columns was delayed during 2002 while OSHA considered comment on issues related to these requirements. This rule merely continues the status quo during 2003; it does not require any change in recordkeeping procedures.

If this rule cannot be made effective until thirty days from publication, employers will be required to comply with the new MSD and hearing loss column requirements for a brief time during 2003, only to revert back to the existing requirements. This would impose burdensome requirements on employers to quickly train their employees and modify their recordkeeping software in time to accommodate the new requirements on January 1. These extraordinary efforts would be wasted since the columns would be in effect for only a short time, and would produce no worthwhile data. Moreover, there would be a substantial degree of confusion about compliance responsibilities since the current recordkeeping forms do not contain the columns or the MSD definition, and OSHA could not produce and distribute new forms in time. For these reasons, OSHA believes that this final rule must take effect on January 1, 2003.

Paperwork Reduction Act

The final rule will continue OSHA's current policies regarding the recording of hearing loss and musculoskeletal tissue disorders during 2003 and will not impose any new paperwork requirements during that year. The addition of a new hearing loss column in 2004 will result in minor paperwork burdens associated with the addition of a new column, involving training of recordkeeping staff, obtaining new forms, and conversion of non-mandatory computer programs. The forms will be made available free of charge in 2003, before they are required for use in 2004. These burdens are already taken into account in the paperwork estimates for this rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Assistant Secretary certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule does not add any new requirements, merely delaying the effective date of two sections of the rule, and allowing a previously delayed section to go into effect in 2004.

State Plans

The 26 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable regulation within six months of the publication date of this final regulation. These states and territories are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, New Jersey, and New York have OSHA approved State Plans that apply to state and local government employees only.

Due to the short amount of time remaining in 2002, some of the states may not complete their rulemaking actions by January 1, 2003. However, the states will complete rulemaking to delay the effective dates of their equivalent regulations shortly thereafter. In the meantime, employers in these states will use the same forms used in federal jurisdiction states (which as noted above do not currently contain the columns or MSD definition) to ensure the uniformity of national data per Section 1904.37.

Executive Order

This document has been deemed significant under Executive Order 12866 and has been reviewed by OMB.

Authority

This document was prepared under the direction of John Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under Section 8 of the Occupational Safety and Health Act (29 U.S.C. 657) and 5 U.S.C. 553.

Signed at Washington, DC this 11th day of December, 2002.

John Henshaw,

Assistant Secretary of Labor.

For the reasons stated in the preamble, OSHA hereby amends 29 CFR Part 1904 as set forth below:

PART 1904—[AMENDED]

1. The authority citation for part 1904 continues to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 5 U.S.C. 533.

2. Revise § 1904.10(b)(7) to read as follows:

§ 1904.10 Recording criteria for cases involving occupational hearing loss.

* * * * *

(b) * * *

(7) *How do I complete the 300 Log for a hearing loss case?*

When you enter a recordable hearing loss case on the OSHA 300 Log, you must check the 300 Log column for hearing loss. (Note: § 1904.10(b)(7) is effective beginning January 1, 2004.)

* * * * *

3. Revise the note to § 1904.12 to read as follows:

§ 1904.12 Recording criteria for cases involving work-related musculoskeletal disorders.

* * * * *

Note to §§ 1904.12: This section is effective January 1, 2004. From January 1, 2002 until December 31, 2003, you are required to record work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness under §§ 1904.5, §§ 1904.6, §§ 1904.7, and §§ 1904.29. For entry (M) on the OSHA 300 Log, you must check either the entry for ''injury'' or ''all other illnesses.''

4. Revise § 1904.29(b)(7)(vi) to read as follows:

§ 1904.29 Forms.

* * * * *

(b) * * *

(7) * * *

(vi) Other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log. Musculoskeletal disorders (MSDs) are not considered privacy concern cases. (Note: The first sentence of this §§ 1904.29(b)(7)(vi) is effective on January 1, 2002. The second sentence is effective beginning on January 1, 2004.)

* * * * *

[FR Doc. 02–31619 Filed 12–16–02; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 2002–4 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing final regulations adjusting the royalty rates and terms under the Copyright Act for the noncommercial educational broadcasting compulsory license for the period 2003 through 2007.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or

William J. Roberts, Jr., Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423

SUPPLEMENTARY INFORMATION:

Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. Terms and rates for this compulsory license applicable to parties who are not subject to privately negotiated licenses are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. This is a window year for such an adjustment.

After extended negotiations initiated by the Library of Congress, the parties in this docket submitted proposals for adjustment of the rates and terms contained in part 253. Section 251.63(b) of the Copyright Arbitration Royalty Panel (''CARP'') rules, 37 CFR, provides that terms and rates for a statutory license may be adopted by the Librarian of Congress in lieu of a CARP proceeding if all parties reach a settlement, and the Librarian publishes the negotiated terms and rates in the **Federal Register** for notice and comment. If no one objects to the proposed rates and terms and submits a Notice of Intent to Participate in a CARP proceeding, then the Librarian may adopt the negotiated rates and terms as final.

On October 30, 2002, the Library published a Notice of Proposed Rulemaking (''NPRM'') setting forth the rates and terms negotiated by the parties in this proceeding for the period 2003–2007. 67 FR 66090 (October 30, 2002). The NPRM specified that objecting parties must submit their objections and Notices of Intent to Participate by December 2, 2002. No filings were received. Consequently, pursuant to 37 CFR 252.63(b), the Librarian moves to final rules.

Effective Date

The final section 118 royalty terms and rates are effective on January 1, 2003. January 1, 2003, is less than 30 days from publication of the notice of the final rule. Section 553 of the Administrative Procedure Act, 5 U.S.C., provides that final rules shall not be effective less than 30 days from their publication unless, *inter alia,* the agency finds good cause, a description of which must be published with the rule. 5 U.S.C. 553(d)(3). Good cause exists in this case.

The final rules are the product of negotiations between representatives of copyright owners and copyright users. All owners and users affected by these rates have already had the opportunity to participate in the process, and any additional interested parties were afforded further opportunity to participate when the Copyright Office published them as proposed rules in the **Federal Register**. 67 FR 66090 (October 30, 2002). The copyright owners and users who negotiated the final rules have the expectation that they will become effective on January 1, 2003. Even those parties affected by the rules who did not participate in their negotiation are aware that 2002 is a window year for new rates and terms for the 2003–2007 period, beginning on January 1, 2003. *See* 67 FR at 66092.

The negotiations that produced these final rules took a considerable amount of time to orchestrate and did not result in final agreements until late this year. In addition, some of the rates are dependent upon changes in the Consumer Price Index, information which was not known until the end of November. This resulted in a delay in publishing the final rules until now. Because of these circumstances, and because no parties affected by these rules are prejudiced, good cause exists that they become effective less than 30 days from date of publication of this Notice.

List of Subjects in 37 CFR Part 253

Copyright, Music, Radio, Television, Rates.

Final Regulations

For the reasons set out in the preamble, the Library of Congress amends part 253 of 37 CFR as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.1 is amended by removing the phrase ''January 1, 1998 and ending on December 31, 2002'' and adding ''January 1, 2003 and ending on December 31, 2007'' in its place.

§ 253.3 [Removed and Reserved]

3. Section 253.3 is removed and reserved.

4. Section 253.4 is amended as follows:

a. In the introductory text, by removing '', or compositions in the repertories of ASCAP, BMI, or SESAC which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.'';

b. By revising paragraph (a);

c. in paragraph (c), by removing the phrase ''January 1, 1998, to December 31, 2002'' and adding ''January 1, 2003, to December 31, 2007'' in its place; and

d. in paragraph (d), by removing ''three'' and adding ''four'' in its place.

The revisions to § 253.4 read as follows:

§ 253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

* * * * *

(a) Determination of royalty rate. (1) For performance of such work in a feature presentation of PBS:
2003–2007 ..... $224.22
(2) For performance of such a work as background or theme music in a PBS program:
2003–2007 ..... $56.81
(3) For performance of such a work in a feature presentation of a station of PBS:
2003–2007 ..... $19.16
(4) For performance of such a work as background or theme music in a program of a station of PBS:
2003–2007 ..... $4.04
(5) For the performance of such a work in a feature presentation of NPR:
2003–2007 ..... $22.73
(6) For the performance of such a work as background or theme music in an NPR program:
2003–2007 ..... $5.51
(7) For the performance of such a work in a feature presentation of a station of NPR:
2003–2007 ..... $1.61
(8) For the performance of such a work as background or theme music in a program of a station of NPR:
2003–2007 ..... $.57
(9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.
(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

* * * * *

§ 253.5 [Amended]

5. Section 253.5(c)(3) is amended by removing ''$66'' and adding ''$80'' in its place.

6. Section 253.6(c) is revised to read as follows:

§ 253.6 Performance of musical compositions by other public broadcasting entities.

* * * * *

(c) 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, in 2003, $460; in 2004, $475; in 2005, $495; in 2006, $515; in 2007, $535.

(2) For all such compositions in the repertory of BMI, in 2003, $460; in 2004, $475; in 2005, $495; in 2006, $515; in $2007, $535.

(3) For all such compositions in the repertory of SESAC, in 2003, $98; in 2004, $100; in 2005, $102; in 2006, $104; in 2007, $106.

(4) For the performance of any other such compositions, in 2003 through 2007, $1.

* * * * *

7. Section 253.7 is amended as follows:

a. In paragraph (a), by removing ''or compositions represented by the Harry Fox Agency, Inc., SESAC, and/or the National Music Publishers Association and which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in this subchapter,''; and

b. By revising paragraph (b).

The revisions to § 253.7 read as follows:

§ 253.7 Recording rights, rates and terms.

* * * * *

(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:

	2003–2007
Feature	$112.40
Concert feature (per minute)	33.75
Background	56.81
Theme:	
Single program or first series program	56.81
Other series program	23.06

(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:

	2003–2007
Feature	$9.29
Concert feature (per minute)	2.44
Background	4.04
Theme:	
Single program or first series program	4.04
Other series program	1.61

(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 equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule ''National Public Radio'' programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	2003–2007
Feature	$12.17
Concert feature (per minute)	17.86
Background	6.10
Theme:	
Single program or first series program	6.10
Other series program	2.43

(3) For purposes of this schedule, a ''Concert Feature'' shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in an NPR-produced radio program:

	2003–2007
Feature	$.78
Feature (concert)(per half hour)	1.63
Background	.39

(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year fee thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the royalty rates established in this schedule.

* * * * *

8. Section 253.8 is amended by revising paragraphs (b)(1) and (f)(1) to read as follows (the undesignated paragraph following (b)(1) is unchanged):

§ 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

* * * * *

(b) * * *

(1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

	2003–2007
(A) For featured display of a work	$68.67
(B) For background and montage display	33.49
(C) For use of a work for program identification or for thematic use	135.37
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	44.47

(ii) For such uses in other than PBS-distributed programs:

	2003–2007
(A) For featured display of a work	$44.47
(B) For background and montage display	22.80
(C) For use of a work for a program identification or for thematic use	90.91
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule	22.80

* * * * *

(f) * * *

(1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year period thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the rates established in this schedule.

* * * * *

9. In § 253.10, the first sentence in paragraph (a) is revised to read:

§ 253.10 Cost of living adjustment.

(a) On December 1, 2003, the Librarian of Congress shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2002, to the most recent Index published prior to December 1, 2003. * * *

* * * * *

Dated: December 3, 2002.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 02–31620 Filed 12–16–02; 8:45 am]

BILLING CODE 1410–31–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 01–76; FCC 02–320]

Assessment and Collection of Regulatory Fees for Fiscal Year 2001

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: In this document, the Commission denies the petition for reconsideration of Bennet & Bennet, PLLC, on behalf of its local multipoint distribution service (LMDS) clients, filed August 10, 2001.

FOR FURTHER INFORMATION CONTACT: Rob Fream, Office of Managing Director at (202) 418–0408 or Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: Adopted: November 21, 2002; Released December 4, 2002.

I. Introduction

1. By this order we deny the petition for reconsideration of Bennet & Bennet, PLLC, on behalf of its LMDS clients, filed August 10, 2001.[1] Bennet seeks reconsideration of *Assessment of Regulatory Fees for Fiscal Year 2001*, 16 FCC Rcd 13525 (2001), 66 FR 36177, July 11, 2001, (2001 Fee Order), to the extent that order reaffirmed the classification of the LMDS within the category of MDS services for purposes of assessing regulatory fees for FY 2001. As a result of this determination, LMDS facilities are subject to an annual fee of $450 per call sign. Bennet asserts that LMDS should be classified as a microwave service, which would subject it to a $5 annual fee payable for an entire ten year license term at the time of renewal (total payment $50). Bennet also argues that the FY 2001 MDS fee is excessive.

II. Background

2. In the 2001 Fee Order, the Commission rejected the arguments of Winstar Communications, Inc. that LMDS should be reclassified as a microwave service. Fee Order, 16 FCC Rcd 13532 paragraph 22. Winstar justified its proposal by arguing that there had been increased administrative activity associated with part 21 MDS this year, whereas there had been little activity associated with LMDS. It also noted generally that it could think of no similarity between LMDS and MDS and no reason why LMDS should be treated differently than other part 101 fixed Microwave services. Sprint opposed the proposal, noting that the LMDS administrative burden had been higher in the year 2000 and had been supported by fee contributions by MDS users. Further, Sprint argued that there were many similarities between the services, including that they both provided the same high speed voice and data services, although LMDS focused on large business users and MMDS focused on residential consumers. The Commission held that although LMDS and microwave services may utilize the same equipment, LMDS is operationally similar to MDS. The Commission concluded that this functional classification had proven adequate for more than 2 years and there was no reason to change it. Additionally, the Commission rejected the arguments of Worldcom, Inc. that the increase in the MDS fee from $275 in FY 2000 to $450 was excessive. Fee Order, 16 FCC Rcd at 13531–32 paragraphs 18–20. The Commission found that the $450 figure reflected the best accounting methods and the most accurate data available.

III. Bennet's Petition for Reconsideration

3. Bennet, who did not file comments earlier in this proceeding, now seeks reconsideration of the Commission's decision to continue to include LMDS in the MDS category for assessing regulatory fees. Bennet contends that LMDS should be included in the microwave category for purposes of assessing fees. In support of its contention, Bennet posits that significant differences exist between the LMDS and MDS services. According to Bennet, these differences include: That MDS uses site based licenses and individually licensed station hub sites, while LMDS uses geographically based licenses and generally does not use individually licensed hubs; that MDS is primarily a one-way video service, while LMDS is primarily a two-way service; and that LMDS and MDS use different equipment and network configurations and have different propagation characteristics, with LMDS and microwave services having more propagation limitations. It further states that the services serve different markets. In this regard, it notes that LMDS and other part 101 microwave services compete against each other in the same target markets and that the Commission's regulatory fee scheme unjustifiably places LMDS at a competitive disadvantage because the other part 101 services pay only a nominal regulatory fee. It also notes that licensing and rulemaking actions for MDS require more administrative resources than the resources required for LMDS. As to the size of the MDS fee, Bennet maintains that the increase from $275 to $450 is burdensome and not supported by any corresponding increase in regulatory costs.

4. Sprint responds that MDS and LMDS are operationally, competitively, and legally similar, both providing high speed wireless voice and data services, but noting that MDS serves primarily residential users and LMDS primarily serves large business users. Sprint contends that differences in the cost of licensing LMDS and MDS are irrelevant since the cost of licensing is not included in calculating annual fees. Fee Order, 16 FCC Rcd at 13595. In Sprint's view, reclassifying LMDS would

[1] Sprint Corp. filed an opposition on August 27, 2001.