



National Cable & Telecommunications Association  
25 Massachusetts Avenue, NW, Suite 100  
Washington, DC 20001-1431  
202-222-2300

[www.ncta.com](http://www.ncta.com)

Daniel L. Brenner  
Senior Vice President  
Law & Regulatory Policy

202-222-2447

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October 10, 2006

Tanya M. Sandros  
Associate General Counsel  
Office of the General Counsel  
U.S. Copyright Office  
2221 S. Clark Street  
11<sup>th</sup> Floor  
Arlington, VA 22202

RE: Petition for Rulemaking of the National Cable & Telecommunications  
Association on Resolving the "Phantom Signal" Issue

Dear Ms. Sandros:

On August 17, 2005, the National Cable & Telecommunications Association ("NCTA") petitioned the Copyright Office ("Office") to commence a rulemaking proceeding addressing the so-called "phantom signals" issue. Specifically, NCTA requested that the Office: (i) reconsider and amend its interpretation of the "contiguous systems" provision of the Copyright Act's cable system definition to provide that two or more cable facilities would be treated as a single system only where the facilities were in contiguous communities, under common ownership and control, and operated from one headend; and (ii) adopt a new rule permitting cable operators that operate a cable system serving multiple communities with varying complements of retransmitted broadcast television signals to use a community-by-community approach in determining the royalties due from that system.

While the NCTA petition included specific regulatory language to implement the proposed amendment to the Office's rule interpreting the statutory cable system definition,<sup>1</sup> it did not proffer language to implement the community-by-community royalty calculation proposal.<sup>2</sup> In order to facilitate the immediate issuance of a Notice of Proposed Rulemaking (rather than the issuance of yet another Notice of Inquiry), NCTA is hereby amending its August 17, 2005 Petition to propose a specific regulatory provision to implement its community-by-community royalty determination proposal, attached hereto as Appendix A.

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<sup>1</sup> See NCTA August 17, 2005 Petition at note 32.

<sup>2</sup> NCTA notes that its proposal for a rule allowing community-by-community royalty determinations was first presented to the Office in 1989 and was the subject of a Notice of Inquiry at that time (RM 89-2).

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In light of the lengthy history of the "phantom signal" issue, NCTA submits that the Office should now proceed expeditiously to commence the requested rulemaking proceeding.

If there are any questions regarding this matter, please communicate directly with the undersigned.

Sincerely,



Daniel L. Brenner

cc: Ben Golant

## APPENDIX A

Amend 37 C.F.R. § 201.17 to include the following new paragraph (g) and renumber all succeeding paragraphs accordingly:

“(g) *Computation of the copyright royalty fee: Cable systems serving multiple communities.* A cable system that serves multiple communities may compute the royalty fee specified in section 111(d)(1)(B) (ii), (iii), and (iv) of the Copyright Act as follows:

(i) A cable system serving multiple communities shall use the system’s total gross receipts from the basic service of providing secondary transmissions of primary broadcast transmitters to determine which of the Statement of Account Forms identified in paragraph (d)(2) is applicable to the system; and

(ii) Where the complement of distant stations actually available for viewing by subscribers to a cable system is not identical in all of the communities served, the royalties due for the system may be computed on a community-by-community basis by multiplying the total distant signal equivalents derived from signals actually available for viewing by subscribers in a community by the gross receipts from secondary transmissions from subscribers in that community.

(iii) The total copyright royalty fee for a system to which this paragraph applies shall be equal to the larger of:

(A) The sum of the royalties computed for the system on a community-by-community basis, or

(B) 1.013 percent of the system’s gross receipts from all subscribers.”