APPENDIX—Continued

[TAA petitions instituted between 4/19/10 and 4/23/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73965	Angell Demmel North America (Workers)	Dayton, OH	04/21/10	04/09/10
73966	Nortel Networks (Workers)	Research Triangle Park, NC	04/21/10	04/19/10
73967	Hewlett Packard (Workers)	Boise, ID	04/21/10	04/16/10
73968	Hospira, Inc. (Workers)	Lake Forest, IL	04/21/10	04/19/10
73969	Cummins, Inc. (Company)	El Paso, TX	04/21/10	04/19/10
73970	CareFusion (Company)	San Diego, CA	04/21/10	04/16/10
73971	Liz Palacios Design Ltd (Workers)	San Francisco, CA	04/22/10	04/09/10
73972	St. Barnabas Heathcare System (Workers)	Ocean Port, NJ	04/22/10	04/05/10
73973	Scientific Games International (Workers)	South Barre, VT	04/22/10	04/08/10
73974	Scientific Games International (Workers)	Concord, NH	04/22/10	04/08/10
73975	Care Fusion (Workers)	Middleton, WI	04/22/10	04/06/10
73976	Worthington Specialty Processing (Company)	Canton, MI	04/22/10	04/18/10
73977	The Flint Journal (State/One-Stop)	Flint, MI	04/22/10	04/19/10
73978	Eastman Kodak (State/One-Stop)	Vancouver, WA	04/22/10	04/20/10
73979	Hagemeyer North America (Company)	Chambersburg, PA	04/22/10	04/21/10
73980	New Era Cap Company (Company)	Buffalo, NY	04/22/10	04/19/10
73981	New Era Cap Company (State/One-Stop)	Demopolis, AL	04/23/10	04/19/10
73982	Smith's Medical PM, Inc. (Workers)	Waukesha, WI	04/23/10	04/02/10
73983	Apria Healthcare (State/One-Stop)	Redmond, WA	04/23/10	04/19/10
73984	Graphic Arts Center Publishing (Company)	Portland, OR	04/23/10	04/21/10
73985	Graphic Arts Center (Company)	Santa Barbara, CA	04/23/10	04/21/10
73986	AT&T (State/One-Stop)	Bothell, WA	04/23/10	04/19/10
73987	Ford Motor Credit (Company)	Colorado Springs, CO	04/23/10	04/22/10

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,501]

Cummins Power Generation, Including On-Site Leased Workers of Adecco USA, Inc., Aerotek, Inc., the Bartech Group, Back Diamonds Networks, Entegee, Inc., DBA Midstates Technical, Manpower, Inc., Robert Half International, Summit Technical Services, Inc., and Universal Engineering Services, Inc. Fridley, MN; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 22, 2010, a representative of the State of Minnesota requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 4, 2010, and published in the **Federal Register** on March 12, 2010 (75 FR 11925).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative determination of the TAA petition filed on behalf of workers at Cummins Power Generation, Fridley, Minnesota, was based on the finding that the subject firm did not import articles like or directly competitive with the generators and transfer switches produced at the subject firm during 2007, 2008 or during January through May 2009, nor did it shift production of those articles abroad during the same period. The investigation also revealed that, during the relevant period, none of the major declining customers of the subject firm increased imports of articles like or directly competitive with generators and transfer switches produced at the subject firm while decreasing purchases from the subject firm. The investigation also revealed that the workers did not supply a component part that was used by a firm that employed a worker group currently eligible to apply for TAA.

The request for reconsideration included documents intended to "illustrate how a former employee [of the subject firm] * * * was adversely affected by trade activities and lost her position." The "trade activities" referred to are the subject firm's use of H1B visas.

This argument errs in confusing the entry of foreign workers into the United States to produce articles at the subject firm with the importation of articles that are like or directly competitive with the articles produced by the subject firm. It is the importation of like or directly competitive articles (and not the entry of foreign workers to produce such articles) that can serve as the basis for a TAA certification.

The petitioner did not supply facts not previously considered or provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered, or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 26th day of April, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

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LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2008–2 CRB CD 2000–2003]

Distribution of the 2000–2003 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Distribution order.

SUMMARY: The Copyright Royalty Judges are announcing the final Phase I distribution of cable royalty funds for the years 2000, 2001, 2002, and 2003.

DATES: Effective May 12, 2010.

ADDRESSES: The final distribution order also is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb/proceedings/2008–2/final-distribution-order.pdf.*

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or by e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Subject of the Proceeding

In 1976, Congress enacted a statutory license for cable television operators to enable them to clear the copyrights to over-the-air television and radio broadcast programming which they retransmit to their subscribers. Codified at 17 U.S.C. 111, the cable license requires cable operators to submit semi-annual royalty payments, along with accompanying statements of account, to the Copyright Office for subsequent distribution to copyright owners of the broadcast programming retransmitted by those cable operators. In order to determine how the collected royalties are to be distributed amongst the many copyright owners filing claims for them, the Copyright Royalty Judges ("Judges") conduct a distribution proceeding in accordance with chapter 8 of the Copyright Act. This order is the culmination of one of those proceedings.[1]

Proceedings for determining the distribution of the cable license royalties are conducted in two phases. In Phase I, the royalties are divided among programming categories. The claimants to the royalties have organized themselves into eight categories of programming retransmitted by cable systems: movies and syndicated television programming; sports programming; commercial broadcast programming; religious broadcast programming; noncommercial television broadcast programming; Canadian broadcast programming; noncommercial radio broadcast programming; and music contained on all broadcast programming. In Phase II, the royalties allotted to each category at Phase I are subdivided among the various copyright holders within that category. This proceeding is a Phase I proceeding for royalties collected from cable operators for the years 2000, 2001, 2002 and 2003.

The royalty payment scheme of the cable license involves several considerations. The license places cable systems into three classes based upon the amount of money they receive from their subscribers for the retransmission of over-the-air broadcast signals. Small- and medium-sized systems pay a flat fee. Large cable systems—whose royalty payments comprise the lion's share of the royalties distributed in this proceeding—pay a percentage of the gross receipts they receive from their subscribers for each distant over-the-air broadcast station they retransmit.[2] How much they pay for each broadcast station depends upon how the carriage of that station would have been regulated by the Federal Communications Commission ("FCC") in 1976, the year in which the current Copyright Act was enacted. Distant signals are principally determined in accordance with two sets of FCC regulations: the mandatory carriage rules in effect on April 15, 1976, and their associated rulings and determinations; and the current FCC regulations defining television markets, and their associated rulings and determinations.

The royalty scheme for large cable systems employs a statutory device known as the distant signal equivalent ("DSE"). The systems, other than those paying the minimum fee, pay royalties based upon the number of DSEs they incur. The statute defines a DSE as "the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programming." 17 U.S.C. 111(f). A DSE is computed by assigning a value of one to distant independent broadcast stations and a value of one-quarter to distant noncommercial educational and network stations, which do have a certain amount of nonnetwork programming during a typical broadcast day. The systems pay royalties based upon a sliding scale of percentages of their gross receipts depending upon the number of DSEs they incur. The greater the number of DSEs, the greater the total percentage of gross receipts and, consequently, the larger the total royalty payment. The monies collected under this payment scheme are received by the Copyright Office and identified as the "Basic Fund."

The complexity of the royalty payment mechanism does not, however, end with the Basic Fund. As noted above, the operation of the cable license is intricately linked with how the FCC regulated the cable industry in 1976. The FCC restricted the number of distant signals that cable systems could carry ("the distant signal carriage rules") and required them to black-out programming contained on a distant signal where the local broadcaster had purchased the exclusive right to that programming ("the syndicated exclusivity rules"). However, in 1980, the FCC took a decidedly deregulatory stance towards the cable industry and eliminated these sets of rules. *See, Malrite T.V.* v. *FCC,* 652 F.2d 1140 (2d Cir. 1981), *cert. denied sub. nom., National Football League, Inc.* v. *FCC,* 454 U.S. 1143 (1982). Cable systems were now free to import as many distant signals as they desired without worry of communications law restrictions.

Pursuant to its statutory authority and in reaction to the FCC's action, the Copyright Royalty Tribunal ("Tribunal") initiated a rate adjustment proceeding for the cable license to compensate copyright owners for royalties lost as a result of repeal of the distant signal

[1] Prior to the enactment of the Copyright Royalty and Distribution Reform Act of 2004, which established the Copyright Royalty Judges, final determinations as to the distribution of royalties collected under the Section 111 license were made by two other bodies. The first was the Copyright Royalty Tribunal, which made distributions beginning with the 1978 royalty year, the first year in which cable royalties were collected under the 1976 Copyright Act. The Tribunal was eliminated in 1993 and replaced by the Copyright Arbitration Royalty Panel ("CARP") system. Under this regime, the Librarian of Congress appointed a CARP, consisting of three arbitrators, who made a recommendation to the Librarian as to how the royalties should be distributed. Final distribution authority, however, rested with the Librarian. As noted above, the CARP system ended in 2004.

[2] The cable license is premised upon the Congressional judgment that large cable systems should only pay royalties for the distant broadcast stations they bring to their subscribers and not for the local broadcast stations they provide. However, cable systems which carry only local stations and no distant ones are still required to submit a statement of account and pay a basic minimum fee. *See infra* n.6.