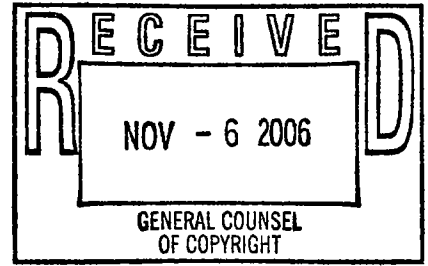
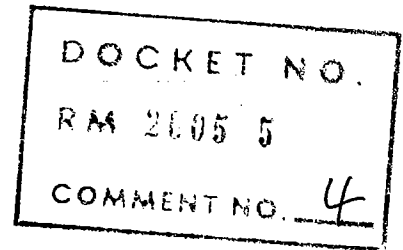


Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.



)
In the Matter of
)
Retransmission of Digital
)
Broadcast Signals Pursuant
)
to the Cable Statutory License
)

Docket No. RM 2005-5



COMMENTS OF NATIONAL PUBLIC RADIO

In response to the Copyright Office's ("Office") Notice of Inquiry, 71 Fed. Reg. 54948 (September 20, 2006) ("NOI"), National Public Radio, Inc. ("NPR") hereby submits its comments regarding the retransmission of digital broadcast signals pursuant to the cable statutory license. NPR generally endorses the joint comments submitted by the Joint Sports Claimants, the Program Suppliers, and other copyright owners which have interests in the cable retransmission of digital television signals. NPR's comments are specifically directed to the retransmission of digital audio broadcast ("DAB") signals and the portion of the NOI devoted to those cable carriage issues.

NPR is a non-profit membership organization of more than 800 noncommercial educational radio stations nationwide. NPR produces and distributes such noncommercial educational programming as *All Things Considered*, *Morning Edition*, and *Talk Of The Nation*.

NPR also operates the Public Radio Satellite Interconnection System and provides representation and membership services to its member stations.

**The Office Should Clarify its Regulations to
Expressly Encompass The Retransmission of Digital Audio Broadcast Signals**

In the NOI, the Office solicits comment on the transition of terrestrial radio stations to digital audio broadcasting ("DAB") using in-band, on-channel ("IBOC") technology and the effect that transition may have on the rules governing the SOAs.¹ As the NOI observes, IBOC technology enables terrestrial radio stations to improve the sound fidelity and reception quality of the services they offer. NOI at 54,951. *See also In the Matter of Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service*, 17 FCC Rcd 19990 (2002). In addition, through NPR's pioneering efforts, the IBOC DAB technology now provides individual terrestrial radio stations with the flexibility to offer multiple digital services while continuing to offer a primary analog service, all utilizing the same spectrum they were previously licensed to use and a small portion of otherwise unused and unusable adjacent spectrum. *See Public Notice, Commission Clarifies Policy Regarding Multiple Audio Streams in IBOC Transmissions*, 20 FCC Rcd. 5136 (2005).

While the NOI correctly notes that the digital radio transition is not the subject of a government mandate, as there is for the digital television transition, that distinction reflects a difference in spectrum use that does not undermine the applicability of Section 111 of the Copyright Act. Television stations are required to convert to digital broadcasting because each

¹ Specifically, the Notice asks "what changes in our rules and the SOAs are necessary to accommodate the secondary transmission of digital audio signals by cable systems. How should cable systems report the retransmission of digital audio multicast streams? Will cable subscribers need specialized equipment or set top boxes to receive these digital radio signals? If so, how would this affect a cable operator's gross receipts calculations?" NOI at 54,951.

station was given an addition 6 MHz of spectrum to permit simultaneous analog and digital transmissions during the digital television transition. A mandatory conversion deadline was necessary so that the Federal government could recoup one of the 6 MHz spectrum allotments temporarily "loaned" to each station. With IBOC technology, there was no comparable "loan" and recoupment of spectrum necessitating a conversion mandate.

Notwithstanding this distinction, the digital transition of radio and television are remarkably comparable for Section 111 purposes. Thus, individual television and radio stations possess the capability of, and are, transmitting multiple digital services, while simulcasting their existing analog services. Both possess the capability of offering ancillary services, such as program-related textual material. Accordingly, while the Office's rules distinguish between the retransmission of television and radio stations in a number of significant respects,² the Office can generally follow the same approach in revising its rules to accommodate the digital radio transition.

As a threshold matter, cable systems historically have marketed their retransmission of terrestrial radio stations on either an all-band or select signal basis. *See 31 C.F.R. § 201(e)(10)*. Since the DAB transition is at an early stage, the existing technical means and options for retransmitting radio station signals will likely continue for the foreseeable future. Because of the permissive nature of the digital radio transition, it may be many years before the Commission authorizes the termination of analog radio transmissions, let alone mandating that termination. In the meantime, the equipment used to retransmit analog radio signals will continue to retransmit those signals. With respect to digital radio signals, while the equipment to process

² For instance, the Distant Signal Equivalent provisions only apply to television. *See 31 C.F.R. § 201.17(f)*.

individual digital radio signals is not yet available, the basic technology exists, and until such equipment is developed, retransmission on an all-band basis would permit the pass through of digital multicast signals.

Thus, cable systems should continue to state whether radio station signals were carried on an all-band retransmission basis or as separate and discrete signals. *See* 37 C.F.R. § 201.17(e)(10)(ii)(B), (C). In addition, cable systems should include in their gross receipts any revenue associated with the retransmission of radio services, including any equipment a subscriber must rent or purchase to receive such services. *See* 37 C.F.R. § 201.17(b)(1). Finally, distinct digital services should be treated as separate retransmissions under the regulations, and program related material should be included under the Section 111 license.

As the digital radio transition evolves, there may be a need to revisit the rules governing cable SOAs. For present purposes, however, it is sufficient to clarify that retransmission of digital radio signals is covered by the Section 111 license and to confirm the applicability of the rules governing the reporting of such retransmissions.

Conclusion

For the foregoing reasons, NPR urges the Copyright Office to clarify its regulations to expressly encompass the retransmission of digital audio broadcast signals.

Respectfully submitted,

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