

Dear Small Commercial Webcaster,

I am writing on behalf of SoundExchange, Inc. (“SoundExchange”) and its member copyright owners to offer certain small commercial webcasters an alternative rate structure to that enacted by the Copyright Royalty Judges (CRJs) in the recent webcasting proceedings. Through this offer, qualified webcasters have the option of utilizing the attached rates and terms for nonsubscription transmissions of SoundExchange member sound recordings under 17 U.S.C. § 112 and § 114.

At the request of members of Congress and congressional committees, SoundExchange is making the attached offer available to small commercial webcasters which do not exceed an annual revenue threshold or a monthly threshold on aggregate tuning hours. The attached rates and terms generally track those previously available under the prior agreement negotiated pursuant to the Small Webcaster Settlement Act (SWSA), which allow qualified entities to pay royalties based on a percentage of revenue (10% or 12%) or a percentage of expenses (7%) as long as their total annual revenue (both direct and affiliated revenue) does not exceed \$1.25 million. However, there are certain additional terms:

- These rates and terms are available for eligible nonsubscription transmissions for 2006-10, thus effectively extending the rates and terms negotiated pursuant to SWSA for an additional 5 years.
- These attached rates only apply toward each webcaster’s first 5,000,000 aggregate tuning hours (“ATH”) of usage each month. For any usage in a single month above 5,000,000 ATH, the webcaster must pay the applicable commercial webcaster rates (currently \$0.0011 per performance during 2007.) By way of example, a service would need to have an approximate average of 6,945 simultaneous listeners, each listening for thirty consecutive days, 24 hours a day, in order to exceed 5,000,000 ATH of usage.
- If a webcaster’s total annual revenue exceeds \$1.25 million, it is no longer eligible for these offered rates and terms. After the conclusion of a six-month “grace period,” during which time it may continue to pay under the offered rates and terms, the webcaster must calculate any subsequent liability using the applicable commercial or noncommercial webcasting rates, as defined in the Federal Register at 72 Fed. Reg. 24084 (May 1, 2007).
- Webcasters must provide census reporting to SoundExchange and be willing to work with SoundExchange on implementing technology, developed at SoundExchange’s expense, to track transmissions and provide the census reporting required under the agreement.

As with SWSA, a condition of this offer is that all parties affirm that this agreement is non-precedential and does not reflect an agreement between willing buyers and willing sellers in the marketplace. Rather, this agreement reflects the desires of certain members of Congress that certain small commercial webcasters receive a below-market rate and as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers. All parties agree that this agreement (including any rate

structure, fees, terms, conditions, or notice and recordkeeping requirements) may not be introduced in any proceeding, including those related to the setting of rates and terms for the licensing of sound recordings.

Please note that SoundExchange is making this offer only on behalf of its copyright owner members and has no authority to make this offer on behalf of non-members of SoundExchange. For transmissions of sound recordings owned by non-members of SoundExchange, webcasters must comply with the rates and terms in the Final Determination of the CRJs, published in the Federal Register at 72 Fed. Reg. 24084 (May 1, 2007). SoundExchange is working, however, to implement an industry-wide resolution that would apply rates and terms similar to the attached for all eligible small commercial webcasters and all sound recording copyright owners. In the event that industry-wide regulations are adopted by the CRJs (or other appropriate authority) with rates and terms substantially similar to those contained in this agreement, this agreement will cease to operate and all parties will be governed by the industry-wide regulations. Ultimately, an industry-wide resolution will be easier for all parties to administer, so it is our hope that such a resolution can be obtained.

If you are interested in accepting these rates and terms offered on behalf of SoundExchange's members, please sign the attached election form and return the signed form to SoundExchange by September 14, 2007.

Should you have any questions about any of the information within, please contact Kyle Funn, Licensing & Enforcement Specialist, at 202.640.5881.

Respectfully,

A handwritten signature in blue ink, appearing to read "John L. Simson", is written over a light blue rectangular background.

John L. Simson
Executive Director
SoundExchange, Inc.