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April 9, 2002

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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St S.W.  
Washington, DC 20554

Re: *Written Ex Parte Presentation*  
*Establishment of Rules and Policies for the Satellite Digital Audio Radio*  
*Service*  
*In the 2310-2360 MHz Band*  
IB Docket No. 95-91



BOSTON  
DALLAS

DELAWARE  
NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

WASHINGTON, DC

Dear Mr. Caton:

Fusion Lighting ("Fusion") has filed this *ex parte* letter in ET Docket 98-42. Because of its relevance, Fusion is filing it in the above-referenced proceeding as well.

Respectfully submitted,

Terry G. Mahn  
Robert J. Ungar  
Counsel for Fusion Lighting

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Re: Written *Ex Parte* Presentation  
1998 Biennial Regulatory Review – Amendment of Part 18  
ET Docket No. 98-42



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Dear Mr. Caton:

In the interest of technical accuracy, Fusion Lighting must respond to the April 3, 2002, *ex parte* filing by Sirius Satellite Radio and XM Radio (the DARS Licensees). Fusion sincerely hopes this is the final word in this nearly four year old docket.

The DARS Licensees fret over the possibility the Commission will adopt a “safe harbor” for Fusion lamps. They characterize the “safe harbor” concept for unlicensed device emissions as against law and public policy. In fact, however, the concept has been firmly rooted in FCC law since 1995, **well before any DARS license had ever issued**. See *Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Report & Order, PR Docket No.93-61, 11 FCC Rcd. 4695 (1995). A “safe harbor” in this instance is the appropriate shelter from a vengeful licensee who has boldly promised it will force the Commission staff into “tracking RF lighting purchasers and unplugging their lights.”<sup>1</sup>

The DARS Licensees flatly refuse to engage in any joint testing of interference to DARS receivers because, they claim, the Fusion lamps are not “production models.” This, however, did not deter them from jointly testing 6 different Fusion lamp models in October 2000, when they were eagerly seeking damaging data on lamp emissions. The only difference between then and now is that **now** there are actual DARS receivers on the market against which to test their theory. Recent testing by Fusion, using the same lamp models from the October 2000 tests, shows no credible threat of harmful interference to DARS receivers. The DARS Licensees know this to be true yet they want the Commission to ignore it. And why is that?

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<sup>1</sup> See August 2, 2001, *ex parte* letter from the DARS Licensees.

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April 9, 2002  
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The reason is because it undermines the credibility of their recent, widely-publicized claims that, in order to survive, the Commission must impose severe in-band emission limits on all Part 15 and Part 18 devices. What really undermines such credibility, however, is that they are fully prepared to live with the tens of millions of Part 15 and Part 18 devices already on the market that do not come close to meeting their in-band proposals.

So what we are seeing here is a "stalking horse" – a phony, throw-away demand made solely to achieve some other purpose. The DARS Licensees have constructed a dire threat of harmful interference so widespread and so severe that it cannot possibly be addressed in the manner suggested, solely for the purpose of coercing the Commission into giving them what they really want – which is the widespread deployment of powerful terrestrial repeaters. These DARS repeaters will boost weak satellite signals to overcome imagined terrestrial interference and provide the imagined capability someday, of delivering terrestrial programming. Fusion is not fooled by these arguments. The Commission should not be fooled either.

Sincerely,



Terry G. Mahn  
Robert J. Ungar

cc: Sam Feder  
Paul Margie  
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