

INSTRUCTIONS FOR THE SPORTS SURCHARGE ADDENDUM

RECENT REGULATORY CHANGES (SPORTS SURCHARGE):

Effective January 1, 2019, the Copyright Royalty Board (“CRB”) adopted a final rule under which certain Form SA3 cable systems may be required to pay a separate per-program royalty (the “Sports Surcharge”) in addition to other royalties payable under Section 111 of the Copyright Act. As authorized by Section 801(b)(2)(C) of the Copyright Act, the CRB adopted the Sports Surcharge in response to the repeal of the Federal Communications Commission’s Sports Blackout Rule.

WHAT IS THE SPORTS SURCHARGE?

The Sports Surcharge is a separate per-program royalty fee payable by Form SA3 cable systems for the secondary transmission of “Sports Surcharge Triggering Programs.” Sports Surcharge Triggering Programs are live, non-network broadcasts of sports events on a distant television station carried by the cable system that would have been subject to blackout under the Federal Communication Commission’s sports exclusivity rule (FCC Sports Blackout Rule) prior to its repeal in 2014 and that meet certain other requirements established by the Copyright Royalty Board in the Sports Surcharge Rule. The Sports Surcharge is calculated on a community-by-community basis using the Sports Surcharge Addendum (Form SS).

THE FCC SPORTS BLACKOUT RULE. Prior to its repeal in 2014, the FCC Sports Blackout Rule (47 CFR 76.111) required a cable system to black out certain distant television station broadcasts of sports events within a 35-mile “specified zone.” Such broadcasts were subject to blackout if no local television station were broadcasting that event and the cable system received timely notification as specified by the FCC rules. The rule did not require the cable system to black out a distant station’s broadcast in a community where: the cable system had fewer than 1,000 subscribers; or the same event was available live on a local broadcast station; or the distant station was “grandfathered” (i.e., had been lawfully carried in the cable community prior to March 31, 1972).

DOCUMENTATION OF PRIOR INVOCATION OF FCC SPORTS BLACKOUT RULE. To trigger the Sports Surcharge, the holder of the broadcast rights to a sporting event (or its agent) must provide the cable system with the same advance written notice as was required by the FCC Sports Blackout Rule along with documentary evidence that the specific team on whose behalf the notice is given had invoked the protection provided by the FCC Sports Blackout Rule during the period from January 1, 2012, through November 23, 2014.

LIMITATION TO “NON-NETWORK” PROGRAMS. For purposes of calculating the Sports Surcharge, only secondary transmissions of live television broadcasts that are “non-network programs” within the meaning of 17 U.S.C. 111(d)(3)(A) can qualify as Sports Surcharge Triggering Programs.

CALCULATING THE SPORTS SURCHARGE. The Sports Surcharge is calculated separately for each community in which a cable system carried one or more Sports Surcharge Triggering Programs during an accounting period. To calculate the Sports Surcharge, the system multiplies the gross receipts attributable to each such community by the number of Sports Surcharge Triggering Programs carried in the community by the Sports Surcharge rate of 0.025 percent (.00025).

NOTE: The Subscriber Groups listed on Form SA3 may contain more than one community, and thus the subscriber group gross receipts listed on Form SA3 may not be the same as the community-specific gross receipts used in calculating the Sports Surcharge.

Example: System A serves three communities, each of which has 1,000 or more subscribers. Community 1 has gross receipts of \$900,000; Community 2 has gross receipts of \$400,000; Community 3 has gross receipts of \$250,000. Subscribers in Community 1 received secondary transmissions of two Sports Surcharge Triggering Programs; subscribers in Community 2 received secondary transmissions of one Sports Surcharge Triggering Program, and subscribers in Community 3 did not receive any secondary transmissions of Sports Surcharge Triggering Programs. The Sports Surcharge owed for Community 1 would be \$450.00 (2 x \$900,000 x .00025); the Sports Surcharge owed for Community 2 would be \$100 (1 x \$400,000 x .00025); and the Sports Surcharge owed for Community 3 would be zero.

Note: With respect to college sports events, the number of Sports Surcharge Triggering Programs involving a specific college team for which a cable system will have to pay the Sports Surcharge in any accounting period will be no greater than the largest number of events as to which the FCC Sports Blackout Rule was invoked in a particular geographic area by that team during any one of the accounting periods occurring between January 1, 2012, through November 23, 2014.

WHERE CAN THE SPORTS SURCHARGE RULE AND THE RELEVANT FCC RULES BE FOUND? The Sports Surcharge Rule is codified at 37 CFR §387.2(e) and can be found online at https://www.ecfr.gov/cgi-bin/text-idx?node=se37.1.387_12&rgn=div8. Archived versions of the FCC rules in effect as of November 23, 2014, (including the FCC Sports Blackout Rule) can be found online at the following link: <https://www.govinfo.gov/content/pkg/CFR-2014-title47-vol4/pdf/CFR-2014-title47-vol4.pdf>

SPORTS SURCHARGE ADDENDUM INSTRUCTIONS

Step 1: Complete part 1 by identifying the legal name of the cable system owner, ID number, and accounting period.

Step 2: Complete the Log of Sports Surcharge Triggering Programs in part 2 by identifying each live non-network broadcast of a sports event by a distant station that your cable system carried during the accounting period that qualified as a Sports Surcharge Triggering Program. The Log also requires that you identify: (i) the call sign of the distant station broadcasting the Sports Surcharge Triggering Program; (ii) the community to which the distant station is licensed by the FCC; (iii) the month and day when your system carried the distant station broadcasting the Sports Surcharge Triggering Program; and (iv) each community in which the distant station broadcasting the Sports Surcharge Triggering Program was carried (“Community”).

Step 3: Enter the number of Sports Surcharge Triggering Programs and Gross Receipts for each Community. The form will calculate the Sports Surcharge for each Community by multiplying the number of Sports Surcharge Triggering Programs for the Community from the Log of Sports Surcharge Triggering Programs by the Gross Receipts attributable to the Community and then multiplying the result by the Sports Surcharge rate of 0.025 percent (.00025) to determine the “Community Total.”

Step 4: Follow the instructions in part 4 to calculate interest, if applicable. **Note:** Underpayments and late payments received after the filing deadline are subject to an interest assessment.

Step 5: The form will calculate the Total Sports Surcharge based on the information provided in Steps 3 and 4.

Step 6: Complete part 6 to certify the form.