revenue.xls (all tabs) from Sirius documents produced in native format
SX Exhibit 247 RR	Butson	Special Markets Revenue.xls (Subs and Summary tabs) from Sirius documents produced in native format
SX Exhibit 248 RR	Butson	XM Satellite Radio Holdings Inc. Attachment 4(c)31 (XMCRB 00145552-7)
SX Exhibit 253 RR	Eisenberg	Amendment No. 3 to Sony BMG Digital Download Sales Agreement with Sprint Spectrum L.P. (Mar. 25, 2007)

SX Exhibit 254 RR	Eisenberg	Amendment No. 4 to the Nov. 5, 2004 letter agreement between Verizon and Sony BMG (Apr. 27, 2007)
SX Exhibit 255 RR	Herscovici	Sirius slideshow presentation "Wachovia Securities Nantucket Equity Conference" (SIR00010319 et seq.) (June 19, 2006)
SX Exhibit 256 RR	Eisenberg	Ringtones agreement between Sony BMG and Alltel Communications, Inc. (SE 0000617 et seq.) (Nov. 7, 2006)
SX Exhibit 257 RR	Eisenberg	Ringtones agreement between Sony BMG and Helio LLC (SE 0001138 et seq.) (Dec. 22, 2006)
SX Exhibit 258 RR	Eisenberg	Video license agreement between Sony BMG and Yahoo! Inc. (SE 0005328 et seq.) (June 16, 2005)

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

)	
In the Matter of)	
)	
ADJUSTMENT OF RATES AND TERMS)	Docket No. 2006-1 CRB DSTRA
FOR PREEXISTING SUBSCRIPTION)	
SERVICES AND SATELLITE DIGITAL)	
AUDIO RADIO SERVICES)	
)	

**DECLARATION AND RULE 11 CERTIFICATION OF
MICHAEL B. DESANCTIS**

I am counsel for SoundExchange, Inc. (“SoundExchange”) in Docket Nos. 2006-1 CRB DSTRA and 2005-5 CRB DTNSRA, and respectfully submit this declaration and certification pursuant to Rule 350.4(e)(1) per the terms of the Protective Order issued December 20, 2006 (“Order”).

1. I have reviewed the written rebuttal statement, designated testimony, and exhibits submitted by SoundExchange in this proceeding.
2. I have also reviewed the definitions and terms provided in the Order.
3. As I discuss below, and after consultation with my clients, portions of SoundExchange’s written rebuttal testimony, designated testimony, and exhibits contain information that is “Protected Material” as defined by the Order.
4. Such Protected Material includes, but is not limited to testimony and exhibits involving (a) contracts, contractual terms or contract strategy that are proprietary, not available to the public, commercially sensitive and, at times, are subject to express confidentiality provisions with third parties; and (b) highly confidential business information,

financial projections, financial data, and competitive strategy that are proprietary, not available to the public, and commercially sensitive.

5. If this commercial or financial information were to become public, it would provide an unfair competitive advantage to the witnesses' competitors and entities with whom they do business (some, but certainly not all, of whom are parties to this proceeding). Public disclosure of this information would place SoundExchange and those it represents at a significant commercial disadvantage and would seriously jeopardize their business interests.

6. Portions of the written direct statement and their accompanying exhibits submitted by SoundExchange clearly meet the definition of "Protected Material." Specifically, as summarized below, the following witnesses' statements and exhibits contain commercial and financial material that is proprietary, not known to the public and the disclosure of which would place SoundExchange and those it represents at a significant commercial disadvantage and would unfairly advantage other parties and third parties.

a. Some of the testimony of and exhibits sponsored by Sean Butson contain information marked Restricted by the Services pursuant to the Protective Order in this proceeding.

b. The statement of Charles Ciongoli contains detailed non-public financial information about certain 2006 costs incurred by Universal Music Group ("UMG") and Universal Music Publishing Group ("UMPG"). Mr. Ciongoli also sponsors exhibits which contain restricted financial information about UMG's and UMPG's income and expenses. The information in both the written testimony and the exhibits is at a level of specificity that is not disclosed to the public; if it were disclosed, it would competitively

disadvantage UMG and UMPG while providing a competitive advantage to other parties in the industry.

c. The statement of Mark Eisenberg, Executive Vice President of Sony BMG, contains detailed non-public commercial and financial information about Sony BMG's negotiated rates for various digital services and negotiated publisher rates for various digital services. In addition, Mr. Eisenberg's testimony contains confidential information regarding Sony BMG's gross margin on CD sales. Mr. Eisenberg also sponsors exhibits that contain confidential agreements for use of Sony BMG's sound recordings, the contents of which include information on rates and other contractual terms therein. None of this information is publicly known or available. Disclosure of the commercial and financial details contained in Mr. Eisenberg's testimony and exhibits would competitively disadvantage Sony BMG while providing its competitors with an unfair commercial advantage.

d. Some of the testimony of and exhibits sponsored by Bruce Elbert contain information marked Restricted by the Services pursuant to the Protective Order in this proceeding.

e. The statement of Steven Herscovici contains information regarding terms in current digital licenses between the record companies and various digital services and confidential financial information of the record companies. None of this information is publicly known or available. Disclosure of the commercial and financial details contained in Dr. Herscovici's testimony and exhibits would competitively disadvantage the record companies while providing their competitors with an unfair commercial advantage. Some of the testimony of and exhibits sponsored by Dr. Herscovici also

contain information marked Restricted by the Services pursuant to the Protective Order in this proceeding.

f. The statement of Janusz Ordover relies upon private digital license agreements and other contracts. In his testimony, Dr. Ordover discusses commercial and financial information about the rates for copyright licenses for digital distribution under recent voluntary agreements between record companies and service providers. Dr. Ordover also relies on confidential listenership information of the record companies. The information contained in this testimony and exhibits is not available to the public. If disclosed, this detailed commercial and financial information would competitively disadvantage the record companies while providing a commercial advantage to those they do business with and to their competitors. In addition, some of the testimony of and exhibits sponsored by Dr. Ordover contain information marked Restricted by the Services and by Music Choice pursuant to the Protective Order in this proceeding.

g. The statement of Michael Pelcovits relies on private digital license agreements and other contracts. In his testimony, Dr. Pelcovits discusses commercial and financial information about the rates for copyright licenses for digital distribution under recent voluntary agreements between record companies and service providers, and information concerning a record company's gross margin on CD sales. The information contained in this testimony and exhibits is not available to the public. If disclosed, this detailed commercial and financial information would competitively disadvantage the record companies while providing a commercial advantage to those they do business with and to their competitors. In addition, some of the testimony of and exhibits sponsored by Dr.

Pelcovits contain information marked Restricted by the Services and by Music Choice pursuant to the Protective Order in this proceeding.

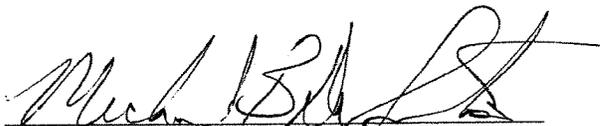
h. The testimony Yorum Wind contains confidential and proprietary market information of third parties that has not been made public. Public disclosure of such confidential information likely would competitively disadvantage such third parties. In addition, some of the testimony of and exhibits sponsored by Dr. Wind contain information marked Restricted by the Services pursuant to the Protective Order in this proceeding.

7. In addition to these written rebuttal statements and exhibits, SoundExchange also has submitted designated testimony from Docket No. 2005-1 CRB DTRA from economist Michael Pelcovits. This testimony and the accompanying exhibits include detailed discussion of commercial and financial information related to digital license agreements entered into by SoundExchange members. This testimony and accompanying exhibits were and remain Restricted in Docket No. 2005-1, and include information that is proprietary, not known to the public, and commercially sensitive. If disclosed, it would competitively disadvantage SoundExchange and the entities it represents and would provide an unfair competitive advantage to other parties and third parties.

8. The commercial and financial information from the written direct statement, designated testimony, and exhibits detailed above is proprietary, not known to the public, and commercially sensitive. It must be treated as "Protected Material" in order to prevent certain business and competitive harm that would result from the disclosure of such information while, at the same time, enabling SoundExchange to provide the Copyright Royalty Board with the most complete record possible on which to base its determination in this proceeding.

Pursuant to 28 U.S.C. §1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: July 24, 2007



Michael B. DeSanctis (DC Bar No. 460961)
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Counsel for SoundExchange, Inc.

Before the
COPYRIGHT ROYALTY JUDGES
 Washington, DC

_____))
 In the Matter of))
))
 ADJUSTMENT OF RATES AND TERMS))
 FOR PREEXISTING SUBSCRIPTION))
 SERVICES AND SATELLITE DIGITAL))
 AUDIO RADIO SERVICES))
 _____)

Docket No. 2006-1 CRB DSTRA

**SOUNDEXCHANGE REDACTION LOG FOR WRITTEN REBUTTAL STATEMENT,
 EXHIBITS, AND DESIGNATED TESTIMONY**

SoundExchange Written Rebuttal Statements and Exhibits

Witness	Pages, Exhibits	Description
Butson, Sean	Appendix F, Appendix G, SX Exhibit 239 RR, SX Exhibit 240 RR, SX Exhibit 241 RR, SX Exhibit 242 RR, SX Exhibit 243 RR, SX Exhibit 244 RR, SX Exhibit 245 RR, SX Exhibit 246 RR, SX Exhibit 247 RR, SX Exhibit 248 RR	Information marked as Restricted by the Services pursuant to the Protective Order in this proceeding
Ciongoli, Charles	Page 6, last paragraph; Page 7, first paragraph; Page 7, Figure 1; Page 8, second full paragraph; Page 9, Figure 2; Page 10, first paragraph (carried over from page 9); Page 10, Figure 3; Page 10, last paragraph; Page 11, first paragraph; Page 12, Figure 4 SX Exhibit 213 RR, SX	Restricted financial information concerning UMG record label expenditures and Universal Music Publishing expenditures

	Exhibit 214 RR	Restricted financial information concerning UMG record labels' and Universal Music Publishing Group's income and expenses
Eisenberg, Mark	<p>Page 5, table; Page 5, note 3; page 6, first paragraph (carried over from page 5); Page 6, table; Page 6, last paragraph (carried over onto page 7); Page 7, second full paragraph; page 10, last full paragraph; Page 11, first paragraph (carried over from page 10).</p> <p>Page 12, last paragraph</p> <p>SX Exhibit 253 RR, SX Exhibit 254 RR, SX Exhibit 256 RR, SX Exhibit 257 RR, SX Exhibit 258 RR</p>	<p>Restricted financial information concerning confidential agreements between SONY BMG and digital services and between music publishers and these same services.</p> <p>Restricted financial information concerning Sony BMG's gross margins and costs associated with the sales of CDs.</p> <p>Restricted commercial and financial information in agreements between Sony BMG and digital services for use of sound recordings</p>
Elbert, Bruce	SX Exhibit 202 RR	<p>All restricted information in the written testimony was marked as Restricted by the Services pursuant to the Protective Order in this Proceeding</p> <p>Information marked as Restricted by the Services pursuant to the Protective Order in this proceeding</p>
Herscovici, Steven	Paragraph 24, last sentence	Restricted information concerning financial terms contained in confidential agreements between record

	<p>Paragraph 29, fifth and sixth sentences</p> <p>Paragraph 73, third sentence</p> <p>SX Exhibit 255 RR</p>	<p>labels and the Services</p> <p>Restricted financial information concerning the terms of confidential agreements between record labels and digital services</p> <p>Restricted financial information concerning UMG's investments</p> <p>Information marked as Restricted by the Services pursuant to the Protective Order in this proceeding</p> <p>The remainder of the information marked as restricted was restricted by the Services pursuant to the Protective Order in this proceeding.</p>
Kessler, Barrie	None	
Mantis, George	None	
Ordover, Janusz	<p>Page 9, Table 1; paragraph 17; note 20, fourth sentence</p> <p>Note 20, second sentence</p> <p>SX Exhibit 205 RR, SX Exhibit 206 RR, SX Exhibit 207 RR</p>	<p>Restricted financial information concerning confidential agreements between record labels and various digital distribution services</p> <p>Restricted information concerning confidential internal Sony BMG survey data on listenership</p> <p>Information marked as Restricted by Music Choice pursuant to the Protective</p>

		<p>Order in this proceeding</p> <p>The remainder of the information marked as restricted was restricted by the Services pursuant to the Protective Order in this proceeding.</p>
Pelcovits, Michael	<p>Page 6, first paragraph (carried over from page 5); Page 6, first full paragraph</p> <p>Page 17, table; Page 18, first paragraph (carried over from page 17)</p> <p>Page 34, note 58</p>	<p>Restricted information concerning terms of confidential agreements between Sony BMG and digital services</p> <p>Restricted information concerning terms of confidential agreements between record labels and digital services</p> <p>Restricted financial information concerning Sony BMG's gross margins and costs associated with the sales of CDs.</p> <p>The remainder of the information marked as restricted was restricted by the Services pursuant to the Protective Order in this proceeding.</p>
Wind, Yoram (Jerry)	<p>Page 21 first paragraph (carried over from page 20), second paragraph; Page 22, Figure 9; Page 22, first paragraph; Page 23, Figure 10</p> <p>SX Exhibit 204 RR</p>	<p>Restricted confidential and proprietary market information of the National Association of recording Merchants</p> <p>Information marked as Restricted by the Services pursuant to the Protective Order in this proceeding</p>

		The remainder of the information marked as restricted was restricted by the Services pursuant to the Protective Order in this proceeding.
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SoundExchange Designated Testimony

Witness	Pages, Exhibits	Description
Bradley, Harold Ray	None	
Brooke, Jonatha	Designated prior oral testimony: May 17, 2006 trial transcript	Session was closed by the Court to the public per the Protective Order in effect in Docket No. 2005-1 CRB DTRA
Fink, Cathy	Designated prior written testimony: Page 11, second full paragraph, first and third sentences. Page 12, second full paragraph, third sentence. Designated prior oral	Restricted financial information concerning unit sales of CDs, protected under the Protective Order in effect in Docket No. 2005-1 CRB DTRA. Restricted financial information concerning the royalty fees received from SoundExchange, protected under the Protective Order in effect in Docket No. 2005-1 CRB DTRA. Session was closed by the

	<p>testimony: May 17, 2007 trial transcript</p>	<p>Court to the public per the Protective Order in effect in Docket No. 2005-1 CRB DTRA</p>
<p>Pelcovits, Michael</p>	<p>Designated prior written testimony:</p> <p>Page 4, table</p> <p>Page 6, first full paragraph, last paragraph</p> <p>Page 14, first paragraph, second sentence and last sentence carried over onto page 15</p> <p>Page 15, last paragraph, first sentence</p> <p>Page 28, last paragraph, carried over onto page 29.</p> <p>Designated exhibits to prior written testimony:</p> <p>SX Exhibit 001 RR, SX Exhibit 002 RR, SX Exhibit 003 RR, SX Exhibit 004 RR, SX Exhibit 005 RR, SX Exhibit 006 RR, SX Exhibit 007 RR, SX Exhibit 008 RR, SX Exhibit 008 RR, SX</p>	<p>Restricted information on fees that SONY BMG gets for its sound recordings and musical works in other digital markets.</p> <p>Restricted information concerning the current fee the SDARS pay for sound recordings</p> <p>Restricted commercially sensitive financial information on sources of SoundExchange's revenues</p> <p>Restricted information concerning the terms of agreements from the four major record companies for use of their sound recordings.</p> <p>Restricted information concerning the rates the record labels receive in agreements for use of their sound recordings.</p> <p>Restricted commercial and financial information contained in agreements between different labels and services for use of sound recordings</p>

	<p>Exhibit 010 RR, SX Exhibit 011 RR, SX Exhibit 012 RR, SX Exhibit 013 RR, SX Exhibit 014 RR, SX Exhibit 015 RR, SX Exhibit 016 RR, SX Exhibit 017 RR</p> <p>SX Exhibit 026 RR</p>	<p>Information restricted by a Webcaster under the Protective Order in effect in Docket No. 2005-1 CRB DTRA. (Also submitted by XM in 2006-1: XMCRB 00033076)</p> <p>Certain information designated as Restricted by other parties in Docket No. 2005-1 CRB DTRA was redacted pursuant to the terms of the Protective Order in that proceeding.</p>
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CERTIFICATE OF SERVICE

I, Albert Peterson, hereby certify that a copy of the public version of the foregoing filing has been served this 27th day of July, 2007 by hand delivery to the following persons:

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