

TABLE OF CONTENTS

Tab A: Introductory Statement and Proposed Rates

Tab B: Direct Testimony of Michael Bloom, MTV Networks

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

In the Matter of:	:	Docket No. 2005-5
	:	CRB DTNSRA
Digital Performance Right In Sound	:	
Recordings and Ephemeral Recordings	:	
For a New Subscription Service	:	

**INTRODUCTORY STATEMENT AND PROPOSED RATES
OF MTV NETWORKS**

In accordance with Rule 351.4 of the Copyright Royalty Board, 37 C.F.R. § 351.4, MTV Networks, a division of Viacom Inc. (“MTVN”), hereby submits this Introductory Statement in connection with the submission of its direct written case to provide the Copyright Royalty Board (the “Board”) with a summary of its proposal and an overview of the witness statement submitted herewith in support of that proposal.

MTVN’s direct testimony consists of the written direct statement of Michael Bloom, the Vice President and General Manager of Digital Music of MTVN.

SUMMARY OF TESTIMONY

MTVN’s direct case addresses the matter of sound recording public performance and ephemeral reproduction licenses under 17 U.S.C. § 114(f)(2) for MTVN’s new digital audio radio (“DAR”) service, which it is preparing to launch in 2007 for distribution via cable systems. As explained in Mr. Bloom’s testimony, MTVN’s DAR service will be offered as one part of a package of programming services offered by MTVN. MTVN’s DAR service is a “new subscription service” under the

Section 114 statutory license scheme. It is functionally the same as the “pre-existing subscription” service product offering which has long been operated by MusicChoice; but MTVN technically cannot operate a “pre-existing” service. Further, the statutory license scheme applicable to “new subscription services” engaged in webcasting simply does not apply to DAR services of the nature MTVN is launching, where “per listener hour” reporting metrics do not exist. MTVN’s DAR service thus is a “new type” of “new subscription service” within the Section 114 license regime.

SoundExchange did not quote a fee to MTVN for its new DAR service; hence MTVN was left without a choice but to participate in these proceedings. MTVN has yet to commercially launch its DAR service.

PROPOSED RATES

The Copyright Act requires the Board to apply rates and terms “that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller,” and to base that rate determination on economic, competitive, and programming information submitted by the parties, including the promotional value of the Services, the relative investment and risk of the parties, and certain other specific criteria listed in the statute. See 17 U.S.C. §114(f)(2)(B).

As detailed in the witness statement of Mr. Bloom, if marketplace benchmarks for sound recording and musical work performances for DAR-type services in effect during the period prior to January 1, 2007 were applied to MTVN’s DAR service, fees equivalent to no more than 5 - 7.25% of the revenue attributable to MTVN’s DAR service would result. MTVN believes that such rates exceed a competitive market rate, however. Lacking any concrete operational financial evidence based on its yet-to-

be-launched service, MTVN proposes that the fees for its DAR service be set at rates no different than other entities providing comparable services (e.g., MusicChoice, XM and Sirius), and in all events no higher than the equivalent of 5 - 7.25% of the revenues attributable to its DAR service, based on the range referenced above. MTVN's new DAR service should not be placed at a competitive disadvantage vis-à-vis these other subscription services providing functionally the same products to consumers.

CONCLUSION

MTVN looks forward to presenting its case before the Board and requests a rate-setting for its DAR service consistent with the foregoing.

October 31, 2006

Respectfully submitted,



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**TESTIMONY OF MICHAEL BLOOM, VICE PRESIDENT AND GENERAL
MANAGER OF DIGITAL MUSIC OF MTV NETWORKS**

INTRODUCTION AND WITNESS BACKGROUND

1. I am the Vice President and General Manager of Digital Music of MTV Networks, a division of Viacom Inc. (“MTVN”). As such, I am responsible for managing the digital audio services distributed by MTVN under the “Urge” brand, including the digital audio radio (“DAR”) service at issue in this proceeding. I have worked at MTVN since 2004. I submit this statement in support of MTVN in this proceeding.

2. As is described more fully herein, MTVN will soon launch a DAR service that will be distributed by cable systems and that complies with the statutory licenses under 17 U.S.C. § 114(f)(2), as part of a package of services offered by MTVN. The service will offer dozens of channels of digital audio programming to cable television subscribers.

3. MTVN’s DAR service is functionally the same type of service as the MusicChoice audio service delivered to cable and satellite TV subscribers. However,

because MTVN's DAR service does not fit within the statutory regime as a "pre-existing subscription service" (under which MusicChoice has been licensed) and also does not fit within the license structure of webcasting "new subscription services" (which historically have involved rate concepts of "aggregate tuning hours" or "per song" per listener which are inapplicable to DAR services such as MTVN's), MTVN filed a notice to participate in these CRB proceedings to establish rates for what I understand to be a "new type" of new subscription service.

DISCUSSIONS WITH SOUNDEXCHANGE

4. This fall, through its counsel, MTVN inquired of SoundExchange, Inc. ("SoundExchange") whether it could negotiate a licensing arrangement for MTVN's new DAR service.

5. SoundExchange replied that it was unable to quote a specific fee to MTVN; hence we are here reluctantly but with no other place to go to secure an appropriate and reasonable rate.

6. Therefore, MTVN had no choice but to participate in this proceeding so that it could obtain a fair, competitive royalty rate to pay to SoundExchange for MTVN's "new type" of subscription service.

MTVN'S DIGITAL AUDIO CABLE SERVICE

7. Beginning in 2007, MTVN plans to launch a new DAR service that is offered to consumers through a variety of cable systems, including Verizon, AT&T, and others. The DAR service is currently being tested internally, but has not been offered to consumers. MTVN's new service will operate in the same markets as MusicChoice and,

to consumers, the service will be functionally the same as the service offered by MusicChoice.

8. MTVN's DAR service will offer more than fifty (50) channels of the best mix of music – from Alternative to Hip Hop to Classical – featuring the hottest artists and tracks for each genre. The service will use industry-leading programming schedules and rotation plans. In addition, the depth, breadth and expertise of MTVN's music programmers will make the DAR service the new and improved standard for digital audio cable programming.

9. In addition, the DAR service will provide compelling graphics and relevant information about the music and artists to create a truly unique look and feel for each channel. Not only will the service provide information about a track's artist, title, label, album and release date but it also displays biographical data, news and upcoming events including tour dates. In addition, MTVN's service will provide an opportunity for consumers to discover new music because it displays both musicians that have influenced an artist as well as those that have been influenced by that artist. These unique features are to the promotional benefit of the artists and sound recording owners whose works are included within MTVN's DAR service.

10. MTVN plans to deliver its music DAR channels as part of a package or "bundle" of programming channels inclusive of audio visual programming that does not qualify for the Section 114 statutory license; and the practice and expectation is that MTVN will be compensated by cable distributors of its programming for the package as a whole.

THE RATE

11. MTVN is aware of the following marketplace rates that currently or until recently have been in place relevant to services of the same nature as MTVN's DAR service. On the sound recording side, the service closest in kind to ours is the MusicChoice service; and MusicChoice has been paying SoundExchange on the basis of a published, voluntary agreement at the rate of 7.25% of MusicChoice's revenue received from cable/satellite operators for distribution of MusicChoice's digital audio service. See 17 U.S.C. § 114(f)(1).

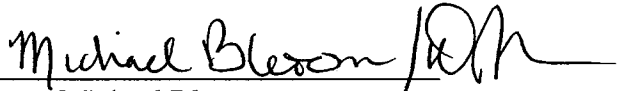
12. I understand that MusicChoice's initial sound recording performance rates (for the period prior to the most recent statutory license period referred to in the immediately preceding paragraph) were the result of a Copyright Arbitration Royalty Panel (CARP) determination setting such rates; and that the basis upon which the CARP set the initial rates was the then-existing musical work performance rates (e.g., established essentially by reference to ASCAP/BMI rates) in effect for the same service. See Determination of Statutory License Terms and Rates for Certain Digital Subscription Transmissions of Sound Recordings, Docket No. 96-5 CARP-DSTRA (Report of the Copyright Arbitration Panel) (certified Nov. 28, 1997). Based on communications received within the last month from the performing rights organizations, we understand that the current musical work performance rates available to MTVN for its DAR service are in the range of 5 - 5.5% of the revenues attributable to the operation of that service.

13. MTVN believes that these rates – which would result in fees equivalent to somewhere between 5 and 7.25% of revenues received by MTVN from distribution of its DAR service – likely exceed the rates that would prevail in a

competitive market. To be sure, MTVN believes that there is no credible argument that can be made that this level of fees is a marketplace rate pertinent to the MTVN “new type” of subscription service. In addition, of course, in the situation where MTVN's DAR channels are bundled together with other services that are not governed by the statutory license involved in these proceedings, the revenue base to which reference would be made would have to be limited to the revenues attributable to the DAR channels alone (and not the non-statutory programming/services).

14. MTVN is aware that the pre-existing service statutory license is governed by the rate-setting standards set forth in 17 U.S.C. § 114(f)(1), while MTVN's “new type” of subscription service is governed by the section 114(f)(2) “willing buyer, willing seller” marketplace standard – which has been construed by the Librarian of Congress in the initial webcasting CARP proceeding to be equivalent to rates that would prevail in a competitive market. See Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Docket No. 2000-9 CARP DTRA 1&2, 67 Fed. Reg. 45239 (July 8, 2002) (codified at 37 C.F.R. Part 261). There is nothing in the statutory scheme, however, that mandates that – merely because of these different stated standards – a “new type” of subscription service engaged in the functionally identical business as a “pre-existing” subscription service like MusicChoice should pay at a higher rate than MusicChoice. And it seems counter-intuitive – and would lead to indefensibly discriminatory and anticompetitive results – were rates set by this CRB that would give one provider (MusicChoice) a competitive advantage over others.

I declare under the penalty of perjury that the foregoing is true and correct or, in some cases, upon information and belief.


Michael Bloom