

(4) For the performance of any other such compositions: \$1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year. Each annual payment to ASCAP, BMI and SESAC shall be accompanied by a signed declaration stating the number of full-time students enrolled in the educational entity operating the station and/or the effective radiated power (ERP) as specified in its current FCC license. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC shall not in any one calendar year request more than 10 stations to furnish such reports.

[72 FR 67647, Nov. 30, 2007, as amended at 73 FR 72726, Dec. 1, 2008; 74 FR 62705, Dec. 1, 2009; 75 FR 74623, Dec. 1, 2010; 76 FR 74703, Dec. 1, 2011; 77 FR 71105, Nov. 29, 2012]

**§ 381.6 Performance of musical compositions by other public broadcasting entities.**

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with NPR. In the event that a station owned by a public broadcasting entity broadcasts programming by means of an in-band, on-channel (“IBOC”) digital radio signal and such programming is different than the station’s analog broadcast programming, then any such programming shall be deemed to be provided by a separate station requiring a separate royalty payment.

(b) *Definitions.* As used in paragraphs (d) and (e) of this section, the following terms and their variant forms mean the following:

(1) *Feature Music* shall mean any performance of a musical work, whether live or recorded, that is the principal focus of audience attention. Feature

Music does not include bridge, background, or underscore music, themes or signatures, interstitial music between programs such as in public service announcements or program sponsorship identifications, brief musical transitions in and out of program segments (not to exceed 60 seconds in duration), incidental performances of music during broadcasts of public, religious, or sports events, or brief performances during news, talk, religious, and sports programming of no more than 30 seconds in duration.

(2) *Population Count.* The combination of:

(i) The number of persons estimated to reside within a station’s Predicted 60 dBu Contour, based on the most recent available census data; and

(ii) The nonduplicative number of persons estimated to reside in the Predicted 60 dBu Contour of any Translator or Booster Station that extends a public broadcasting entity’s signal beyond the contours of a station’s Predicted 60 dBu Contour.

(iii) In determining Population Count, a station or a Translator or Booster Station may use and report the total population data, from a research company generally recognized in the broadcasting industry, for the radio market within which the station’s community license is located.

(3) *Predicted 60 dBu Contour* shall be calculated as set forth in 47 CFR 73.313.

(4) *Talk Format Station* shall mean a noncommercial radio station:

(i) Whose program content primarily consists of talk shows, news programs, sports, community affairs or religious sermons (or other non-music-oriented programming);

(ii) That performs Feature Music in less than 20% of its programming annually; and

(iii) That performs music-oriented programming for no more than four (4) programming hours during the hours from 6 a.m. to 10 p.m. each weekday, with no two (2) hours of such programming occurring consecutively, with the exception of up to five (5) weekdays during the year.

(5) *Weekday* shall mean the 24-hour period starting at 12 a.m. through 11:59 p.m. on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays occurring

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between January 1 of a given year up to and including Thanksgiving day of that year.

(6) *Translator Station* and *Booster Station* shall have the same meanings as set forth in 47 CFR 74.1201.

(c) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including per-

formances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(d) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) Music Fees (Stations with 20% or more programming containing Feature Music):

	Population count	2013	2014	2015	2016	2017
Level 1 .....	0–249,999 .....	\$631	\$644	\$657	\$670	\$683
Level 2 .....	250,000–499,999	1,126	1,149	1,171	1,195	1,219
Level 3 .....	500,000–999,999	1,688	1,722	1,756	1,791	1,827
Level 4 .....	1,000,000– 1,499,999.	2,251	2,296	2,342	2,389	2,437
Level 5 .....	1,500,000– 1,999,999.	2,814	2,870	2,928	2,986	3,046
Level 6 .....	2,000,000– 2,499,999.	3,377	3,445	3,513	3,584	3,655
Level 7 .....	2,500,000– 2,999,999.	3,939	4,018	4,098	4,180	4,264
Level 8 .....	3,000,000 and above.	5,628	5,741	5,855	5,972	6,092

(ii) Talk Format Station Fees (Stations with <20% Feature Music programming):

	Population count	2013	2014	2015	2016	2017
Level 1 .....	0–249,999 .....	\$631	\$644	\$657	\$670	\$683
Level 2 .....	250,000–499,999	631	644	657	670	683
Level 3 .....	500,000–999,999	631	644	657	670	683
Level 4 .....	1,000,000– 1,499,999.	788	804	820	836	853
Level 5 .....	1,500,000– 1,999,999.	985	1,005	1,025	1,045	1,066
Level 6 .....	2,000,000– 2,499,999.	1,182	1,206	1,230	1,254	1,279
Level 7 .....	2,500,000– 2,999,999.	1,379	1,406	1,434	1,463	1,492
Level 8 .....	3,000,000 and above.	1,970	2,009	2,049	2,090	2,132

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i) Music Fees (Stations with 20% or more programming containing Feature Music):

	Population count	2013	2014	2015	2016	2017
Level 1 .....	0–249,999 .....	\$631	\$644	\$657	\$670	\$683
Level 2 .....	250,000–499,999	1,126	1,149	1,171	1,195	1,219
Level 3 .....	500,000–999,999	1,688	1,722	1,756	1,791	1,827
Level 4 .....	1,000,000– 1,499,999.	2,251	2,296	2,342	2,389	2,437
Level 5 .....	1,500,000– 1,999,999.	2,814	2,870	2,928	2,986	3,046

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	Population count	2013	2014	2015	2016	2017
Level 6 .....	2,000,000– 2,499,999.	3,377	3,445	3,513	3,584	3,655
Level 7 .....	2,500,000– 2,999,999.	3,939	4,018	4,098	4,180	4,264
Level 8 .....	3,000,000 and above.	5,628	5,741	5,855	5,972	6,092

(ii) Talk Format Station Fees (Stations with <20% Feature Music programming):

	Population count	2013	2014	2015	2016	2017
Level 1 .....	0–249,999 .....	\$631	\$644	\$657	\$670	\$683
Level 2 .....	250,000–499,999	631	644	657	670	683
Level 3 .....	500,000–999,999	631	644	657	670	683
Level 4 .....	1,000,000– 1,499,999.	788	804	820	836	853
Level 5 .....	1,500,000– 1,999,999.	985	1,005	1,025	1,045	1,066
Level 6 .....	2,000,000– 2,499,999.	1,182	1,206	1,230	1,254	1,279
Level 7 .....	2,500,000– 2,999,999.	1,379	1,406	1,434	1,463	1,492
Level 8 .....	3,000,000 and above.	1,970	2,009	2,049	2,090	2,132

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) Music fees for stations with >=20% Feature Music programming:

	Population count	2013	2014	2015	2016	2017
Level 1 .....	0–249,999 .....	\$138	\$140	\$143	\$146	\$149
Level 2 .....	250,000–499,999	230	234	239	244	248
Level 3 .....	500,000–999,999	345	352	359	366	373
Level 4 .....	1,000,000– 1,499,999.	459	468	478	487	497
Level 5 .....	1,500,000– 1,999,999.	574	586	597	609	622
Level 6 .....	2,000,000– 2,499,999.	689	702	716	731	745
Level 7 .....	2,500,000– 2,999,999.	804	820	836	853	870
Level 8 .....	3,000,000 and above.	1,149	1,171	1,195	1,219	1,243

(ii) Talk fees for stations with <20% Feature Music programming:

	Population count	2013	2014	2015	2016	2017
Level 1 .....	0–249,999 .....	\$138	\$140	\$143	\$146	\$149
Level 2 .....	250,000–499,999	138	140	143	146	149
Level 3 .....	500,000–999,999	138	140	143	146	149
Level 4 .....	1,000,000– 1,499,999.	161	164	167	170	174
Level 5 .....	1,500,000– 1,999,999.	201	205	209	213	218
Level 6 .....	2,000,000– 2,499,999.	241	246	251	256	261
Level 7 .....	2,500,000– 2,999,999.	281	287	293	299	305

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	Population count	2013	2014	2015	2016	2017
Level 8 .....	3,000,000 and above.	402	410	418	427	435

(4) For the performance of any other such compositions, in 2013 through 2017, \$1.

(e) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year. Each annual payment shall be accompanied by a signed declaration stating the Population Count of the public broadcasting entity and the source for such Population Count. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI and SESAC, a public broadcasting entity shall make its books and records relating to its Population Count available for inspection. In the event that a public broadcasting entity wishes to be deemed a Talk Format Station, then such entity shall provide a signed declaration stating that Feature Music is performed in less than 20% of its annual programming and that it complies with the caps set forth in paragraph (b)(4) of this section. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI or SESAC, a public broadcasting entity shall make its program schedule or other documentation supporting its eligibility as a Talk Format Station available for inspection.

(f) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC each shall not in any one calendar year request more than 10 stations to furnish such reports.

[72 FR 67647, Nov. 30, 2007, as amended at 77 FR 71106, Nov. 29, 2012]

**§ 381.7 Recording rights, rates and terms.**

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and dis-

plays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2013–2017
(A) Feature .....	\$116.37
(B) Concert feature (per minute) .....	34.95
(C) Background .....	58.81
(D) Theme:	
(1) Single program or first series program .....	58.81
(2) Other series program .....	23.88

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2013–2017
(A) Feature .....	\$ 9.62
(B) Concert feature (per minute) .....	2.53
(C) Background .....	4.18
(D) Theme:	
(1) Single program or first series of program .....	4.18
(2) Other series program .....	1.66

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made