



October 27, 2009

Dear :

Subject: Commercial Service Fee

Earlier this year, the ANA Board authorized the collection of a \$75 fee for each new television commercial produced after July 1, 2009, that employs union actors. The purpose of the Commercial Service Fee (the “CSF”) is to support the operations and efforts of the Joint Policy Committee on Broadcast Talent Relations, the multi-employer bargaining unit that has represented ANA and 4A’s members in negotiations with SAG, AFTRA, and the AFofM for performers in commercials used in TV, radio, new media, and on the Internet for more than 50 years.

While not currently subject to the Commercial Service Fee, a proportionately smaller fee will be adopted in the future for radio and new media. For now only television commercials are covered.

Some advertisers and agencies have asked for clarification regarding the obligation to pay the CSF, what it is used for, and why they should make the payment.

This letter addresses those questions. The discussion is in four parts:

1. What the ANA Needs You to Know
2. What the ANA Needs You To Do
3. What Is the JPC and Why Support It?
4. What Is the Commercial Service Fee and Why Pay It?

### **What the ANA Needs You to Know**

An investment of \$75 per new television commercial to support the JPC is well worth the return. Without the JPC, there would be chaos in commercial production and costs would skyrocket. The JPC’s annual budget is \$650,000. In contrast, the unions budget more than ten times that amount annually to negotiate and deal with the same contracts. In the last negotiations alone, the JPC saved the industry millions and negotiated the lowest wage increase of any major collective bargaining contract in the nation. Without the CSF, there is no JPC; without the JPC, there is no sensible marketplace for commercial production. It’s that simple.

## **What the ANA Needs You to Do**

- If you are the person in your organization responsible for commercial production, please read this letter carefully and call us if you have any questions.
- If you are not the person responsible for commercial production in your organization, it is imperative that you forward this letter to the right person/department. Please let us know to whom you have forwarded it so that we can follow up, if necessary. I appreciate your cooperation.
- Please instruct your advertising agency that they should instruct their talent payroll companies to include the CSF on their invoices to the agency. Without that instruction, your agency is unlikely to authorize the charge.

## **What Is the JPC and Why Should You Support It?**

### **1. What the JPC does for ANA and 4A's members.**

The JPC was founded by the ANA and 4A's in 1962 when the industry decided that it, rather than the broadcasters, should negotiate the collective bargaining agreements (the "CBA") with SAG, AFTRA, and the AFofM for performers appearing in commercials. It was now the advertisers', not the broadcasters', dollars being spent on commercial production, and it made no sense to have the broadcasters continue to negotiate the CBA for commercials. Since its formation, the JPC has negotiated all of the CBAs with the unions for commercials. Each CBA has been for three years, with the exception of a two-year extension agreed upon in 2006. The commercial production industry represented by the JPC is the largest contributor to the union pension and health funds (larger than either television or motion pictures) and today annually spends about \$1 billion on payments to actors and their retirement and health funds. The agreements with SAG, AFTRA, and AFofM for commercials collectively represent the largest CBA in the entertainment industry and are among the largest in the country across all union agreements. They cover the employment terms and conditions of more than 130,000 actors and musicians.

However, negotiating the CBAs is only part of what the JPC does.

Through the hard work of the ANA, 4A's, and JPC, the industry has developed a working relationship with the union leadership. The JPC's open and transparent approach, even when disagreeing with the unions, has created an atmosphere of mutuality of interest rather than the historical adversarial interaction. This has fostered honest discussions and reasonable compromise. That alone has saved the industry a great deal of time and employee costs in resolving smaller disputes, and its savings in dealing with larger disputes is very significant.

That working relationship does not mean the JPC is not a formidable adversary when it believes the unions have crossed the line. For the first time in its history, in 2008 the JPC brought the Screen Actors Guild to arbitration over what the JPC felt was an improper practice that created an inequitable playing field with respect to how to determine contributions to SAG's pension and health funds for covered services under the CBA. The arbitrator agreed with the JPC position that if there is a dispute between a

signatory and SAG on the proper allocation, it must be resolved through arbitration in accordance with the CBA. SAG appealed and lost. The JPC win has, and will, continue to save the industry millions of dollars in overpayments to the pension and health funds.

As one can imagine, with a contract this large, there is a consistent day-to-day need to handle matters for members and for the industry as a whole. This takes time and commitment from both the ANA and 4A's. The JPC literally deals with the unions every day to resolve areas of disagreement and conflict. Moreover, the resolution of many of the day-to-day issues impacts on the entire industry. The unified voice of the JPC insures that such decisions will not have unintended consequences that may be detrimental to all members.

The annual budget of the JPC is approximately \$650,000, a small price to pay to maintain a stable market for a \$3-billion collective bargaining agreement. Also, as reserves build in the CSF fund, the per-commercial fee may be lowered. The investment is well worth the return.

## **2. Why the ANA and 4A's established and continue to support the JPC.**

The JPC, through its bargaining and arbitrations with the unions, has saved the advertising industry millions of dollars. Moreover, under the new contract, costs have been contained for the next three years, and the future looks brighter than ever for fair and just compensation.

In the past two-and-a-half years, the JPC has conducted six major seminars without charge, five of which were "aired" on the Internet. In all, more than 700 people participated. In addition, the JPC continues its ongoing practice of educating and informing the industry by routinely issuing bulletins and position papers relating to questions of contract interpretation and industry change, as well as maintaining the JPC blog and postings on the ANA and 4A's Web sites.

Over the next two years, the JPC, arm in arm with the unions, is developing an entirely new way to pay actors who perform in television commercials. Rather than pay actors on a basis that has no relationship to the value received by the advertiser for the work, the JPC and unions have retained Price Waterhouse Coopers to conduct a pilot that bases actors' pay on GRP's. This will align talent payments with the way advertisers buy and measure media, making a measured ROI possible while still paying actors a fair and reasonable wage for their work. This is a groundbreaking undertaking that the ANA and 4A's recognize as a giant leap forward and a much-overdue improvement.

The JPC has reached out to every constituent of the industry—advertisers, agencies, talent payroll companies, production companies, casting directors, consultants, and even performers—with detailed surveys of concerns under the CBAs. Through these surveys the JPC fully understands the important issues facing the industry better than any other organization, giving the JPC distinct advantage at the bargaining table.

## **3. The JPC's success in representing the advertising industry is significant and measurable.**

In the 2009 negotiations with the unions, the JPC negotiated the lowest wage increase in any major CBA negotiated in the United States in the last quarter of 2008 and first two quarters of 2009. Furthermore, the wage increase negotiated was also below the wage concessions made to actors by the motion picture and television production industries as well as to the unions that represent production crews. Given the fact that CBAs for commercials, television programming, motion pictures, and crew were all negotiated in early 2009 makes the JPC's performance even more impressive.

The Bureau of National Affairs tracks CBAs. In its comparison of 2008 to 2009 contracts, the median and weighted averages increase in multi-year collective bargaining negotiated in the first quarter of 2009, i.e., in the heart of the recession, are in the chart below.

	<b>2008</b>	<b>2009</b>
<b>All Contracts</b>	Median Average – 3.00% Weighted Average – 4.00%	Median Average – 3.00% Weighted Average—4.50%
<b>Non-Manufacturing Contracts</b>	Median Average – 3.50% Weighted Average – 4.90%	Median Average – 3.20% Weighted Average – 5.00%

In comparison to national averages in the chart above, the yearly weighted average increase in the CBA negotiated by the JPC for the three-year period April 1, 2009, through March 31, 2012, is less than 2 percent per year. In addition, the annual increase in the CBAs with actors in motion pictures and television programming is more than 3 percent. The annual increase in the crew CBA is also above 3 percent. To put that in perspective, a 1 percent difference represents \$10 million dollars in annual savings. Without question, the JPC has provided unmatched leadership and cost containment for the advertising industry.

**4. Without the JPC, commercial production costs would skyrocket.**

It would be imprudent for our industry to leave the negotiations solely to advertisers or advertising agencies or, worse, the broadcasters or production community. The ANA and 4A’s members are partners in the business of producing television commercials and share common interests in controlling costs and minimizing administrative burdens. For advertisers it makes sense to be at the table because it is their money that is being spent. Agencies need to be there because they know how to best watch the bottom line on behalf of their clients. Without the JPC, there would be no unified voice speaking for the industry. Each advertiser and agency would be forced to negotiate independently with the unions, who would be free to promulgate whatever rates they could get away with, creating a chaotic and extraordinarily costly result.

**What Is the Commercial Service Fee and Why Pay It?**

**1. Payment of the Commercial Service Fee is fair and proportionate.**

A fee of \$75 for all new television commercials paid by those members who produce television commercials under the union agreements, when measured against either the average cost of production—\$400,000—or the annual cost of the collective bargaining agreement—\$1 billion—is unquestionably proportionate and fair.

**2. Establishment of the Commercial Service Fee.**

Working with the unions and containing costs, while continually looking for ways to improve the market for advertisers and agencies, takes considerable time and commitment by many people, including legal counsel and experts retained by the JPC to assist in understanding complex industry structures, the aggregation of data from disparate sources, and coming to the table across from unions prepared and with deep internal philosophical splits on how actors should be paid.

As Bob Liodice, president and CEO of the ANA, and Nancy Hill, president of the 4A's, pointed out in their memo announcing the Commercial Service Fee, the Commercials Contracts (Television and Radio) are the largest CBAs in the entertainment industry, costing advertisers more than \$3 billion over the three-year term of the contract. Today it is not sensible to approach this challenge without a sound financial foundation. Too much is at stake, and when one deals in even small percentages of such a large number, the economic consequences are considerable and must be monitored.

### **3. How the Commercial Service Fee revenue is used.**

The JPC incurs numerous expenses. In addition to the costs incurred for the various negotiations, the fees for retaining the JPC's lead negotiator and legal counsel, the day-to-day handling of the myriad of questions from members, and the bulletins and blogs, the JPC and unions are undertaking groundbreaking projects to restructure the way actors are paid, how the airings of commercials are monitored, and how best to pay for Internet and new media. In addition, the JPC hires consultants, as needed, to assist when issues are particularly complex. Further, the JPC's aggressive stance against the unions when union activities pose a large collective threat or cost to authorizers adds further financial needs. All of these costs are retained, budgeted, and monitored by the ANA, insuring that they are spent in an efficient manner with established priorities and goals.

### **4. Much is ahead for the JPC and the industry.**

In addition to the major undertaking of the GRP pilot, the industry needs to prepare itself for how it, and the unions, will deal with new media when the 2010 negotiations begin—particularly in light of developments on digital and Internet platforms and the explosion of social media and mobile productions likely to come. Much of the funds collected from the Commercial Service Fee will be used to develop talent payment methodologies for those media platforms and the complexities associated with managing where these platforms evolve. In addition, the JPC is exploring new ways to monitor commercials to eliminate costly and time-consuming audits. The JPC also conducts educational seminars and offers advice to ANA members as they experience problems and challenges in commercial production. Indeed, the Commercial Service Fee is for more than just commercials—it's for dealing with whatever the future may hold for video and audio communications to consumers and insuring that the costs of performers who are hired for such productions are fair and reasonable.

### **5. ANA member payment of the Commercial Service Fee.**

The ANA notified its membership that the fee should be assessed against all ANA JPC authorizers and all 4A's agency authorizers on behalf of all of their clients, including all ANA members who produce union commercials using a 4A's JPC authorizer. The 4A's has notified its JPC authorizer members of the ANA decision. As such, if a 4A's JPC authorizer member represents an ANA member, it should charge the fee to its client. Should the ANA member object to paying the Commercial Service Fee, someone from the ANA will be happy to discuss the matter with the member.

### **6. How the Commercial Service Fees are collected and remitted to the ANA.**

To make the process as simple as possible, the Commercial Services Fee is charged and collected by the talent payroll services that are used in the industry to handle payments to actors and to the unions' pension and health funds and state and federal tax authorities. The talent payroll services have been provided with a list of JPC authorizers for which they will add the fee when a new commercial is first aired. This one-time fee will then be collected from the talent payroll agency's client (either the

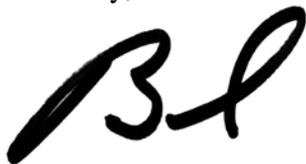
advertising agency or the advertiser). Once collected, it is remitted to the ANA where it is held in a separate account.

If you have any questions regarding the Commercial Service Fee or anything else relating to the CBAs with SAG, AFTRA, and the AFofM, please feel free to contact Douglas J. Wood, JPC lead negotiator, at 212 549-0377 or [dwood@reedsmith.com](mailto:dwood@reedsmith.com).

Finally, the ANA continues to work on behalf of ANA members across the entire ecosystem. This is a critical industry function that manages a \$1 billion/year contract. To do so fairly requires reasonable resources. We believe this request is more than fair. I trust you concur.

In addition to Doug Wood, I would be pleased to respond to any question or concern you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'BL' with a stylized flourish.

Bob Liodice  
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