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October 18, 2017

[CB-CDA 2017-122]

RULING OF THE BOARD

On September 8, 2017, the Board issued Notice 2017-098, in which it put questions to the Parties. Questions 2 and 3 of this Notice were directed to Stingray and were related to the issue of revenue allocation.

On October 16, 2017, Re:Sound and SOCAN (the “Collectives”) jointly requested that the Board not consider any new information that Stingray may provide in response to questions 2 and 3, arguing that it would be procedurally unfair to do so. In the alternative, they request that the Board set forth additional procedural steps.

While the Board is alive to possible issues of procedural fairness, including providing Parties with the ability to test evidence, the Collectives’ motion is premature. It is based on their hypothesis as to the nature of the information that Stingray will provide. However, Stingray has not yet provided a response to questions 2 and 3. As such, the Collectives’ motion is dismissed.

Lastly, to the extent the Collectives’ motion implicitly requests that the Board not permit Stingray to even produce responses to questions 2 and 3, this is dismissed as well. As the Collectives note, “it is within the power of the Board to seek additional information where appropriate.” Good faith of the Parties is presumed. Any allegations of failure to respond fully or truthfully during the interrogatory process or during the hearing cannot be done in the abstract without knowing how Stingray will respond, and what information it will rely on in its responses. As such, it is appropriate to permit Stingray to respond to questions 2 and 3.

As per Notice 2017-098, after Stingray provides their answers, the Collectives may comment thereon. This may include raising any procedural issues related to the information provided by Stingray or suggesting the means by which any new evidence may be tested.