Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703, in Washington, DC, on September 7, 2016.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2016–21963 Filed 9–12–16; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 387

[Docket No. 15–CRB–0010–CA]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: On April 26, 2016, the Copyright Royalty Judges (Judges) published for comment proposed regulations governing royalty rates and terms for the distant retransmission of over-the-air television and radio broadcast stations by cable television systems to their subscribers. The participants in the proceeding concluded their negotiations and asked for readoption of the cable rate regulations without change. The Judges accepted the negotiated settlement and did not propose any substantive changes to the participants' proposed rates and terms. However, the Judges' proposed regulations updated terms, moved the rules to the chapter of the CFR that includes other applicable rules of the Copyright Royalty Board, and proposed certain other non-substantive changes to make the rules easier to read. The Judges received comments from the Phase I parties on the proposed changes and finding the suggested revisions therein clarified the rule, accepted all of the proposed changes.

DATES: *Effective:* September 13, 2016.

Applicability date: January 1, 2015, through December 31, 2019.

ADDRESSES: The final rule is also posted on the agency's Web site (*www.loc.gov/crb*).

FOR FURTHER INFORMATION CONTACT: Kimberly Whittle, Attorney Advisor, by telephone at (202) 707–7658, or by email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2016, the Copyright Royalty Judges (Judges) published for comment in the **Federal Register** proposed regulations governing royalty rates and terms for the distant retransmission of over-the-air television and radio broadcast stations by cable television systems to their subscribers for the period 2015–2019. *See* 81 FR 24523. The proposal was the result of a settlement between the National Cable & Telecommunications Association, the American Cable Association, and a group referring to itself as the ''Phase I Parties.'' [1] The settlement proposed that the extant rates, terms, and gross receipts limitations remain unchanged through 2019. *See* 17 U.S.C. 111(d)(1)(B) and 37 CFR 256.2(c)–(d). The notice included a request for comments from interested parties as required by 17 U.S.C. 801(b)(7)(A).

The Judges received the following comments on the substance of the proposal from the Phase I Parties:

Proposed § 387.1, second sentence. The proposed language ''. . . a cable system entity may engage in the activities set forth in 17 U.S.C. 111'' appears to be vague and overly broad as compared to the scope of the Section 111 statutory license that is limited to ''secondary transmissions to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station'' under certain conditions that are set forth in 17 U.S.C. 111(c). Accordingly, the Phase I Parties suggest the above-quoted language of proposed § 387.1 be changed to ''. . . a cable system shall be subject to a statutory license authorizing secondary transmissions of broadcast signals to the extent provided in 17 U.S.C. 111.''

Proposed § 387.2(a). The proposed language, ''the royalty fee rates for secondary transmission by cable systems are those established by 17 U.S.C. 111(d)(1)(B)(i)–(iv), as amended,'' is potentially ambiguous in light of the express limitation at the beginning of Section 111(d)(1)(B) that: ''Except in the case of a cable system whose royalty fee is specified by subparagraph (E) or (F).'' This limitation means that the royalty rates in subsections (i)–(iv) of Section 111(d)(1)(B) apply to only one class of cable systems—those with semi-annual gross receipts of $527,600 or more (commonly known as ''Form 3 systems'')—not to all ''cable systems'' as the general reference in proposed § 387.2(a) now suggests. Accordingly, the Phase I Parties suggest that the above-quoted language of proposed § 387.2(a) be modified to incorporate the statutory limitation, perhaps by revising the language to state ''. . . by cable systems not subject to § 387.2(b) of these regulations . . . ''

Proposed § 387.2(b). The use of ''alternate tiered rates'' in the title and body of this section is potentially confusing because these rates are not ''alternate'' rates that might apply to any cable system, but a separate set of rates, established by 17 U.S.C. 111(d)(1)(E) and (F), that apply to cable systems with less than $527,600 in semi-annual gross receipts (commonly known as ''Form ½ systems''). In addition, use of the phrase, ''tiered rates,'' could cause some confusion because monthly subscriber fees for cable service are almost universally based on ''tiered'' bundles of programming services and rates. Accordingly, the Phase I Parties suggest that the title of proposed § 387.2(b) be changed to ''Rates for Certain Classes of Cable Systems,'' and the words ''alternate tiered'' be deleted from the text of the regulation.

Proposed § 387.2(e). The language, ''Computation of royalty fess shall be governed by 17 U.S.C. 111(d)(1)(C),'' is potentially confusing because it might be read to suggest that any and all aspects of the royalty fee computation can be determined by reference to Section 111(d)(1)(C). While that paragraph identifies the computation to be used in some specific situations that might apply to some Form 3 systems, it does not address how some other key components (*e.g.,* gross receipts and distant signal equivalent values) of the royalty fee calculation are determined, or how the 3.75 percent rate and syndicated exclusivity surcharge are computer. Accordingly the Phase I Parties suggest that either § 387.2(e) be deleted in its entirety or it be rewritten to state: ''Computation of royalty fees shall be governed by 17 U.S.C. 111(d) and 111(f), and 37 CFR 201.17.''

Comments of the Phase I Parties on Proposed Rule at 1–3 (May 17, 2016).

In addition to seeking comments on the proposed settlement, the Judges also solicited comments on the Judges' proposed relocation of the regulations to 37 CFR part 387, which includes other applicable rules of the Copyright Royalty Board. The Judges likewise solicited comments on certain non-substantive changes to the regulations to make them easier to read. The Judges received no comments on the editorial proposals.

The Judges' authority to adopt proposed settlements as statutory rates and terms is codified in Section 801(b)(7)(A) of the Copyright Act. That provision of the Act authorizes the Judges to adopt as a basis for statutory terms and rates an agreement concerning such matters reached among ''some or all of the participants'' in a proceeding ''at any time during the proceeding'' except that the Judges must provide an opportunity to comment on the agreement to those that would be bound by the agreement. 17 U.S.C. 801(b)(7)(A)(i). In light of the statutory requirements regarding adoption of settlements and the absence of any opposition to the proposed settlement, the Judges find that the proposed settlement (along with the revisions proposed by the settling parties in their comments), which leaves the current rates and terms unchanged and adjusts the regulatory language to improve

[1] The ''Phase I Parties'' are the Program Suppliers, Joint Sports Claimants, Public Television Claimants, Commercial Television Claimants, Music Claimants, Canadian Claimants Group, National Public Radio, and Devotional Claimants.

clarity and precision, provides a reasonable basis for setting statutory terms and rates and, therefore, the Judges adopt the settlement as proposed as well as the improved language.

Moreover, the Judges believe that the proposed change to the placement of the extant regulations (*i.e.,* relocating them to 37 CFR part 387) and the non-substantive changes to the regulations are reasonable and appropriate measures to consolidate related CRB regulations and to make those regulations more comprehensible. Therefore, the Judges adopt the regulations as proposed.

List of Subjects in 37 CFR Part 387

Cable television, Copyright, Royalties.

Final Regulations

■ In consideration of the foregoing, the Copyright Royalty Judges amend 37 CFR chapter III by adding part 387 to read as follows:

PART 387—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

Sec.

Authority: 17 U.S.C. 801(b)(2), 803(b)(6).

§ 387.1 General.

This part establishes adjusted terms and rates for royalty payments in accordance with the provisions of 17 U.S.C. 111 and 801(b)(2)(A), (B), (C), and (D). Upon compliance with 17 U.S.C. 111 and the terms and rates of this part, a cable system shall be subject to a statutory license authorizing secondary transmissions of broadcast signals to the extent provided in 17 U.S.C. 111.

§ 387.2 Royalty fee for compulsory license for secondary transmission by cable systems.

(a) *Royalty fee rates.* Commencing with the first semiannual accounting period of 2015 and for each semiannual accounting period thereafter, the royalty fee rates for secondary transmission by cable systems not subject to paragraph (b) of this section are those established by 17 U.S.C. 111(d)(1)(B)(i)–(iv), as amended.

(b) *Rates for certain classes of cable systems.* Commencing with the first semiannual accounting period of 2015 and for each semiannual accounting period thereafter, the alternate tiered royalty fee rates for cable systems with certain levels of gross receipts as described in 17 U.S.C. 111(d)(1)(E) and (F), are those described therein.

(c) *3.75 percent rate.* Commencing with the first semiannual accounting period of 2015, and for each semiannual accounting period thereafter, and notwithstanding paragraphs (a) and (d) of this section, for each distant signal equivalent or fraction thereof not represented by the carriage of:

(1) Any signal that was permitted (or, in the case of cable systems commencing operations after June 24, 1981, that would have been permitted) under the rules and regulations of the Federal Communications Commission in effect on June 24, 1981 (former 47 CFR 76.1 through 76.617 (1980)); or

(2) A signal of the same type (that is, independent, network, or non-commercial educational) substituted for such permitted signal; or

(3) A signal that was carried pursuant to an individual waiver of (former 47 CFR 76.1 through 76.617 (1980)); in lieu of the royalty rates specified in paragraphs (a) and (d) of this section, the royalty rate shall be 3.75 percent of the gross receipts of the cable system for each distant signal equivalent. Any fraction of a distant signal equivalent shall be computed at its fractional value.

(d) *Syndicated exclusivity surcharge.* Commencing with the first semiannual accounting period of 2015 and for each semiannual accounting period thereafter, in the case of a cable system located outside the 35-mile specified zone of a commercial VHF station that places a predicted Grade B contour, in whole or in part, over the cable system, and that is not significantly viewed or otherwise exempt from the FCC's syndicated exclusivity rules in effect on June 24, 1981 (former 47 CFR 76.151 through 76.617 (1980)), for each distant signal equivalent or fraction thereof represented by the carriage of such commercial VHF station, the royalty rate shall be, in addition to the amount specified in paragraph (a) of this section:

(1) For cable systems located wholly or in part within a top 50 television market:

(i) 0.599 percent of such gross receipts for the first distant signal equivalent;

(ii) 0.377 percent of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iii) 0.178 percent of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

(2) For cable systems located wholly or in part within a second 50 television market:

(i) 0.300 percent of such gross receipts for the first distant signal equivalent;

(ii) 0.189 percent of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iii) 0.089 percent of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

(3) For purposes of this section ''first 50 major television markets'' and ''second 50 major television markets'' shall be defined as those terms are defined or interpreted in accordance with the Federal Communications Commission rule ''Major television markets'' in effect on June 24, 1981 (47 CFR 76.51 (1980)).

(e) *Computation of rates.* Computation of royalty fees shall be governed by 17 U.S.C. 111(d) and 111(f) and 37 CFR 201.17.

Dated: June 28, 2016.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

Approved:

David S. Mao,

Acting Librarian of Congress.

[FR Doc. 2016–20529 Filed 9–12–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0060; FRL–9945–84–Region 2]

Approval of Air Quality Implementation Plans; Puerto Rico; Infrastructure Requirements for the 1997 and 2008 Ozone, 1997 and 2006 Fine Particulate Matter and 2008 Lead NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving most elements of the five State Implementation Plan (SIP) revision submittals from the Commonwealth of Puerto Rico to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 and 2008 ozone, 1997 and 2006 fine particulate matter ($PM_{2.5}$) and 2008 lead National Ambient Air Quality Standards (NAAQS). The SIP is required to address basic program elements, including, but not limited to: Regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards.