DUPLICATE

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

In the Matter of	)	
Section 109 Report to Congress	)	**Docket No. 2007-1**
Notice of Inquiry	)	

REPLY COMMENTS OF DEVOTIONAL CLAIMANTS

On behalf of Devotional Claimants,[1] we hereby submit these Reply Comments in connection with Notice of Inquiry ("NOI") in the above-referenced proceeding.

Having reviewed all the written comments in this proceeding, the Devotional Claimants reiterate their basic positions set forth in their original comments. Primarily, the Devotional Claimants believe that the cable and satellite compulsory licenses have served copyright owners, cable and satellite companies and the subscribing public well over the past decades. While urging that the rates paid by cable and satellite operators should be increased to better approximate fair marketplace value, Devotional Claimants nonetheless endorse retention of the satellite statutory license and support retention of both the cable and satellite licenses in their current form.

[1] The Devotional Claimants filing these Reply Comments are Amazing Facts, Inc.; American Religious Town Hall Meeting, Inc.; Billy Graham Evangelistic Association; Catholic Communications Corp.; The Christian Broadcasting Network, Inc.; Coral Ridge Ministries Media, Inc.; Cottonwood Christian Center; Crenshaw Christian Center; Crystal Cathedral Ministries; Evangelical Lutheran Church in America; Faith for Today; Family Worship Center Church; In Touch Ministries, Inc.; It Is Written; Joyce Meyer Ministries; Liberty Broadcasting Network; Oral Roberts Evangelical Association; RBC Ministries; Reginald B. Cherry Ministries; Rhema Bible Church; Ron Phillips Ministries; Speak the Word Church International; The Potter's House of Dallas, Inc., Zola Levitt Ministries, Inc.

I. CATV Industry Proposals To Reduce Royalty Payments Should Be Rejected

While cable interests vigorously endorse the need for a cable compulsory license, they complain about various aspects of Section 111, including the 3.75% surcharge, the so-called phantom signal fee and the treatment of FOX stations as full (1.0) DSE-valued signals. The Devotional Claimants recognize that there are sound regulatory and practical reasons for the surcharge, the phantom signal fee, as well as DSE valuation of FOX stations, and we oppose any attempt to erase those distinctions in order to reduce the royalties paid by cable operators. Indeed, it appears that the cable interests seek to keep the primary benefits of systems – the ease and certainty of retransmission of broadcast signals and their programs - while eschewing part of the corollary burden, a full payment of the compulsory royalty rate.

The cable proposal to wipe out the 3.75% surcharge ignores the fact that the surcharge applies only if CATV operators choose to carry the particular signals that generate the fee. Having benefited from offering signals that attract and keep subscribers, cable interests now wish to change the copyright royalty rules mid-stream that provided that benefit in the first place. Indeed, rather than being an undue burden, it appears that the payments for 3.75% signals reasonably approximate the fair marketplace value of the distantly retransmitted signals for cable operators and their subscribers; otherwise those signals would be dropped. Thus, instead of eliminating the surcharge, the Copyright Office should encourage a royalty scheme that emulates the surcharge feature, because it best realizes fair marketplace value to copyright program owners.

Cable's desire to end payment for the so-called phantom signal fee is a clear attempt to undermine the long-standing policy, which dates back to very early

interpretative rulings by the Copyright Office, and by which cable operators of integrated system (i.e. contiguous communities served from a common headend) pay royalties on an integrated, system-wide basis.[2] That some subscribers receive a signal while their neighbors do not is a decision of the cable operator, not one mandated by law. Cable systems have the choice to expand service of these so-called phantom signals throughout their service area, thereby providing additional programming choices for their subscribers. Rather than undermining Copyright Office rules that define contiguous communities for Statement of Account (SOA) filing purposes, operators should expand viewing options when a system's operations are contiguous and integrated.

As to the treatment of FOX stations as independent (1.0 DSE-valued), rather than network (0.25 DSE-valued) stations for copyright royalty purposes, this issue was resolved years ago and should not be revisited now. There is nothing inconsistent with a station being deemed a network for one purpose (FCC rules) and an independent station for a different purpose (copyright compulsory licensing). The effort by cable interests to redefine FOX stations is a transparent attempt by them to reduce the DSE of each station by 75%, thereby diminishing the revenues paid under the cable compulsory license and further distancing the license fee from a fair marketplace value for all the signals.

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[2] Further, the CATV proposal to end the phantom signal fee also constitutes a back-door attempt at making the cable license mirror the satellite license, where royalties are instead paid on a per subscriber/per signal basis. The Devotional Claimants oppose a "one size fits all" concept for statutory licensing of retransmitted broadcast signals, a view generally shared by other commenting copyright owners. Rather, any exception to the grant of exclusive rights in copyright law in the form of a compulsory license for cable must be tailored specifically to the legal and regulatory history of the medium, as well as the needs of the affected parties (copyright owners, broadcasters, CATV operators and subscribers). The current Section 111 fee structure balances those interests for the cable industry. It must be recognized that a different history and set of needs applies to the satellite industry. As a result, any effort to impose the satellite rate structure on cable not only would be unfair from a practical perspective since it would ignore pertinent needs and history, but also it would be unwise from a policy perspective, because it would discourage legislative reform based on a full record.

In sum, the cable industry proposals are designed to reduce significantly the royalties paid by cable operators, without any compensating benefit to copyright owners. Such a result would understandably create a firestorm of protest by copyright owners, whose works are subject to compulsory licensing. As the Copyright Office fully appreciates, the present compulsory scheme was created as a settled balance of complex competing interests, the primary purpose of which was to ensure copyright owners fair economic benefit for the compelled use of their works by the medium of cable television. By reducing any of the royalty payment obligations, the very existence of the license would be threatened.

II. Devotional Claimants Oppose Retro-fitting Existing Compulsory Licenses for Internet TV or Mobile Telephony

As a general principle, Devotional Claimants support fair enjoyment of the cable and satellite compulsory licenses. Thus, if a new entrant (such as a telephone company providing video programming services) meets the statutory definition of "cable system," then it should be entitled to use of the license; provided, that it fully comply with the obligations of the license, including timely payment of royalties, full and accurate reporting of carriage, and compliance with other compulsory licensing requirements, such as syndicated exclusivity protection.

However, based on the comments in this inquiry, it appears more likely in the coming years that other new media companies, especially those exploiting Internet and mobile telephony, may want to become involved in the distribution of channels of programming. In that event, it is one thing for program owners to license their works for new media distribution, but quite another for new entrants to attempt to retro-fit the cable

or satellite compulsory license to enable exploitation of broadcast channels of programming without direct authorization.

Rather than straining for an interpretation of the pre-existing compulsory licenses provisions to address Internet TV or mobile telephony, the Devotional Claimants believe there should be a broad public debate on whether to proceed on a compulsory licensing basis, and only if an affirmative decision is reached, to determine new media-specific rules. Congress, not an administrative agency, should decide the course of public action. If the Copyright Office determines there is a need, Congress should be urged to consider the interests of all affected parties involving these new media, and only if consensus is achieved, should medium-specific licenses be adopted. The copyright, communications and commerce issues associated with Internet distribution of television channels of programming in particular are complex, and it would be administratively inappropriate to attempt to jerry-rig a solution into the existing license schemes.

III. The Copyright Office Needs to Complete Open Dockets

Finally, in its original comments, the Devotional Claimants noted several open Copyright Office proceedings that require action, including action on digital signals, audit of statement of account and dismissal of the cable industry's effort to secure reconsideration of the FOX channels as independent signals. After reviewing the public comments in this inquiry, it is even clearer to the Devotional Claimants that all participants in this proceeding need prompt resolution of these open agenda items. Particularly as the broadcast industry moves toward digital TV next year, the proper compulsory license treatment of digital signals must be understood well in advance of February 2009, so that cable and satellite companies, which will be retransmitting

multiplexed digital broadcast signals, will understand the obligations associated with their retransmission activities.

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