Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2017	)	MD Docket No. 17-134
	)	
	)	

COMMENTS OF RAMAR COMMUNICATIONS, INC.

Ramar Communications, Inc. ("Ramar"), by its attorneys, hereby submits the following comments in response to the Notice of Proposed Rulemaking, FCC 17-62, released on May 23, 2017 by the Federal Communications Commission ("FCC" or the "Commission") in the above-captioned proceeding.[1] The NPRM seeks comment on proposed regulatory fees for fiscal year (FY) 2017.

At paragraphs 20-22, the NPRM solicits comment on various issues concerning FCC assessment and collection of regulatory fees on satellite television stations. As proposed in the NPRM, stations authorized as satellites pursuant to Note 5 of Section 73.3555 of the Commission's Rules (a "Note 5 waiver") and identified as such in the Television and Cable Factbook would pay an annual regulatory fee of $1725, regardless of market size. The NPRM describes (at ¶ 21) (emphasis added) the Note 5 waiver scenario as follows: "There is a standalone full-service station *usually* within the same market that serves as the 'parent' to the satellite station that could not be commonly owned or controlled with the satellite, but for such a waiver." The NPRM seeks comment on a series of satellite-related issues including, *inter alia*, (at ¶ 22) whether to calculate satellite station fees as a percentage (50 or 75 percent) of the $4950

[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, MD Docket No. 17-134, Notice of Proposed Rulemaking, FCC 17-62 (rel. May 23, 2017) ("NPRM").

fee to be paid for FY 2017 by "standalone" television stations in "remaining markets" (i.e., markets below the top 100) (referred to herein as "Remaining Markets").

As a general proposition, the imposition of lower regulatory fees for broadcast satellite stations is both rational and fair. That is because satellite stations are effectively "second class citizens" within the television industry. A typical satellite station: (i) is licensed to a smaller, less well populated (one might say a "satellite") city, generally resulting in service to underserved areas and populations, but at the expense of competitive coverage of the population center of the relevant designated market area ("DMA"); (ii) rebroadcasts the programming of a parent broadcast television station that typically does serve the primary city; and (iii) is listed as a satellite of a parent in standard industry sources/publications such as the Television and Cable Factbook and/or BIA/Kelsey. A satellite station is effectively tethered to its parent and is not held out to competitors, the public, or advertisers as an independent, standalone station. Once it acquires the satellite label, a station's standing in the industry and its independent revenue-generating capabilities are reduced. These listings are for that reason essentially self-regulating – substantial competitive downsides incentivize stations *not* to be labeled as second-class satellites within the television industry. [2]

Satellite stations that hold Note 5 waivers constitute only a subset of the total universe of satellite stations. That is because Note 5 waivers are needed *only* when the relevant predicted signal contour of the satellite overlaps with the relevant predicted signal contour of the standalone parent, creating an otherwise prohibited duopoly. But, the larger universe of television broadcast satellite stations also includes those satellite/parent combinations which do

[2] A Note 5 waiver station warrants a lower regulatory fee *not* because the government has granted it the privilege of a duopoly waiver, but because of its second class citizenship vis-à-vis standalone stations.

not need Note 5 waivers because the satellite member of such a pair has no predicted signal contour overlap with its parent. Such a scenario can easily unfold in DMAs of vast geographic size where commonly owned stations' contours often do not overlap.

Against this background, the FCC has in the past made clear that it affords satellite regulatory fee status not just to note 5 waiver satellite stations, but to stations identified as satellites within standard television industry publications. For example, in 2002, the Commission plainly stated in that year's regulatory fee order: "Those stations designated as Television Satellite Stations in the 2002 Edition of the Television and Cable Factbook *(or similar source*) are subject to the fee applicable to Television Satellite Stations."[3]

This even-handed treatment of all satellite television stations is consistent with the fact that there is rarely any practical or operational difference between satellite/parent combinations which need Note 5 waivers and those which do not. Certainly, the Commission's Note 5 waiver evaluations do not depend on any such differences. Rather, Note 5 waiver showings are evaluated against the following three-pronged test:

> [A]pplicants seeking to transfer or assign a television satellite station are entitled to a 'presumptive' exemption from Section 73.3555(b) of the Commission's rules if the parent/satellite combination meets three criteria: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready

[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 2002*, Report and Order, 17 FCC Rcd 13203, 13268 (2002) (emphasis added). BIA/Kelsey's database is logically a "similar source" to the Television and Cable Factbook, as BIA/Kelsey's database is used by the FCC to determine the number of stations in a market for purposes of implementing FCC radio multiple ownership rules. *See* Dana A. Scherer, *The FCC's Rules and Policies Regarding Media Ownership, Attribution, and Ownership Diversity*, CONGRESSIONAL RESEARCH SERVICE REPORT 7-5700, at 6 (Dec. 16, 2016) *available at* https://fas.org/sgp/crs/misc/R43936.pdf.

> and able to construct or to purchase and operate the satellite as a full-service station.[4]

The third of these showings typically takes the form of a letter from an industry broker.[5] At present, Commission processes do not require satellite/parent combinations which *lack* cognizable signal contour overlap to make a showing to the Video Division which satisfies the Three Satellite Criteria.

Ramar strongly urges the Commission to reaffirm its approach of assessing the lower satellite station regulatory fee both on Note 5 waiver stations and on stations recognized as satellites in standard industry publications. Ramar perceives no public interest-based rationale for affording lower satellite fees *only* to those satellite/parent combinations which happen to need the government grant of a duopoly waiver. In today's intensely competitive video marketplace, *all* television satellite/parent combinations warrant and need the lower fees. Whether or not a satellite/parent combination requires a Note 5 waiver, satellites typically have substantial deficiencies in over-the-air area and population coverage which relegate them to second class status. When a station's over-the-air coverage is a fraction of the coverage of its

[4] *See Soda Mountain Broadcasting, Inc. & KEZI, Inc.*, 29 FCC Rcd 5781, 5781 (Vid. Div., M. Bur. 2014). These three criteria are referred to herein as the "Three Satellite Criteria." Ramar notes that: (i) the Commission has clarified that because there is no digital counterpart to an analog City Grade contour, the first criterion is currently evaluated on an *ad hoc* basis (*see Applications for Consent to Transfer Control of License Subsidiaries of Media General, Inc. to Nexstar Media Group, Inc.,* MB Docket No. 16-57, Memorandum Opinion and Order, DA 17-23 (rel. Jan. 11, 2017)); and (ii) a Note 5 waiver was granted in *Soda Mountain* pursuant to an *ad hoc* analysis, where all of the presumptive criteria were not met.

[5] *See Soda Mountain*, supra, at 5782-83 (citing letter from broker W. Lawrence Patrick stating that the identified satellite station could not be successfully sold as a "standalone" station).

broadcast competitors, the satellite inevitably suffers in the competitive areas that matter, including the satellite's attractiveness to advertisers and program suppliers.[6]

Ramar emphasizes that carriage by multichannel video programming distributors ("MVPDs") does not eliminate the competitive imbalance faced by television station satellites. First, as noted above, with regard to vital over-the-air coverage, standalone stations in the DMA with which the satellite must compete will virtually always benefit from considerably more powerful and centrally located technical facilities than those of a satellite. MVPD distribution does nothing to eliminate the resultant (often substantial) satellite deficit in over-the-air population coverage. Furthermore, to the extent satellite station programming is carried by an MVPD separately from the programming of a parent, the satellite incurs additional signal delivery costs due to distance within the DMA, any MVPD distribution may not be comparable in channel positioning to that of the parent and market competitors, and the satellite's programming may well be second-tier, non-major network programming that attracts far fewer viewers. Finally, with MVPD carriage comes all of the fierce multi-channel competition that exists in today's MVPD world, including that provided by the bevy of non-broadcast channels carried by MVPDs .[7]

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[6] Ramar can attest to these considerable marketplace disadvantages. For example, it operates KUPT(TV) as a non-Note 5 waiver satellite station within the vast Albuquerque-Santa Fe DMA. KUPT is the only full power television station licensed to Hobbs, New Mexico. Hobbs' airport is located 253 miles from the airport for the city of Albuquerque. Hobbs had a 2010 census population of 34,122 (compared to the 677,590 *television households* Nielsen currently estimates to be in the entire DMA), and KUPT's over-the-air signal covers less than five percent of both the total population and area of the entire DMA. KUPT bears no resemblance to a station able to cover the DMA's main population.

[7] These factors, including the reality of all the additional competitive channels MVPDs bring to the video marketplace, undercut any suggestion that MVPD carriage is a "changed circumstance" which might support higher regulatory fees for satellite stations.

To the extent the Commission in the future may want for any reason to require satellite/parent combinations that do not hold Note 5 waivers to provide evidence of their satellite status beyond standard industry publication listings, a simple approach would be to provide that such a combination will be permitted to make a showing to the Video Division consistent with Three Satellite Criteria precedent. Under this approach, an accepted showing would confirm satellite standing for regulatory fee purposes.[8]

Under any circumstances, the FCC should continue to provide substantial regulatory fee relief to all satellite stations, including those holding Note 5 waivers and those listed in industry publications. To the extent the Commission gives any alternative consideration to whether to treat satellites as Remaining Markets stations, obligated to pay 50 to 75 percent of the standard fee for standalone stations in Remaining Markets (see ¶ 22 of the NPRM), Ramar would again strongly urge that all satellite stations, those which need Note 5 waivers and those which are recognized in industry publications as satellites, be treated as Remaining Markets stations *per se*. After all, longstanding Commission precedent allows a station licensed and operating within a top 100 market to show why it should equitably be allowed to pay a lower Remaining Markets fee.[9] Under this alternative approach, satellite stations in top 100 markets could elect this

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[8] Ramar believes that adoption of this approach would reasonably impose only modest obligations on the Video Division, namely to use its already well-developed expertise to review a finite number of simple fact-based showings under the Three Satellite Criteria. In fact, only two of the criteria are in play for these satellite stations because the first one, the lack of City Grade overlap, no matter how it is interpreted on this side of the 2009 digital conversion, will *always* be satisfied in a non-Note 5 waiver scenario – there is by definition *no* overlap of cognizable digital contours. To the extent the Commission deems it advisable, Ramar would support an additional requirement that all such FCC-recognized satellites would be expected to maintain their satellite listings in the Television and Cable Factbook and the BIA/Kelsey database.

[9] As note 66 of the NPRM recognizes, a top 100 market station has historically had a waiver pathway by which it can seek equitable treatment as a Remaining Markets station. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, Report and Order, 11 FCC

(continued...)

treatment *per se* – these stations are, after all, not "standalones" and they must overcome numerous competitive disadvantages in order to compete effectively with stations that cover much larger areas and populations with their technical facilities. An onerous regulatory fee starkly disproportionate to their coverage capabilities should not add to their burdens.

Equitable regulatory fee treatment of all satellite stations will clearly further the public interest by helping to ensure that the agency's regulatory fee scheme is rational and fair. Basic principles governing agency decision-making require that the FCC treat, equitably and consistently, all satellite TV stations with limited over the air coverage that serve smaller communities, including those that happen to be located in large DMAs. Well established case law phrases it as the agency's duty to treat similarly situated entities similarly, sometimes referred to as the Melody Music doctrine.[10] That bedrock concept counsels strongly against adoption of a regime that denies small, less competitive stations a much needed break against high regulatory fees appropriate for major market stations (that effectively cover large population centers and generate commensurate revenue and profit).

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Rcd 18774,18786, ¶ 32 (1996) ("We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, *based upon the actual area served by the licensee.*") (emphasis added).

[10] *See Melody Music, Inc. v. FCC*, 345 F.2d 730, 32 (D.C. Cir. 1965). *See also New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361, 366 (D.C. Cir. 1987); *Public Media Center v. FCC,* 587 F.2d 1322, 1333 (D.C. Cir. 1978).

CONCLUSION

All satellite stations should be afforded relief consistent with the facts, precedent, and proposals set forth herein.

Respectfully submitted,

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