

and comply with the provisions of these Rates and Terms through December 31, 2004, provided that such Noncommercial Webcaster continues to meet the conditions for eligibility as a Noncommercial Webcaster, as set forth in 17 U.S.C. 114(f)(5)(E)(i) (as added by the Small Webcaster Settlement Act of 2002).

(c) *Proof of Eligibility.* A Noncommercial Webcaster that makes an election pursuant to Section 2(a) shall make available to SoundExchange, within 30 days after SoundExchange's written request at any time during the 3 years following such election, sufficient evidence to support its eligibility as a Noncommercial Webcaster and, if applicable, as an NEE. Any proof of eligibility provided hereunder shall be provided with a certification signed by the chief executive officer of the Noncommercial Webcaster, or other person with similar management authority over the Noncommercial Webcaster, certifying that the information provided is accurate and the person signing is authorized to act on behalf of the Noncommercial Webcaster.

### 3. Minimum Annual Fees

(a) *NEEs Transmitting a Single Channel.* Except as provided in Section 3(c) and subject to Section 4, each NEE shall pay nonrefundable minimum annual fees as set forth below for all or any portion of a year in which it made or makes any digital audio transmissions of sound recordings under the section 114 statutory license (whether a "Broadcaster Simulcast" (as defined in Section 9(b)), an Internet-only transmission or otherwise):

(1) \$200 for the period beginning on October 28, 1998, and ending on December 31, 1999 (which shall be treated as one year for purposes of these Rates and Terms);

(2) \$250 for each of the years 2000 through 2003; and

(3) \$500 for 2004, except in the case of an NEE that is, or is affiliated with, an educational institution with fewer than 10,000 enrolled students, in which case the minimum fee shall be \$250.

(b) *Other Noncommercial Webcasters Transmitting a Single Channel.* Except as provided in Section 3(c) and subject to Section 4, each Noncommercial Webcaster that is not an NEE shall pay nonrefundable minimum annual fees as set forth below for all or any portion of a year in which it made or makes any digital audio transmissions of sound recordings under the section 114 statutory license (whether a Broadcaster Simulcast, an Internet-only transmission or otherwise):

(1) \$200 for the period beginning on October 28, 1998, and ending on December 31, 1999 (which shall be treated as one year for purposes of these Rates and Terms);

(2) \$250 for 2000;

(3) \$300 for 2001, except in the case of a Noncommercial Webcaster substantially all of the programming of which is reasonably classified as news, talk, sports or business programming, in which case the minimum fee shall be \$250;

(4) \$350 for 2002, except in the case of a Noncommercial Webcaster substantially all of the programming of which is reasonably

classified as news, talk, sports or business programming, in which case the minimum fee shall be \$250;

(5) \$400 for 2003, except in the case of a Noncommercial Webcaster substantially all of the programming of which is reasonably classified as news, talk, sports or business programming, in which case the minimum fee shall be \$250; and

(6) \$500 for 2004, except in the case of a Noncommercial Webcaster substantially all of the programming of which is reasonably classified as news, talk, sports or business programming, in which case the minimum fee shall be \$250.

#### (c) *Noncommercial Webcasters*

##### *Transmitting Multiple Channels.*

Notwithstanding Section 3(a) or (b) as applicable, the nonrefundable minimum annual fee shall be \$500 for each year (as identified in Section 3(a)(1) through (3) or 3(b)(1) through (6)) for any Noncommercial Webcaster that made or makes digital audio transmissions of sound recordings on more than one channel or station of programming; provided that—

(1) if the digital audio transmissions of sound recordings over any channels or stations in excess of one consist only of "Incidental Performances" (as defined in Section 9(f)), the nonrefundable minimum annual fee shall be as provided in Section 3(a) or (b) as applicable;

(2) if substantially all of the programming of all of a Noncommercial Webcaster's channels and stations is reasonably classified as news, talk, sports or business programming, the minimum fee shall be \$250;

(3) if a Noncommercial Webcaster that owns or operates multiple over-the-air terrestrial AM or FM radio stations offers more than one Internet channel or station on which substantially all of the programming consists of Broadcaster Simulcasts, then—

(A) a nonrefundable minimum annual fee otherwise determined in accordance with this Section 3(c) shall extend to only three such Internet channels or stations offering Broadcaster Simulcasts, as well as associated Internet-only channels (subject to Section 5);

(B) additional nonrefundable minimum annual fees shall be payable under this Section 3(c) for additional groups of up to three Internet channels or stations offering Broadcaster Simulcasts, as well as associated Internet-only channels (subject to Section 5);

(C) each such group of up to three such Internet channels or stations, as well as associated Internet-only channels (subject to Section 5), shall be treated as a separate Noncommercial Webcaster for purposes of Sections 3(c)(2), 4 and 5;

(D) all such channels or stations offering Broadcaster Simulcasts in a group shall be treated as a single channel or station for purposes of Section 5;

(E) any additional channels or stations considered with the group for purposes of Section 5 shall also be considered with the group for purposes of Section 4; and

(F) accordingly, the Noncommercial Webcaster may offer two additional Internet-only channels or stations with each group of up to three channels or stations offering Broadcaster Simulcasts without triggering

payments under Section 5(b), but all of such channels or stations (up to a total of five) shall be considered together for purposes of determining whether the Noncommercial Webcaster exceeds the 146,000 Aggregate Tuning Hour threshold in Section 4; and

(4) for purposes of determining the number of channels or stations of programming offered by a Noncommercial Webcaster, an "archived program" (as defined in 17 U.S.C. 114(j)(2)) that complies with the conditions in 17 U.S.C. 114(d)(2)(C)(iii)(I) and (II) shall not be considered a separate channel or station of programming except in the case of a Noncommercial Webcaster that exclusively makes digital audio transmissions of archived programming.

(d) *Payment in Lieu of Providing Reports of Use.* All Noncommercial Webcasters' payments of nonrefundable minimum annual fees for each of 2003 and 2004 shall be accompanied by an additional payment of \$50 in 2003 and \$25 in 2004 in lieu of the provision of reports of use of sound recordings, as described in Section 7.

### 4. Usage Fees for 2004

(a) *In General.* Subject to Section 5, the nonrefundable minimum annual fee payable under Section 3 for 2004 shall constitute full payment for digital audio transmissions totaling not more than 146,000 "Aggregate Tuning Hours" (as defined in Section 9(a)) per month. If, in any month during 2004, a Noncommercial Webcaster makes digital audio transmissions of sound recordings under the section 114 statutory license in excess of 146,000 Aggregate Tuning Hours, the Noncommercial Webcaster shall pay additional royalties for those digital audio transmissions in excess of 146,000 Aggregate Tuning Hours at the following rates, subject to an election as provided in Section 4(b):

(1) \$0.0002176 (.02176¢) per "Performance" (as defined in Section 9(f)); or

(2) \$.00251 (.251¢) per "Aggregate Tuning Hour," except in the case of channels or stations where substantially all of the programming is reasonably classified as news, talk, sports or business programming, in which case the royalty rate shall be \$.0002 (.02¢) per Aggregate Tuning Hour.

For the avoidance of doubt, a Noncommercial Webcaster shall calculate its Aggregate Tuning Hours of digital audio transmissions each month and shall pay any additional royalties owed for such month as provided above in this Section 4(a), but the Noncommercial Webcaster shall not owe any additional royalties for any subsequent months until such time as the Noncommercial Webcaster again exceeds the 146,000 Aggregate Tuning Hour threshold during a given month.

(b) *Election of Per Performance or Aggregate Tuning Hour Rate.* The first time a Noncommercial Webcaster is required to pay additional royalties under Section 4(a), the Noncommercial Webcaster shall elect to pay based on the per performance royalty set forth in Section 4(a)(1) or the aggregate tuning hour royalty set forth in Section 4(a)(2) for all additional royalties under Section 4(a) incurred during the remainder of 2004, if any. Thus, for example, a Noncommercial Webcaster may not in one