

ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559

FINAL REGULATIONS

COMPULSORY LICENSE FOR CABLE SYSTEMS

The following excerpt is taken from Volume 49, Number 64 of the Federal Register for Monday, April 2, 1984 (pp. 13029-13038)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 80-2]

Compulsory License for Cable Systems

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulations.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting amendments to 37 CFR 201.11 and 201.17, as amended through final regulations on June 27, 1978, and July 3, 1980, and through interim regulations on May 20, 1982. These regulations implement portions of section 111 of the Copyright Act of 1976, title 17 of the United States Code. That section prescribes conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works, including the filing of Notices of Identity and Signal Carriage Complement and Statements of Account, and the submission of statutory royalty fees. The amendments revise or clarify certain requirements governing the form and content of such Notices and Statements.

EFFECTIVE DATES: June 1, 1984. Written comments on the specific language of the regulations should be received on or before May 2, 1984.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department D.S., Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, S.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8300.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Copyright Act of 1976 (Act of October 19, 1976, 90 Stat. 2541) establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirements that the cable systems comply with provisions regarding recordation of Notices of Identity and Signal Carriage Complement and Notices of Change of Identity or Signal Carriage Complement under section 111(d)(1), and deposit of Statements of Account and statutory royalty fees under section 111(d)(2).

On June 27, 1978, the Copyright Office announced in the Federal Register (43 FR 27827) the adoption of Statement of Account forms and published amendments to its regulations (37 CFR 201.17) to reflect changes necessitated by the new forms.

Further experience with these regulations led the Copyright Office to

publish in the Federal Register on July 3, 1980 (45 FR 45270) certain clarifying and technical amendments to its regulations (37 CFR 201.17) governing the form, content, and filing of Statements of Account.

During the July 3, 1980, rulemaking proceeding, the Copyright Office received several comments suggesting substantive revisions to the regulations and Statement of Account forms (45 CFR 45273):

Based on their experience reviewing the Statements of Account submitted during the first three accounting periods, copyright owners noted in their comments particular areas where they feel further information and/or clarifications are needed. These areas principally concern the designation of local and distant stations, classification of Canadian and Mexican stations, and problems resulting from the filings submitted on behalf of joint "individual" cable systems. In addition, some copyright owners proposed changes that they contend would streamline the royalty calculation steps required on forms CS/SA-2 and CS/SA-3.

Comments on behalf of the cable operators, on the other hand, suggested that a good deal of the information required on the Statement of Account for the purpose of assisting copyright owners and the Copyright Royalty Tribunal in the distribution of cable royalties is, in fact, unnecessary. They also advocated a review of our definition of "gross receipts for the 'basic service of providing secondary transmission of primary broadcast transmitters'" based on recent technological advances and new marketing strategies affecting the types of services now available for a single monthly fee.

Although these issues were outside the scope of the rulemaking, the Copyright Office stated its belief "that

some of these developments do warrant a review of our cable regulations and Statement of Account forms at an appropriate time" (45 CFR 45273).

Subsequently, several administrative actions were taken, or judicial decisions rendered, affecting the cable television compulsory license mechanism.¹

The Copyright Office decided that these administrative determinations warranted attention and might provide an adequate basis for a review of the cable television regulations and Statement of Account forms. To this end, the Copyright Office, on June 10, 1981, published in the *Federal Register* (46 FR 30649) a Notice of Public Hearing to be held on July 28, 1981, intended to elicit comments, views, and information regarding these matters.

During the public hearing, the Copyright Office received testimony and written submissions from two cable television operators and representatives of the Motion Picture Association of America (MPAA), the National Cable Television Association (NCTA), and professional sports. The Copyright Office also received written comments from other interested parties in response to the Notice of Public Hearing. Because the Commission's actions had an immediate impact on the responsibility of cable systems under the copyright compulsory license, the Office decided to publish in the *Federal Register* (47 FR 21786) regulations concerning this impact effective May 20, 1982, on an interim basis.²

At that time, the Office also announced that proposed regulations pertaining to the other issues addressed during the Office's July 1981 public hearing would be forthcoming. Initially,

the Office believed only a few months would elapse before publication of proposed rules. On October 20, 1982, however, the Copyright Royalty Tribunal adopted a final rule in CRT Docket No. 81-2 (published at 47 FR 52146 on November 19, 1982). By this rule, the Tribunal made two types of cable royalty rate adjustments³ and set January 1, 1983, as the effective date for both. Both rate adjustments were appealed to the U.S. Court of Appeals for the D.C. Circuit (which upheld the Tribunal's rate determination on December 30, 1983).⁴

In December 1982, Congress, as part of an appropriations measure, imposed a bar on the expenditure of funds to implement the 3.75% portion of the rate adjustment until final decision by the Court of Appeals or until March 15, 1983, whichever occurred first.⁵

In late 1982 and early 1983, the Copyright Office received numerous requests for advice or interpretive rulings regarding the 1982 cable rate adjustment. Our urgent guidance was requested before March 15, 1983, the expiration of the legislative stay. The Office published a Notice of Inquiry, Docket No. RM 83-3 (48 FR 6372; February 11, 1983), in which we summarized the issues presented to us for guidance and requested comment. Based upon our preliminary analysis of

the issues and the comment letters, the Office issued a letter of opinion on March 11, 1983 (published at 48 FR 13166; March 30, 1983) in which we expressed tentative, limited views about interpretation of the 3.75% portion of the rate adjustment.⁶

During this same period, the National Cable Television Association formally requested that the Office act immediately on two issues covered by this rulemaking, on the ground that these issues were now critical in light of the CRT's 1982 cable rate adjustment. ("Petition for Expedited Action"; February 3, 1983.) The two issues identified were: computation of the cable royalty fees affected by: (1) Addition or replacement of a regularly carried distant signal in the middle of an accounting period and (2) carriage of a distant broadcast signal on a tier with non-broadcast services for a single fee—the so-called "tiering" issue.⁷

The Office believes that its position regarding the first issue was made clear in the interim rules issued May 20, 1982 (47 FR at 21786), and this view was repeated in letters of opinion from the Office to the NCTA on December 27, 1982,⁸ and December 30, 1982. In our opinion, proration of the DSE value defined by 17 U.S.C. 111(f) is permitted only in the specific cases set forth in the definition of the DSE value. Except as expressly permitted by the DSE definition, partial carriage of a signal at any time during a given accounting period must be computed at full value for that type of signal, as though the signal were carried the entire accounting period.⁹

¹The interim rules are clearly interpretive, as noted in a footnote. 47 FR 21786. Moreover, since the Copyright Office considered it prudent to wait until the Supreme Court acted on the petition for certiorari in the *Malrite* case, before the Office issued any interpretation of the impact of the FCC's 1980 deregulation order on cable system Statement of Account filings, it was necessary to act on an interim basis in order to give cable systems guidance for the then current accounting period. (We refer to the first half of 1982; the Supreme Court denial of certiorari was handed down on January 11, 1982.)

²One adjustment is a "surcharge" on certain distant signals to compensate copyright owners for the carriage of syndicated programming formerly prohibited by the FCC's syndicated exclusivity rules in effect on June 24, 1981 (former 47 CFR 76.151 et seq.) ("syndicated exclusivity surcharge"). The second adjustment raised the royalty rate to 3.75% of gross receipts per additional distant signal equivalent (DSE) with respect to carriage of distant signals not generally permitted to be carried under the FCC's distant signal rules prior to June 25, 1981. Under the Tribunal's initial order, both rates were to be effective on January 1, 1983.

³The Court of Appeals affirmed the Tribunal's rate adjustment in all respects. *NCTA, Inc. v. Copyright Royalty Tribunal*, No. 82-2389 (D.C. Court of Appeals, December 30, 1983). In a Statement of Views concerning the 1982 cable rate adjustment, the Office noted that we would not take affirmative steps to implement the rate adjustment pending a final decision of the Court of Appeals. 48 FR 13166. See *infra*. The Office is now in the process of developing procedures, forms, and policies to implement the rate adjustment.

⁴Section 143 of House Joint Resolution 631, Pub. L. 97-377. In fact, the legislative stay expired on March 15, 1983, since the decision of the Court of Appeals was rendered on December 30, 1983.

⁵The issues addressed in Docket No. 83-3 and rules concerning implementation of the Tribunal's 1982 cable rate adjustment will be taken up in a separate proceeding. As the Office noted in the March 1983 Statement of Views, the comment letters received in February 1983 will be considered now in implementing the cable rate adjustment.

⁶The Motion Picture Association of America and the Professional Sports Leagues, while differing with NCTA on the merits, also asked the Office to issue regulations on the tiering issue.

⁷In our December 27, 1982 letter, we said, at page 2: "[W]e have concluded, for reasons hereafter given, that royalty fees must be paid, at least at the current rates, for any affected distant signal carried during any part of the accounting period [January-June 1983 as if it were carried for the entire accounting period." Published in the Copyright Office Notice of Inquiry, 48 FR at 6372.

⁸The central question of the NCTA, to which the Office responded in December 1982, was "whether an affected television station which is dropped prior to March 15 (the expiration of the legislative stay) must be paid for through March 15 or through June 30." The Office responded that, in light of the meager legislative history concerning Section 143 of the H.S. Resolution 631, we were unable to conclude that a modification of our existing non-proration regulation was intended. Therefore, payment must be made for the entire accounting period, but different rates apply before and after March 15, 1983.

¹On September 11, 1980, the Federal Communications Commission (FCC) published in the *Federal Register* (45 FR 60186) its decision to remove the cable television distant signal limitations and syndicated program exclusivity rules from the FCC regulations. The Court of Appeals for the Second Circuit upheld the authority of the FCC to repeal these rules in *Malrite v. FCC*, 652 F.2d 1140 (2d Cir. 1981), and the Supreme Court on January 11, 1982, denied a petition for certiorari on this issue in *National Association of Broadcasters v. FCC*, 102 S.Ct. 1002 (1982).

On September 23, 1980, the Copyright Royalty Tribunal published in the *Federal Register* (45 FR 63026) its determination of the 1978 cable royalty distribution. The Court of Appeals for the D.C. Circuit generally upheld the Tribunal's royalty distribution in *NAB v. CRT*, et al., No. 80-2273 (D.C. Cir. April 9, 1982); *NPR v. CRT*, et al., No. 80-2281 (D.C. Cir. April 9, 1982); *Major League Baseball, NBA, NHL and NASL v. CRT*, et al., No. 80-2284 (D.C. Cir. April 9, 1982); *CBS v. CRT*, et al., No. 80-2290 (D.C. Cir. April 9, 1982); and *ASCAP v. CRT*, et al., No. 80-2298 (D.C. Cir. April 9, 1982). On January 5, 1981, the Copyright Royalty Tribunal published in the *Federal Register* (46 FR 892) its first adjustment of the compulsory license royalty rates (the "1981 inflationary" rate adjustment). This determination was upheld on appeal by the Court of Appeals for the D.C. Circuit, *NCTA v. CRT*, 689 F.2d 1077 (1982), and the Copyright Office subsequently implemented the rate adjustment.

As discussed below, with respect to the "tiering" issue, the Office has taken a position as part of practices adopted in examining Statements of Account that allocation of gross receipts is not expressly permitted by the Copyright Act. Some have interpreted the Office's definition of "gross receipts," in effect since 1978, as a regulatory position on the "tiering" issue. The issue is now addressed fully in this proceeding.

In response to letters from motion picture copyright owners regarding the "tiering" issue and compliance with the compulsory license, a cable system, Cablevision Systems Development Company, brought an action for declaratory judgment in June 1983 against the Motion Picture Association of America, Inc. and its eight-member motion picture production companies. *Cablevision Systems Development Company v. Motion Picture Association of America, et al.* Civ. No. 83-1655 (D.D.C., filed June 8, 1983). The complaint generally seeks an adjudication that 17 U.S.C. 111 permits a cable system to allocate gross receipts in some way to reflect the "tiering" practices of cable systems. The defendants have counterclaimed for copyright infringement.

In September 1983, the NCTA also filed an action in the federal court for the District of Columbia, seeking a declaratory judgment regarding the "tiering" issue. *NCTA, Inc. v. Columbia Industries, Inc., et al.*, Civ. No. 83-2785 (D.D.C., filed September 21, 1983).

Finally, with respect to the "tiering" issue, a Petition for Adoption of Rule was filed on December 9, 1983, on behalf of the "professional sports leagues" (Major League Baseball, the National Basketball Association, the National Hockey League, and the North American Soccer League). The Petition requested that the Office terminate RM 80-2 by adopting a rule "consistent with, and indeed mandated by, the language and legislative history of the Copyright Act, prior Copyright Office rulings and sound policy considerations." (Petition of Major League Baseball, et al., at 6). The NCTA, Cablevision, and a law firm filed comments opposing adoption of rule by the Copyright Office relating to the "tiering" issue on the general ground that the issue is now before the courts and the Office cannot, in any event, decide the matter finally since definitive interpretation of a statute is the province of the courts.

As noted, the Office has decided to address the "tiering" issue in this proceeding. On this issue specifically, the rule is interpretive. While the courts will determine the correct interpretation of the Act and the Copyright Office will welcome the guidance of the courts on "tiering" and other issues, the Office

finds no justification for further delay in specifically addressing in regulations and important issue that continues to affect the filing of Statements of Account. At one time or another, the major interests affected by the compulsory license (cable systems and copyright owners) have asked the Office to "take a position" (cable systems generally) or "confirm a position" (copyright owners generally) regarding "tiering." Interpretation of the Act for purposes of administering the compulsory license of 17 U.S.C. 111 is within the authority of the Copyright Office—e.g., to develop forms, practices, and policies. The statement in Copyright Office regulations at 37 CFR 201.2(a)(iv) that the Office does not give "legal opinions or advice" regarding the "sufficiency, extent or scope of compliance with the copyright law" has been interpreted and applied by the Office to mean that it will not act as a lawyer for members of the general public. The Office does not give specific advice whether certain conduct actually constitutes copyright infringement. With respect to administration of the Copyright Act in general and the compulsory licenses in particular, the Copyright Office must and does, however, interpret the Act. In appropriate cases, courts have accorded weight to Office interpretations.¹⁰ The courts, of course, are the final arbiters of what the law means.

After careful consideration of all the hearing testimony and written comments, the Copyright Office now has decided to adopt several amendments to the cable regulations and changes in the Statement of Account forms. A discussion of the amendments and major substantive comments appears below.

1. *Proration of DSE's.* Paragraph (f) of section 111 of the Copyright Act sets forth the definition of "distant signal equivalent" (DSE), which has been incorporated by reference in § 201.17(f) of the Copyright Office regulations. The DSE is the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system, in whole or in part, beyond the local service area of the primary transmitter of such programming. Cable systems that complete Statement of Account form CS/SA-3 compute their statutory royalty payments on the basis of their total number of DSE's.

¹⁰*Mazer v. Stein*, 347 U.S. 201, 211-213 (1954); *DeSylva v. Ballentine*, 351 U.S. 570, 577-78 (1955); *Norris Industries, Inc. v. International Telephone and Telegraph Corp. and Ladd*, 606 F.2d 918 (11th Cir. 1983), cert. denied, 52 U.S.L.W. 3282 (U.S. Oct. 4, 1983); *Esquire, Inc. v. Ringer*, 501 F.2d 798, 801-02 (D.C. Cir. 1978); *Elton Corp. v. Ringer*, 570 F.2d 294, 298-99 (4th Cir. 1978).

¹Error; line should read:
"an important issue that continues to"

Under the compulsory license, each year is divided into two semi-annual accounting periods: January 1 through June 30, and July 1 through December 31. Ordinarily, the DSE of a distant television station carried full time for an entire accounting period is that station's full type value—that is, either 1.0 for an independent station, or .25 for a network or noncommercial educational station. Cable systems and their representatives have frequently questioned the appropriate calculation of the DSE value when a station is carried for an entire broadcast day during an accounting period, but is not carried every day of the period.

The Office has rejected similar if not identical proration arguments in past rulemaking proceedings. (45 FR 45270; July 30, 1980, which established 37 CFR 201.17(f)(3).) Nevertheless, responsive to the requests of cable systems, the Office sought testimony and comments specifically on whether "a cable system should be permitted to make a prorated adjustment to the full DSE value of a distant television station added, deleted or carried on a part-time basis during an accounting period if that station is also carried full time during any portion of that accounting period?"

Representatives from the cable industry maintained the compulsory license mechanism is sufficiently flexible to enable a cable system to prorate the ordinary DSE value in any of the above circumstances to reflect actual carriage. Furthermore, they asserted that the statutory division of the year into two accounting periods is merely procedural for purposes of royalty and Statement of Account submissions and is not a substantive element or condition of the compulsory license. The cable industry representatives suggested that a strict interpretation of this provision would result in an unjustified windfall to copyright proprietors.

Representatives of the program supply industry, on the other hand, noted that the statute itself specifies only a few, narrow instances where DSE proration is permissible and that all other types of limited carriage must be computed as full time carriage.

After careful consideration, the Copyright Office once more confirms its interpretation that proration of DSE's is not permitted under 17 U.S.C. 111 except in the specific cases included in the DSE definition in section 111(f). The statute, therefore, requires the computation of the DSE value on the basis of full-time carriage¹¹ in the above-mentioned

¹¹By "full-time carriage" the Office means carriage in excess of the partial or limited carriage for which proration is specifically allowed in the DSE definition.

²Error; line should read:
"Office to mean that it will not act as a"

circumstances irrespective of the amount of actual carriage during the accounting period. The Office finds no basis in the Copyright Act or its legislative history for a departure from the views expressed at 45 FR 45271-2. In sum, actual carriage is not the sole basis for computation of cable copyright royalties;¹³ "distant signal equivalent" is a phrase which was uniquely crafted and defined in the Copyright Act; and the brief references to proration in the legislative committee reports confirm that proration would be permissible only in the cases specially defined in the statute. H.R. Rept. No. 1476, 94th Cong., 2d Sess. 100 (1976). Section 111(d)(2)(B), moreover, in part requires the computation of a "total royalty fee for the period covered by the statement" (emphasis added). The Copyright Office believes that this language illustrates that the division of each year into two separate accounting periods represents a substantive element of the compulsory license mechanism which we have no statutory authority to alter. In an effort to clarify this point further with respect to the appropriate calculation of DSE's, the Copyright Office is amending

¹³ The NCTA at the July 28, 1981, public hearing and in briefs submitted to the D.C. Court of Appeals in *NCTA v. Columbia Pictures Industries*, Civ. No. 83-2785, D.D.C. Sept. 21, 1983 (made part of this record by NCTA's submission of December 22, 1983) argued that payment of royalties based upon the amount of amount of actual use is a basic principle of copyright law. In support of that argument, NCTA cites *Sheldon v. M-G-M*, 81 F.2d 49 (2nd Cir. 1936) *aff'd*, 309 U.S. 390 (1940). The Copyright Office finds no support for this proposition in copyright law generally and certainly not in the *Sheldon* case. *Sheldon* applied the patent rule of apportionment of profits attributable to the infringement. The case does not affect actual damages or statutory damages; it certainly does not purport to confirm a principle that the copyright owner may expect compensation based on the amount of the use only and not on factors such as the value of property, the nature of the work and the market for it, and the transaction costs of a per use method of payment. In the ordinary case, the Copyright Act does not regulate the amount of compensation a copyright owner may receive. The copyright owner enjoys an exclusive right and if someone wishes to make use of a copyrighted work in a way restricted by 17 U.S.C. 106 (the exclusive rights provision), the compensation is set by voluntary agreement between the copyright owner and the user. Those voluntary agreements may be based on use, but are not necessarily so. For example, performing rights for nondramatic music are generally licensed on a "blanket" basis—the opposite of a per use basis. Many contracts for other works or other uses are for a term of years and permit unlimited use during the period. It is true that motion pictures are frequently licensed on a per use basis, but this is not a "principle of copyright law." In any event, cable retransmission of broadcast programming is subject to a compulsory license. Compensation is set by the statute (as adjusted by the CRT). The formula is complex and varies depending on the size of the cable system and the definition of DSE value. Actual carriage is important in some cases, but it is clearly not the sole principle on which cable royalties are computed. A cable system grossing less than \$65,500 for a given six month period pays \$20 in copyright royalties irrespective of the amount of actual carriage.

§ 201.17(f) by adding a new subsection (2)(A) to read as follows:

(2)(A) Where a cable system carries a primary transmitter on a full-time basis during any portion of an accounting period, the system shall compute a DSE for that primary transmitter as if it was carried full-time during the entire accounting period.

2. *Multiple part time carriage.* The "distant signal equivalent" value can be prorated in the case of lack of activated channel capacity, and in the case of permissive substitution for programming primarily of interest to the distant community. These bases for proration of DSE's are unaffected by the FCC deregulation effective June 25, 1981.

In its comments to the Copyright Office rulemaking proceeding under Docket No. 79-4 (regulations issued July 3, 1980), the MPAA raised questions concerning the appropriate total DSE value to be assigned where two or more distant television stations having different DSE type values are carried part time on any one cable channel during an accounting period. The MPAA advocated that in this circumstance, a cable system should be required to set the total DSE values for those stations at not less than full value of the signal carried most frequently during the accounting period.¹⁴ In support of this position, the MPAA noted that it is illogical to suggest that Congress intended to require cable systems to pay the value of a full DSE for full-time carriage of one signal, but some lesser value if the same amount of programming is delivered to the cable subscriber from two or more part-time signals with different DSE type values.

Comments submitted on behalf of three multi-system operators (MSO's) opposed the MPAA position. They asserted that the treatment of multiple stations carried part time on a single channel should be consistent with the treatment of any single station carried on a part-time basis.

The Copyright Office has emphasized its inability to alter the clear and unambiguous statutory definition of "distant signal equivalent":

We cannot emphasize too strongly that the "distant signal equivalent" is a statutory definition, and one which was created *sui generis* in the Copyright Act. The Copyright Office was not given any authority by Congress to elaborate on this definition. General principles of statutory construction require that clear and unambiguous definitions, and provisos contained in and limiting the operative effect of definitions, shall be given controlling effect. This is especially true where the term or phrase was created by the very statute in which it

¹⁴ The MPAA made its proposal before FCC deregulation, when proration of the DSE was also permitted for part time carriage pursuant to the FCC's late night and specialty rules.

appears. Thus, if the Copyright Office should attempt to modify this statutory definition, there is no other body of law to which we could look for guidance. (45 FR 45271)

Because the DSE definition does not require the accumulation of part-time DSE values based on lack of activated channel capacity to equal, at a minimum, the full DSE value of the part-time station most frequently carried, the Copyright Office does not believe it has the authority to impose such requirement by regulation.

3. *Classification of Canadian, Mexican, and Specialty television stations.* Although the cable compulsory license principally concerns the retransmission of domestic signals, section 111(c)(4) extends the compulsory license to the retransmission of Mexican and Canadian signals by "grandfathered" U.S. cable systems and by U.S. cable systems located within the limited border zones of Mexico and Canada respectively. As part of its comments to Docket No. RM 79-4, the MPAA questioned the validity of form CS/SA-3 filings which classify carriage of Canadian television stations as "network" stations and assign to them a DSE value of one-quarter. Because of its significance in the royalty calculation process, the Office sought testimony during the July 1981 hearing as to whether Canadian and Mexican television stations carried on a distant basis should be classified instead as "independent stations" with a corresponding DSE value of one. The Copyright Office received three comments in response to this inquiry. Two large MSO's suggested that the Office resolve this issue through use of the FCC definition of "independent station" under 47 CFR 76.5(n):

(n) *Independent station.* A commercial television broadcast station that generally carries in prime time not more than 10 hours of programming per week offered by the three major national television networks.

The MSO's imply that adoption of this definition would enable certain Canadian stations to be classified as "network" stations.

Testimony offered by representatives of the program supply industry, on the other hand, suggested that classification of foreign television stations as "network" stations is contrary to the definition of "network" and "independent" stations included in section 111(f) of the copyright law and that Canadian and Mexican stations must be classified as "independent stations," for purposes of computing DSE values. The Copyright Office agrees with this view.

Section 111(f) defines a "network station" as:

... a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the

United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of that station's typical broadcast day.

The subsection then defines an "independent station" as " . . . a commercial television broadcast station other than a network station."

Canadian and Mexican television stations fail to meet several of the qualifying "network" standards set forth above. First, neither Canadian nor Mexican stations are owned or operated by, or affiliated with any of the United States television networks. Second, with respect to Canadian stations, the regulations of the Canadian Radio-Television Telecommunications Commission impose foreign content limits of 40% in every Canadian licensee's program schedule, with 45% allowable in prime time. Although specific limits are not included in the U.S. copyright law definition of "network station," it is unlikely that carriage under the Canadian foreign content limits would constitute a "substantial part of the programming supplied by such networks for a substantial part of that station's typical broadcast day." (Emphasis added). Third, even if the "substantiality" test noted above were met, foreign stations would still fail to meet the "supplied" test since they acquire broadcast rights to such programming directly from the program supply copyright holders rather than through U.S. television networks.

If foreign stations cannot be considered "network stations" within the meaning of section 111(f), and they plainly cannot be considered "noncommercial educational stations" as defined in section 397 of title 47 United States Code, then they must be classified as independent stations for the purpose of assigning the DSE value.

Although the Office did not specifically invite comment with respect to the DSE value for specialty stations in the United States, one cable system operator suggested that the Copyright Office should encourage carriage of "socially useful" signals by permitting cable systems to assign either no DSE value, or a greatly reduced DSE value, for carriage of specialty stations. The general reasoning applicable to Canadian and Mexican stations leads to the same conclusion when applied to specialty stations. The Copyright Office in examining Statements of Account has consistently taken the position that specialty stations must be assigned a DSE value of one, since they do not meet the more specific alternative definitions of "network station" or "noncommercial educational station." The Office emphasizes that this interpretation applies to 17 U.S.C. 111 solely for the purposes of computing DSE values. In

order to make these points clear, the Office is adding a new subparagraph (5) to § 201.17(f), which is concerned with computation of DSE's. The new language reads:

(5) For the purposes of computing DSE values, specialty primary television transmitters in the United States and all Canadian and Mexican primary television transmitters shall be assigned a value of one.

4. *Part-time carriage log.* Under present Copyright Office regulations, cable systems are required to log in Space J of Statement of Account forms CS/SA-2 and CS/SA-3 their carriage on a part-time basis of specialty and late-night programming, and other part-time carriage where they lack the activated channel capacity to retransmit on a full-time basis all signals which they are authorized to carry. These logging requirements first were imposed in 1978 on the assumption that this information "may reasonably be relevant to the question of royalty distribution." (43 FR 960.) Since 1978, the CRT and the copyright claimants to the cable royalty pools have had practical experience in several royalty distribution proceedings. In light of this experience, the Copyright Office decided to review the underlying basis for these logging requirements. The review, however, was limited to form CS/SA-2 since the information on part-time carriage included in form CS/SA-3 remains essential to the royalty calculation process.

The Copyright Office heard testimony and received comments from eight diverse organizations in response to this inquiry. Of these groups, only the National Association of Broadcasters (NAB) advocated retention of the log, at least until the CRT and the claimants gain further experience in the distribution of royalties. The NAB also was critical of any distinction made between "form 2" and "form 3" systems noting that the degree of harm caused copyright owners or the benefits received by multiple "form 2" cable systems is equivalent to the harm and benefits accruing from one "form 3" system serving the same number of subscribers. Therefore, the NAB suggests that these systems be treated equally with respect to their filing requirements.

The Copyright Office takes no position on the validity of the NAB "harm-benefit" analysis. Notwithstanding, the Office proposes to eliminate the part-time carriage log from form CS/SA-2 for several reasons. First, the log is employed on form CS/SA-2 solely to provide information for the CRT royalty distribution proceedings, which have, to date, concentrated on cable systems filing form CS/SA-3. Second, the Office's interim regulation of May 20, 1982 (47 FR 21786) eliminated the part-time logging requirements for

carriage of late-night and specialty programming, which should further reduce the utility of the log in the royalty distribution process. Finally, the proposal by the Copyright Office to clarify the occasions when a cable system may appropriately claim part-time carriage because of "lack of activated channel capacity," discussed *infra*, may further reduce the significance of the log.

5. *Lack of activated channel capacity.* The DSE definition permits a cable system that completes form CS/SA-3 to reduce the full DSE value of television broadcast stations carried on a part-time basis where "the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry . . ." (hereafter "LAC capacity"). During its examination of Statements of Account, the Copyright Office has noted several instances where cable systems have employed this provision and, at the same time, appeared to be using one or more of their activated channels for services other than secondary transmissions (e.g., local origination, subscription services, etc.). Because of the uncertainty surrounding the applicability of the LAC capacity provision in this circumstance, the Copyright Office sought the views of the interested parties.

The Office received testimony and comments from seven groups in response to this inquiry. Organizations representing cable operators commented favorably on the ability of a system to utilize "lack of activated channel capacity" as a basis to reduce the ordinary DSE value in the situation noted above. In particular, they contended that cable operators should not be obligated to pay royalties for full-time carriage when a signal is carried only part-time. They also noted that, under the recent FCC deregulation eliminating its distant signal limitations, it is no longer possible for a cable system to retransmit all signals which it may be authorized to carry. Thus, the cable spokesmen suggest that all "form 3" cable systems now should be able to apply this provision for any and all part-time carriage. On the other hand, representatives of copyright proprietors advocated a strict interpretation of the DSE definition to eliminate use of the LAC capacity provision in cases where non-secondary transmission services are provided by a cable system.

After a thorough review of the parties' comments and the Copyright Act and its legislative history, the Copyright Office has determined for the following reasons that the intent of the LAC capacity provision limits its application to occasions where *all* of a cable system's activated channel capacity is devoted to secondary transmissions.

First, as has been discussed in detail in previous Copyright Office rulemakings relating to this issue, the Office has concluded "that Congress clearly did not intend to establish an open-ended policy of permitting the reduction of DSE values to correspond to actual signal carriage." (45 FR 45271). Acceptance of the cable industry's position on this matter would invariably lead to this unintended result. Second, the statute specifically provides that proration of a DSE under the guise of lack of activated channel capacity may be available only where it is not possible for a cable system to retransmit all signals which it is authorized to carry. While the Commission's deletion of its distant signal limitations theoretically negates any possibility of carriage by a cable system of all signals which it is authorized to carry, the devotion of one or more of a system's activated channels to non-secondary transmission services evidences a conscious decision by the cable operator to refrain from carrying as many secondary transmissions as otherwise possible.¹⁴

In order to effectuate this decision, the Office is adopting a new definition in § 201.17(b) to read as follows:

(10) For purposes of this section, a cable system "lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry" only if: (A) All of its activated television channels are used exclusively for the secondary transmission of television signals; and (B) the number of primary television transmitters secondarily transmitted by the cable system exceeds the number of its activated television channels.

The Office also proposes to make corresponding modifications to the Statement of Account forms, by June 1984.

6. *Gross Receipts for "Basic Service"—the "Tiering Issue."* Section 111(d)(2) of the Act requires cable systems to compute their statutory royalty payments on the basis of their gross receipts paid by subscribers "for the basic service of providing secondary transmissions of primary broadcast transmitters." Cable systems have frequently questioned the appropriate determination of gross receipts in cases where: (1) The minimum service package includes services in addition to the retransmission of radio and television signals, or (2) secondary transmissions are included in various tiers of service packages upon payment of separate charges for each service package or "tier." Since the choice of service packages above minimum service ordinarily rests with the subscriber, different subscriber groups

arise for a given tier of service. Cable systems frequently have urged to the Copyright Office that they should be allowed to allocate the gross receipts in some way to reflect the precise amounts received from subscriber groups for the "secondary transmission" services.

In 1978, the Copyright Office specifically addressed the meaning of "gross receipts" (43 FR 27828) with respect to the inclusion in minimum cable service of local origination services (such as time and weather and automated services). At that time, the Office concluded that a cable system could not allocate a portion of the monthly service fee to the local origination services and report only the balance as "gross receipts." The Office's rationale for this decision was that the origination and retransmission services are clearly part of an integral package offered to subscribers and that there is no statutory justification or basis for allocating the monthly fee.

The Copyright Office, in examining Statements of Account since 1978, has generally questioned any allocation of gross receipts where secondary transmission service has been combined with a non-broadcast service for a single subscriber fee for the package of services, either with respect to minimum service or through the tiered approach. If a cable system has reported gross receipts applying its own formula for allocation, however, the Office would not ordinarily be aware of this in examining Statements of Account, unless the cable system voluntarily disclosed to us its allocation of gross receipts.

Since 1978, many cable systems have made various satellite origination networks (such as CNN, ESPN, and USA) and other non-broadcast services available to their subscribers, sometimes in combination with secondary transmission service. When the copyright law was enacted in 1976, cable systems generally transmitted all of their secondary transmissions to their subscribers for a single monthly service charge. Computer micronization has led to the development of "addressable" channel converters enabling cable systems to offer their subscribers a wider range of program selection through different tiers of service consisting of a specified number of channels, purchasable by subscribers at various increments of cost.

In light of these developments, the NCTA suggested in its comments to the Office's July 3, 1980, rulemaking proceeding, that the Office reconsider its earlier decision concerning "gross receipts." The Office decided to consider the "tiering" issue in general, and, as part of the July 1981 hearing, the Copyright Office sought testimony and comments on the implications of tiering.

Many of the comments indicated that the issue is best addressed with respect to the determination of "gross receipts" rather than DSE's. Comments received from cable television operators asserted that cable systems should be required to include as part of their basic service "gross receipts," only that part of their minimum service or tiered revenues attributable to secondary transmission service. The NCTA suggested that, for purposes of simplicity, a cable system should report its entire receipts for all tiers as part of its basic service "gross receipts" in cases where the tier contains any secondary transmissions, but application of these receipts in the royalty calculation process should be limited to that subscriber segment receiving the tiered signals rather than the system's total number of subscribers. On the other hand, representatives of professional sports and the MPAA opposed any allocation or apportionment of gross receipts by subscriber groups, as suggested by the NCTA or by any other method. Instead, these groups requested that the regulations specify that all gross receipts attributable either to minimum service or to any tier of service containing secondary transmissions must be included in the calculation of royalties for the entire cable system, and that the gross receipts and DSE's should be aggregated.

As noted, tiering marketing strategies were not fully contemplated when the current law was enacted. Accordingly, the statute does not specifically accommodate tiering. The Act provides no guidance whatsoever either to the Copyright Office or cable systems regarding the method¹⁵ for attempting any allocation of gross receipts.¹⁶ The Office has been given no specific delegation of regulatory authority to establish a method for allocation. Under the circumstances, the Office has doubted whether it has the authority to establish a method for allocation of gross receipts. Even if that authority

¹⁴ The first allocation question is whether allocation would be permitted with respect to minimum service received by all subscribers, as well as tiered services received by different subscriber groups. Secondly, in addition to the segmentation by subscriber groups proposed by NCTA, other methods might be: (1) Simple apportionment of revenues for each signal on a tier (a cable system might then "load-up" a secondary transmission tier with inexpensive or free program origination services, thereby diluting the amount of royalties due); (2) evaluation of the programming carried on certain tiers, with respect to the market value of the programming and/or the popular appeal of the signal, as measured by some marketing device. Another method, not relating to gross receipt allocation, would be to prorate the DSE to reflect the proration of subscribers receiving a secondary transmission (this method is contrary to the Office's interpretation of the Act that the DSE value cannot be prorated or allocated except as specifically provided in the definition itself).

¹⁵ The Act permits allocation of gross receipts in

³ Error; line should read:
"the portion of subscribers
receiving a secondary"

¹⁴ See *In re Arlington Telecommunications Corp.*, Memorandum Opinion and Order of the FCC, 84-87, No. 34233; (February 3, 1984).

could be found under the general rulemaking power of 17 U.S.C. 702, what allocation method would be fair to all interests, and what kinds of controls and verification would be needed to avoid abuse?

The 1982 cable rate adjustment tends to enlarge the Office's doubts about the appropriate method for allocation, if any, since certain signals will cost substantially more than others. Thus, the NCTA's suggestion that the royalty should be calculated based on the segregated revenues for each tier applied to the DSE's for that tier, rather than on aggregated gross receipts and DSE's, would seem open to substantial manipulation of signals and tiers.

The Copyright office has concluded that the Copyright Act does not permit any proration or other allocation of either DSE's or gross receipts by subscriber groups where any secondary transmission service is combined with nonbroadcast services in program packages, clusters, or tiers. We confirm in regulations the interpretation of the Copyright Act applied by the Licensing Division of the Office since 1978.

The Office recognizes that cable marketing practices have changed drastically since 1978, but the Office cannot provide the flexibility requested by cable systems absent guidance from the Congress or the courts. To a large extent, subject to arrangements with local franchising authorities, a cable system can control its own "tiering" destiny. The system can offer secondary transmission services solely as part of minimum service or on discrete tiers, excluding expensive origination services in either case.

Accordingly, the Office is amending the definition of gross receipts for the "basic service of providing secondary transmissions of primary broadcast transmitters" to specify that allocation is not permitted where broadcast and non-broadcast services are combined in separate packages or tiers, chargeable at a single fee for the combined service. Section 201.17(b)(1) as amended reads:

(1) Gross receipts for the "basic service of providing secondary transmissions of primary broadcast transmitters" include the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals, for additional ser-

ees, and for converter fees. All such gross receipts shall be aggregated and the DSE calculations shall be made against the aggregated amount. Gross receipts for secondary transmission services do not include installation (including connection, relocation, disconnection, or reconnection) fees, separate charges for security, alarm or facsimile services, charges for late payments, or charges for pay cable or other program origination services: Provided That, the origination services are not offered in combination with secondary transmission service for a single fee.

7. *All-band FM.* One of the most difficult issues that the Copyright Office has faced in administering the cable television compulsory license has concerned the appropriate identification of FM radio signals carried by a cable system on an "all-band" basis. In an effort to assure compliance by cable systems with their statutory responsibilities while minimizing burdensome monitoring by them, the Copyright Office adopted a two-pronged regulation in 1978. The first element of the regulation permits cable systems carrying "all-band" FM, to adopt monitoring systems such as the periodic use of a good FM receiver during optimum weather conditions for the area, which can *reasonably be expected* to identify radio signals meeting certain specified time and strength standards. The second part of the regulation requires these affected cable systems to describe in part 3 of Space H of the Statement of Account form the monitoring systems so employed.

As part of the July 1981 hearing, the Office sought testimony and comments on whether or not cable systems carrying "all-band" FM should continue to be required to describe their monitoring activities. All of the comments received on this point favored the elimination of this reporting requirement and the Office is deleting subclause (v) of the § 201.17(e)(10) of its regulations and will eliminate part 3 of Space H of the Statement of Account form accordingly. It should be emphasized, however, that cable systems which continue to retransmit FM radio signals on an "all-band" basis still are required to identify the signals so carried.

Representatives of National Public Radio (NPR), the American Society of Composers, Authors and Publishers (ASCAP), and the National Association of Broadcasters (NAB) expressed the view that, based on their examination of submitted Statements of Account, many cable systems either misunderstand or disregard the instructions relating to Space H. The commentators noted that some cable systems properly answer "No" in part 1, designating no "all-band" carriage, but then neglect to complete part 2 to indicate those radio signals

which the cable system processed separately. The Copyright Office agrees that part 1 of Space H may result in some confusion and believes that it can be reduced through simplification of the Statement of Account form.

Accordingly, the office intends to delete part 1 of Space H in its entirety and add a new column to part 2 for identifying a radio station that was electronically processed by the system as a separate and discrete signal.

ASCAP and NPR also noted problems which they have encountered during the CRT royalty distribution proceedings due to the lack of an adequate statutory or regulatory definition of "distant" radio carriage. The commentators have asked the Copyright Office to resolve this situation through the adoption in our regulations of a definition of "distant" radio carriage. The Copyright Office has decided not to act on this request. Section 111(f) of the copyright law provides in part that,

The "local service area of a primary transmitter," in the case of a radio broadcast station, comprises the primary service area of such station, pursuant to the rules and regulations of the Federal Communications Commission.

Carriage outside of this local service area constitutes "distant" carriage. The Office cannot provide the desired clarification.

8. *Specification of local television carriage.* Cable systems that complete Statement of Account form CS/SA-3 compute their statutory royalty payment on the basis of their carriage of distant non-network programming. For this purpose, a television station is considered as "local," and hence not considered in the calculation of royalties, if it "is entitled to insist upon its signal being retransmitted . . . pursuant to rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1978" (i.e., within Grade B contour, significantly viewed, etc.). Copyright Office regulations and Statement of Account forms CS/SA-2 and CS/SA-3 currently¹⁷ require cable system operators to indicate whether television stations carried by them are "local" or "distant."

In their comments to the July 3, 1980, Copyright Office rulemaking proceeding, the MPAA suggested that cable systems also be required to specify the particular basis under which they classify particular television station carriage as local. The MPAA believes that this additional requirement would reduce the number of innocent errors in the designation of carriage and would enhance the reviewability of the Statement of Account forms by

¹⁷ As discussed at point 4 *supra*, the Office is eliminating the part-time carriage log for CS/SA-2 systems in the final regulation.

one instance, unrelated to tiering: where a cable system is located partly within and partly without the local service area of a primary transmitter, gross receipts are allocated to reflect gross receipts derived from subscribers located outside the local service area of such primary transmitter. 17 U.S.C. (d)(2)(B)(iv). The Office has concluded that this provision, which is based on the fundamental distinction between distant and local signals, does not evince any congressional intent to allow allocation in the unrelated case of tiering.

copyright proprietors and cable system operators. As part of our July 1981 hearing, the Copyright Office sought the views of other interested parties regarding this suggestion.

In response, the Office received comments from four groups of cable operators, all objecting to the suggestion. They noted that the information is presently readily available in FCC files and numerous cable television data publications.

Although the Office does not believe that the further specification of local television carriage would impose great burdens on cable operators, we have decided against adding this regulatory requirement in light of the availability of the information from other sources.

9. Statement of Account forms and royalty computations.

a. *CS/SA-2 forms.* Cable systems completing Statement of Account form CS/SA-2 compute their statutory royalty payments through use of either a seven- or eight-step mathematical formula set forth in Space L. In their comments to the July 3, 1980, Copyright Office rulemaking proceedings, the MPAA proposed that the Office adopt a simplified, four-step formula which, they suggest, achieves the same results as the present formulas. Prior to the July 1981 hearing, the Copyright Office published the proposed formula in the *Federal Register* (48 FR 30651) for comment and review.

During the hearing, both the MPAA and the NCTA testified that the proposed formula reached comparable results as the two somewhat longer formulas now used and, therefore, favored its adoption. On the other hand, comments received from two multi-system operators requested that the Copyright Office delay consideration of this matter until completion of judicial review of the CRT "inflationary" rate adjustment, which has now been sustained on appeal.¹⁸

Although the proposed formula is shorter than the two existing formulas, the Copyright Office believes that the benefits to be gained through simplification are minimal. Furthermore, the two existing formulas track the statutory language of the calculations as set forth in sections 111(d)(2) (C) and (D) of the statute, and, in the opinion of the Copyright Office, lead to a better understanding by cable operators of the royalty computation process under the compulsory license. The Copyright Office believes that this instructional aspect, in addition to its familiarity in use during the last eight accounting periods, far outweighs any benefits that may be derived through use of a simplified formula. Accordingly, the

Office has decided to retain the two formulas as presently written.

b. *CS/SA-3 forms.* The MPAA has, for several years, also sought the revision of the royalty calculation process on form CS/SA-3 through the use of a table to convert total DSE's to percentage decimals. The Copyright Office suggests that representatives of the cable industry meet with copyright proprietors to develop joint recommendations concerning simplification of this calculation process.

c. *All forms.* In its July 1981 testimony, the MPAA pointed out that many combined "individual" cable systems often innocently report as several individual systems in violation of the statute and Copyright Office regulations. In an effort to detect and possibly avoid these innocent infractions, the MPAA recommended that: (1) The Statement of Account forms prominently set forth the circumstances when two or more individual systems must report as one system; (2) the system specify the location of its headend; and (3) the system provide its FCC-assigned "physical system" and "community name" code numbers.

The Copyright Office believes that the number of inadvertent "individual" filings has decreased since 1978 due, in part, to the better understanding by cable operators of their obligations under the compulsory license. Therefore, while the Office will continue prominently to include in the Statement of Account instructions the combined "individual" system filing requirements, we have decided against imposing additional filing requirements on cable operators, subject to our ongoing review of procedures to implement the 1982 cable rate adjustment.

d. *Special form for small systems.* Finally, one cable television operator suggested that the Copyright Office define "small" cable television systems as those serving fewer than 1,000 subscribers and allow more liberal reporting requirements for such systems.

The Office has attempted, throughout its administration of the compulsory license mechanism, to reduce the filing burdens imposed on smaller cable systems. The amendments included in this rulemaking attempt to continue this trend. However, the Office has no authority to waive or reduce certain statutory-prescribed filing requirements on the basis of the number of a cable system's subscribers.

For the foregoing reasons, the Copyright Office is amending the stated portions of 37 CFR 201.11 and 201.17, effective June 1, 1984. The issues and policies covered by this rulemaking have been the subject of a public

hearing and extensive public comment. The regulations are either interpretive of the Copyright Act or concern technical adjustments in the Statement of Account forms. In order to prepare the revised forms for publication in June 1984, the final regulations will be effective on June 1, 1984. The Office invites public comment specifically on the language of the final regulations, but they will be effective on June 1, 1984, in the form they are published today, unless the Office subsequently publishes a notice to the contrary. To the extent that the rules are interpretive of the Copyright Act and confirm past examining practices of the Copyright Office, the Office may cite these regulations in examining Statements of Account from today forward.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the United States Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.¹⁹ To the extent that the regulations are interpretive, moreover, they are not subject to the Regulatory Flexibility Act in any event.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that the regulations will have no significant impact on small businesses. The regulations primarily affect large MSO cable systems who file CS/SA-3 forms.

List of Subjects in 37 CFR Part 201

Cable television, Copyright, Copyright Office.

Final Regulations

In consideration of the foregoing, Part 201 of 37 CFR Chapter II is amended in

¹⁹ The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17)," except with respect to the making of copies of copyright deposits). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOLA requirements.

¹⁸ *NCTA v. CRT*, 689 F. 2d 1077 (D.C. Court of Appeals: 1982).

the manner set forth below.

A. Section 201.11 is amended as follows:

1. Paragraph (c)(2) of § 201.11 is removed in its entirety.

2. Paragraph (d)(4) of § 201.11 is removed in its entirety and paragraph (d)(5) is redesignated paragraph (d)(4).

3. Paragraph (e)(2) of § 201.11 and accompanying footnote 5 are removed in their entirety.

4. Paragraph (e)(3) of § 201.11 is redesignated paragraph (e)(2) and is revised to read as follows:

§ 201.11 Notice of Identity and signal carriage complement of cable systems.

(e) . . .
(1) . . .

(2) *Special (Required) Amendments for Certain Cable Systems.* Any cable system which records an Initial Notice of Identity and Signal Carriage Complement and is required by the last sentence of paragraph (c)(1)(iv)(B) of this section to record a special amendment shall, no later than one hundred and twenty days after recordation of the Initial Notice, record an amendment to that Notice identifying the primary transmitter or primary transmitters of FM signals generally receivable by the system as of the date of the amendment in accordance with paragraphs (c)(1)(iv) (A) and (B) of this section. Such amendment shall: (i) Be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement"; (ii) specifically identify the Initial Notice intended to be amended so that it may be readily located in the records of the Copyright Office; and (iii) be signed and dated in accordance with paragraph (c)(1)(v) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.

5. The reference to "paragraph (e)(3)" in the last sentence of paragraph (B) of § 201.11(c)(1)(iv) is changed to read "paragraph (e)(2)."

B. Section 201.17 is amended as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

1. Paragraph (b)(1) of § 201.17 is revised to read as follows:

(b) *Definitions.* (1) Gross receipts for the "basic service of providing secondary transmissions of primary broadcast transmitters" include the full

amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees. All such gross receipts shall be aggregated and the DSE calculations shall be made against the aggregated amount. Gross receipts for secondary transmission services do not include installation (including connection, relocation, disconnection, or reconnection) fees, separate charges for security, alarm or facsimile services, charges for late payments, or charges for pay cable or other program origination services: Provided That, the origination services are not offered in combination with secondary transmission service for a single fee.

2. A new paragraph (b)(10) is added to § 201.17 and reads as follows:

(b) . . .

(10) For purposes of this section, a cable system "lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry" only if: (A) All of its activated television channels are used exclusively for the secondary transmission of television signals; and (B) the number of primary television transmitters secondarily transmitted by the cable system exceeds the number of its activated television channels.

3. Paragraph (e)(5) of § 201.17 is revised to read as follows:

(e) . . .

(5) The designation "Channels," followed by: (i) The number of channels on which the cable system made secondary transmissions to its subscribers, and (ii) the cable system's total activated channel capacity, in each case during the period covered by the Statement.

4. Paragraph (e)(8) of § 201.17 is revised to read as follows:

(e) . . .

(8) The designation "Services Other Than Secondary Transmissions: Rates," followed by a description of each package of service which consists solely of services other than secondary transmission services, for which a separate charge was made or established, and which the cable system furnished or made available to subscribers during the period covered by the Statement of Account, together with the amount of such charge.

However, no information need be given concerning services furnished at cost. Specific amounts charged for pay cable programming need not be given if the rates are on a variable, per-program basis. (The fact of such variable charge shall be indicated.)

5. Paragraph (e)(9)(vii) of § 201.17 is revised to read as follows:

(e) . . .
(9) . . .

(vii) The information indicated by paragraph (e)(9), subclauses (v) and (vi) of this section, is not required to be given by any cable system that appropriately completed Form CS/SA-1 or Form CS/SA-2 for the period covered by the Statement.

6. Paragraph (e)(10)(i) of § 201.17 is revised to read as follows:

(e) . . .
(10) . . .

(i) A designation as to whether each primary transmitter was electronically processed by the system as a separate and discrete signal.

7. Paragraph (e)(10)(v) of § 201.17 is removed in its entirety.

8. Paragraph (f)(2) of § 201.17 is revised to read as follows:

(f) . . .

(2)(A) where a cable system carries a primary transmitter on a full-time basis during any portion of an accounting period, the system shall compute a DSE for that primary transmitter as if it was carried full-time during the entire accounting period.

(B) where a cable system carries a primary transmitter solely on a substitute or part-time basis, in accordance with subparagraph (3) of this paragraph (f), the system shall compute a DSE for that primary transmitter based on its cumulative carriage on a substitute or part-time basis. If that primary transmitter is carried on a full-time basis as well as on a substitute or part-time basis, the full DSE for that primary transmitter shall be the full DSE type value for that primary transmitter, for the entire accounting period.

9. A new paragraph (f)(5) is added to § 201.17 and reads as follows:

(f) . . .

(5) For the purposes of computing DSE values, specialty primary television transmitters in the United States and all Canadian and Mexican primary television transmitters shall be assigned

a value of one.

10. The last sentence of § 201.17(g) is amended by removing the numerals "0.675" and substituting "0.799" in lieu thereof.

(17 U.S.C. 111, 702)

Dated: March 20, 1984.

David Ladd,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

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