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April 12, 2002

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
445 Twelfth Street S.W.  
Washington, D.C. 20554

Re: Written *Ex Parte* statement in ET Docket No. 98-42:  
1998 Biennial Regulatory Review – Amendment of Part 18  
of the Commission’s Rules to Update Regulations for RF Lighting  
Devices;  
ET Docket No. 01-278: Review of Part 15 and other Parts of the  
Commission’s Rules;  
IB Docket No. 95-91; SDARS Terrestrial Repeaters



BOSTON

DALLAS

DELAWARE

NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

WASHINGTON, DC

Dear Mr. Caton:

Once again it is necessary to correct the record in this proceeding, hopefully (again) for the last time. In their *ex parte* filing of April 8, 2002, Sirius Satellite Radio and XM Radio (the “DARS licensees”) state that they are “skeptical” of Fusion’s “purported” testing of DARS receivers, in part because, XM has a repeater located near Fusion’s test facility in Rockville, Md. and so a test would not show anything about the potential of a Fusion lamp to interfere with DARS reception when only a satellite signal is present.

First, it must be noted that there was nothing “purported” about the tests. They really did occur, and backhanded references will not make them go away. Second, although Fusion’s initial testing of an XM receiver did take place in the “urban canyon” of Rockville where Fusion frankly did not anticipate XM might have installed a repeater, the second testing, this time of both the XM and Sirius receivers took place in the middle of the Berkshire mountains of Massachusetts where one can be confident, beyond peradventure of doubt, there are no DARS repeaters.<sup>1</sup>

If indeed there is a “kill zone” within some distance of a Fusion lamp as the DARS licensees so dramatically allege, the Berkshire tests using a lamp emitting at the proposed Commission out-of-band limit revealed it to be a mere three meters for XM and five meters for Sirius – a far cry from the bloated figure of 1800 meters forecasted by the DARS licensees in their May 4, 2001 *ex parte*

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<sup>1</sup> If we now learn that the DARS licensees have festooned even the Berkshires with repeaters, the Commission should give serious consideration to an inquiry into exactly what type of service is really envisioned.

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filing, or even the apparently revised, and drastically reduced 50 meters now alleged by the DARS licensees.<sup>2</sup>

So in short, Fusion tested the DARS receivers. The tests occurred in a virtual wilderness, devoid of repeaters. The tests showed little impact to the receivers. A "safe harbor" to prevent DARS licensees' threatened abuse to Fusion customers is in the public interest – now more than ever. The Commission's out-of-band proposal continues to make sense.

Very truly yours,

  
Terry G. Mahn  
Robert J. Ungar

cc: Sam Feder                      John Reed  
Paul Margie                      Ronald Rapsi  
Peter Tenhula                      Tom Tycz  
Bryan Tramont                      Hugh Van Tuyl  
Donald Abelson                      Ira Keltz  
Rosalee Chiara                      Geraldine Matise  
Ronald Chase                      Michael Marcus  
Bruce Franca                      Anna Gomez  
Linda Haller  
Julius Knapp

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<sup>2</sup> A microwave oven interfered with the DARS receivers at a greater distance than the Fusion lamp!