No. 23-927

In the Supreme Court of the United States

NATIONAL RELIGIOUS BROADCASTERS NONCOMMERCIAL MUSIC LICENSE COMMITTEE,
Petitioner,

v.

COPYRIGHT ROYALTY BOARD, ET AL.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF GATEWAY CREATIVE BROADCASTING, FAMILY STATIONS, INC., AND UNIVERSITY OF NORTHWESTERN-ST. PAUL/NORTHWESTERN MEDIA AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE

Amici curiae are the following noncommercial religious radio broadcasters that also webcast music online:[1]

Gateway Creative Broadcasting operates two Christian music radio stations—JOYFM 99.1 and BOOST 95.5—in the St. Louis area and several syndicated cities, and webcasts Christian music.

Family Stations, Inc. ("Family Radio") holds broadcast licenses for 71 broadcast signals, and webcasts Christian music. As a noncommercial Christian listener-supported radio and streaming ministry that has been on the air for over 65 years, their educational mission is to share the Word of God and a message of hope. Family Radio reaches into markets in 28 states, serving communities such as New York, San Francisco, Sacramento, Los Angeles, Philadelphia, Baltimore, Chicago, and San Diego, among others, with a mixed format consisting of educational, Bible-focused talk programming and music that is selected to specifically fit its Bible centered mission.

University of Northwestern-St. Paul/Northwestern Media ("Northwestern Media") operates multiple Christian music radio

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[1] No counsel for a party authored this brief in whole or in part and no person other than amici or their counsel made any monetary contribution to its preparation or submission. Both parties received timely notice of intent to file this brief.

stations on 104 outlets across 10 states, and webcasts Christian music.

Amici are not businesses. They are not commercial entities. They do not exist to sell products or for any financial gain. Instead, they are all noninteractive, noncommercial religious webcasters that stream Christian music online for one purpose: to spread the Gospel message of hope, peace, and joy through music and teaching.

Amici's stations are all listener supported. They are noncommercial, meaning the musical streaming content is free to the listener and uninterrupted by commercial advertising. Like many nonprofits, amici's budgets are tight, and rising costs pose a significant threat to their ability to fulfill their organizational missions of spreading the Gospel of Jesus Christ through positive and encouraging Christian broadcasting and webcasting. Amici's stations are tax-exempt 501(c)(3) non-profit ministries "organized and operated exclusively for religious, charitable, … or educational purposes." *See* 26 U.S.C. § 501(c)(3). By law, no part of their net earnings may "inure[] to the benefit of any private shareholder or individual." *Id.* In accordance with these provisions, amici are ministries whose missions are to promote biblical teaching and to encourage listeners in their spiritual walks.

In adherence to these requirements, amici's programming decisions are made to further their missions and not for profit. For example, syndicated ministries with whom they partner are carefully chosen based on alignment with their Bible-focused

missions. Potential programming partners are carefully vetted, with some amici so committed to entering into the right partnerships with other ministries that their partners are not charged for airtime. Noncommercial educational broadcasters cannot accept revenue in exchange for broadcasting advertisements for goods or services or advertisements supporting or opposing political candidates, or advertisements expressing opinions on matters of public interest. *See* 47 U.S.C. § 399b(a), (b)(2); 47 C.F.R. § 73.503(d). Rather, they depend on the generosity of listeners and other interested donors to support their educational missions and receive no government funding. Further, all donations and income that amici receive are reinvested back into the ministry for growth, station upgrades and repairs, salaries, and similar expenses; their owners and operators are not able to realize a profit from this income.

The Copyright Royalty Board's ("Board") decision in *Web V*, covering calendar years 2021 through 2025, to require noncommercial religious webcasters to pay 18 times the secular public radio webcaster rate to webcast sound recordings above the low monthly aggregate tuning hours (ATH) threshold greatly impacts amici. Amici and all other noncommercial religious webcasters must first pay a $1,000 non-refundable minimum fee per station or channel—twice the amount they paid under *Web IV*—which authorizes them to webcast to an average of only 218 simultaneous online listeners per month before additional fees are charged. Pet. Appx. 2a-3a, 500a (86 Fed. Reg. 59452, 59566). After the per month threshold of 159,140 ATH has been reached—again,

an average of only 218 simultaneous listeners—noncommercial religious webcasters must then pay the rate commercial webcasters pay, which is 18 times the rate that National Public Radio, Inc. ("NPR") affiliated webcasters pay for any usage above that threshold. *Id.*[2]

Amici exist to communicate. They do that through their radio broadcasts and online webcasts. The practical effect of the Board's decision to favor secular speech over amici's religious speech is that amici's message has been muffled, and their ability to fulfill their mission has been impeded.

Paradoxically, because of the steadily increasing rates over the last several years, amici have been required to proactively *limit* their webcast audience.[3]

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[2] The Board adopted statutory royalty rates for NPR-affiliated webcasters that had been jointly proposed by NPR and SoundExchange. Pet. Appx. 733a-37a (37 C.F.R. 380.31(a)). It is important to understand that although NPR and SoundExchange jointly proposed *Web V* royalty rates that NPR would pay, ultimately the rates were approved and adopted by the Board as the public statutory rates for an entire category of webcasters and all copyright owners, including those who were not parties to the agreement to propose statutory rates. In other words, the royalty rates that apply to NPR—and the much higher rates that apply to amici—are not simply the result of free market negotiation, but rather state action: specifically, the action of the Board in adopting NPR and SoundExchange's proposed rates and rejecting Petitioner's proposed rates, including its proposal that it pay the same rates as NPR.

[3] That amici and other noncommercial religious webcasters are required to actively turn people away from their nonprofit services to avoid paying fees is strong indication that the fees are excessive and not in the public interest.

They've done this in two primary ways. First, amici are hesitant to advertise or push their online streaming platforms, knowing that increased listeners mean increased fees. Second, amici have limited the amount of time a listener can stream their content before the listener is knocked off the stream, which, of course, creates the risk that the listener will choose another platform to stream online content.

For example, to reduce above-threshold per-performance fees, Family Radio reduced its listeners' continuous streaming time by one-third before automatically terminating those sessions. Similarly, Gateway Creative Broadcasting limits listeners to three hours of continuous streaming time.

KTIS, one of Northwestern Media's webcast stations, had a four-hour cap in effect from August 2022 to April 2023, and a 10-hour cap from July 2023 to February 2024. The purpose of the cap is to limit fees under *Web V*. As the figures show, over 10,000 listeners per month—on a single webcast station—were turned away after reaching the four-hour cap because of the new, higher fee structure. Under the current 10-hour cap—which Northwestern Media fully expects will cause it to pay higher overage fees—over 3500 listeners per month are still regularly automatically terminated from the webcast stream after reaching the cap:

4-Hour Cap		10-Hour Cap	
Aug/2022	12,701	Jul/2023	3,491
Sep/2022	11,754	Aug/2023	3,689
Oct/2022	12,317	Sep/2023	3,607
Nov/2022	12,727	Oct/2023	3,868
Dec/2022	16,435	Nov/2023	3,768
Jan/2023	13,020	Dec/2023	4,890
Feb/2023	12,137	Jan/2024	3,794
Mar/2023	13,573	Feb/2024	3,814
Apr/2023	13,054		
May/2023	12,909		
Jun/2023	11,979		

Moreover, even prior to the Board's most recent rate-setting decision in *Web V*, the *Web IV* rates, covering calendar years 2016 to 2020, placed a huge strain on amici.

For example, in 2018, Gateway Creative Broadcasting paid approximately $5,700 in royalty streaming fees. But in 2023, those fees rose to approximately $130,000.

In 2015, Family Radio paid just over $1300 in royalty fees. In 2018, they paid approximately 29 times that amount. And in 2019, they paid nearly $5000 per month in webcast licensing fees.

Similarly, in 2015, Northwestern Media spent approximately $12,000 in licensing fees. In 2018, when they went over the cap, they paid just under $35,000. In 2019, that amount skyrocketed to $88,600. After 2019, due to affordability issues, Northwestern Media put in place tighter listener caps, therefore reducing some of the excessive royalty fees.

The rates are now higher than they were under *Web IV*. Amici, and other similarly situated religious webcasters, now face a Morton's Fork: either eliminate or greatly reduce their webcast footprint or pay excessive rates that may eventually require them to shut their doors. Either way, fewer listeners hear amici's message of Christian salvific hope, and their mission therefore suffers.

NPR isn't forced to make that choice. Amici shouldn't have to either.

SUMMARY OF ARGUMENT

Amici agree with Petitioner that this case presents a vital religious liberty issue: namely, whether the Board's decision to favor NPR's secular speech over noncommercial webcasters' religious speech violates the Religious Freedom Restoration Act (RFRA) or the First Amendment. It is unclear to amici why the Board refused to accept the agreement between NPR, the Corporation for Public Broadcasting ("CPB"), and SoundExchange—the "NPR Agreement"—as a relevant benchmark. It is also unclear whether the Board's decision to favor NPR's secular speech over amici's religious speech was based on animus. But

ultimately it doesn't matter. What matters is that the Board was solely responsible for 1) adopting the rates jointly proposed by NPR and SoundExchange, setting them as the public webcaster statutory rates, and 2) expressly choosing to set much higher rates for noncommercial religious webcasters, despite knowing about and adopting the NPR rates. The fact is that the outcome of the Board's decision to ignore the NPR benchmark rates and set noncommercial religious webcaster rates at *18 times* NPR's rates for listeners about the 218-listener threshold, violates Petitioner's constitutional and statutory rights.[4] Review by this Court is both warranted and necessary to ensure the fair treatment of all noncommercial webcasters, regardless of the message being transmitted by the webcaster.

But review is also warranted for an independent reason: to protect litigants' statutory and procedural rights in Board proceedings.

An analogy is instructive. Before the Board, Petitioner believed it was playing checkers. It was told it was playing checkers. It was given the rules to

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[4] It is worth noting that participation by noncommercial religious webcasters in rate-setting proceedings places a much greater financial strain on them in comparison to commercial webcasters, who can offset the cost with subscription sales, advertisements, or other revenue generation. Noncommercial religious webcasters would prefer to reach a negotiated settlement with SoundExchange or individual record companies, in part, because they are far less able to bear the costs of participating in rate-setting proceedings than commercial licensees given their dependence on listener donations and sponsorships and their inability to sell advertisements to raise money.

checkers. It knew how checkers had been played in the past. It was familiar with the checkers board, how the pieces are moved, and strategy to win the game. It prepared for the checkers game based on the common understanding of how checkers is played. And then it played the game based on these prior rules.

But then when the game was over, the Board told Petitioner *sorry, you've lost, we were playing chess all along*.

By changing three precedents—pertaining to the statutory exclusionary rule, the burden of proof, and expert testimony—without giving prior notice to Petitioner, the Board made it nearly impossible for Petitioner to successfully litigate its proposed rates. Review is necessary to chasten the Board and remind it that it must adjudicate matters fairly and impartially, not arbitrarily and capriciously. Moreover, review is especially warranted *now* because *Web VI* proceedings have already commenced. Without this Court's guidance, amici and Petitioner face grim prospects of obtaining favorable licensing rates for calendar years 2026 through 2030.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT REVIEW TO SETTLE A CONFLICT BETWEEN THE BOARD'S INTERPRETATION AND THE REGISTER'S INTERPRETATION OF THE STATUTORY EXCLUSIONARY RULE, 17 U.S.C. §114(F)(4)(C).

This case presents the unique question of who is responsible for interpreting the Copyright Act. Or

perhaps better put, who is *ultimately* responsible for interpreting the Act? There are three contenders in this case: the Copyright Royalty Board, the Register of Copyrights, and the D.C. Circuit.

The dispute here concerns the Copyright Act's statutory exclusionary rule, which provides in relevant part:

> Neither [the Webcaster Settlement Act] **nor any provisions of any agreement entered into pursuant to [the Webcaster Settlement Act],** including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth therein, **shall be admissible as evidence or otherwise taken into account** in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements by the Copyright Royalty Judges under paragraph (3) or section 112(e)(4).

17 U.S.C. §114(f)(4)(C) (emphasis added).

Essentially, Section 114(f)(4)(C) bars the Board during rate-setting proceedings (such as the proceedings here) from admitting into evidence or

otherwise considering the provisions of agreements entered into under three congressional Acts—including the Webcaster Settlement Act (WSA) of 2009—authorizing parties to reach statutory rate agreements in lieu of the rates set by the Board and its predecessor. During the *Web IV* rate-setting proceeding, the Board requested the Register of Copyrights to interpret Section 114(f)(4)(C)'s exclusionary rule. *See* 17 U.S.C. §802(f)(B)(i) ("In any case in which a novel material question of substantive law concerning an interpretation of those provisions of this title that are the subject of the proceeding is presented, the Copyright Royalty Judges ***shall request*** a decision of the Register of Copyrights, in writing, to resolve such novel question.") (Emphasis added). Specifically, the Board asked the Register to determine whether the statutory exclusionary rule prevented the Board from considering a license agreement between a webcaster and a record company if that agreement includes "any terms that are copied verbatim from," are "substantively identical to," "influenced by," or even "refers to" a prior WSA settlement agreement. Scope of the Copyright Royalty Judges' Continuing Jurisdiction, 80 Fed. Reg. 58,300, 58,302 (Sept. 28, 2015).

The Register answered each question with a resounding "no," concluding that Section 114(f)(4)(C) only "prohibits consideration of provisions of settlement agreements entered into pursuant to the 2009 WSA and does not bar the [Board] from considering direct license agreements containing provisions that are copied from, are substantively identical to, have been influenced by, or refer to, the provisions of a WSA agreement." *Id.* at 58,302. In

other words, it is the agreements themselves that are inadmissible, *not* simply information contained in the agreements. This opinion by the Register became "binding precedent." *SoundExchange, Inc. v. Muzak LLC*, 854 F.3d 713, 717–19 (D.C. Cir. 2017); 17 U.S.C. §803(a)(1) (stating that "Copyright Royalty Judges shall act in accordance with … and on the basis of … prior determinations and interpretations of the … Register of Copyrights").

Notably, Petitioner was a party to *Web IV*, the rate-setting proceeding in which the Register issued this binding interpretation of Section 114(f)(4)(C) in its favor. *See* 80 Fed. Reg. at 58302 (stating that "the webcasting parties, ***[including] National Religious Broadcasters Noncommercial Music License Committee*** … assert that the questions should be answered in the negative, and that the [Board] should be able to take these agreements into consideration as benchmarks or corroborative evidence in the current proceeding") (emphasis added). In the present proceeding, relying on the Register's binding precedent, Petitioner sought to support its claim for a lower rate by admitting SoundExchange's internal valuation of NPR rates from 2016-2020 (the "NPR Analysis"). Petitioner attempted to use the NPR Analysis as a valuation of a non-WSA NPR rate structure. But the Board excluded the NPR Analysis, concluding that Section 114(f)(4)(C) applied.

The Board reasoned that the royalty rates used in SoundExchange's NPR Analysis "are rates derived from a non-precedential WSA Agreement that the Judges are not permitted to consider in a rate

proceeding." Pet. Appx. 530a (*Web V*, 86 Fed. Reg. 59452, 59572). But in so doing, the Board failed to properly apply the Register's binding decision, which concluded that Section 114(f)(4)(C) *only prohibits* consideration of provisions of WSA settlement agreements, *not* terms used in valuing a *non-WSA* agreement, even if terms valuing the non-WSA agreement were copied from, are substantively identical to, have been influenced by, or refer to, the provisions of a WSA agreement. *See* 80 Fed. Reg. at 58,302. WSA rates ended in 2015. *See* 17 U.S.C. §114(f)(4)(A). The NPR Analysis valued 2016-2020 rates—rates explicitly outside the WSA time frame. Even if those 2016-2020 non-WSA rates and valuation of those rates were identical to, copied verbatim from, or derived from a WSA settlement agreement, the statutory exclusionary rule nevertheless does not apply. Under the Register's binding interpretation, what matters is whether the evidence sought to be admitted is a WSA agreement or not. Because the NPR Analysis incontrovertibly is not a WSA settlement agreement, but is instead an analysis of non-WSA rates, the Board erred by excluding it.

The Board's interpretation creates a direct conflict with the Register's interpretation, which this Court should now resolve. There is no logical or legal reason to distinguish the NPR Analysis excluded here from the licensing agreements ruled admissible in *Web IV*. Neither exhibit is a prohibited WSA agreement, or simply rates copied and pasted from a WSA agreement. Instead, both involve *non*-WSA rates.

The D.C. Circuit's analysis fares no better than the Board's. The court determined that "the Board

appropriately concluded that it was statutorily barred from considering the royalty rates contained in the "'NPR Analysis,'" reasoning that "the Register's opinion allows the Board to consider voluntary license agreements that incorporate WSA settlement terms, as well as the effect of the WSA on private-settlement negotiations," but "does not require or even allow the Board to consider documents like the NPR Analysis." Pet. Appx. 663a. The court distinguished between incorporating terms from WSA settlements into subsequent agreements, which "are fair game for the Board's consideration," from the documentation of "WSA rates that may have been used to propose terms for a subsequent agreement." *Id.*

Respectfully, the court's analysis makes a distinction without a difference. Why should it matter if the terms from a WSA Agreement are incorporated into a subsequent agreement, versus incorporated into an internal analysis for the purpose of negotiating a subsequent agreement? Why is the former admissible, and the latter not? Nothing in the exclusionary rule itself makes this distinction. Importantly, Petitioner did not *infer* that the NPR Analysis was used for the valuation of non-WSA 2016-2020 rates; SoundExchange expressly stated this was the purpose of the analysis. Pet. 31.

Admittedly, the Register's binding opinion is not factually identical to the present case. There, the documentary evidence at issue was voluntary license agreements, whereas here the documentary evidence involves the internal NPR Analysis. But even when the Register's opinion does not involve a factually identical scenario, the D.C. Circuit has afforded the

Register deference. *See, e.g.*, *Muzak*, 854 F.3d at 719 (reasoning that "although the Register did not decide our issue, … [w]e should respect her guide to interpretation"). And if—as the Board and the D.C. Circuit concluded—the Register's earlier opinion was inapposite, then the Board was *required to* request a decision of the Register regarding the admissibility of the NPR Analysis, which the Board did not do. *See* 17 U.S.C. § 802(f)(B)(i) (stating that novel questions "shall" be referred to the Register for resolution).

Moreover, although the continued vitality of the *Chevron* doctrine is currently pending before the Court, *Chevron* deference is still the law of the land. Under *Chevron*, the Register's opinion is entitled to deference by the D.C. Circuit. *See Cablevision Sys. Dev. Co. v. Motion Picture Ass'n of Am.*, 836 F.2d 599, 609 (D.C. Cir. 1988). This is true even if the circuit court thought its interpretation of the statute was better than the Register's. *See Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005) (concluding that the Ninth Circuit should have applied the reasonable interpretation of an agency, rather than its own contrary construction adopted in another case, even if the court believed the contrary construction was the best interpretation of the statute). Because the Board violated its statutory mandate to follow the interpretation of the Register, the Board's contrary interpretation should not have been given deference by the D.C. Circuit. Instead, the D.C. Circuit should have deferred to the Board's interpretation.

The D.C. Circuit did get at least one thing right: namely, that the NPR Analysis was important to one

of Petitioner's rate structures. *See* Pet. Appx. 663a. Without it, the D.C. Circuit concluded that Petitioner's proposal of a minimum fee for threshold use plus excess usage fees equal to one-third the rates applicable to commercial webcasters lacked evidentiary support. The Board's interpretation was not only erroneous as a matter of statutory interpretation, but arbitrary and capricious.

So too was the Board's decision to change two other precedents. First, contrary to prior precedent, the Board held that Petitioner was required to present expert testimony to establish a benchmark's comparability to the market being valued. *See* Pet. 35-36. Second, again contrary to prior precedent, it inverted the burden of proving and quantifying a proposed adjustment to a benchmark, placing the burden on the proponent of the benchmark—here, Petitioner—rather on the proponent of the adjustment—SoundExchange. *Id.* at 36-37. The practical effect of the Board's burden shifting was to force Petitioner to become a mind reader, having to anticipate and quantify every potential adjustment or risk having the benchmark thrown out.

Petitioner reasonably relied on all three of these prior precedents in litigating rates in *Web V*. The Board's unannounced decision to change course on these three precedents significantly prejudiced Petitioner and the interests of the noncommercial religious webcasters it represents. Even if the Board had the authority to change these precedents—which amici dispute—the Board nevertheless cannot depart from its prior policy *sub silentio*; at a minimum, the Board must show that "the new policy is permissible

under the statute, that there are good reasons for it, and that the agency *believes* it to be better." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (emphasis in original). Because the Board's prior precedents "engendered serious reliance" by Petitioner, the Board's unannounced and unreasoned decision to change the precedents was "arbitrary and capricious." *Id.*

This Court should grant the Petition to settle the conflict between the Board and D.C. Circuit's interpretation of the statutory exclusionary rule, and the Register's interpretation of the rule, and to clarify the process an agency must use in changing prior practice to avoid acting arbitrarily and capriciously.

II. REVIEW SHOULD BE GRANTED BECAUSE *WEB VI* RATE PROCEEDINGS HAVE ALREADY COMMENCED, INCREASING THE URGENCY AND NEED FOR THIS COURT TO PROVIDE OVERSIGHT AND GUIDANCE TO THE BOARD.

Review is warranted *now*. There have already been five rate proceedings. The last two proceedings—*Web IV*, covering calendar years 2016 through 2020, and *Web V*, covering calendar years 2021 through 2025—resulted in exponentially higher rates and fees for amici and other noncommercial religious webcasters. If the trend continues, the survival of these nonprofit webcasters is in jeopardy. Notably, the Board recently announced the commencement of *Web VI* proceedings, covering calendar years 2026 through 2030. *See* 89 Fed. Reg. 812, 812-14. This Court should grant review and both reverse the Board's arbitrary and capricious decision in *Web V*,

and provide it further guidance in current and future rate proceedings.

Amici simply asks that Petitioner—and the noncommercial religious webcasters that it represents—be treated fairly. Amici are not in the market trying to increase profitability, or fatten shareholders' pockets to the detriment of SoundExchange or copyright owners. Indeed, they couldn't if they wanted to. *See* 26 U.S.C. §501(c)(3) (nonprofits must be "organized and operated exclusively" to fulfill charitable missions and cannot distribute profits). They broadcast and webcast music out of a singular vision and mission: to share the positive, upbuilding, and life-affirming message of the Gospel.

Because theirs is a message-based mission, Amici have naturally chosen to broadcast their message—at least in part—where most people spend hours a day: online. Their content is free to the listener, supported not by the government, or by advertising, but by listeners.

In many relevant respects, Amici are similarly situated to NPR. They are nonprofits. They webcast music online. They are not commercial entities. Their mission is to promote the public good by providing content free of charge, content that must be educational, mission-oriented, and devoid of ads. *See* 47 C.F.R. §73.503(d).

Despite these similarities, there are three key differences between NPR and Amici. First, NPR is secular, and Amici are religious. Second, when certain

low thresholds are surpassed, Amici pay *18 times* the rate to webcast digital recordings than the NPR rate. In other words, the NPR rate is 1/18th—a tiny fraction of—the rate Amici pays. Third, NPR stations have royalty fees paid for them by the federal government through CPB. 37 C.F.R. §380.32(a). Whereas NPR gets the benefit of being a not-for-profit, noncommercial webcaster at all listenership levels, Amici do not. Above the low thresholds—218 simultaneous listeners per month—Amici pay *the same rates* as commercial nonsubscription webcasters such as Free Pandora or Google (*see* Pet. Appx. 641a), despite the fact that during *Web I*, the Copyright Arbitration Royalty Panel (CARP)—the predecessor to the Board—found that setting identical rates for noncommercial and commercial services "affronts common sense" and that "commercial license rates almost certainly overstate fair market value" and "can *not* appropriately be used as a [noncommercial] benchmark." Report of the CARP, Docket No. 2000-9 CARP DTRA 1&2, 89 (Feb. 20, 2002) (emphasis in original).

Because Amici are similarly situated to NPR, *not* Free Pandora, Google, or other for-profit, commercial webcasters, they should be charged no more than the rates that NPR and other noncommercial public webcasters pay, not the rates of commercial broadcasters.

This Court should grant review to ensure that *all* noncommercial webcasters are treated fairly and equally by the Board, both now and in the future.

CONCLUSION

For the foregoing reasons and the reasons stated in Petitioner's brief, the Court should grant the petition for a writ of certiorari and reverse the decision below.

Respectfully submitted,

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