August 15, 2019

**VIA E-MAIL**

Anna Bonny Chauvet

Associate General Counsel

Office of the General Counsel

U.S. Copyright Office

101 Independence Avenue, SE

Washington, DC 20559-6003

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

Dear Ms. Chauvet:

On August 8, 2019, the undersigned along with Mitchell Schwartz and Viviana Betancourt of the Office of the Commissioner of Baseball, Philip Hochberg, John Stewart and Ann Mace of Crowell & Moring LLP, Dustin Cho of Covington & Burling LLP, Scott Griffin of Public Broadcasting Service, John Beiter of Beiter Law Firm, Brian Coleman of Drinker, Biddle & Reath LLP, Matthew Maclean of Pillsbury, Wintrop Shaw Pittman LLP, and Benjamin Sternberg of Lutzker & Lutzker LLP (collectively the “Owner Representatives”) met with you, Regan Smith, and Jody Harry from the Copyright Office (“Office”) to discuss certain issues raised in the above-captioned rulemaking proceeding. In accordance with the “ex parte communications” notice adopted by the Office on December 6, 2017, this summary of the ex parte discussion is being submitted via email for posting on the Office’s website.

**Statement of Account Space E Revisions.**Following Copyright Owners’ position in their written comments, the Owner Representatives discussed possible modifications to the Space E format in the current Statement of Account form that would provide meaningful information to assist the determination of whether or not to institute an audit. The current Space E information has not been helpful in determining the reasonableness of an operator’s reported gross receipts in Space K of the statement of account. Specifically, the current Space E information produces widely divergent results from the gross receipts information reported in Space K for many cable systems. The audits undertaken thus far have found that the basic service monthly rate reported in Space E is actually paid by far few subscribers than reported in Space E. Rather, the auditors have found that subscribers actually pay a variety of monthly rates that are generally higher than the basic service rate reported in Space E. Space E should be modified so that the reported information reflects the number of subscribers and the monthly rate(s) that cable operators actually receive for the basic service of providing broadcast signals. Presumably, if Space E reflected the number of subscribers actually paying specific monthly rates that information would be roughly comparable to the gross receipts information reported in Space K. This would enable copyright owners to determine from the face of the statement of account whether an audit should be undertaken (or not), rather than the current situation where data about what subscribers actually pay can be determined only through expensive and time-consuming audits.

The Owner Representatives indicated that they have not yet developed a sample form for how a new Space E would look, but promised that they would reach out to representative for cable operators to determine if a mutually acceptable form can be developed. In this regard, the Owner Representatives indicated that the current Space F could be eliminated in its entirety, a proposal that is supported by the cable industry.

The Owner Representative also indicated their support for the Office’s proposed change from using “converter fees” to “equipment fees” to reflect the current technology. As part of Space E reporting issues, the Owner Representatives urged the Office to require cable operators to report the actual equipment fees paid by subscribers in Space E rather than the current situation in which many cable operators report only the lowest-priced equipment fee. As the audits have uncovered, subscribers often pay higher equipment fees than what is reported in Space E. Such a change is needed to provide rough comparability between what is reported in Space E with what is reported in Space K.

**Gross Receipts Definition for Bundled Product Services.** After the Space E discussion, all the Owner Representatives except for the undersigned left the meeting. The undersigned on behalf of Program Suppliers met with Ms. Chauvet to discuss Program Supplies’ position regarding gross receipts reporting for basic service revenues that flow from multi-element bundled pricing, particularly on the use of the GAAP methodology for determining what portion of the bundled price is appropriately assigned to the basic service for purposes of reporting gross receipts. Program Suppliers support the use of the GAAP methodology to determine the basic service component of the bundled pricing as being fair, objectively determined, and widely used by not only the cable industry but by other industries.

Sincerely,

*Stinson LLP  
  
s/ Dennis Lane*

Dennis Lane

DL:

cc: Regan Smith, Michael Kientzle, Mitchell Schwartz, Viviana Betancourt,  
Philip Hochberg, John Stewart, Ann Mace, Dustin Cho, Scott Griffin, John Beiter,  
Brian Coleman, Matthew Maclean, Benjamin Sternberg, Daniel Cantor; via e-mail