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FEDERAL COMMUNICATIONS COMMISSION  
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DOMESTIC FACILITIES DIVISION  
SATELLITE RADIO BRANCH

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
)  
SATELLITE CD RADIO, INC. )  
)  
Application for Digital Audio )  
Radio Service Satellite System )

File Nos. 49/50-DSS-P/LA-90;  
58/59-DSS-AMEND-90;  
44/45-DSS-AMEND-92

To: The Commission

**OPPOSITION**

The Radio Operators Caucus (ROC) hereby opposes a "Motion for Acceptance of Supplemental Comments" filed on behalf of Satellite CD Radio, Inc. (Satellite CD Radio), in connection with its above-captioned application on or about November 9, 1994.<sup>1</sup>

Satellite CD Radio seeks leave to file comments which include proposed rules for a satellite digital audio radio service. Satellite CD Radio acknowledges that "the comments cover issues that would not normally be considered until the adoption of a Further Notice of Proposed Rule Making." Satellite CD Radio indicates that its purpose in tendering proposed rules at this time is to permit interested parties to comment on them in advance of a Further Notice.

The proffered comments are self-evidently premature at best, and represent a blatant attempt to co-opt the rule making process. The only pending rule making proceeding dealing with satellite DARS has as its sole focus the possible allotment of spectrum space for such a service, and the Commission expressly declined to include in that proceeding consideration of the regulatory regime that would govern any such service.<sup>2</sup> It is worth noting in that regard that the comments are tendered under the caption of the Satellite CD Radio application, reflecting a tacit recognition that there is no rule making proceeding in which the comments would be appropriate.

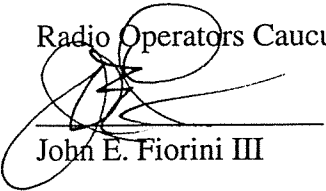
<sup>1</sup> ROC is an informal group of more than 40 radio station owners with over 300 stations in more than 90 markets throughout the United States.

<sup>2</sup> Amendment of the Commission's Rules with regard to the Establishment and Regulation of New Digital Audio Radio Services, 7 FCC Rcd 7776, 7781 (1992).

When and if the Commission proposes rules to govern a satellite digital audio service, comments on those proposed rules will be appropriate. In the meantime, however, Satellite CD Radio's attempt to preempt the process through submission of its own proposed rules should not be countenanced.

Respectfully Submitted,

Radio Operators Caucus



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November 23, 1994

CERTIFICATE OF SERVICE

I, Elizabeth A. Fertig, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 23rd day of November, 1994, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing to the following:

  
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