

month when its digital audio transmissions exceed 146,000 Aggregate Tuning Hours calculate its additional royalties based on the per performance royalty and in another month when its digital audio transmissions exceed 146,000 Aggregate Tuning Hours calculate its additional royalties based on the aggregate tuning hour royalty.

(c) *Reporting.* For 2004, each Noncommercial Webcaster making digital audio transmissions in excess of 146,000 Aggregate Tuning Hours in any month shall report its Aggregate Tuning Hours of digital audio transmissions to SoundExchange in its monthly statement of account under Section 6(d). Each Noncommercial Webcaster having a statutory license in 2004 and not making digital audio transmissions in excess of 146,000 Aggregate Tuning Hours in any month shall so certify in the statement of account accompanying its first payment in 2005, if any.

5. Fees for More Than Three Channels of Programming

Subject to Section 3(c)(3), if in any year (as identified in Section 3(a)(1) through (3) or 3(b)(1) through (6)), a Noncommercial Webcaster made or makes digital audio transmissions of sound recordings on more than three channels or stations of programming, then—

(a) the Noncommercial Webcaster shall by written notice to SoundExchange at the time of its first payment for the year or its inception of its first channel or station in excess of three, whichever is later, designate three channels or stations for which the nonrefundable minimum annual fee payable under Section 3, and in 2004, any additional royalty payment under Section 4, shall constitute full payment; and

(b) the Noncommercial Webcaster shall pay royalties for all its digital audio transmissions of sound recordings under the section 114 statutory license over its other channels and stations at the Statutory Rate for digital audio transmissions made by commercial eligible nonsubscription transmission services at such time, provided that—

(1) the Noncommercial Webcaster shall not be required to make any minimum payment that otherwise applies to commercial eligible nonsubscription transmission services;

(2) the nonrefundable minimum annual fee payable under Section 3 shall not be creditable toward such payments for its other channels and stations;

(3) such payments for its other channels and stations shall be due at the times provided in Section 6 (rather than any different times otherwise applicable to commercial eligible nonsubscription transmission services), except that if the Statutory Rate for digital audio transmissions made by commercial eligible nonsubscription transmission services has not then been determined, such payments for its other channels and stations shall be due 45 days following the month in which the Statutory Rate is determined; and

(4) the Noncommercial Webcaster shall comply with other terms relating to royalty payments that otherwise apply to commercial eligible nonsubscription transmission

services (e.g. terms concerning any election among payment options).

For the avoidance of doubt, by operation of Section 3(c)(3), when 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: (i) such Broadcaster Simulcasts shall in no event be subject to the Statutory Rate for digital audio transmissions made by commercial eligible nonsubscription transmission services, and (ii) only programming offered on Internet-only channels or stations in excess of two that may be associated with a group of up to three channels or stations offering Broadcaster Simulcasts may be subject to that Statutory Rate as provided in this Section.

6. Payment of Royalties in General

(a) Timing of Minimum Payments.

Payments of nonrefundable minimum annual fees under Section 3 for the period beginning on October 28, 1998, and ending on December 31, 2003, shall be due by October 15, 2003. Nonrefundable minimum annual fees for 2004 shall be due by January 31, 2004. Notwithstanding the foregoing provisions of this Section 6(a), when a Noncommercial Webcaster has not previously made digital audio transmissions of sound recordings under the section 114 statutory license, the Noncommercial Webcaster may make its first payment of nonrefundable minimum annual fees within 45 days following the month in which the Noncommercial Webcaster commences digital audio transmissions of sound recordings under the section 114 statutory license.

(b) *Timing of Other Payments.* Any payments due under Section 4 or 5 shall be due 45 days following the month in which the liability accrues.

(c) *Credit.* Any payments of section 112 or 114 statutory license royalties made by a Noncommercial Webcaster to SoundExchange prior to its election under Section 2 shall be creditable to the payments due under Sections 3 through 5 of these Rates and Terms.

(d) *Remittance.* Payments of all amounts due under these Rates and Terms shall be made to SoundExchange and shall under no circumstances be refundable. Payments shall be accompanied by a statement of account in the form made available on the SoundExchange Web site located at <http://www.soundexchange.com>.

(e) *Ephemeral Recordings.* The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made during the period beginning on October 28, 1998, and ending on December 31, 2004, and used solely by a Noncommercial Webcaster to facilitate transmissions for which it pays royalties as and when provided in these Rates and Terms shall be deemed to be included within, and to comprise 8.8% percent of, the Noncommercial Webcaster's royalty payments under these Rates and Terms.

(f) *Continuing Obligation to Pay.* If Statutory Rates and terms for Noncommercial

Webcasters for the period beginning January 1, 2005, have not been established by December 31, 2004, then Noncommercial Webcasters shall continue to make payments at the 2004 rates under these Rates and Terms until such successor rates and terms are established. Such interim royalties shall be subject to retroactive adjustment based on the final successor rates. Any overpayment shall be fully creditable to future payments, and any underpayment shall be paid within 30 days after establishment of the successor rates and terms, except as may otherwise be provided in the successor terms.

(g) *Late Payments.* A Noncommercial Webcaster shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by SoundExchange after the due date. Late fees shall accrue from the due date until payment is received by SoundExchange.

7. Notice and Recordkeeping

(a) *Data for Distributions.* Noncommercial Webcasters electing these Rates and Terms shall not be required to provide reports of use of sound recordings for 2003 and 2004, even if the Librarian of Congress issues regulations otherwise requiring such reports by Noncommercial Webcasters. The payments required by Section 3(d) are intended to facilitate SoundExchange's ability to collect or otherwise acquire substitute data on which to base distributions to copyright owners and performers of payments made by Noncommercial Webcasters, although SoundExchange shall be under no obligation to spend such payments in any particular way or to collect or otherwise acquire any particular data by any particular means. SoundExchange may base its distributions to copyright owners and performers of payments made by Noncommercial Webcasters on any data or methodology determined by its board.

(b) *Future Reporting.* The Noncommercial Webcasters shall designate a task force of not less than five members that shall be obligated to use reasonable efforts to work with SoundExchange to determine data fields and report formats and recommend policies, procedures and systems for the delivery of electronic reports of use of sound recordings to SoundExchange sufficient to permit SoundExchange, beginning in 2005, to distribute the royalties paid by Noncommercial Webcasters to those copyright owners and performers whose sound recordings are used by Noncommercial Webcasters based on data reported by or on behalf of Noncommercial Webcasters. In the absence of agreement among the Noncommercial Webcasters concerning the membership of such task force, each Noncommercial Webcaster shall be obligated to use reasonable efforts to do the foregoing.

8. Default

A Noncommercial Webcaster shall comply with all the requirements of these Rates and Terms. If it fails to do so, SoundExchange may give written notice to the Noncommercial Webcaster that, unless the breach is remedied within 30 days from the date of notice and not repeated, the