Exhibit CWTA-1

COPYRIGHT BOARD CANADA

File: Public Performance of Musical Works

SOCAN Tariff 24

Ringtones: 2003-2005

JOINT STATEMENT OF CASE

CANADIAN WIRELESS TELECOMMUNICATIONS ASSOCIATION, BELL MOBILITY, TELUS MOBILITY and CANADIAN RECORDING INDUSTRY ASSOCIATION INC.

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I. INTRODUCTION AND OVERVIEW OF OBJECTORS' POSITION

1. This is the Joint Statement of Case on behalf of the Canadian Wireless Telecommunications Association ("CWTA"), Bell Mobility ("Bell"), TELUS Mobility ("TELUS") (collectively the "Wireless Carriers") and the Canadian Recording Industry Association Inc. ("CRIA") (jointly the "Objectors") in response to SOCAN's proposed Tariff 24 for the years 2003-2005 (the "Tariff").

2. SOCAN has overreached enormously in its proposal for this new tariff. A faulty legal premise, coupled with a completely invalid rate analysis, causes the proposed tariff to be both legally untenable and inconsistent with comparable tariffs in other countries around the world.

3. First, there is no legal liability under section 3(1) of the *Copyright Act* (the "Act") for downloading a ringtone. A ringtone may be *available* to the public, and a ringtone download may be a *communication*, but a ringtone download is not a communication *to the public.* In fact, such a download is a *private* delivery of a ringtone from a vendor to a purchaser and is not a public transaction at all.

4. Second, even if liability exists, the royalty sought by SOCAN is far too high. It is premised on an analysis that both misunderstands and plainly misstates the Board's March 3, 2002 Digital Pay Audio decision (the "DPA Decision"). It ignores the purely incidental nature of the download (vs. the associated reproduction) in the context of a ringtone transaction. And it is many times greater than similar royalties in any country for which SOCAN provided information. SOCAN also inappropriately seeks to share in the incremental revenue generated by mastertones, over and above the revenue generated by monophonic and polyphonic ringtones, even though the incremental revenue arises solely from the introduction of a non-SOCAN input, namely an original sound recording of a performance of a work.

5. The Objectors submit that, in the absence of a legal basis for the Tariff, no tariff should be certified at all. Alternatively, if a tariff is certified, the royalty rate for monophonic and polyphonic musical ringtones should be no more than 1.5% of an appropriate revenue

base designed to prevent SOCAN from unfairly capitalizing on incremental mastertone revenues.

II. THE RINGTONE BUSINESS

6. SOCAN has provided certain background information on the parties and on musical ringtones in its revised Statement of Case.[1] The Wireless Carriers will provide additional information at the hearing on the evolution of the wireless telephony market in Canada, including the continuing development of wireless handsets and the introduction, status and future of the Canadian ringtone market. CRIA witnesses will discuss mastertones and recently negotiated record company/music publisher licences for reproduction and performing rights in mastertones.

7. Except for mastertones, which use actual original sound recordings of prior performances, musical ringtones must be created in a monophonic or polyphonic format.[2] In particular, ringtone suppliers must determine the best means of creating the music for which they have acquired the reproduction rights in a manner that can be most effectively heard as ringtones on subscribers' handsets.

8. From a copyright perspective, even if SOCAN's communications rights are involved (which they are not), ringtone transactions primarily engage reproduction rights. These rights must be cleared in order to place a ringtone in inventory on a ringtone supplier's server and (subject to the applicability of the private copying regime) to store the ringtone on the wireless subscriber's handset for future use.

9. Reproduction rights in two kinds of underlying works are potentially in play. First, with respect to all ringtones, including mastertones, the reproduction right in the underlying *music* must be cleared with the publisher who controls the musical work. This payment enures to the benefit of the publisher and the author of the music. These are also SOCAN's members.

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[1] See paragraphs 4-11.

[2] Mastertones and monophonic and polyphonic ringtones are generally described at paragraph 10 of SOCAN's revised Statement of Case.

10. Mastertones, unlike polyphonic or monophonic ringtones, also engage an additional reproduction right. This is the right to reproduce an original sound recording of a specific prior *performance* of the music in question. This additional right must be cleared with the recording's maker,[3] the principal makers being members of CRIA.

11. There are significant costs related to the creation of the sound recordings used to create mastertones, costs which are not incurred in the creation of monophonic or polyphonic ringtones. The process of making sound recordings includes scouting, discovering and developing the artists and related material, rights clearances/acquisition, producing the sound recording, as well as advertising, distributing and marketing the sound recording. The cost of these additional inputs is reflected in a higher retail price for mastertones vis-à-vis the monophonic or polyphonic ringtones.

12. SOCAN's purported communication right (if it exists) relates solely to the *transmission* of a musical ringtone from a website to a handset that completes the subscriber's ringtone purchase and puts into effect the reproduction (ie storage on the subscriber's handset) which the subscriber sought.

13. Canadian ringtone suppliers, whether they be the Wireless Carriers or third party providers, are attuned to the interests of copyright owners in ringtones and have made efforts to ensure that the necessary copyrights have been cleared. For example, as noted in SOCAN's Statement of Case, significant royalties have been earmarked for payments to publishers (for the benefit of SOCAN's members) in respect of the reproduction rights in the underlying musical works. This reflects the fact that ringtone transactions are primarily about storing (i.e. reproducing) a desired ringtone on the subscriber's handset. The manner in which this is accomplished, whether at the time of manufacture or subsequently by other means including a download from a website, matters little to the consumer.

14. Finally, it is worth noting that many musical ringtones do not use music from SOCAN's repertoire, and many other ringtones do not use music at all. Sound effects, recreated

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[3] Usually a record company, and often referred to as a "label".

voices and real voices form a material proportion of ringtone downloads, whether measured by the number of downloads or by revenue. If SOCAN is entitled to a royalty at all, it is not entitled to a royalty with respect to these ringtones.

III. THE LEGAL ISSUE – NO COPYRIGHT LIABILITY

15. The Tariff seeks royalties for "a licence to communicate to the public by telecommunication" SOCAN's musical works. The Objectors' position is that this right is not engaged by ringtone downloads in that they do not constitute communications *to the public* by telecommunication within the meaning of section 3(1)(f) of the Act.[4]

16. The Objectors concede that a download is a communication by telecommunication. A downloaded musical ringtone, if not in the public domain, is usually a communication of a SOCAN work by telecommunication. However, it is clear that such a communication is not "to the public" and that an essential feature of copyright liability is therefore absent.

17. SOCAN appears to rely entirely on statements made by the Board in its October 1999 Phase I decision regarding SOCAN Tariff 22 (the "Tariff 22 Decision") in support of its contention that its rights are engaged by a ringtone download. This decision, which broadly considered uses of music over the Internet, included general statements as to how the phrase "to the public" might be interpreted with respect to such uses. However, the Tariff 22 Decision did not (and was not required to) distinguish between a download and other forms of Internet music use (eg. streaming or webcasting). The Board's statements, which were not reviewed on appeal, were overbroad and are not applicable in the specific context of a music download.

18. The Board, in the context of Tariff 24, will now be required for the first time to turn its attention specifically to a royalty on music downloading by consumers in commercial transactions. In particular, the Board will have to focus on the fact that each transaction involves a unique one to one engagement involving a consumer who chooses a ringtone from an electronic inventory and then arranges to have it "shipped" as an electronic file

to be stored on his or her handset for later use. While members of the public are free to engage in these transactions, that does not make each transaction a communication "to the public".

19. Accordingly, there is no legal basis for SOCAN's proposal. As SOCAN's rights are not engaged, the proposed Tariff cannot be certified.

IV. THE ROYALTY

1. OVERVIEW OF THE OBJECTORS' POSITION

20. SOCAN's valuation approach rests on a complete misstatement of the so-called "valuation principles" purportedly adopted by the Board in the DPA Decision and cannot withstand even minimal scrutiny. SOCAN's untenable approach leads to a royalty claim that is at odds with ringtone royalties around the world.

21. A properly grounded approach to assessing the value of the communication right (if any) in ringtones actually leads to a royalty of no more than 1.5% of the appropriate revenue base. This base must exclude revenues from non-SOCAN ringtones, such as public domain musical ringtones and ringtones that do not use music at all, as no SOCAN licence is required.

22. Mastertones involve ringtones based on the reproduction of original sound recordings of well-known performances of musical works rather than monophonic or polyphonic recreations of those works. From a copyright perspective, the difference between a mastertone and a ringtone is the additional use of an actual original sound recording. The incremental price of the mastertone is attributable solely to the presence of that incremental copyright element which is not owned by or attributable to SOCAN. As a result, SOCAN's tariff rate must be constructed so that SOCAN does not share in that portion of the incremental mastertone revenue that was generated by copyrights outside SOCAN's repertoire.

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[4] The legal issue will be briefed in more detail in the Objectors' June 14, 2005 filing.

23. Finally, SOCAN's proposed fixed rate minimum royalty per download is excessive and inconsistent with the Board's approach to minimum fees generally. The Objectors do not object to an appropriate minimum if a tariff is certified, but it should be framed as a nominal dollar amount per quarter or year.

2. THE RIGHT RATE – VALUING SOCAN'S COMMUNICATION RIGHT

a) Introduction

24. The Objectors and SOCAN agree that benchmarking, or using proxies, constitutes an acceptable approach to valuing any communication right that SOCAN might have in ringtone downloads. There is currently no Canadian market for ringtone communication rights, and SOCAN appears to acknowledge that there is no similar Canadian music use in which the value of the communication right, by itself, constitutes a satisfactory benchmark. The Objectors and SOCAN agree that in these circumstances the benchmarking exercise can appropriately include an analysis of the relationship between the values of communication and reproduction rights in a benchmark setting.

25. Where the parties differ is in both their selection and implementation of the appropriate benchmark approach. SOCAN proposes a benchmark based on a grab bag of non-analogous Canadian data. As discussed below, the Objectors retained an expert economic consultant, Professor Frank Mathewson, who determined that the available Canadian values for various non-ringtone communication and reproduction rights were incapable of establishing viable benchmarks and who concluded that SOCAN's approach was ill conceived. As a result, Professor Mathewson turned to data on foreign values for communication and reproduction rights in ringtones themselves.

b) SOCAN's Approach

26. SOCAN asserts that the ringtone and pay audio businesses are sufficiently similar "to allow the Board to follow generally the valuation principles adopted in the approval of SOCAN's Pay Audio Tariff".[5] SOCAN goes on to state that its unadjusted DPA rate of 13% "was established on the basis that the compensation for SOCAN members should

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[5] Revised SOCAN Statement of Case, para. 31.

reflect an amount greater than that which they received for the reproduction rights in the sound recordings used by the Pay Audio Services" and that "the Board approved a SOCAN royalty rate that was 50% higher than the amounts generated for SOCAN members in the reproduction rights market (i.e. 13% rather than 8.67%, before any PD music adjustment)".[6] On the basis that ringtone reproduction licences might generate average royalties of about 9.1%, SOCAN calculates that its ringtone communication rights would be entitled to 13.7% (1.5 x 9.1%) in order to justify its 10% ringtone rate proposal.[7]

27. SOCAN fundamentally misstates the nature and effect of the Board's DPA Decision. The Board did *not* set SOCAN's unadjusted DPA royalty based on a comparison with the amounts received by SOCAN members for reproduction rights in sound recordings. Reproduction rights were not even in issue at the DPA hearing. All the Board did was reject NRCC's argument that the royalty *shares* (not "amounts") as among authors, makers and performers should be the same for DPA as for private copying (where each of these three groups earns about the same amount).

28. In fact, in the DPA Decision, the Board expressly stated that the private copying tariff "should *not* be used in the context of pricing the telecommunication right [in DPA]" because the private copying tariff is "paid on account of the reproduction right". [emphasis added].[8] In making this statement, the Board referenced its 1999 decision regarding NRCC Tariff 1.A (commercial radio).[9] In that case the Board first established the position, subsequently adopted in the DPA Decision, that NRCC's "neighbouring" rights would generally be treated as having the same value as SOCAN's rights, rejecting evidence of differential revenues to composers and performers/makers in the market for physical reproductions:

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[6] Revised SOCAN Statement of Case, para. 33.

[7] Revised SOCAN Statement of Case, paras. 35 and 36.

[8] DPA Decision, p. 14.

[9] NRCC Tariff 1.A – Commercial Radio – 1998-2002 dated August 13, 1999 ("NRCC Tariff 1.A Decision"); see also DPA Decision, footnotes 19 and 20.

> The Board rejects these [reproduction market] proxies; its task is to value the right to broadcast, not the right to reproduce.
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> ....
>
> [I]t matters not that one party was paid more than the other for making the fixation in the first place; we are dealing with two different markets in two different rights; the right to make the recording and the right to communicate it.[10]

29. Quite apart from its misstated provenance, SOCAN's valuation approach has no intrinsic merit. It displays a series of fundamental flaws.

30. SOCAN says that its pre-adjustment 13% DPA royalty is "50% higher than the amounts generated for SOCAN members in the reproduction rights market (i.e. 13% rather than 8.67%...)".[11] But there is *no* 8.67% royalty rate or "amount" for SOCAN members in the reproduction rights market. It is a made-up number. It is simply the amount that would have been awarded to SOCAN for DPA if the Board had awarded SOCAN one-third rather than one-half the combined 26% unadjusted DPA rate. Accordingly, SOCAN established its purported ratio using a non-existent figure.

31. In fact, SOCAN established its ratio by comparing not "amounts" at all, but rather shares. SOCAN received one-half the combined unadjusted DPA communications right royalty, but its members receive only one-third of the aggregate compensation earned by authors, performers and makers for reproduction rights in the music recording market. As noted by Professor Mathewson (and by the Board in earlier decisions), there is no economic basis for mixing and matching revenues in completely different markets that engage different copyright interests. Similarly, there is no economic basis for comparing shares, rather than royalty amounts or rates.

32. Moreover, and in any event, SOCAN never explains why a ratio between communications and reproduction rights for one Canadian use, ie DPA (even if such a ratio existed), ought necessarily to be the "right" ratio in a different use, ie ringtone

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[10] NRCC Tariff 1.A Decision, pp. 26 and 32.

[11] Revised SOCAN Statement of Case, para. 33.

downloads. Such a proposition is inconsistent with the Board's past use of proxies; Professor Mathewson confirmed that no benchmark from another use can be "exported" without adjusting for differences between the respective uses. SOCAN made no attempt to explore such adjustments, and Professor Mathewson opined that they would be too numerous and complicated to make the attempt worthwhile.

c) The Objectors' Approach

33. As noted above, the Objectors retained Professor Mathewson to provide expert guidance with respect to an appropriate approach to valuing SOCAN's communication right in ringtones (if such right exists at law). His opinion has been filed as Exhibit CWTA-2. In summary, after pointing out the many deficiencies in SOCAN's approach, Professor Mathewson's expert opinion as to the basic royalty rate is as follows:

(a) The Board may have regard to the *actual* fees for communications rights in ringtones in other countries. While the circumstances in each country may vary, foreign ringtone communications rights range from 1% to 5% of retail prices.

(b) The Board may also have regard to the *relative* fees for communication and reproduction rights in ringtones in other countries. Observing the ratio of foreign fees, rather than the absolute amount of foreign fees, permits a "unit free" comparison to be made which eliminates some concerns about differences between those jurisdictions and Canada. The ratio of communications fees to reproduction fees in ringtones ranges from 1 to 10, up to about 1 to 2 (and never remotely approaches SOCAN's suggested starting point of 1.5 to 1). If these ratios are applied to the 9.1% ringtone reproduction right payments identified by SOCAN, they suggest a SOCAN royalty of between 1% and 4.5%.

(c) Finally, Professor Mathewson notes that the Board may have regard to the *total* amount of fees for the bundle of communication and reproduction rights in ringtones in other countries. The two rights are often licensed together for an aggregate royalty amount. That total amount ranges from 7.7% to 15%. If the 9.1% Canadian ringtone reproduction right were subtracted from, say, the most

common of these foreign totals, a maximum SOCAN royalty of approximately 3% would be inferred.

34. The recent Sony BMG – EMI Publishing deal discloses an arm's length arrangement whereby EMI's communications/performing and reproduction rights are to be licensed for mastertones in the U.S. for [redacted]. The ratio, [redacted], is in the range of rates disclosed in other countries. This U.S. ratio suggests a Canadian communications right rate of about [redacted],[12] while the U.S rate suggests a Canadian rate of [redacted]. The Objectors propose that any Canadian rate be set at no more than 1.5%. This royalty is within the range of outcomes suggested by the foreign data, and reflects real market transactions in an adjacent market that is likely the single greatest source of the music found in Canadian ringtone downloads.

3. MASTERTONES

35. As noted earlier, monophonic and polyphonic ringtones are created by or for ringtone suppliers and engage the publisher's reproduction right in the musical work and (if it exists) SOCAN's communication right. A mastertone involving the same musical work substitutes a reproduction of an original sound recording of a particular performance of that work for the monophonic or polyphonic version. Accordingly, in respect of any given musical work, the difference (from a copyright perspective) between a monophonic or polyphonic ringtone and a mastertone is exclusively that the mastertone also engages the maker's (record company's) reproduction right in the original sound recording.

36. Mastertones not only engage an additional copyright, they also sell for an additional price. The issue is whether SOCAN's communication right royalty should attach in any way to that extra revenue. The Objectors' position is that it should not.

37. First, as a functional matter, it is clear that SOCAN's communication right is not related to the incremental value (or price) of a mastertone over a polyphonic ringtone. A polyphonic ringtone priced at, say, $2 engages SOCAN's and the publisher's communications and reproduction rights respectively. The only difference from a

copyright perspective between that ringtone, and a mastertone priced at, say, $3, is the substitution of the reproduction of an original sound recording of a famous performance for the generic polyphonic version. In other words, the only material difference between the two ringtones, and the only basis for the higher price for mastertones, is the use of the maker's reproduction right in the original recording. Thus nothing about the *incremental* revenue derived from mastertones can be attributed to the use of SOCAN's copyright and, as a result, any tariff must be structured so that SOCAN's royalty does not apply to such revenues.

38. This functional analysis is consistent with the economic analysis performed by Professor Mathewson. Mastertones are now available in Canada, and ringtone suppliers and others have already acquired licences from record companies to reproduce the relevant recordings. These licences provide information as to free market prices for these rights in ringtones. The data indicate that the additional input cost reflected by these additional licences tends to equal or exceed the incremental revenue that mastertones command. This "real world" data supports the observation that the price difference between mastertones and polyphonic ringtones can be attributed only to copyrights other than SOCAN's communication right and that SOCAN, as a result, should derive no benefit from the incremental price.

39. There are a number of ways that this outcome can be achieved. One way to accomplish this for each reporting period would be for each licensee to calculate the average price for its monophonic and polyphonic ringtone downloads and then attribute that average price to mastertones to establish the rate base. Any SOCAN royalty would then be payable on the actual revenue from polyphonic and monophonic ringtones and the deemed revenue (at the polyphonic/monophonic rate) for mastertones. This arrangement would have the effect of giving SOCAN royalty returns for mastertones at the levels achieved for polyphonic and monophonic ringtones in the relevant period, which is consistent with the Objectors' position that the incremental difference between polyphonic ringtones and

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[12] If the [redacted] ratio is applied to the 9.1% Canadian ringtone reproduction rate used by SOCAN in its model.

mastertones is not attributable to any additional SOCAN rights, but rather to the sound recording reproduction rights of the recording companies.

4. RATE BASE

40. It goes without saying that SOCAN can only license, and users need only pay for, downloads that engage SOCAN's rights. Even if downloads constitute communications to the public by telecommunications, they will not engage SOCAN's rights if they do not contain music from SOCAN's repertoire. Accordingly, downloads that do not contain music at all, or that contain public domain music ("non-SOCAN downloads"), should not trigger royalty payments to SOCAN.

41. There are two ways to ensure that SOCAN does not receive royalty payments to which it is not entitled: either the revenue base on which royalties are paid can be defined to exclude non-SOCAN download revenue, or the nominal royalty rate can be appropriately discounted.

42. It is clear that SOCAN's royalty proposal takes no account of non-SOCAN downloads. SOCAN asserts that the amount of public domain music use appears to be *de minimus*, and thus argues that no discount is necessary.[13] SOCAN does not mention non-musical ringtones at all, and does not address the possibility that the rate base, rather than the rate, might be adjusted to account for non-SOCAN downloads.

43. In fact, non-SOCAN downloads occur and revenues accrue at a rate that is distinctly not *de minimus*. Combined Wireless Carrier data disclose non-SOCAN downloads accounting for about 14.2% of all downloads and about 11.5% of all download revenue in the past two fiscal quarters.

44. Accordingly, licensees should be entitled to choose one of two options, based on their ability to segregate SOCAN from non-SOCAN downloads. To ensure that SOCAN is paid only for downloads that engage its rights, users should be entitled to pay any royalty rate only on revenues generated by SOCAN downloads. Alternatively, to take account of

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[13] Revised SOCAN Statement of Case, para. 37.

the fact that some users' systems may not be able to readily segregate download revenues in this fashion, users should be entitled to a 10% discount in the nominal royalty rate (which would then be applied to all download revenue).

5. MINIMUM ROYALTIES

45. SOCAN seeks minimum royalties of 20 cents per ringtone supplied (for 2005).[14] SOCAN's proposal is inconsistent with Board policy on minimum fees and, in any event, is untenable on its face.

46. The Board has said that tariff structures should be tailored to the business model of the industry concerned, and that minimum fees should reflect a balance between SOCAN's actual cost and the royalties otherwise payable absent the minimum fee.[15] One of the factors to be considered is the administrative cost incurred by SOCAN when issuing its licences. Minimum fees should also reflect the intrinsic value of SOCAN's music and repertoire and the value to the licensee of obtaining and holding the licence (even if the actual use of SOCAN's repertoire is small).[16] The minimum should be adjusted so that the number of users that pay it is neither too high nor too low.[17]

47. One way in which SOCAN's proposed minimum is inconsistent with Board practice is that it is calculated per download rather than for a period of time. Other minimums certified by the Board for tariffs covering continuous or repeated uses of SOCAN's repertoire are all expressed as amounts of money for an entire year. The only exceptions are tariffs covering episodic uses (concerts, marching bands, circuses, etc.) where the minimum fee is calculated per event. There is no certified tariff which includes a minimum royalty calculated per work used or per use of a work. And the "biggest" tariffs, such as those for radio and TV, where music use is more or less continuous (as with ringtones), have no minimum royalty at all.

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[14] SOCAN proposes 10 cents per ringtone supplied for 2004, and proposes no minimum, but rather a maximum of $7,500 per calendar quarter, for 2003.

[15] SOCAN Tariff 9 – Sports Events – 1998-2002 – dated September 15, 2000 ("SOCAN Tariff 9 Decision"), p.13.

[16] *ibid.*

[17] *ibid.*

48. SOCAN's proposed minimum is also incomprehensibly high. SOCAN notes in its Statement of Case that ringtone prices vary from about $1 to $3 per download. A 20-cent minimum represents 6.7% of a $3 download and 20% of a $1 download – this latter amount is twice the (already inflated) regular royalty rate SOCAN seeks. SOCAN's minimum actually equals its proposed regular royalty at a download price of $2.

49. Thus SOCAN is not really asking for a minimum royalty in the sense that minimum royalties have been understood previously by the Board. Instead, in effect, SOCAN seeks to establish minimum deemed download revenues of $2 per ringtone. SOCAN proposes a regular royalty based on revenues, a model repeatedly approved by the Board because of its flexibility and because SOCAN's receipts then rise and fall with actual user revenues. At the same time, SOCAN proposes a minimum royalty scheme to set a floor under those revenues so that its royalty receipts can only rise, not fall, with marketplace results. Such an approach is entirely at odds with the principle of a revenue-based royalty and with the purpose of a minimum and has no precedent in any other certified tariff.

50. The Objectors note that in some (but by no means all) foreign countries there are minimum royalties similar to those in SOCAN's proposal. As noted above, such an approach is inconsistent with the approach the Board has taken in the past. More appropriate is an approach where a nominal minimum rate is set on a per quarter or per annum basis (such as in the United States).

V. CONCLUSION

51. Music certainly plays an important role in ringtones. The Objectors and others involved in the ringtone business understand both that role and the need to compensate rights owners accordingly. They have actively sought out and negotiated with reproduction rights owners, including SOCAN's constituents, to acquire the reproduction rights licences necessary to permit ringtone transactions to occur.

52. SOCAN's proposed communication rights tariff is another thing altogether. As noted earlier, this right is not engaged by a private ringtone transaction in which an individual purchases a ringtone and has it delivered over the Wireless Carriers' networks to his or

her handset. These are not communications "to the public" within the meaning of the Act.

53. Moreover, even if these downloads do fall within the Act, SOCAN overstates their importance in the context of a ringtone transaction. What consumers want, and pay for, is to have the ringtones embedded (i.e. copied or reproduced) on their handsets for future use. The means by which the ringtone is delivered is immaterial. Thus even if a download delivery technically engages SOCAN's communication right, the related royalty should be set at a rate that is commensurate to the incidental nature of the use and its relative lack of importance compared to the other copyright or copyrights engaged by the process. Such an outcome, unlike the outcome proposed by SOCAN, would be consistent with the regulated and free market outcomes in every other country for which information is available.

VI. WITNESSES

The following is a list of witnesses who are expected to testify as part of the Objectors' Case together with an indication of their evidence.

1. Wireless Carriers Panel

Peter Barnes (CWTA)
Ken Truffen (Bell)
Upinder Saini (Rogers)
Robert Blumenthal (TELUS)

This panel will provide an overview of wireless telephony in Canada and will address the development of the Canadian ringtone industry, including the following:

- Introduction and brief history of the wireless industry in Canada
- Overview of structure of the wireless industry in Canada
- Introduction of ringtones in Canada
- Evolution of Canadian ringtone market, including different types of ringtones (eg. monophonic, polyphonic, mastertones, voicetones, create-your-own tones), sale and marketing of ringtones and ringtone technology
- Evolution of wireless handsets
- Anticipated developments
- Ringtone transaction demonstration

Estimated time in chief: 1 – 1.5 hours

2. Ivan Crookes, M-Qube

Mr. Crooks will briefly describe the function of a ringtone provider, including a description of how ringtones are created.

Estimated time in chief: 20-30 minutes

3. CRIA Panel

Graham Henderson (CRIA)
Christine Prudham (Sony BMG Music (Canada) Inc.)
Marcel Deluca (Warner Music Canada)

This panel will provide an overview of the Canadian recording industry and will also address the following issues relating to the ringtone industry:

- current status of licensing in the sound recording industry
- costs associated with the creation of sound recordings
- mastertones

Estimated time in chief: 1 hour

4. Professor Frank Mathewson
(University of Toronto, Charles River Associates Canada Ltd.)

Professor Mathewson will provide expert analysis of approaches to valuing SOCAN's communications right in ringtones (assuming such right exists). He will analyze SOCAN's models and discuss a more appropriate approach together with the outcomes that approach suggests. Professor Mathewson's report is appended as Exhibit CWTA-2.

Estimated time in chief: 2 - 3 hours

DOCUMENTS

TAB	DOCUMENT	EXHIBIT NO.
1	Joint Statement of Case	CWTA-1
2	Mathewson Report	CWTA-2
3	Aggregated Data on Non-SOCAN Ringtones	CWTA-3
4	Non-Aggregated Data on Non-SOCAN Ringtones (confidential)	CWTA-4
5	SOCAN Responses to CWTA Interrogatories:	
	1 & 9	CWTA-5A
	7	CWTA-5B
	16	CWTA-5C
	24	CWTA-5D
	31	CWTA-5E
	41, 57 & 58	CWTA-5F, 5G
	54	CWTA-5H
6	CRIA (and CRIA Class A members') Responses to SOCAN Interrogatory 8	CWTA-6