

Before the  
COPYRIGHT ROYALTY BOARD  
LIBRARY OF CONGRESS  
Washington, D.C.

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In the Matter of: )

DTNSRA )  
Digital Performance Right in Sound )  
Recordings and Ephemeral Recordings )  
For a New Subscription Service )  
\_\_\_\_\_ )

DOCKET NO. 2005-5 CRB

**INTRODUCTORY MEMORANDUM  
TO THE WRITTEN DIRECT  
STATEMENT OF SIRIUS SATELLITE RADIO INC.**

Sirius Satellite Radio Inc. ("Sirius") submits this introductory memorandum of its written direct statement for the convenience of the Copyright Royalty Judges. This proceeding concerns, among other things, the sound recording fees applicable to the service Sirius provides (the "Sirius/Dish Service") by transmitting certain channels of its audio programming service over EchoStar's Dish Network satellite television service ("Dish Network"). Sirius presents the testimony of Douglas Kaplan and Steve Blatter and joins with XM Satellite Radio Inc. in presenting the testimony of Dr. Tasneem Chipty.

Sirius proposes a fee based on Dr. Chipty's analysis equal to \$0.001235 per subscriber per month for the performance and ephemeral recording rights at issue in this proceeding. The proposed fee will apply from the inception of the service through the term applicable to this proceeding. For years after 2008, Sirius proposes that the rate should be adjusted by the Producer Price Index for Cable Networks. Sirius also proposes payment terms and notice and recordkeeping terms.

Sirius' witnesses testify as follows:

**Douglas A. Kaplan**, Sirius' Senior Vice President for Business Affairs and Business Development, Entertainment and Sports, testifies that primary business of Sirius is its subscription Satellite Digital Audio Radio Service (the "SDARS Service"), offering more than 130 channels of music, sports, news, talk and entertainment programming. He also testifies that the Sirius/Dish Service is provided by Sirius to expose the Sirius SDARS Service to potential new subscribers. Mr. Kaplan testifies that [ ]

[ ] Mr. Kaplan also explains that, because sound recording copyright owners are compensated for the SDARS Service, any obligation to pay royalties for the Sirius/Dish Service would be double counting. Mr. Kaplan will describe Sirius' proposed fee and terms.

**Steve Blatter** is Senior Vice President for Music Programming at Sirius, supervising employees who create and maintain the 64 Sirius music channels. His 20+ year career has been in radio programming and marketing at the local and national levels. He has had extensive dealings with record companies as they seek radio air time to promote their sales. He will testify that Sirius is part of the radio industry, but its music channels (i) face additional and unique challenges, (ii) provide enormous added value to listeners, and (iii) confer valuable promotional benefits on record companies. He will explain what Sirius must do to select, develop, test, market, and implement its 64 music channels, showing that the Sirius presentations are highly creative in themselves and make available a great deal of music that listeners otherwise would never encounter via

the inherently limited play lists of ordinary terrestrial radio. He also will discuss how record companies covet the promotional benefits of Sirius air time and make extensive efforts to persuading Sirius to play their music – which they provide to Sirius for free.

**Dr. Tasneem Chipty**, a Vice President at CRA International, analyzes what would be a reasonable royalty in this proceeding to be paid in a competitive market by a willing music programming service to a willing seller, for the provision of digital audio channels to be offered as part of a bundled package of channels by a television service to its residential consumers. Specifically, Dr. Chipty estimates both a reasonable royalty rate and a reasonable attributed revenue base.

With regard to the reasonable royalty rate, Dr. Chipty analyzes three potential benchmarks available for determining the rate in this proceeding: ASCAP and BMI's recent proposals to Sirius for use of musical works rights in public performances on DISH, Music Choice's rate with BMI, and the pre-existing digital audio radio subscription services rate applicable to pre-existing subscription services. She then considers adjustments to account for material differences between the benchmarks and the XM and Sirius services at issue in this proceeding. Upon consideration of available benchmarks, Dr. Chipty concludes that a competitive rate under the willing buyer – willing seller standard ranges between [ ] of revenues earned for providing a bundle of audio music channels delivered over a television service.

With regard to the reasonable attributed revenue base, Dr. Chipty testifies that Sirius' and XM's core business is subscription satellite radio direct to the consumer, and that the significance to Sirius and XM of carriage on satellite television stems from its subscriber acquisition value in attracting new subscribers to that core line of business.

Dr. Chipty concludes that consideration of the terms of Sirius and XM's agreements with DISH and DirecTV suggests that the actual value associated with the agreements is difficult to interpret. She also testifies that these terms conflate the direct value of providing music content to a television system with the promotional value of carriage on a television system to Sirius and XM's satellite radio services.

Accordingly, Dr. Chipty estimates an attributed revenue base for Sirius and XM based on the revenues earned by Music Choice, one of the pre-existing services, from cable operators for provision of a bundle of audio music channels to be sold as part of a larger package of video programming. She concludes that these attributed revenues based on Music Choice provide an upper bound on a reasonable revenue base for Sirius on the DISH Network and XM on DirecTV. Dr. Chipty testifies that, at most, these XM and Sirius services should generate \$0.0233 per subscriber per month for a bundle of audio music channels for distribution to residential subscribers.

Using the lower end of her proposed royalty rate and her attributed revenue base, Dr. Chipty calculates a per subscriber royalty fee of 0.1235 cents per month. She testifies that, adjusted annually for inflation using the Cable Networks Producer Price Index, such a per subscriber fee is in the range she estimates for a reasonable royalty. Dr. Chipty

testifies that her analysis of both the reasonable royalty rate and the reasonable attributed revenue base is conservative, and on balance overstates the appropriate fee.

Respectfully submitted,



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