

PUBLIC VERSION

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

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

WRITTEN DIRECT STATEMENT OF SOUNDEXCHANGE, INC.

Volume 1 of 7

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October 30, 2006

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for the Written Direct Statement of SoundExchange, Inc.
2006-1 CRB DSTR

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**INTRODUCTORY MEMORANDUM TO THE
WRITTEN DIRECT CASE OF SOUNDEXCHANGE, INC.**

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

CONTENTS OF SOUNDEXCHANGE’S WRITTEN DIRECT CASE

Volume 1 contains: (A) this Introductory Memorandum; (B) the Rate Proposal for SoundExchange, as required by 37 C.F.R. § 351.4(b)(3); (C) an Index of SoundExchange’s Written Direct Testimony; (D) an Index of the Exhibits to SoundExchange’s Written Direct Testimony; and (E) a Certificate of Service. Pursuant to 37 C.F.R. § 350.4(a), § 351.4, and the Copyright Royalty Board’s Orders dated August 18, 2006 and September 28, 2006, SoundExchange is filing an original, five copies, and an electronic copy of the materials in Volume 1.

Volume 2 contains the written direct testimony of SoundExchange’s fifteen witnesses. Pursuant to 37 C.F.R. § 350.4(a), § 351.4, and the Copyright Royalty Board’s Orders dated

August 18, 2006 and September 28, 2006, SoundExchange is filing an original, five copies, and an electronic copy of the materials in Volume 2 (with restricted information redacted), which SoundExchange will seek leave to amend upon entry of a protective order. SoundExchange is serving Volume 2 (with restricted information unredacted) on opposing outside counsel.

Volume 3 contains SoundExchange's Exhibit Numbers SX 001 DP through SX 006 DP. None of these exhibits contains any restricted or confidential information. (The suffix "DP" refers to "Direct Public."): Pursuant to 37 C.F.R. § 350.4(a), § 351.4, and the Copyright Royalty Board's Orders dated August 18, 2006 and September 28, 2006, SoundExchange is filing an original, five copies, and an electronic copy of the materials in Volume 3.

Volume 4 contains the designated written direct testimony, oral direct testimony, and oral cross-examination of SoundExchange witness Michael Pelcovits in Docket No. 2005-1. Pursuant to 37 C.F.R. § 350.4(a), § 351.4(b)(2), and the Copyright Royalty Board's Orders dated August 18, 2006 and September 28, 2006, SoundExchange is filing the original, five copies, and an electronic copy of the testimony in Volume 4 (excluding materials that were designated as Restricted in Docket No. 2005-1), which SoundExchange will seek leave to amend upon entry of a protective order. SoundExchange is serving Volume 4 (including the Restricted materials) on opposing outside counsel.

Volume 5 contains the exhibits to the designated oral testimony of Michael Pelcovits from Docket No. 2005-1. Pursuant to 37 C.F.R. § 350.4(a), § 351.4(b)(2), and the Copyright Royalty Board's Orders dated August 18, 2006 and September 28, 2006, SoundExchange is filing the original, five copies, and an electronic copy of the exhibits in Volume 5 (excluding materials that were designated as Restricted in Docket No. 2005-1), which SoundExchange will

seek leave to amend upon entry of a protective order. SoundExchange is serving Volume 5 (including the Restricted materials) on opposing outside counsel.

Volume 6 contains the designated written direct testimony, oral direct testimony, and oral cross-examination of SoundExchange witness Barrie Kessler in Docket No. 2005-1. Pursuant to 37 C.F.R. § 350.4(a), § 351.4(b)(2), and the Copyright Royalty Board's Orders dated August 18, 2006 and September 28, 2006, SoundExchange is filing the original, five copies, and an electronic copy of the testimony in Volume 6 (excluding materials that were designated as Restricted in Docket No. 2005-1), which SoundExchange will seek leave to amend upon entry of a protective order. SoundExchange is serving Volume 6 (including the Restricted materials) on opposing outside counsel.

Volume 7 contains the exhibits to the designated written and oral testimony of Barrie Kessler from Docket No. 2005-1. Pursuant to 37 C.F.R. § 350.4(a), § 351.4(b)(2), and the Copyright Royalty Board's Orders dated August 18, 2006 and September 28, 2006, SoundExchange is filing the original, five copies, and an electronic copy of the exhibits in Volume 7 (excluding materials that were designated as Restricted in Docket No. 2005-1), which SoundExchange will seek leave to amend upon entry of a protective order. SoundExchange is serving Volume 7 (including the Restricted materials) on opposing outside counsel.

Volume 8 contains SoundExchange's Exhibit Numbers SX Ex. 101 DR to SX Ex. 110 DR. Each of these exhibits contains restricted and confidential information. (The suffix "DR" refers to "Direct Restricted."). In the absence of a protective order, SoundExchange is not filing Volume 8 with its written direct statement, but will seek leave to amend upon entry of a protective order. SoundExchange is serving Volume 8 (including the restricted materials) on opposing outside counsel.

SUMMARY OF THE WRITTEN TESTIMONY OF SOUNDEXCHANGE’S WITNESSES

SoundExchange’s written direct case consists of the testimony of the following expert and fact witnesses.

A. Expert Witnesses

SoundExchange is submitting expert reports from one media and technology expert, two economists, one Chartered Financial Analyst, and one survey expert in its direct case filing.

James Griffin is a leading expert on digital content delivery. He is Managing Director of OneHouse LLC, a consulting company focused on the intersection of media and technology issues and their exploitation in the marketplace. Mr. Griffin will give a technological introduction to the two satellite radio companies, XM Satellite Radio (“XM”) and Sirius Satellite Radio (“Sirius”), as well as the pre-existing services that provide audio transmissions over cable and satellite television. His testimony will discuss the developments in technology that led to satellite radio and describe how satellite radio’s geographic coverage, the depth of its music selection, its ease of use, and its increased interactivity distinguish it from terrestrial radio.

Mr. Griffin will explain that the primary draw of satellite radio is music. He will testify that, by seeking to provide consumers with as tailored a music listening experience as possible, the satellite radio companies create option value (the ability to listen to music on demand) in their music, making it more valuable to consumers and making copyright holders more deserving of compensation. He will then explain that, in today’s music marketplace, sound recording rights holders must recoup their costs from many streams of distribution. Mr. Griffin will testify that if music rights holders are not compensated, consumers will substitute away from other market-priced services to satellite radio because it can offer a comparable music value for an artificially low price. Finally, Mr. Griffin will testify that, with their low marginal cost structure,

the high penetration they will obtain through deals with car manufacturers and others, and their multiple revenue streams, the companies' futures are bright.

Yoram Wind, Ph.D., is Lauder Professor and Professor of Marketing at the Wharton School at the University of Pennsylvania. Dr. Wind will testify regarding a survey of 428 individuals who are current satellite radio subscribers or who are considering subscribing to the service within 30 days. Dr. Wind will explain that the primary objective of the survey was to determine the value of satellite radio music programming to XM and Sirius subscribers and potential subscribers, and that a secondary objective was to determine music programming's value relative to other programming.

Dr. Wind, who designed the survey, will describe how it was conducted in double-blind fashion by trained interviewers in 24 randomly selected malls around the country. He will describe the survey's use of multiple measures to determine the value of music and other types of programming to satellite radio. Dr. Wind will explain that the survey employed open-ended questions, constant sum questions which require a respondent to allocate 100 points among various choices to specify the value of each choice to the respondent, and conjoint analysis which measures how consumers value different aspects of the same good or service.

Dr. Wind will testify that, by every measure in the survey, respondents rated music programming as substantially more valuable than any other aspect of the satellite radio service. He will explain that, among other conclusions, he found that respondents would be three times as likely to cancel their subscription if satellite radio lacked music, as compared to lacking any other type of programming; that respondents cited music five times more than any other programming type as the programming that caused them to subscribe to the service; that respondents listen to music four times more than any other programming type; and that

respondents rate music as being more than three times as important as any other programming type.

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. Mr. Butson will offer an analysis of the SDARS industry and of XM and Sirius. He will conclude that both are strong companies, selling a popular product, with encouraging futures.

Mr. Butson will provide a financial analysis of each of the SDARS, supported by financial modeling. He will review the SDARS' revenue sources and cost structure, specifying which particular revenues and costs are key to their continued success. He will provide a balance sheet analysis for each SDARS. He will explain the basis for his projections that each SDARS will continue its rapid growth, and will offer projections based on revenue, EBITDA, net income, and free cash flow. Finally, he will provide a projected valuation of the two SDARS.

Mr. Butson's testimony will further explain that, because of the SDARS' relatively high fixed costs, customer growth is key to their continued success, and he will offer growth projections based on his analysis showing that the SDARS will soon become profitable. Mr. Butson will testify that the SDARS also benefit from high barriers to entry that prevent or deter other potential competitors from offering comparable services.

Ultimately, Mr. Butson will conclude that the SDARS can afford SoundExchange's rate proposal without disruption to their financial structure or to the industry.

Michael Pelcovits, Ph.D., is a principal of the consulting firm Microeconomic Consulting & Research Associates, Inc. Dr. Pelcovits will offer two methods to validate SoundExchange's

rate for the SDARS, and will also validate SoundExchange's rate for the Preexisting Services ("PES"). Dr. Pelcovits first will testify that all digital services are, to greater or lesser degrees, substitutes for one another. Thus, he will conclude that below-market rates in this regulated setting will have harmful consequences to other distributors of music in digital form, to the record labels, and ultimately to consumers. Second, he will explain that there is no one correct method of establishing rates that satisfy the statutory criteria and, therefore, the Board should consider various kinds of evidence and multiple economic approaches in evaluating the parties' rate proposals.

Dr. Pelcovits will evaluate the rate proposal in light of rates paid by the SDARS for non-music content. He will explain that the amount the SDARS pay for content is a function of the number of customers that the content is expected to draw to the service. Therefore, he will analyze the SDARS' content deal about which the most public information exists -- Sirius's deal with Howard Stern. Dr. Pelcovits will testify that Sirius paid Stern approximately 50% of the revenue that it anticipated collecting from the customers Stern attracted to Sirius. Dr. Pelcovits will conclude that an analogous figure based on the customers that music brings to the services would translate to a royalty rate for SoundExchange of approximately 24.5% of revenue or \$2.94 per subscriber per month in 2012, the final year of the licensing period.

Dr. Pelcovits then will evaluate SoundExchange's rate proposal by applying economic game theory. Dr. Pelcovits will show that the SDARS in 2012 will earn a surplus of approximately \$4.67 per subscriber per month (stated in 2007 dollars). He then will divide that surplus among the SDARS and all of their various content utilizing a well-accepted modeling technique called a "Shapley" solution to cooperative game theory. He will testify that the Shapley solution is the best available method to divide the SDARS' surplus in a manner

consistent with the four statutory factors set out in 17 U.S.C. § 801(b)(1) (the “Section 801(b)(1) factors”). Dr. Pelcovits will show that the model predicts sound recording copyright owners receiving approximately 62% of the surplus generated by each of the SDARS in 2012. That translates into a royalty rate of \$2.90 per subscriber per month, or 24% of revenue.

Ultimately, Dr. Pelcovits will conclude that both modeling exercises support SoundExchange’s proposed 2012 rate of the greater of \$2.75 per subscriber per month or 23% of revenue. He will testify that SoundExchange’s proposal to reduce the rates from the 2012 level to the greater of \$1.10 per subscriber per month or 10% of revenue in the first year of the rate period is consistent with the SDARS’ smaller surplus in those years, and with the fourth Section 801(b)(1) factor.

Dr. Pelcovits’ testimony will conclude with an analysis of the rates SoundExchange has proposed for the PES. By adjusting the rate proposed by SoundExchange in Docket No. 2005-1 CRB DTRA, he will conclude that an appropriate royalty rate for the PES in 2012 based on this analysis would be the greater of 30% of revenue received by the PES or \$.25 per subscriber per month for every customer that subscribes to the underlying cable or satellite television service.

Janusz Ordover, Ph.D., is a professor of economics at New York University, and former Deputy Assistant Attorney General for the Economics at the Antitrust Division of the United States Department of Justice. Dr. Ordover will explain the role of pricing in economic choices and will analyze the four Section 801(b)(1) factors in light of that explanation.

Dr. Ordover will begin by analyzing the role that pricing plays in the allocation of resources, and by explaining that market pricing leads to supply and demand decisions that maximize society’s economic welfare. He will then apply these general principles to sound recording copyrights and will explain that the most efficient way to price them is so that the

customer is charged an amount equal to the value the customer places upon the good. He will testify that, because music is the principal and most valuable content provided over satellite radio, he would expect that sound recording copyright holders would obtain a substantial portion of the revenue obtained from the SDARS' customers in an open market transaction.

Dr. Ordover next will explain that rates negotiated in the open market for the blanket use of sound recordings is, in this case, an appropriate measure of royalty rates that satisfy the Section 801(b)(1) factors. He will testify that market-based rates best maximize the availability of creative works to the public and, almost by definition, provide a "fair" return for both buyer and seller under existing economic conditions. Dr. Ordover will explain that functioning markets also are the best vehicle for setting prices that reward risk and technical contribution and assure that parties to a transaction recover their costs, and that the graduated implementation of SoundExchange's rate proposal assures against any potential disruption to the industries. He will testify that the fact that analogous blanket licenses for sound recordings are negotiated in the marketplace to the satisfaction of both buyers and sellers shows that this is not a case involving market failure in which rates would have to be adjusted upward or downward under the Section 801(b)(1) factors. According to Dr. Ordover, the current economic conditions do not require the Copyright Royalty Judges to create subsidies and, instead, the Judges should attempt to set rates that mimic marketplace rates.

Dr. Ordover then will address marketplace rates in unregulated markets for music and other content. He first will analyze the prices that satellite television systems pay for content. He will explain that these benchmarks are relevant because the DBS television satellite companies have business models and capital structures that are roughly comparable to those of the SDARS. Dr. Ordover then will review other digital music distributors that purchase sound

recordings in marketplace transactions and will note that these digital music distribution businesses pay approximately 50% of the revenue they receive for sound recording licenses. Based on these benchmarks, and after reviewing the benchmarks and surplus analysis performed by Dr. Pelcovits, Dr. Ordover will conclude that SoundExchange's proposed rate, which is phased in and reaches a maximum of the greater of \$2.75 or 23% of revenue in 2012, is fully consistent with the Section 801(b)(1) factors.

B. Fact Witnesses

Edgar Bronfman, Jr. is the Chairman and Chief Executive Officer of Warner Music Group Corp. ("WMG"). Mr. Bronfman will recount the risks that he and his investor partners faced when they purchased WMG in 2003. Mr. Bronfman will discuss the fundamental importance of ensuring that the royalty rates for satellite services reflect the fair value of copyrighted sound recordings and that the rates not subsidize the satellite services, given the satellite services' payment of fair value in the marketplace for other non-music content. He next will explain why the rates for the satellite services should not be discounted to reflect any alleged similarity to terrestrial radio or meaningful promotional effect on sales of recorded music. Finally, Mr. Bronfman will describe the likely impact of this proceeding both by directly determining revenue streams from satellite services and by setting a benchmark that could affect other transactions.

Charles Ciongoli is the Executive Vice President and Chief Financial Officer of Universal Music Group ("UMG"), the world's largest record company. He will discuss the significant costs and investments that the major record companies make every year to create and popularize the sound recordings that are exploited by the satellite radio services and services delivering music over cable and satellite television.

Lawrence Kenswil is the President of Universal eLabs, a division of UMG. Mr. Kenswil will explain Universal's view of the marketplace for the electronic distribution of music, including the rapid development of wireless networks and the premium that mobile music services pay to copyright owners in the marketplace. He will also describe UMG's marketplace agreements with other digital music services, and how these agreements reflect the value of UMG's sound recordings.

Mark Eisenberg is Senior Vice President, Business and Legal Affairs, Global Digital Business Group, at SONY BMG Music Entertainment ("SONY BMG"). Mr. Eisenberg will provide a comprehensive overview of SONG BMG's approach to licensing digital music services. As part of that approach, he will explain why satellite radio is not promotional and why any alleged promotional effect should have no impact on the appropriate royalty rate. Finally, Mr. Eisenberg will provide an overview of the terms of SONG BMG's marketplace agreements.

Michael Kushner is the Senior Vice President of Business and Legal Affairs at the Atlantic Recording Corp., which is part of WMG. Mr. Kushner will describe the financial risks and challenges faced by all record companies, including the substantial investment in finding, developing, and promoting talented artists. He will further discuss the reasons why, with sales of CDs in decline, these risks and challenges are greater now than ever before. Mr. Kushner will also provide an overview of the functions of a record label, showing the extensive investment of time and money that goes into making a single recording project, the vast majority of which ultimately fail to break even.

David Hughes is the former Vice President, Technology Strategies and Digital Policy at SONY BMG, and currently is Senior Vice President of Technology for the Recording Industry Association of America. Mr. Hughes will discuss some of the recording industry's many

technological contributions to the digital distribution of sound recordings. He will describe many of the ways in which the recording industry is responsible for essential technical infrastructures that support the digital marketplace and have made possible the opening of exciting new markets and media.

Edward Chmelewski is the President and co-founder of Blind Pig Records, a Blues label. His testimony will describe some of the challenges that independent record labels face in today's marketplace. He will also describe the contributions that Blind Pig makes to the creation of sound recordings, as well as the substantial costs it incurs and risks it takes each time it releases an album. His testimony will discuss the decline in CD sales that Blind Pig has experienced and how this impacts the company's ability to create sound recordings. He will explain that new revenue streams, such as the royalty at issue here, are critical to making niche musical genres available to the public.

Dan Navarro is a recording and performing artist who releases albums on his own label, Red Hen Records. He will describe the hard work that artists undertake to create sound recordings, and will discuss the costs, risk and creative contribution of music artists. He will also explain that the royalties at issue in this proceeding are an important new source of revenue for recording artists.

Barrie L. Kessler is Chief Operating Officer of SoundExchange. Her testimony will describe SoundExchange's royalty collection and distribution operations, explain the importance of full and accurate data for licensees, and discuss why SoundExchange should remain the sole collection and distribution agent. She will also explain why neither the Sirius-EchoStar service nor the Capstar service should be entitled to the rates available for pre-existing services.

Simon Renshaw is the President of Strategic Artist Management. His testimony will explain that, although XM and Sirius rely on artists' sound recordings for essential content for their programming, the satellite radio services are not important parts of recording artists' promotional campaigns. He will also explain that he has seen no evidence of increased sales from artists' appearances on the satellite radio services.

Respectfully submitted,

By 

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Counsel for SoundExchange, Inc.

Dated: October 30, 2006

§ 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) January 1, 2007-December 31, 2007:

i) 10% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of services pursuant to the statutory license set forth in 17 U.S.C. § 114(j)(10); or

ii) \$1.10 per month per Subscription.

b) January 1, 2008-December 1, 2008:

i) 12% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of services pursuant to the statutory license set forth in 17 U.S.C. § 114(j)(10); or

ii) \$1.30 per month per Subscription.

c) January 1, 2009-December 31, 2009:

i) 15% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of services pursuant to the statutory license set forth in 17 U.S.C. § 114(j)(10); or

ii) \$1.60 per month per Subscription.

d) January 1, 2010-December 31, 2010:

i) 18% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of services pursuant to the statutory license set forth in 17 U.S.C. § 114(j)(10); or

ii) \$1.95 per month per Subscription.

e) January 1, 2011-December 31, 2011:

i) 20% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of services pursuant to the statutory license set forth in 17 U.S.C. § 114(j)(10); or

ii) \$2.35 per month per Subscription.

f) January 1, 2012-December 31, 2012:

i) 23% of all revenue paid or payable to the SDARS, excluding only revenues that are entirely unrelated to the provision of services pursuant to the statutory license set forth in 17 U.S.C. § 114(j)(10); or

ii) \$2.75 per month per Subscription.

2) Subscription. For purposes of the calculation of the royalty amount set out in (1) above, a “subscription” means receipt by an SDARS customer of the SDARS service on a device for all or any part of the month. A customer receiving the service over more than one device is receiving more than one subscription, and a customer receiving service for free (*e.g.*, during a free trial period) also is receiving a subscription.

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 and Sirius, to the extent those services are making digital audio transmissions of sound recordings as defined in § 114(j)(10). Any other services offered by either entity shall not be covered by the rates set forth in this proposal.

Other Preexisting Subscription Services (“PES”)

Each transmitting entity providing PES 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 (2) below:

a) January 1, 2008-December 31, 2008:

i) 15% of all revenue paid or payable to the PES that is attributable to the PES Service; or

ii) \$.05 per month for each person who subscribes to the underlying cable or satellite television Service.

b) January 1, 2009-December 31, 2009:

i) 18.75% of all revenue paid or payable to the PES that is ; or

ii) \$.10 per month for each person who subscribes to the underlying cable or satellite television Service.

c) January 1, 2010-December 31, 2010:

i) 22.5% of all revenue paid or payable to the PES that is attributable to the PES Service; or

ii) \$.15 per month for each person who subscribes to the underlying cable or satellite television Service.

d) January 1, 2011-December 31, 2011:

i) 26.25% of all revenue paid or payable to the PES that is attributable to the PES Service; or

ii) \$.20 per month for each person who subscribes to the underlying cable or satellite television Service.

e) January 1, 2012-December 31, 2012:

i) 30% of all revenue paid or payable to the PES that is attributable to the PES Service; or

ii) \$.25 per month for each person who subscribes to the underlying cable or satellite television Service.

2) Subscriber. For purposes of the calculation of the royalty amount set out in (1) above, a “person who subscribes to the underlying cable or satellite television Service” means a person who subscribes for all or for any part of the month, or to whom the Service is otherwise delivered without a fee (*e.g.*, during a free trial period). When the music service is provided only over a particular tier of the service (*e.g.*, a digital or premium tier), a “person who subscribes to the underlying cable or satellite television Service” means a person who subscribes to that tier of the service, and not a person who subscribes to a different tier of service and does not receive any music service.

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) Allocation of Royalty Payments. To the extent that more than one digital audio service is providing digital audio services to the same underlying cable or satellite television service (under other section 114 licenses or otherwise), PES Services subject to this statutory license will pay a proportionate share established by a ratio of the number of channels the PES Service is offering divided by the total number of channels of digital audio services offered on the underlying cable or satellite television service.

5) 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 PES 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.

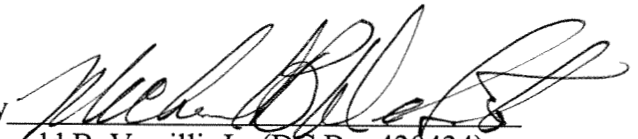
6) Services Covered. For purposes of this section, PES Services shall include the services offered by Muzak and Music Choice, to the extent those services are making digital audio transmissions of sound recordings that meet the statutory requirements of 17 U.S.C. § 114(j)(11), but shall not include any other services provided by these or any other company.¹

II. TERMS

SoundExchange proposes that many, but not all of the terms of the current regulations, 37 C.F.R. Part 262, be maintained in their current form. SoundExchange proposes those changes to the current regulations described in the testimony of Barrie Kessler, as well as all such changes needed to implement the rate proposal discussed above. 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 if warranted by the record.

¹ To the extent the Board rules that DMX is a PES subject to this rate, it too is included in this rate proposal.

Respectfully submitted,

By 

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Dated: October 30, 2006

Index of Witness Statements

Tab	Witness	Title
1	James Griffin	Managing Director, OneHouse LLC
2	Yoram (Jerry) Wind	Lauder Professor of Marketing, Wharton School of Business, University of Pennsylvania
3	Sean Butson	Consultant and Chartered Financial Analyst
4	Michael Pelcovits	Principal, Microeconomic Consulting & Research Associates, Inc.
5	Janusz Ordover	Professor of Economics and former Director of the Masters in Economics Program at New York University
6	Edgar Bronfman, Jr.	Chairman and Chief Executive Officer, Warner Music Group Corp.
7	Charles Ciongoli	Executive Vice President and Chief Financial Officer, Universal Music Group North America
8	Lawrence Kenswil	President, Universal eLabs, a division of Vivendi Universal's Universal Music Group
9	Mark Eisenberg	Senior Vice President, Business and Legal Affairs, Global Digital Business Group, Sony BMG Music Entertainment
10	Michael Kushner	Senior Vice President, Business and Legal Affairs, Atlantic Recording Corp.
11	David Hughes	Senior Vice President of Technology, Recording Industry Association of America
12	Ed Chmelewski	President, Blind Pig Records
13	Dan Navarro	Recording and Performing Artist
14	Barrie Kessler	Chief Operating Officer, SoundExchange, Inc.
15	Simon Renshaw	President, Strategic Artist Management

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Exhibit No.	Sponsored By	Description
SX Ex. 001 DP	Barrie Kessler	Declaration of Barry M. Massarsky in Docket No. RM 2005-2 (Aug. 26, 2005)
SX Ex. 002 DP	Barrie Kessler	Motion by SoundExchange for Referral of Novel Material Question of Substantive Law Concerning the Preexisting Subscription Service Compulsory License in Docket No. 2005-1 CRB DSTRA (May 4, 2006)
SX Ex. 003 DP	James H. Griffin	CD containing video advertisements <i>Blue People Say It's Better Than Radio</i> ; <i>Woman Drives Car With Boyfriend On Roof</i> ; <i>Music Changes Hair</i> ; and <i>A Switch Within Us</i>
SX Ex. 004 DP	Lawrence Kenswil; Michael Kushner	2005 RIAA Year-End Statistics
SX Ex. 005 DP	Michael Kushner	2006 RIAA Mid-Year Statistics
SX Ex. 006 DP	Mark Eisenberg	XM Radio.com Testimonials Page

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Exhibit No.	Sponsored By	Description
SX Ex. 101 DR	Barrie Kessler	[Redacted]
SX Ex. 102 DR	Barrie Kessler	[Redacted]
SX Ex. 103 DR	Michael Pelcovits; Janusz Ordover	[Redacted]
SX Ex. 104 DR	Mark Eisenberg	[Redacted]
SX Ex. 105 DR	Lawrence Kenswil	[Redacted]
SX Ex. 106 DR	Charles Ciongoli	[Redacted]
SX Ex. 107 DR	Mark Eisenberg	[Redacted]
SX Ex. 108 DR	Janusz Ordover	[Redacted]
SX Ex. 109 DR	Janusz Ordover	[Redacted]
SX Ex. 110 DR	Janusz Ordover	[Redacted]

CERTIFICATE OF SERVICE

I, Jared O. Freedman, hereby certify that, by agreement of the parties, a copy of the foregoing **Public Version of the Written Direct Statement of SoundExchange, Inc.** (without exhibits and designated testimony) is being served this 30th day of October, 2006, by electronic mail to the persons listed below. In, addition, by agreement of the parties, a copy of the foregoing Written Direct Statement of SoundExchange, Inc. (with exhibits and designated testimony) is being served by overnight delivery on the persons listed below.

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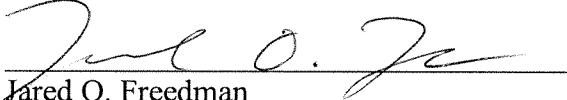
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