

**Before the  
Copyright Royalty Board**

In the Matter of	)	
	)	
Distribution of the	)	Docket No. 2005-4 CRB CD 2003
2003 Cable Royalty Funds	)	

**COMMENTS OF DEVOTIONAL CLAIMANTS**

The Devotional Claimants<sup>1</sup> submit the following comments in response to the Copyright Royalty Board's ("CRB") *Notice Announcing Partial Phase I Settlement and Soliciting Comments on Motion for Further Distribution* published at 72 Fed. Reg. 46516 (August 20, 2007).

The CRB seeks comments on 1) whether any claimant entitled to receive royalty fees from the 2003 Cable Fund has a reasonable objection to the proposed partial distribution and the related requests of the Phase I parties; 2) whether there are any potential Phase I or Phase II controversies; 3) whether the current Phase I claimant categories are adequate to represent the interests of all claimants or whether additional categories are needed; 4) if there is a 2003 cable controversy, whether a proceeding should be commenced at this time or delayed pending negotiations among parties; and 5) how should notices of pre-controversy motions or filings be made available for public comment.

**1. Comments on 2003 Partial Distribution**

The Devotional Claimants are parties to the Motion seeking further partial distribution of

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<sup>1</sup> The Devotional Claimants joining in these Comments are Liberty Broadcasting Network, Inc., Coral Ridge Ministries Media, Inc., Crystal Cathedral Ministries, Inc., The Christian Broadcasting Network, Inc., In Touch Ministries, Inc., Family Worship Center Church, Inc., Amazing Facts, Inc., American Religious Town Hall, Inc., Billy Graham Evangelistic Association, Catholic Communications Corporation, Cottonwood Christian Center, Crenshaw Christian Center, Evangelical Lutheran Church in America, Faith For Today, Inc., It Is Written, Joyce Meyer Ministries, Inc., RBC Ministries, Rhema Bible Church, Ron Phillips Ministries, Speak The Word Church International, The Potter's House of Dallas, Inc., and Zola Levitt Ministries.

2003 cable royalties and fully support the motion. As noted by the Board, the Devotional Claimants do not seek receipt of their share of such distribution at this time. Therefore, we concur with all aspects of the motion, including the proposed lump sum distribution to specified parties, the 0.18% distribution to NPR, the withholding for the present time of 0.5% for the Devotional Claimant's category (enabling that share of the distribution and any additional sums due the Devotional Claimants to be made at the conclusion of the 2003 proceeding or sooner if so requested), and establishing a further reserve of 5.5% for additional controversies. In the opinion of the Devotional Claimants, these reserves are sufficient to address any Phase I and/or Phase II disputes that might arise affecting its interests. Moreover, with respect to partial distributions, Devotional Claimants oppose the imposition of any condition on the use of those funds. Restricting use of distributed funds would defeat the purpose of the partial distribution and be outside the scope of statutory authority.

## **2. Phase I and Phase II Controversies**

As to Phase I, a controversy exists as to the share of the Canadian Claimants on the one hand, and all other claimants on the other. The Devotional Claimants are not aware of the precise amount of Phase I funds in controversy, but they believe the amount is less than 2%.

As to Phase II, a controversy may exist between the Devotional Claimants and any other entities legitimately claiming a share of the Devotional Claimant category not identified in footnote 1 above. Certain of such entities may be represented by National Association of Broadcasters (NAB) and Independent Producers Group (IPG). The Devotional Claimants are not aware of the precise amount of Phase II funds that might be in controversy, but they believe that the amount is significantly less than the 0.5% funds held in reserve for Devotional Claimants.

## **3. Claimant Categories**

The Devotional Claimants believe that the current categories are adequate to represent the interests of all claimants, and particularly all Devotional Claimants. With respect to the idea of creating a Spanish Language Category for Phase I purposes, Devotional Claimants oppose such a proposal. Devotional Claimants believe such an additional category is unnecessary. To elaborate, certain of the Devotional Claimants produce and distribute religious programs in Spanish language. These programs are and will continue to be fairly compensated within the Devotional Category. Similarly, copyright owners of Spanish language programs in other categories, such as Program Suppliers, Joint Sports, NAB, Public Broadcasting, and Music, may claim and receive compensation from those categories.

Thus, the suggestion that a new category or categories of Phase I claimants is needed cannot be based on any copyright owner being unable to claim a share from an identifiable category. Rather, it must be based on other grounds; however, in our view, adding other categories of claimants would be unnecessary duplicative of the current structure. Further, as the CRB knows, the proposal to create a Spanish Language program category is not new. The notion was considered and rejected by the Copyright Royalty Tribunal in an early Section 111 distribution proceeding. While the number of Spanish language programs may have increased, there is no need to single such programs for disparate treatment. If a new category were created, the Devotional Claimants who produce Spanish language content would be forced to divide their resources and make claim in multiple categories, without promise of more compensation, but with certain likelihood of more expense. It is logical that any funds available for a Spanish language category would come directly out of the funds presently distributed to the existing categories that already compensate Spanish content. It makes no prudent administrative sense to increase the burden on parties by dividing similar thematic content between multiple categories.

#### **4. Commencement of Proceeding**

As noted above, the Devotional Claimants believe there is a Phase I controversy with respect to 2003 Cable, and there may be controversy with respect to Phase II (Devotional Claimants category). There are already noted Phase I and II controversies with respect to 2000-2002 Cable.<sup>2</sup> The Devotional Claimants favor consolidation of the 2000-2003 cable proceedings and, in light of the fact that negotiations are not likely to resolve the dispute with the Canadian Claimants, declaration of a controversy and initiation of a Phase I 2000-2003 Cable proceeding. The 2000-2003 case involves a discrete issue, the claim of Canadian Claimants, and thus may be adjudicated with relative efficiency.<sup>3</sup>

#### **5. Pre-Controversy Notices**

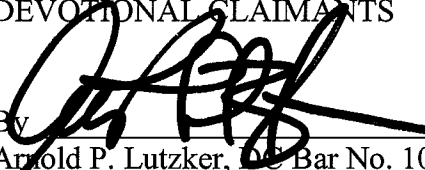
The Devotional Claimants believe that when the CRB receives a motion or other filing prior to initiation of an active proceeding for which public comment is appropriate, the CRB should publish notice of its receipt in the Federal Register and concurrently place the Federal Register notice on its website. This procedure would ensure that all members of the public have due notice and the opportunity to comment on pertinent filings. After public comments are received, they should be made available for inspection at the CRB's offices and on its website. If appropriate, a service list may then be prepared and published so that on-going public participation will be facilitated.


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<sup>2</sup> There are also open proceedings dating back to 1998 for both cable and satellite.

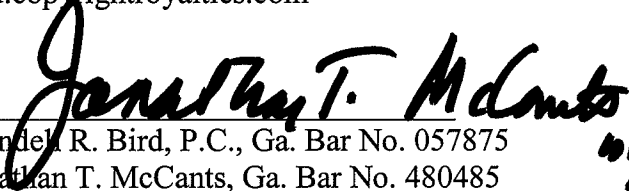
<sup>3</sup> The Devotional Claimants do not support early initiation of a proceeding involving 2004-2005 cable, because that would leave the earlier-in-time Phase I proceedings from 2000-2003 in limbo. As to satellite proceedings, Phase I parties are in discussions trying to resolve 1999-2003 satellite Phase I claims. These negotiations have been on-going for some time and may bear fruit. The Devotional Claimants support these settlement discussions and the efforts of the Phase I parties to seek voluntary resolution of those Phase I claims before consideration of any CRB proceeding. Therefore, the Devotional Claimants do not believe initiation of any satellite controversy should precede the cable proceedings noted above.

Respectively Submitted,  
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September 19, 2007

## **CERTIFICATE OF SERVICE**

I, Arnold P. Lutzker, hereby certify that a copy of the foregoing "Comments of Devotional Claimants" was served via overnight courier, this 19<sup>th</sup> day of September, 2007, upon the following:

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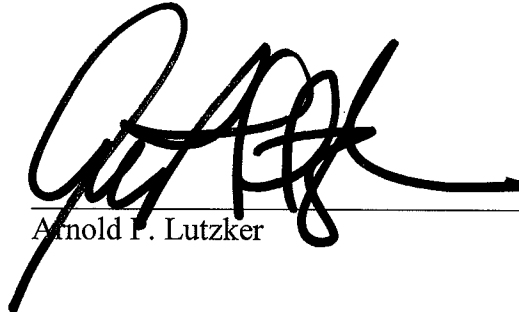
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A handwritten signature in black ink, appearing to read 'Arnold F. Lutzker', written over a horizontal line. The signature is stylized and cursive.

Arnold F. Lutzker