



March 20, 2020

Mr. Edward Atsinger
Chairman
Radio Music License Committee

Re: *Radio Music License Committee, Inc. v. Broadcast Music, Inc.*, 18 Civ.
4420 (LLS) (S.D.N.Y.)

Dear Ed:

This letter sets forth the Agreement (“Agreement”) reached between Broadcast Music, Inc. (“BMI”) and the Radio Music License Committee (“RMLC”) pertaining to certain provisions of the BMI 2017 Radio Station Blanket/Per Program License Agreement (the “BMI 2017 License”). This Agreement is expressly incorporated in Paragraph 4 of the BMI 2017 License and is binding upon all commercial radio stations that (collectively, the “Licensees”): (i) are represented by the RMLC in the above-captioned action or (ii) have agreed to be bound by the outcome of the above-captioned action.

The parties agree as follows:

1. The term of the BMI 2017 License will be January 1, 2017 through December 31, 2021 (the “License Term”).
2. BMI and the RMLC agree that the RMLC will collect a one-time-litigation-related fee totaling \$5 million from stations licensed under the BMI-17 License (the “Litigation Fee”), to be paid to BMI on or before December 31, 2020. The RMLC shall allocate and collect said Litigation Fee from Licensees and shall transfer such payments directly to BMI. To assist the RMLC in accomplishing this effort, BMI shall provide to the RMLC, within 30 days of execution of this letter, information detailing the estimated license fees payable by Licensees for 2019, and in the same format detailed in Paragraph 10, below.
3. For each year during the period January 1, 2017-December 31, 2019 (the “Retroactive Period”), final blanket license fees as defined in the BMI 2017 License will be computed on the basis of 1.78% of gross revenue generated by Licensees during that year, less a standard deduction as set forth in the BMI 2017 License, if applicable. Payments due under Paragraph 4.H by any station that was billed a minimum fee for the Retroactive Period shall be billed in 2020. Any

- license fees owing on account of the Retroactive Period not made within 9 months shall accrue interest at the rate of 1% per month. To the extent that any licensed station under the BMI 2017 License was sold during the Retroactive Period, the parties agree that, for convenience, BMI shall bill the new owners for all amounts owing on account of the Retroactive Period unless otherwise required. As set forth in the BMI 2017 License, for the period January 1, 2020-December 31, 2021, final blanket license fees will be computed on the basis of 1.78% of gross revenue generated by Licensees during that year from such broadcasts less a standard deduction as set forth herein and/or in the BMI 2017 License, if applicable.
4. If BMI does not receive the certification when required by Paragraph 4.I(1) of the BMI 2017 License, the retroactive amounts due for calendar years 2017 through 2019 will be determined based on previously-invoiced amounts adjusted to reflect the difference in applicable headline rate.
 5. For the avoidance of doubt, for each year of the License Term, the parties agree as follows with respect to the revenue base:
 - a. Reportable advertising revenues under Paragraph 2.R of the BMI 2017 License shall include amounts reflecting known or accrued buy-side commission amounts or discounts. In the event that revenue is generated by advertising placed by a third-party with no commission or discount, the 12% deduction shall not be applied. Nothing in this Agreement or the BMI 2017 License is intended to modify the *status quo* regarding revenues generated by in-house sales or other sales not involving a buy-side advertising agency.
 - b. Reportable digital revenues from display advertisement and sponsorship revenue from station websites under Paragraph 2.S of the BMI 2017 License shall be subject to a 30% deduction. Revenues generated from advertisements and sponsorships embedded in digital streams, including pre- and post-roll advertisements, shall be subject to a 25% deduction. All terms in this Agreement and in the BMI 2017 License regarding digital advertising are non-precedential and may not be relied upon in any rate court proceeding.
 - c. Licensees will continue to report affiliated network revenues in the same manner that they have done under the BMI 2010 License. In the event that there is a currently-pending audit dispute regarding the reporting of affiliated network revenues, such dispute shall be subject to arbitration in accordance with Paragraph 11 of the BMI 2010 License. Any such arbitration decision shall govern the reporting of such revenues by the party station(s) participating in the arbitration under the BMI 2017 License. The RMLC agrees that it will take no position in any such arbitration.
 6. Other revenue-based disputes that arise during or after the Term are to be resolved on a Licensee-by-Licensee basis, as needed, and in accordance with the BMI 2017 License, provided that, if, during the term of the BMI 2017 License, any dispute arises between BMI and any Licensee concerning the interpretation of any of the

provisions of this letter agreement or the BMI 2017 License which, in the judgment of BMI and/or the RMLC, has or may have industry-wide impact, BMI and the RMLC shall first endeavor to resolve such dispute, failing which either BMI or the RMLC may refer the matter to the Rate Court. In the event of such a reference, either BMI or the RMLC shall, as a preliminary matter, be entitled to assert that the dispute between them is not one that has or may have industry-wide impact and, as such, is not properly dealt with under the terms of this provision.

7. For each year of the License Term, BMI will offer a per-program license using the same formula as the BMI 2010 License, as adjusted to reflect the blanket license rate in the BMI 2017 License, and to preserve the ratio between the blanket license and the per-program license. Eligibility for payment on a per-program basis will be the same as the requirements set forth in the BMI 2010 License. Pursuant to Paragraph 4.D of the BMI 2017 License, Licensees will pay a base fee of 0.31% of Revenue Subject to Fee from Radio Broadcasting.
8. The parties' agreement to the BMI 2017 License terms is conditioned upon the American Society of Composers, Authors and Publishers ("ASCAP") not being entitled to, either by agreement, arbitration determination or otherwise, amounts in addition to those required to be paid under the express economic terms set forth in the 2017 ASCAP Radio Station License Agreement ("Supplemental ASCAP Payments"), with the effect of the occurrence of Supplemental ASCAP Payments as follows:
 - a. In the event that ASCAP is entitled to Supplemental ASCAP Payments, at BMI's sole option not to be unreasonably exercised, the license terms in the BMI 2017 License will constitute interim rather than final terms and the parties will proceed with a hearing to determine reasonable rates and terms for the entire period under docket no. 18-cv-04420-LLS (S.D.N.Y.) ("License Re-Opener");
 - b. In any relevant arbitration between ASCAP and the RMLC, BMI agrees to respond to any reasonable subpoenas for documents or information related to the Rate Court proceeding under docket no. 18-cv-04420-LLS (S.D.N.Y.) that is the subject of the settlement between BMI and the RMLC;
 - c. In the event that (1) ASCAP is entitled to Supplemental ASCAP Payments, and (2) that BMI reasonably exercises its License Re-Opener option, Licensees shall continue to make payments in accordance with the BMI 2017 License. All amounts paid thereunder shall constitute interim fees subject to adjustment based on a final fee determination; and,
 - d. In the event that (1) ASCAP is entitled to Supplemental ASCAP Payments, (2) BMI reasonably exercises its License Re-Opener option, and (3) the parties proceed with a hearing under docket no. 18-cv-04420-LLS (S.D.N.Y.), BMI and the RMLC mutually agree not to invoke Rule 408 of the Federal Rules of Evidence to preclude consideration of the terms of the

BMI 2017 License in the course of the ensuing litigation.

9. The parties agree that, following agreement on the terms of the BMI 2017 License, they will jointly seek a final order from the Rate Court that: (i) finds that the terms of the BMI 2017 License are reasonable and non-discriminatory for the License Term and comply with the terms of the Final Judgment entered on December 29, 1994 in *U.S. v. Broadcast Music, Inc.*, No. 64-civ-3787 (the “BMI Consent Decree”), and (ii) provides for payment of administrative fees to the RMLC at rates to be determined by RMLC and set forth in the joint proposed order.
10. BMI agrees to supply the RMLC, by July 15, 2020 applying its best efforts, and May 15, 2021, respectively, the requisite license fee data and station identifying information, such that the RMLC may calculate and invoice each station for its administrative fee. Station identifying information shall include for each Licensee: FCC ID number, call letter/band, license type (blanket or per program), owner/group name; and billing address. Requisite license fee data shall include estimated annualized total fee data.
11. The parties agree that the Rate Court will retain continuing jurisdiction over the proceedings under docket no. 18-cv-04420-LLS (S.D.N.Y.) and will be requested to keep the docket open for the purpose of enforcing the parties’ consent judgment and the terms, conditions, and obligations of the BMI 2017 License, including conducting further proceedings in the event that the above-referenced License Re-Opener condition precedent is satisfied and BMI exercises its conditional option under the License Re-Opener term of the BMI 2017 License.
12. The parties agree to promptly begin good-faith negotiations of license terms for the next license period effective January 1, 2022. The parties further agree that such negotiations will include a discussion of Licensees’ trade-and-barter revenue. Nothing herein or in the agreement shall prevent BMI or the RMLC from arguing during such negotiations for or against the inclusion of trade-and-barter revenue in the revenue base and/or a change in the license rate based on a change in the amount or treatment of trade-and-barter revenues since the negotiation of the BMI 2010 License.

Very truly yours,



Michael Steinberg

Agreed:



Edward Atsinger
Chairman, Radio Music License Committee