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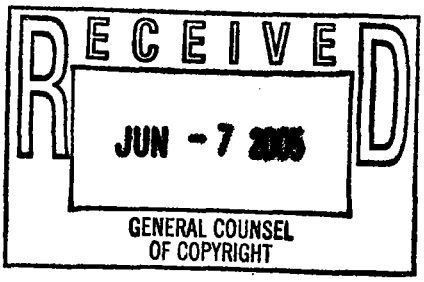

In the Matter of	
Cable Compulsory License	**Docket No.** 2005-6
Reporting Practices	

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PETITION FOR RULEMAKING

The Motion Picture Association of America, Inc. ("MPAA"), on behalf of its member companies and other producers and/or distributors of movies, series and specials broadcast by television stations ("Program Suppliers"), hereby petitions the Copyright Office to commence a rulemaking proceeding addressing the issues discussed below relating to reporting practices of cable operators under 17 U.S.C. § 111 ("Section 111").

I. BACKGROUND

There have been significant technological, marketing and regulatory changes in the cable television industry during the more than twenty-five years since Congress enacted the Section 111 cable compulsory licensing provisions. Nevertheless, there have been relatively few modifications to the statement of account ("SOA") forms that cable operators must file to account for either these industry changes or the significant experience that copyright owners have gained from reviewing SOAs and dealing with cable operators concerning their filings. Indeed, the SOA forms, and related Copyright Office ("Office") regulations, have remained essentially the same since the mid-1980s.

Because Section 111 (unlike other compulsory licenses) does not provide Program Suppliers with a right to audit cable operators, Program Suppliers rely almost exclusively on SOA information for compliance review. However, the information currently provided by cable operators on SOAs is in certain instances either unclear or inadequate, or both. Consequently, Program Suppliers have faced increasing challenges with respect to garnering information that can be used to efficiently analyze cable operators' compliance with Section 111. On numerous occasions, Program Suppliers have found cable operators unwilling (and, indeed, without incentive) to provide additional information requested by Program Suppliers.

Program Suppliers seek clarification and modification of the existing regulations and pertinent sections of the SOA forms. *First*, Program Suppliers request that the Office improve the nature of the information reported on the SOAs by cable operators, particularly information relating to gross receipts, service tiers, subscribers, headend locations, and cable communities. The proposed changes are necessary to keep current with a changing industry and are critical to efficient and effective compliance review by Program Suppliers and other copyright owners as well as the Licensing Division of the Copyright Office. *Second*, Program Suppliers request regulatory clarification regarding the effect of cable operators' interest payments that accompany late-filed SOAs or amended SOAs – specifically, that payment of such interest does not impair the ability of copyright owners to bring infringement actions against cable operators that fail to pay the full amount of the royalties they owe on a timely basis. *Finally*, Program Suppliers request that the Office clarify the definition of the term cable "community" in its regulations to comport more clearly with the meaning of "cable system" as defined in Section 111, and to avoid misinterpretation by cable operators. That definition is crucial to determining the amount of Section 111 royalties that cable operators must pay.

The specific changes that Program Suppliers seek to the Office's regulations, and to the SOA forms, are set forth in Attachment A. The regulatory action requested by Program Suppliers is properly within the authority of the Copyright Office. *See* 17 U.S.C. § 111(d) (authorizing the Register of Copyrights to establish requirements for the filing of SOAs and royalty deposits, including the information contained in the SOAs); 17 U.S.C. § 702 (establishing the Office's authority to promulgate regulations consistent with the Copyright Act); *see also Cablevision Sys. Dev. Co. v. Motion Picture Ass'n of America, Inc.*, 836 F.2d 599, 608-09 (D.C. Cir. 1988); *Satellite Broadcasting and Communications Ass'n of America v. Oman*, 17 F.3d 344, 347 (11th Cir. 1994).

II. DISCUSSION

A. Changes to Information Reported on Cable SOAs

1. Verifying Gross Receipts Using Subscriber and Rate Information

Program Suppliers request that the Office amend the SOAs to require greater congruity between the "gross receipts" information and the subscriber and rate information provided on the SOAs -- as well as greater detail concerning the nature of the revenues that a cable operator includes and excludes in its "gross receipts."

Section 111 requires cable operators to report both the "total number of subscribers" to their system and the "the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters." *See* 17 U.S.C. § 111(d)(1)(A). Consistent with Section 111, the Office's regulations require cable operators to report "the gross amount paid to the cable system by subscribers for the basic service of providing secondary transmissions of primary broadcast transmissions." 37 C.F.R. §

201.17(e)(7).[1] This regulation is implemented by Space E (titled "Secondary Transmission Service: Subscribers and Rates") and Space K (titled "Gross Receipts") of the SOAs. According to the instructions for Space E, the information provided therein "should cover all categories of 'secondary transmission service' of the cable system" including the number of subscribers and the rate applicable to each category of subscribers. Forms SA1-2 and SA3, p. 2, Space E. Instructions for completing Space K require cable operators to "[e]nter the total of all amounts ('gross receipts') paid to [their] cable system by subscribers for the system's 'secondary transmission service' (as identified in space E)." Forms SA1-2 and SA3, p. 7, Space K.

As the directions imply, the total amount obtained by multiplying the number of subscribers identified in each category in Space E by the applicable rate should approximate the cable operators' gross receipts in Space K. *See Compulsory License for Cable Systems*, 43 Fed. Reg. 958, 959 (Jan. 5, 1978) (recognizing that the subscriber information solicited on the SOAs was intended to "be useful for at least a rough comparison with the reported gross receipts, and [to give] meaning to the statutory requirement that the 'number of subscribers' be given.") However, this is hardly the case in practice.

Program Suppliers frequently find substantial variance in the Space E and Space K data. For example, Program Suppliers examined the top seventy-five Form SA3 royalty payers for the 2003-2 accounting period. For each system, using the subscriber and rates information provided by cable operators in Space E, Program Suppliers calculated what the gross receipts would be.

[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." 37 C.F.R. § 201.17(b)(1).

Program Suppliers then compared those calculated gross receipts with gross receipts as reported in Space K. *See* Attachment B. Among other things, Program Suppliers found that the calculated gross receipts for forty-eight of the seventy-five systems (64% overall) varied -- over or under -- from their reported gross receipts by 10% or more; that forty-three of these forty-eight systems (57% overall) had calculated gross receipts that *exceeded* the reported gross receipts by 10% or more; and that the calculated gross receipts for seven of the systems exceeded the reported gross receipts by triple digits (between 106% and 584%). Indeed, for all of the systems, the calculated gross receipts varied from the reported gross receipts by some amount.

It is unclear whether the problem is one of inaccurate gross receipts numbers in Space K or inaccurate or incomplete subscriber and rate data in Space E -- or whether there are legitimate explanations for the variances in specific cases. Program Suppliers simply have no way of knowing what the explanation is based on an examination of the SOAs. Program Suppliers also have no way of knowing precisely what the cable operators are choosing to include in (or exclude from) the gross receipts upon which they rely for calculating royalties. Accordingly, to make compliance review meaningful, changes to the SOA are necessary.

Program Suppliers have two additional concerns about data reported in Space E. *First*, SOA instructions for Space E are unclear about whether cable operators should provide information about *subscriber* categories or *service* categories. The regulations require cable operators to provide "[a] brief description of each *subscriber category* for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters," as well as "the number of subscribers to the cable system in each *subscriber category*," and the "charge or charges made per subscriber to each *subscriber category*." 37 C.F.R. § 201.17(d)(6)(i)-(iii) (emphasis added). The regulations state that for

these purposes, "[e]ach entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) which is charged by the cable system for the basic service of providing secondary transmissions shall be considered one subscriber." 37 C.F.R. § 201.17(e)(6)(iii)(B). This provision appears to contemplate information about the categories of subscribers based on the types of physical facilities through which subscribers receive cable service. However, Space E of the SOA does not instruct cable operators to provide information on subscriber categories. Rather, Space E directs cable operators to report the number of subscribers in each "Category of *Service*" -- a phrase which many cable operators may construe as relating to tiers of service. Forms SA1-2 and SA3, p.2, Space E, Blocks 1 and 2 (emphasis added). A possible practical consequence of this language shift is confusion among operators about whether to report subscriber categories or service categories, which ultimately leads to inconsistent reporting practices among cable operators.

Second, cable operators do not report multi-unit dwelling ("MDU") subscriber data, for entities such as hotels, motels, and apartments, in a consistent manner. Some cable operators report the total subscriber counts for each of the MDUs they serve while others report each MDU simply as one subscriber. For MDUs that report total subscriber counts, it is unclear as to how the subscriber numbers are derived. For example, in the case of hotels or motels, it is uncertain whether the reported subscriber counts are based on the number of rooms, the number of sets, or some other estimate related to occupancy. In addition, some cable operators are in the practice of leaving their SOAs blank regarding their service to MDUs. In those cases, Program Suppliers are unable to determine whether the blank area on a form indicates zero (meaning no MDU subscribers), whether that the referenced question is not applicable ("N/A") to that particular system, or whether the system simply has failed to provide the pertinent information. *See* Form

SA1-2, p. 2; Form SA3, p.2, Space E (providing subscriber blanks for "Motel, Hotel" and "Commercial," but offering no specific formula for how subscribership data should be tabulated other than the general direction that the cable operator should "compute the number of 'subscribers' in each category by counting the number of billings in that category" rather than "the number of sets receiving service"). It is likely that the confusing nature of the information required in Space E contributes to the variances in the calculated gross receipts and the reported gross receipts. *See* Attachment B, and discussion *supra.*

Subscriber and rate information reported on SOAs should reflect the specific rate arrangement the cable operator has with the MDU. More specifically, the figure in the Rate column in Space E of the SOA should be the rate (or range of rates) that the cable operator actually charged each of the subscribers included in the "No. of Subscribers" column on the last day of the accounting period. Thus, if the cable operator provides service to one hotel with 100 rooms for a flat fee of $1,000 per month, that operator would show "1" subscriber in the "No. of Subscribers" column and $1,000 in the "Rate" column. If, on the other hand, that cable operator charged the hotel $10 per room per month, the operator would show "100" in the "No. of Subscribers" column. This way, the "Rate" multiplied by the "No. of Subscribers" would accurately reflect the approximate amount of total "gross receipts" that the cable operator received from the hotel.

The inconsistencies in the reported gross receipts and subscriber data make it extremely difficult for Program Suppliers to verify the gross receipts reported by cable operators. To remedy these concerns, Program Suppliers propose that the Office take the following action: (1) amend Space E of the SOAs to solicit information on "subscriber categories" rather than

"categories of service,"[2] (2) amend the instructions for Space E to specify that the "rate" reported on the SOA for MDUs must reflect the specific rate arrangement the cable operator holds with the MDU (flat rate or per unit), as well as the amount billed for providing cable service pursuant to that arrangement, (3) include an instruction that cable operators are not to leave spaces blank, but rather are to fill in each area with a zero or the designation "N/A" if a particular category does not apply to their system, (4) amend Space K of the SOAs to include instructions specifying that the gross receipts reported in Space K should approximate calculated gross receipts (*i.e.*, the number of subscribers in each category identified in Space E, multiplied by the applicable rate), and (5) require the cable operator to briefly explain in Space K any variation of more than 10% between these calculated gross receipts and reported gross receipts.

2. Reporting Tiers of Service on Cable SOAs

Cable operators should also identify and describe each tier of service they offer. Currently, the "Category of Service" designation in Space E of the SOAs requires cable operators to report secondary transmission service for each service category provided. *But see* 37 C.F.R. § 201.17(e)(6)(i) (requiring "a brief description of each subscriber category for which a charge is made by a cable system for the basic service of providing secondary transmissions of primary broadcast transmitters"). As explained above, although labeled as "Category of Service" descriptions, the required information, in reality, relates to subscriber categories. There is scant information about the tiers of service (*i.e.*, basic, expanded, digital, *etc.*) offered by cable operators, particularly about whether cable operators accurately include gross receipts for all tiers of service containing broadcast signals, as required. *See* 37 C.F.R. § 201.17(e)(7); Forms

[2] Program Suppliers propose in Section II.A.2, *infra*, a new "Space" on the SOA that would require cable operators to provide information relating to categories of service.

SA1-2 and SA3, p. 6, Section K. Program Suppliers need information on the different tiers of service offered in order to verify that cable operators are including, in their reported gross receipts, gross receipts from all tiers of service containing broadcast signals that are offered to subscribers for a separate fee.[3]

To obtain more specific and relevant information regarding each individual cable operator's different tiers of service, the fees charged for the tiers of service, and subscribership for each tier, Program Suppliers ask the Office to amend its SOAs to include a new "Space" between existing Space E and Space F providing such detailed information. This new Space (referred to in Attachment A as Space E-2 and titled "Categories of Service and Rates") would require cable operators to identify and describe (1) each tier of service they provide for a separate fee, noting which tiers contain broadcast signals, (2) the rates associated with each service tier, and whether the fees collected for each package are included or excluded from their gross receipts calculation, (3) the number of subscribers receiving each service tier, (4) the lowest tier of service including secondary broadcast transmissions that is available for independent

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[3] Cable operators are required by statute to offer all broadcast signals on a "separately available" basic tier of service, and, with only certain exceptions, are prohibited from requiring the purchase of any other service tier as a prerequisite to obtaining this service. *See* 47 U.S.C. § 543(b)(7)-(8). Program Suppliers seek a means to identify any cable operators not in compliance with this statutory requirement, as they may be reporting artificially low gross receipts levels for broadcast signals by reporting gross receipts only for tiers of service not independently available to subscribers. If a cable operator requires, as a prerequisite to purchasing the service tier containing broadcast signals, the purchase of another tier (or other tiers) of service, the gross receipts from the additional tier(s) of service must be included in the gross receipts calculation. *See* Forms SA1-2 and SA3, p. 6, Section K; *see also Compulsory License for Cable Systems: Reporting of Gross Receipts*, 53 Fed. Reg. 2493, 2495 (Jan. 28, 1988). However, the current SOA does not require sufficiently specific information about the tiers of service and the conditions of purchasing each available tier for Program Suppliers to verify cable operators' reporting practices in this area.

subscription, and (5) any tier of service or equipment for which purchase is required as a prerequisite to obtaining another tier of service.

3. Specific Location of Cable Headend

Section 111(f) of the Copyright Act states in part that:

> For purposes of determining royalty fees under subsection (d)(1), two or more cable systems in contiguous communities under common ownership or control or operating from *one headend* shall be considered as one system.

17 U.S.C. § 111(f) (definition of "cable system") (emphasis added). *See also* 37 C.F.R. § 201.17(b)(2). Moreover, as the Office has correctly determined, two cable systems operating from the same headend are considered to be one system for purposes of calculating the Section 111 royalties "even if they are owned by different entities." General Instructions, Form SA3, p. ii; General Instructions, Form SA1-2, p. ii; *see Compulsory License for Cable Systems*, 43 Fed. Reg. 958, 958 (1977).

Currently, cable operators are required to identify on the SOA the community(ies) in which they operate but not the location of the headend(s) serving those communities. *See* 37 C.F.R. § 201.17(e)(4), Form SA1-2, p. 1, Section D; Form SA3, p. 1, Section D. The absence of information on headend locations prevents Program Suppliers from determining whether cable operators are in fact complying with the Section 111(f) requirement to treat all cable systems operating from a common headend as a single cable system. The location of a system's headend has become particularly important in recent years for determining what constitutes a single cable system for reporting purposes, as smaller cable systems consolidate into a larger system, or connect more expansive areas into a single system. Again, without the right to audit a cable system to assess its compliance, Program Suppliers rely on information garnered from the

publicly available SOAs. If Program Suppliers were able to determine the location of headends and, thus, ascertain which cable communities shared a common headend, they could more effectively determine whether operators are complying with the SOA filing requirements.

Information concerning headend locations is not readily available to anyone other than the cable operators themselves. Accordingly, Program Suppliers request that Space D of Forms SA1-2 and SA3 be amended to require each cable operator to identify on its SOA the location of each of its headends and the specific communities served from that headend.

4. Identity of the County in Which the Reported Cable Community is Located

Program Suppliers propose that cable operators include on their SOAs the identity of the county in which a reported community is located. The Office's regulations currently require cable systems to report "the name of the community or communities served by the [cable] system." 37 C.F.R. § 201.17(e)(4). The SOAs also require cable operators to identify the cable communities they serve, including requiring them to provide information as to the "city or town" and "state" served. Forms SA1-2 and SA3, p.1, Space D. However, the SOAs do not require cable operators to identify the county in which the given community is located.

The absence of information concerning county location is particularly problematic where multiple communities bear the same or closely similar names. For example, Pennsylvania alone has as many as 200 instances where communities with the same names are located in different counties, the most pervasive being Washington township, which appears in twenty-two different Pennsylvania counties throughout the state. *See* Attachment C. In states such as Pennsylvania, the county is a unique identifier, readily distinguishing one similarly named community from another. If cable operators reported county information for each of their served communities, its

location within the state would become readily apparent without further investigation. This information would also be useful to Program Suppliers in determining when separate cable communities are contiguous to each other. *See* 17 U.S.C. § 111(f).

Further, having information on each cable community's county would assist Program Suppliers and cable operators alike by clarifying whether a signal is local or distant. Currently, among other considerations, there are three county-based criteria that help determine whether a station is local: (1) a significantly viewed designation; (2) an Area of Dominant Influence ("ADI") designation; and/or (3) a Designated Market Area ("DMA") designation. If a station is significantly viewed in a particular county, the cable system operating in that county may carry that station as a local signal and therefore incur no direct royalty payment for its carriage. Similarly, if a cable system's subscribers are located in an ADI or DMA county associated with a certain television market, then carriage of commercial stations licensed to that market to subscribers located in that county is considered local. Again, there is no direct liability for the carriage of local stations. Thus, including a cable system's county on the SOA would provide Program Suppliers and cable operators with an additional tool for precision in determining the area in which a signal is considered local.

The absence of that information also complicates Program Suppliers' efforts to determine whether Form 3 cable operators are properly classifying particular broadcast signals as local or "partially distant" (*i.e.*, as distant to some subscribers but local to others). Knowing the precise county within which the community is located would aid Program Suppliers in this effort. Finally, including county information on SOAs would not be burdensome to cable operators.

Program Suppliers request that Space D of Forms SA1-2 and SA3 be amended to require cable operators to identify the county where each cable community is located, in addition to the requirement to identify the city and state.

B. Interest Payments to the Copyright Office and Copyright Infringement Liability

The Office's regulations require cable operators to pay interest on any royalties "submitted as a result of a late payment or underpayment." *See* Form SA1-2, p.8, Space Q; SA3, p. 9, Space Q; *see also* 37 C.F.R. § 201.17(i)(2). Any such payments do not preclude Program Suppliers and other copyright owners from bringing an action against cable operators for copyright infringement and seeking remedies pursuant to 17 U.S.C. §§ 501-506 and 509 for the time period for which the cable operators' royalty payments were not properly remitted. *See* 17 U.S.C. § 111(c)(2) ("[T]he willful or repeated secondary transmission to the public by a cable system of a primary transmission made by a broadcast station...is actionable as an act of infringement...(B) where the cable system has not deposited the statement of account and royalty fee required by [Section 111](d).").

However, neither the Office's SOAs, nor the regulations, clearly specify that the payment of interest to the Copyright Office for overdue and underpaid compulsory license fees does not shield a cable operator from liability for copyright infringement for unpaid royalty fees. This lack of clarity has resulted in cable operators suggesting that the payment of interest on late royalty payments, regardless of how long overdue, absolves licensees from any other liability for copyright infringement — a theory which is incorrect as a matter of law.

In the recently enacted CRDRA, Congress made it clear that the terms set by Copyright Royalty Judges ("CRJs"), including late payment terms, shall not "prevent the copyright holder

from asserting other rights and remedies provided under this title." 17 U.S.C. § 803(c)(7). There is no reason that the regulation adopted by the Office concerning late payments should have a different effect. The proposed regulatory changes would achieve consistency between Section 111 and the CRDRA.

Therefore, Program Suppliers urge the Office to amend its regulations and SOAs to include language clarifying that the Office's assessment of interest in Space Q of the SOA does not absolve cable operators from copyright infringement liability, pursuant to 17 U.S.C. §§ 501-506 and 509, for the failure to make timely royalty payments.

C. Definition of "Community" for Traditional Cable Systems and for Satellite Master Antenna Television ("SMATV") Systems[4]

Program Suppliers request that the regulatory definition of a cable "community" be clarified to comport with the area for which an operator has been granted a franchise. This is not a request for a new regulation, but rather a request for clarification of a well-established rule.

As noted above, two or more cable systems constitute a single cable system for purposes of Section 111 if they are under common ownership or control and are located in the same or "contiguous communities." 17 U.S.C. § 111(f); 37 C.F.R. § 201.17(b)(2). Where common ownership of cable systems is established, defining the "community" served is important for the purpose of ascertaining whether two or more cable facilities operate in "contiguous communities," and whether those facilities should file as a single (typically Form 3) cable

[4] The Federal Communications Commission ("FCC") has referred to SMATVs also as private cable operators ("PCOs"). *See Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Notice of Proposed Rulemaking, FCC MB Docket 05-49, 70 Fed. Reg. 11314, 11326 at ¶ 77 (Mar. 8, 2005); *Annual Assessment of Competition in the Market for the Delivery of Video Programming*, 69 Fed. Reg. 39930, 33932 at ¶ 30 (July 1, 2004).

system. The pertinent statutory and regulatory provisions are intended to prevent the artificial fragmentation of large cable systems into multiple smaller systems to avoid royalty payments properly due under Section 111. *See Compulsory License for Cable Systems*, 43 Fed. Reg. at 958 ("'[T]he legislative history of the Act indicates that the purpose of this sentence [in Section 111(f)] is to avoid the artificial fragmentation of cable systems'"); H.R. Rep. 94-1476 (Sept. 3, 1976), *available at* 1976 U.S.C.A.A.N. 5659, 5714 (1976); *see also Columbia Pictures Industries, Inc. v. Liberty Cable, Inc.*, 919 F. Supp. 685, 688 (S.D.N.Y. 1996).

Program Suppliers have had an increasing number of disputes with cable operators over what constitutes a cable "community" for reporting purposes under the copyright compulsory license. In the last year alone, the issue of contiguity has arisen in more than thirty-five separate instances in MPAA's dealings with cable operators. Many cable operators operating over a large geographic area are attempting to artificially separate their systems into multiple smaller systems to reduce their royalty obligations under Section 111. In most cases, cable operators disaggregate cable systems in contiguous cable communities that should be reported on a single Form SA3 and report these systems separately as multiple Forms SA1 and SA2 systems. By disaggregating, the smaller individual systems report lower gross receipts, the effect of which is the reduction of the systems' base rate fees obligations and elimination of the systems' 3.75% fees obligations.

The Office's regulations currently state that the term "community," for purposes of Section 111, has the same meaning as a "community unit" as defined in FCC rules and regulations. 37 C.F.R. § 201.17(e)(4). FCC regulations define "community unit" as a "separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas)." 47 C.F.R § 76.5(dd).

The cable SOAs also set forth this FCC based definition of "community unit." *See* Forms SA1-2 and SA3, p.1, Space D.[5]

The FCC has interpreted the phrase "community unit" to mean cable franchise areas. "Community units are political jurisdictions (*i.e.*, a city, town, or county) or portions of political jurisdictions for which a local government body has granted a franchise to operate a cable system. These separate areas may or may not encompass an entire city or county." *In re Implementation of Satellite Home Viewer Improvement Act of 1999*, 15 F.C.C.R. at 21702 n.100; *see also In re Warner Cable Communications of Cincinnati, Inc.*, 10 F.C.C.R. at 6016 n.8 ("As a practical matter, in our rate regulatory context, the phrase 'community unit' has usually been treated as the franchise area."); *In the Matter of: Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, FCC MB Docket 05-49, Notice of Proposed Rulemaking, 70 Fed. Reg. at 11320, ¶¶ 29-30) (noting that cable communities are "easily defined by the geographic boundaries of a given cable system"). The FCC has also stated that some community units are large, transcending traditional political boundaries:

> Cable systems operate pursuant to franchise authorizations from the political subdivisions in which they operate. However, they do not typically have separate and distinct headend facilities and separately programmable transmission facilities within each city, town, village or county through which the wiring is laid and into which programming is distributed. For reasons of engineering and economic efficiency, cable facilities generally do not stop and start at political boundaries.

[5] Presently, Forms SA1-2 and SA3 cite the FCC definition of "community unit," previously captioned as 47 C.F.R. § 76.5(mm). This regulation has since been renumbered as 47 C.F.R. § 76.5(dd).

In re Matter of Petition for Relief of Kathleen Ballanfant Roberts, 11 F.C.C.R. at 6007.[6] Therefore, the FCC's view of "community unit" is analogous to cable operators' franchise areas.

The Office's view of "community" is consistent with the FCC's. Although the Copyright Office has not independently defined the term "community," the Office has stated that "*political boundaries* [may be used] to determine when communities are contiguous." *Cable Compulsory Licenses: Definition of a Cable System*, 62 Fed Reg. at 18709 (emphasis added). Further, while the Office has not defined "political boundaries," a reasonable construction of its statement supports the proposition that commonly owned systems within a *county subdivision*[7] or

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[6] The FCC requires cable operators to have unique identifiers for the communities they serve. Pursuant to FCC regulations, all traditional cable system operators must complete a separate "Cable Community Registration" Form (FCC Form 322) for each "community unit" served. 47 C.F.R. § 76.1801. Once these forms are processed, the FCC assigns each individual community unit a Community Unit Identification Number ("CUID"). These CUID numbers are maintained on the FCC's website. *See* http://www.fcc.gov/mb/engineering/liststate.html (last visited June 6, 2005). FCC regulations require cable operators to identify "[t]he name of the community or area served," but require no specific information regarding that area's boundaries. 47 C.F.R. § 76.1801; *see* also FCC Form 322. Thus, while the FCC website provides a list of registered community units, it does not provide specific boundary information for these areas.

[7] The U.S. census bureau defines county subdivision as "[a] legal or statistical division of a county recognized by the Census Bureau for data presentation. The two major types of county subdivisions are census county divisions and minor civil divisions." *See* Glossary of Terms, *available at* http://www.factfinder.census.gov/home/en/epss/glossary_c.html (last visited June 6, 2005). Census county divisions are along county lines. The Census Bureau defines minor civil divisions ("MCDs") as follows:

> A primary governmental and/or administrative subdivision of a county, such as a township, precinct, or magisterial district. MCDs exist in 28 states and the District of Columbia. In 20 states, all or many MCDs are general-purpose governmental units: Connecticut, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin. Most of these MCDs are legally designated as towns or townships.

See Glossary of Terms, *available at* http://www.factfinder.census.gov/home/en/epss/glossary_m.html (last visited June 6, 2005).

municipality - the political entities that usually are the cable franchising authorities - should be regarded as being within the same community and, thus, be required to file as a single cable system.[8] The Office's statement also finds support in published letters from the Office's General Counsel that describe cable systems in contiguous towns as a single system for Section 111 purposes. *See Letter from Copyright Office General Counsel to Senator Edward M. Kennedy*, 93-2-12.L (Feb. 12, 1993) (noting that commonly-owned cable systems in contiguous towns spanning three counties were a single cable system for reporting purposes); *Letter from Copyright Office General Counsel to Maurita K. Coley*, 88-9-14.2L (Sept. 14, 1988) (noting that commonly-owned cable systems were in contiguous communities, regardless of separation by unpopulated areas or geographic barriers, and were a single cable system for reporting purposes). Thus, two or more groups of commonly owned facilities in contiguous municipalities or county subdivisions would be required to file as a single system. Moreover, the General Counsel has made clear that geographical boundaries, such as unpopulated areas, mountains, lakes, or rivers, do not interrupt contiguity. As the General Counsel stated:

> It is the Copyright Office view that where two or more cable systems are owned by the same entity and share a political or geographic boundary, the systems comprise one cable system under section 111(f) of the Copyright Act. The fact that the political or geographic boundary shared is only a small touching point, is comprised of unpopulated land, or exists at a natural barrier such as a mountain or a body of water, does not change this conclusion.

Letter from Copyright Office General Counsel to Maurita K. Coley, 88-9-14.2L (Sept. 14, 1988). Based on the foregoing, the Office's view of community is clearly aligned with the FCC's.

The meaning of "community" discussed above does not - and should not - differ in application to SMATVs, or other PCOs, because the Office has already determined that

[8] Of course, a broader construction of the term "political boundaries" would include everything from boroughs to towns, cities, counties, or states.

SMATVs and traditional cable systems should be treated the same for purposes of Section 111. *Cable Compulsory Licenses: Definition of Cable Systems*, 62 Fed. Reg. at 18709. Moreover, consistent with the views of the FCC and the Office, relevant case law has held that multiple SMATVs in a single metropolitan area should be reported as a single cable system under Section 111. *See Liberty Cable, Inc.*, 919 F. Supp. at 689 (holding that over 100 commonly-owned SMATV systems within the metropolitan New York City area were a single cable system for reporting purposes).

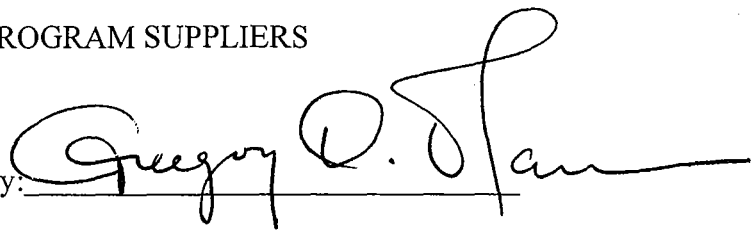
In light of the foregoing, Program Suppliers request that the Office clarify the regulatory definition of community as the particular area for which an operator has been granted a franchise. The appropriate boundary distinction for defining cable communities for traditional cable systems should be a system's franchise area. For SMATVs and other PCOs subject to Section 111, the term "community" should correspond to the "community" of the traditional cable systems serving the area within which the SMATV facility is located.

III. CONCLUSION

For the reasons discussed above, Program Suppliers request the Copyright Office to amend its rules and SOAs as set forth in Attachment A.

Respectfully submitted,

PROGRAM SUPPLIERS

By: 

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