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March 21, 2019

VIA E-MAIL

Regan A. Smith
General Counsel and Associate Register of Copyrights
Library of Congress
U.S. Copyright Office
101 Independence Avenue, SE
Washington, DC 20559-6000

Re: Notice of Ex Parte, *Statutory Cable, Satellite, and DART License Reporting Practices*,
Docket No. 2005-6

Dear Ms. Smith,

On March 20, 2019, the undersigned, together with Seth Davidson and Alyssia Bryant of Mintz (as counsel to NCTA – The Internet & Television Association (“NCTA”)), had a telephone conference with you and Anna Chauvet, Assistant General Counsel of the U.S. Copyright Office (the “Office”) to discuss the Sports Representatives’ March 14, 2019 *ex parte* submission proposing changes to the draft Sports Surcharge Addendum (“Addendum”) that NCTA provided to the Office on January 24, 2019.

At the outset of our conversation, we stated that NCTA had no objection to those edits to the Addendum proposed by the Sports Representatives that were stylistic in nature (or merely corrected typographical errors). However, NCTA has significant concerns about the Sports Representatives’ proposed addition of two “certification” questions to the Addendum for the ostensible purpose of “facilitating the copyright owner’s efforts to ensure compliance with the Sports Surcharge.” As we explained, the addition of these questions is unnecessary and likely would cause confusion for cable operators. The questions presume that if an operator makes a secondary transmission of a sports event identified in a “Sports Surcharge Notice” it must complete the rest of the Addendum. However, there are a variety of reasons why the receipt of a Sports Surcharge Notice may not trigger an operator’s obligation to make a Sports Surcharge payment.

We noted further that the entities seeking to invoke the Sports Surcharge know the identity of the operators to whom they have directed Sports Surcharge Notices and there is

no justification for shifting the burden of assessing compliance (which was placed on the sports entities under the FCC's sports blackout rules) to either the cable operators or the Copyright Office's examiners. We pointed out that the general instructions currently found on the "Log of Sports Surcharge Triggering Programs" contained in the Addendum, together with the updated "Important Notice About This Statement of Account" page, provide the information needed to alert cable operators to the addition of the Sports Surcharge to the calculation of royalties due.

We also addressed the Sports Representatives' proposal to add the "Total Sports Surcharge" to Space L, Block 4 of Form SA3. While we agreed that the Sports Surcharge is an additional fee that is calculated separately from the minimum fee, we noted that making modifications to the existing Form SA3 at this time could be disruptive, particularly if further changes are made when the rulemaking is completed. Therefore, we suggested that the Office add to the Addendum an additional page or section on which operators would be directed to calculate and show their "Total Royalty Due For Accounting Period" (*i.e.*, the sum of the "Total Royalty Fee" amount found from Space L, Block 4 and the "Total Sports Surcharge"). We explained that requiring the Total Royalty Due For Accounting Period to be calculated and reflected as part of the Addendum would ensure that operators do not overlook the Addendum. For those operators that currently file the "TWC Excel Format" version of Form SA3, the Total Sports Surcharge could be incorporated into the current "Filing Fee Addendum." Attached to this letter are draft samples of a Total Royalty Due For Accounting Period section that could be incorporated into the Sports Surcharge Addendum and of a revised TWC Excel Format Filing Fee Addendum that incorporates the Total Sports Surcharge.

Pursuant to the "ex parte communications" notice adopted by the Office on December 6, 2017 and instructions received orally from the Office, this summary of our ex parte discussion is being submitted via e-mail for posting on the Office's website.^{1/}

Respectfully submitted,

/s/ **Diane Burstein**

Diane Burstein

Attachment

cc: Anna Chauvet

^{1/} *Statutory Cable, Satellite, and DART License Reporting Practices*, Request for Reply Comment; Notice of Ex-Parte Communication, 82 Fed. Reg. 58153, 58154 (Dec. 11, 2017).

ACCOUNTING PERIOD:

FORM SA3. TOTAL FOR ACCOUNTING PERIOD

LEGAL NAME OF OWNER OF CABLE SYSTEM:	SYSTEM ID#	Name
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<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; padding: 5px;">CITY OR TOWN</td> <td style="width:50%; padding: 5px;">STATE</td> </tr> <tr> <td style="height: 20px;"></td> <td style="height: 20px;"></td> </tr> </table>	CITY OR TOWN	STATE			First Community
CITY OR TOWN	STATE				

<p>Line 1. ROYALTY FEE FROM SPACE L Enter Total Royalty and Filing Fees Due for Accounting Period</p> <p style="text-align: right;">\$ _____</p> <p>Line 2. TOTAL SPORTS SURCHARGE From Sports Surcharge Addendum</p> <p style="text-align: right;">\$ _____</p> <p>Line 3. TOTAL FOR ACCOUNTING PERIOD Add lines 1 and 2 and enter here</p> <p style="text-align: right;">\$ </p>	Total
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FORM SA3. FILING FEE ADDENDUM

LEGAL NAME OF OWNER OF CABLE SYSTEM:	SYSTEM ID#	Name
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<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; padding: 2px;">CITY OR TOWN</td> <td style="width:50%; padding: 2px;">STATE</td> </tr> <tr> <td style="height: 20px;"></td> <td style="height: 20px;"></td> </tr> </table>	CITY OR TOWN	STATE			First Community
CITY OR TOWN	STATE				

<p>Line 1. ROYALTY FEE FROM SPACE L</p> <p style="text-align: right;">\$ _____</p> <p>Line 2. TOTAL SPORTS SURCHARGE From Sports Surcharge Addendum</p> <p style="text-align: right;">\$ _____</p> <p>Line 3. FILING FEE</p> <p style="text-align: right;">\$ _____</p> <p>Line 4. TOTAL ROYALTY AND FILING FEES PAYABLE FOR ACCOUNTING PERIOD Add lines 1, 2 and 3 and enter here</p> <p style="text-align: right;">\$ </p>	Total Fee
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*Effective January 1, 2014, pursuant to the Satellite Television Extension and Localism Act of 2010 (STELA), which granted authority to the Copyright Office to establish fees for the filing of statements of account (SOAs) under the section 111, 119, and 122 statutory licenses, the Office now assesses filing fees for ALL SOAs for current, past and future accounting periods. For details, see the Federal Register, November 29, 2013 (78 FR 71498). Please be advised that the filing fee is deducted before the royalty payment is credited; thus the omission of the appropriate filing fee will result in an underpayment of royalty fees. Please remit the royalty fee and filing fee in **one EFT payment**. (SOA3 filing fee: \$725).*