

Before the  
COPYRIGHT ROYALTY BOARD

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In the Matter of )  
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ADJUSTMENT OF RATES AND TERMS FOR ) Docket No. 2006-1 CRB DSTRA  
PREEXISTING SUBSCRIPTION SERVICES, )  
AND )  
SATELLITE DIGITAL AUDIO RADIO SERVICES )  
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**TESTIMONY OF DAMON WILLIAMS**

My name is Damon Williams. I am the Vice President of Programming and Production for Music Choice. In that capacity, I oversee the direction and strategy for video and audio programming at Music Choice. I, and the employees I manage, also work directly with record labels and artists to further their promotional strategies through various aspects of the Music Choice service. I submit this testimony to explain the many ways in which the Music Choice residential audio service promotes records and the artists and labels who produce them, and particularly how the Music Choice service drives record sales and leads to the creation of more recordings.

**My Background**

I joined Music Choice in 1998, spending my first years with the company as the lead programmer for the urban music channels, which under my direction have emerged as the most popular channels in the Music Choice line-up. My vision for compelling urban programming was realized with the introduction of Tha' Corner, the first uncut rap show for television, which I both directed and produced. In addition, I wrote and hosted a four-part audio series called "The

History of Hip Hop” which aired on the Music Choice R&B and Hip-Hop channel. I have brought both up-and-coming and established recording artists into Music Choice’s New York City production studio for exclusive interviews and studio sessions, and have played a lead role in the research and product development efforts at Music Choice.

As a leading music programmer in the country’s broadcast industry, I had over fifteen years of broadcast experience prior to joining Music Choice, which included driving Radio One’s WKYS in Washington, DC ratings to the number one spot in only six months. Under my direction, that station earned Gavin Magazines’ Urban Station of the Year Award, and I was presented with the programmer of the year award from Impact Magazine. Prior to my work at WKYS, I served as the program director of Infinity Broadcasting’s hip-hop station WPGC-AM where I spearheaded the crossover of the station’s format from hip-hop to gospel, overseeing programming in both formats. Previously, in November of 1992, I was selected to help Willis Broadcasting put a new mainstream urban station 92.1-KISS-FM on the air. During my tenure at KISS-FM, the station was considered a key breakout stations by many record labels such as Def Jam Records, Bad Boy Records and Jive Records. During my tenure there, I was recognized by Rapsheet Magazine as “DJ of the Month.”

In my career, both in terrestrial radio and at Music Choice, I have built relationships with record labels and artists by helping to promote their records and break new artists. I am familiar with the operations of Music Choice and with its relationships with record labels and artists. I am also familiar with various other aspects of the music industry such as the promotional effect of broadcasting, including terrestrial radio and digital broadcasting, on record sales and artist development. As part of my responsibilities as Vice President of Programming and Production for Music Choice, I also keep myself generally aware of the programming activities of other

broadcasters and the promotional strategies employed by the record labels and artists. A list of my recent public speaking engagements on music industry issues is submitted as Exhibit MC 18.

Although Music Choice has branched out into other areas, including on-demand video, the residential music service is the heart and soul of what we do. It is our core service, and is our service that most customers have and know. The following testimony is based upon my personal knowledge and information available to me in the course of performing my duties as Vice President of Programming and Production for Music Choice.

**I. Airplay On Music Choice Promotes Artists and Sells Records**

From my experience in the broadcasting industry, both at Music Choice and at various terrestrial radio stations, I know that playing music on the Music Choice residential service increases record sales. This promotional effect is acknowledged by the record labels and artists in a number of ways. Record labels and artists frequently give us testimonials, both orally and in writing. Here are some examples of testimonials we have recently received:

“I can always count on Music Choice's metal channel to put my records into heavy rotation, and to spotlight them in the weeks leading up to release, creating more awareness to the consumer that we are targeting. We also did a ‘Declassified’ program with them on Trivium's ‘Ascendancy,’ which was a great way to kick things off for a new band, with that kind of exposure.” -- Amy Sciarretto, Director of Hard Rock Radio & Regional Video Promotion, Roadrunner Records.

“Over the years, Music Choice has played a key role in helping Island Def Jam expose our new and established artists to the marketplace. We always depend on Music Choice to be at the forefront of this exposure to let the marketplace decide what they want, while other media outlets wait to see what other media outlets are doing (Crazy, isn't it!). Music Choice's programming philosophy is a refreshing change from the over-researched norm. Long live Music Choice!” -- Thomas K. Lytle, Vice President of Urban Promotion, Island Def Jam Records.

“Music Choice is a dream jukebox for your home: loaded with songs you love and songs you ought to love. Music Choice is a

true supporter of developing artists and their brand is fast becoming synonymous with great music of all genres.” -- Maura Duval Griffin, Director of Marketing for Nettwerk Records.

“Music Choice offers an unmatched cross platform opportunity to extend the reach of our artist promotions to millions of homes. The MUSIC CHOICE Sounds of the Seasons channel is an excellent marketing vehicle for our national promotion of LeAnn Rimes’ first ever Christmas album.” -- Jeff Tuerff, VP Marketing at Curb Records.

“Music Choice Adult Alternative has been there at the beginning for many new artists for both Lost Highway and Island Records including Marc Broussard, Donavon Frankenreiter, Bernard Fanning and Tift Merritt as well as the more established artists like Paul Westerberg, Ryan Adams, Elvis Costello, Melissa Etheridge, John Mellencamp, Willie Nelson, Lucinda Williams, The Jayhawks and many more. I wouldn't want to see what would happen if I didn't have the Music Choice Adult Alternative audience involved in our projects.” -- Ray Di Pietro, VP Promotion & Artist Development, Lost Highway Records.

“Music Choice has been instrumental in exposing Starsailor to the masses. Their early support really helped set the stage for the record and most importantly impacted sales.” -- Steve Nice, President, Nice Management and Consulting (management for band Starsailor).

“I'd like to tell you again what a great channel you have with your adult alternative format. It is a great mix of adult rock that is sadly missing from so many local radio markets. The music does the talking there.....and I know from connecting with other label folks, managers, artists, retail outlets and general music loving public. Keep up the great work.” -- Brian Corona, Vice President, Atlantic Records.

Artists also recognize the role Music Choice plays in selling their records, and frequently thank us.

The record labels also send us commemorative plaques. The plaques are given to various key music programmers and stations around the country by record labels as a “thank you” for helping them achieve milestone record sales and airplay. We receive these plaques because we play and support these artists heavily throughout the lifespan of each of their projects. Not every

station or channel in the broadcast industry gets these plaques, only those outlets that the labels feel greatly contributed to the success of their projects and increased sales. Receiving these is a true acknowledgement of our value to the labels. Examples of the inscriptions on these plaques include:

Mariah Carey - #1 Billboard single “We Belong Together” – from Island Def Jam Music.

Snoop Dogg and the Eastsidaz – one million copies sold of “Tha Eastsidaz” – from TVT Records.

Jill Scott - #1 Billboard Urban Single for song “Whatever” – from Hidden Beach Records.

Recognition of Music Choice help in selling more than nine million copies of the following albums: Mary J. Blige – “Mary Common”; Shaggy – “Hotshot”; The Roots – “Things Fall Apart”; GZA – “Beneath the Surface” – from Universal Music Group.

Recognition of Music Choice support of Loud Records artists: Big Pun and Mobb Deep – from Loud Records.

Def Jam Records thanks you for committing support for the following artists: Redman; Ludachris; L.L. Cool J; Method Man; Foxy Brown; Ja Rule; Funkmaster Flex – from Island Def Jam Records.

Slipknot, “Vol. 3: Subliminal Verses” – platinum sales award -- from Roadrunner Records.

Nickelback, “The Long Road” -- 5X platinum sales award – from Roadrunner Records.

Hawthorne Heights, “The Silence In Black & White” -- gold sales award – from Victory Records.

Breaking Benjamin, “We Are Not Alone” – gold sales award – from Hollywood Records.

Representative photographs and a listing of these and other plaques, which are proudly displayed at Music Choice, are submitted as Exhibit MC 19.

## PUBLIC VERSION

The record labels and artists' management also send us free promotional copies of every new recording that is released, and actively lobby us to include their records on our service. They do this because they know that Music Choice provides a national platform to break new artists and sell records. Examples of e-mails from record labels and artists' management seeking to obtain play on Music Choice are submitted as Exhibit MC 20. This activity has markedly increased since the time I joined Music Choice in 1998, as I discuss in more detail below. Examples of e-mails and faxes from record labels and artists, thanking Music Choice for promoting their records, are submitted as Exhibit MC 21. Again, we receive many of these thanks via e-mail, fax, orally and in interviews since we partner directly with the labels on many promotions. Artists and representatives of the record labels also frequently visit our offices in person to give programmers of the Music Choice channels a chance to listen to new music, speak with the artists and find out more about the music. Artists and labels typically time their visits in conjunction with a record release. A list of artists and label representatives who have visited Music Choice over the past year is submitted as Exhibit MC 22. The examples of testimonials, plaques, communications and visits I am providing in this testimony are a small portion of what we have received over the time I have worked at Music Choice.

A key part of the promotion of a new band is creating a "story" for that band. That story is used to convince major labels to sign a band, to persuade radio stations and video outlets to play that band and for all facets of promoting the band. Play on the Music Choice residential service is an important part of creating a new band's story, which the band then uses to generate buzz and leverages into further exposure and promotion. I have had numerous terrestrial radio programmers tell me that they played a song on their station after hearing it on Music Choice.

An example of a promotional e-mail blast sent out by Hollywood Records, featuring the fact that an artist's new recording was being played on Music Choice, is submitted as Exhibit MC 23.

Music Choice has become a proving ground for breaking new artists, and a key part of the record labels' business strategy. Record labels seek our input when they decide whether to sign new artists, particularly artists that we are playing. For example, Lil John is now a successful rap artist who has sold millions of records. When Music Choice first started playing him, he was not well known nationally and was on a small independent label based in Atlanta. After we gave him significant airplay, TVT Records called us and asked what we thought about him, what we thought his long-range potential was and what kind of feedback we were getting on him. TVT went on to sign Lil John and his first album released on TVT went multi-platinum.

Music Choice has spent a significant amount of resources to improve its residential service in ways that are specifically designed to sell records. For example, we have constantly improved and upgraded our on-screen display, which features key marketing information, such as the artist's name and album title, as well as artist facts, album artwork, artist images and more. The on-screen display is designed to allow customers to quickly become aware what music is available for purchase either via our website or in the general marketplace. Once a consumer hears a song on Music Choice, they have all the information they need to make a purchasing decision. The labels, artists and managers love this feature of our service because you do not get this information while listening to terrestrial radio. Examples of what our on-screen display looks like while a song is playing are submitted as Exhibit MC 13. We also include on some screen displays a notice that the record being played can be purchased through our website, [www.musicchoice.com](http://www.musicchoice.com). Over the past 8 years, over 380,000 CDs have been sold through our service for sales totaling over \$4,875,000.

Music Choice has conducted numerous studies showing that our customers frequently look at the artist and album names while listening to the service. One such survey, conducted by Arbitron in 2004, showed that 85% of our customers look at the screen to read the name of the artist while a song is playing, and 84% look to read the name of the song. The results of that survey are submitted as Exhibit MC 11.

A recent study has also specifically confirmed that the Music Choice residential music service sells records for the labels. In that study, conducted for us by Arbitron in 2005, almost 40% of customers surveyed said that they had bought a record specifically because they heard it on Music Choice. A copy of the results of that survey is submitted as Exhibit MC 12. That study also found that 91% of our customers look at the screen to read the name of the artist performing, and 86% look to see the name of the song.

## **II. Music Choice Creates Custom Promotions For Record Labels And Artists**

Music Choice also sells records by doing artist-specific promotions at the request of the record labels. Music Choice spends significant resources on these promotions, at no cost to the record labels. One kind of custom promotion we do on behalf of the record labels involves the heavy promotion of a band's new album prior to and leading up to the official release of the album. A recent example is a promotion that we ran for the heavy metal band Shadows Fall in 2004. This promotion featured an hourlong show, including the band's new album, "The War Within," in its entirety and audio clips from band members explaining aspects of the album.

The show ran 12 times on the Music Choice Metal channel during the 6 days leading up to the record release of "The War Within," and the 6 days directly following. The promotion included on-screen advertising panels run during the show promoting the album and various information about the band. We estimate that during the 12 days that this show aired, these advertising panels promoting "The War Within" were seen approximately 6 million times by



Music Choice listeners nationwide. Some of the advertising panels directed customers to the Music Choice website, offering additional information and the ability to purchase the album. "The War Within" went on to sell over a quarter million copies. Subsequently, Shadows Fall has become a popular metal act and signed with major label Atlantic Records. In recognition of this promotion, we received the following quote from George Vallee of Century Media Records:

"Music Choice's audio promotions have been extremely beneficial to Century Media Records especially in the case of Shadows Fall's 'Declassified' promo. This promotion ran the week before the album's release and in turn helped the disc debut at #20 in the Billboard Top 200 chart, which is a first for our label. Music Choice is a platform that has a huge impact on our target market and in turn results in higher CD sales. We could not be happier with Music Choice's services and look forward to working together more in the future."

Three Music Choice employees received plaques from Century Media showing their gratitude. Copies of two internal studies of this promotion created by Music Choice are submitted as Exhibit MC 24.

Another example of this kind of custom promotion is one we did in 2005 for the band God Forbid to promote their new album "IV: Constitution of Treason." Music Choice featured the album on its "Declassified" program on the Metal channel, played in its entirety with interview segments from the band in-between the songs. The show aired for one week prior to the release date of the CD. On-screen advertising panels ran for one week prior to the "Declassified" show to advertise the show. Advertising panels were also displayed in connection with the program, promoting the new record and the release date. In total, there were 540 on-screen advertisements for the "Declassified" program, and 820 advertisements promoting the release of the record. When the record was released, it had the highest opening week in CD sales for any of the band's 4 albums. In fact, during the first week of its release, "IV: Constitution of Treason" sold 4 times as many units as any of the band's prior records did in

their first week of release. God Forbid's fans posted many positive comments about the album, specifically mentioning that they heard it on Music Choice, at the band's MySpace web page. A copy of an internal Music Choice study of this promotion, including sales information and examples of fan comments and advertisement panels, is submitted as Exhibit MC 25.

Another example is a promotion we did with the band Trapt in 2005, for the release of their new album "Someone in Control." In addition to airing the record in its entirety on the Rock Channel, we also included advertising panels featuring the band's live concert dates, ticket purchase information, artist facts and band news items. On-screen advertising panels were shown 4 times per hour and whenever one of the band's songs was played. Record sales data we obtained from Soundscan indicated there was a positive impact on sales of "Someone In Control" during the promotion period. The album was the top selling hard rock album for the first week of its release. A copy of an internal Music Choice study of this promotion is submitted as Exhibit MC 26.

Yet another good example is a similar promotion we did with the band Disturbed in 2005, for the release of their new album "Ten Thousand Fists." The album played on the Rock channel from 9/6/05 through 9/20/05 in an album premiere show. According to our calculations, the 1,079 advertising panels that we put on the screen during the show's two week run would have been seen approximately 30 million times. The advertising panels promoted the date of the album release, the band's website and the album premiere show on Music Choice. Following this audio show, the album debuted at number 1, selling 239,000 copies during its first week. Soundscan data for that album also indicated a positive impact on record sales on release and during the remainder of the promotion period. A copy of an internal Music Choice study of this promotion is submitted as Exhibit MC 27.

Music Choice has done many similar promotions over the past few years. A representative list, including the promotions I described above and six other such promotions done over the past two years, is submitted as Exhibit MC 28. Examples of various on-screen advertising panels run in connection with such promotions, organized by record label, is submitted as Exhibit MC 29. Notably, the record labels find these promotions so valuable that they grant us, at no charge, the right to play the entire album during the promotion, which we would not normally be allowed to do. Copies of agreements with various record labels, granting us these rights, are submitted as Exhibit MC 30.

Another kind of custom promotion that we do is artist interviews and other live recordings. We moved our programming office into New York City in late 2001 and built a production studio to interview artists as they visited the office to promote their records. Our programs were so successful, and we were getting so many interview requests, we had to move again in 2005 so we could dramatically enlarge our studio. We have now become a regular promotional stop for artists when they introduce a new CD or are promoting a live show. 2002 was the first year we had any artists in the studio at all, and we had 54 artist visits that year. In 2003 we had 106 visits; in 2004 we had 227; in 2005 we had 229; and this year through September 29 we had 149 artist visits. During many of these visits, Music Choice produced promotional recordings of the artists at no cost to the record labels, which are featured on our residential audio and video services.

**III. The Promotional Value Provided By The Music Choice Service Leads To The Creation Of More Recordings**

The promotional effect of the Music Choice service leads to the creation of more records. First, the sales that we increase in the ways I described above create more profit for the record labels, which they can then use to produce more records and invest in new artists. Additionally,

however, Music Choice helps sell records for many artists who do not get actively promoted by the record labels or played on terrestrial radio. Without the national promotion and resulting sales these artists get from digital broadcasters like Music Choice, some of these artists would likely lose their recording contracts and cease releasing records.

The single biggest driver of record sales is airplay. Consumers do not usually buy records that they have not heard before. Terrestrial radio is still the primary way that consumers hear new records. Over the past several years, however, consolidation in the industry has made it harder and harder for the record labels to promote new artists on terrestrial radio.

The latest phase of this consolidation began in the late 1990s, while I was still working in terrestrial radio. In the early to mid 1990s, you would typically have 2 or 3 independent stations in larger markets playing similar formats. As a result, more formats were economically viable. Each station had a clear personality and freedom to play whichever records it wanted. Beginning in 1996, when Congress relaxed cross ownership rules for media companies, radio consolidators like Clear Channel began to buy radio properties around the nation. By the late 1990s, the few companies owning most of the stations went to a “cluster” strategy, where each company focused on a particular format or musical genre to “own” in a given market. The company would then focus its resources on that format and eliminate the competition for the format in that market. Unprofitable formats were eliminated and radio station personalities disappeared. Today, only a few formats are economically viable.

After consolidation, the companies set up a system where programming was taken out of the hands of the individual stations. Instead, one program director would dictate the playlists for many of the stations in a given format. The consolidators were able to improve the cost structure of radio stations this way. However, it severely restricted the number of new records that could

be added to the playlist each week and consequently lowered the number of new records that could be pushed by the labels. If you listen to the radio anywhere in the country for a particular format, you will basically hear the same several songs played over and over again. This tightening of the playlists also seriously limited the number of new artists that the record labels can break on terrestrial radio.

Record labels sign a large number of new artists every year to recording contracts. Getting signed, however, does not mean that an artist will be successful. Especially given the consolidation of the radio industry, the record labels can only push a small fraction of those bands on terrestrial radio. It is not surprising, then, that the vast majority of records produced by the labels are not profitable. Instead, the labels have to try to make up for those losses with sales from the few records that they do push. For the artists that do not get actively pushed by the labels and do not get airplay on terrestrial radio, the outlook is not good. If an artist's first record does not sell enough copies, the artist will often be dropped by the record label and will not be able to make any more records.

Music Choice provided, and still provides, a solution to this serious problem for artists and record labels. We have many channels, which allows us to broadcast many different formats and sub-formats, including many formats that get little or no play on terrestrial radio. Heavy metal, jazz, and certain kinds of hip-hop music are good examples of such formats. Although these formats may get some airplay on local college radio, Music Choice provides a far more powerful promotional push because it is a national platform available to many millions of listeners. The labels appreciate the impact Music Choice has on sales for these kinds of artists, as shown by this recent testimonial we received about a jazz artist:

“First of all I would like to thank you and Music Choice for all the support you have given our artists here at Orpheus Music. With

limited radio airplay out there, Music Choice has helped us reach the consumer that we might never have been able to get to because radio does not give independents a chance out there. One of our most successful projects has been the development of Andre Ward. Without Music Choice we would not have been able to break this saxophonist the way we have. When you started playing his music we started getting sells from places such as Iowa, the Carolinas, and other places where I know we were not receiving radio airplay. If there is anything I can do for you or Music Choice please let me know, my door is always open to you all. Again thanks for all your support.” -- Virgil K. Thompson, Senior Vice President, Music, Film and Television, Orpheus Music

Because Music Choice promotes record sales in many formats that are not covered by terrestrial radio, those sales allow the labels to recoup their investments, help keep the artists in those formats from losing their recording contracts, and allow those artists to keep making records.

**IV. The Promotional Value Provided By The Music Choice Service Has Greatly Increased Since 1998**

Since I arrived at Music Choice in 1998, the promotional value of the Music Choice service has increased, and so has the record labels’ and artists’ recognition of that value. In early 1998, Music Choice had approximately 4 million customers. Today, that number has grown to over 31 million customers. The number of channels we program has also increased from 31 to 53. This big increase in customers and channels means that the nationwide promotion and exposure offered by Music Choice reaches far more potential record-buyers and at the same time the promotional effect is more targeted towards listeners who are inclined to buy the particular type of music played on the channel. As noted above, Music Choice has also improved its service during that time with respect to features, like the on-screen display and selling CDs through our website, that increases the promotional value of the service to the record labels.

The record labels have increasingly recognized the promotional value of the Music Choice service during this time. When I first arrived at Music Choice, digital broadcast was just beginning to be recognized by the record labels and artists as a viable and consistent outlet for

record promotion. In particular, while the labels were not wary of Music Choice as they initially were of the webcasters who were just then coming on the scene, the labels were not yet fully convinced that Music Choice was a consistent vehicle to promote records and break new artists. Consequently, the labels, especially the major labels, did not actively lobby us to put their records on Music Choice, and the promotional divisions of the labels did not “service” Music Choice nearly to the extent they do today. “Service” is a term used in the radio industry for various ways that the record labels try to get radio stations to play records, including providing free copies of the records to stations. In 1998, we were not receiving many free CDs from the record labels.

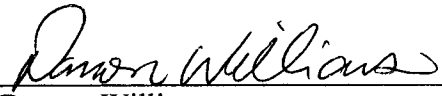
All of this has changed dramatically since 1998. At the time I arrived, the labels were servicing Music Choice, but in a limited manner. In 1999, I changed the programming philosophy at Music Choice, emphasizing new music as a key programming strategy. In 2001, Music Choice secured a deal with Nielsen’s Broadcast Data Systems (“BDS”) to begin tracking our playlists. BDS is one of the key organizations that monitor the playlists of terrestrial radio stations and other media outlets. BDS is the service most trusted and relied upon by the record labels to find out which records are getting airplay in the various markets across the country. In order to secure this deal, the record labels had to speak up on our behalf. Mark Tindall, a Senior Vice President and General Manager of West Coast Operations at BDS, reached out to the labels and asked them whether they wanted Music Choice included in the BDS reports, and the labels said yes. After BDS began tracking Music Choice in 2001, the labels were able to more easily see the huge promotional impact provided by our residential audio service, and they began more aggressively seeking to have their records played on Music Choice. Also, the labels use the

evidence of heavy airplay on Music Choice to convince terrestrial radio stations to start playing a song from new and established artists.

After BDS started tracking Music Choice, the labels began paying much more attention to our service, and greatly increased their servicing Music Choice with free CDs and other promotional material, essentially treating Music Choice like they would treat a terrestrial radio station. As we improved the Music Choice service to upgrade the on-screen content and began doing custom promotions with artists, including interviews, shows and our Artist of the Month promotion, the importance of Music Choice to the record labels and artists has continued to increase. Today, the labels clearly recognize Music Choice as a key component of their national promotional strategy. We now receive free copies of every record that is released. Indeed, the record labels call us every week to get play statistics, get our feedback on their artists, and discuss strategies for promoting records and breaking new artists.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on the 26th of October, 2006.

  
Damon Williams