

Appendix A
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October 27, 1997

Ms. Kathleen O'Brien Ham
Chief, Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW
Room 5202
Washington, DC 20554

Dear Ms. Ham:

In mid-August, David Thompson, President of SEA, Inc. ("SEA") and Thomas Keller, counsel for SEA, met with Amy Zoslov, Diane Conley, and Frank Stilwell of the Auctions and Industry Analysis Division regarding the auction for the 220 MHz service. During that meeting, Ms. Zoslov indicated that under the recently enacted Balanced Budget Act of 1997, the Commission is now required to prescribe methods by which a reasonable reserve price would be required or a minimum opening bid established for its auctions. Ms. Zoslov stated that the Bureau would be considering these issues in the context of the 220 MHz service auction in the near future and invited SEA to submit any information it thought relevant to those issues.

In response to that invitation, SEA proposes that the Commission adopt a minimum opening bid for the 220 MHz service auction based on a formula using \$0.02 per MHz per population, with a 25% discount in Regional Economic Area Groupings (REAG) and Economic Area (EA) licenses to reflect the level of incumbency within the 220 MHz service and a minimum opening bid of \$2,500. SEA believes that this formula is consistent with Congress' goal in enacting the reserve price/minimum opening bid provision, meets the public interest objectives of the competitive bidding provisions of the Communications Act, is consistent with Commission precedent, and takes into account the existence of incumbents on the 220 MHz band.

The 220 MHz service auction will consist of 908 licenses in the Phase II 220 MHz service. Specifically, the Commission will auction three nationwide licenses, 30 REAG licenses and 875 EA licenses. Each of the three nationwide licenses will consist of 10

channels of 5 kHz of spectrum, for a total of 100 kHz of spectrum.(1) Each REAG license will consist of 15 channels of 5 kHz spectrum, for a total of 150 kHz of spectrum.(2) Finally, each EA block will consist of 10 channels of 5 kHz spectrum, for a total of 100 kHz of spectrum.(3)

Under SEA's proposal, the minimum opening bid would take into account the price of the spectrum at \$0.02 per MHz per unit of population and the population of the service area covered by the license. For REAG and EA licenses, SEA proposes that the \$0.02 per MHz per population formula be discounted by 25% to take into account the level of incumbency within the 220 MHz service. We applied the formula to a Nationwide, REAG, and EA license. The results of these applications are set forth below:

Nationwide License:

100 kHz spectrum block represents 10% of 1 MHz (100 kHz [divided by] 1 MHz =
.10)
.10 MHz x \$0.02 = 0.002.
\$0.002 x total nationwide population(4)
\$0.002 x 252,586,844 = \$505,174
Minimum opening bid = \$505,174

(1) 10 base channels x 5 kHz = 50 kHz and 10 mobile channels x 5 kHz = 50 kHz, for a total of 100 kHz of spectrum per license.

(2) 15 base channels x 5 kHz = 75 kHz and 15 mobile channels x 5 kHz = 75 kHz, for a total of 150 kHz of spectrum per license.

(3) *See infra* n.1.

(4) For purposes of this example, the total nationwide population was derived by adding the total population for each EA.

REAG-1 Northeast:(5)

150 kHz spectrum block represents 15% of 1 MHz (150 kHz [divided by] 1 MHz =
.15)
.15 MHz x \$0.02 = \$0.003
\$0.003 - 25% incumbency rate = \$0.00225
\$0.00225 x total REAG 1 population
\$0.00225 x 41,567,648 = \$93,528
Minimum opening bid = \$93,528

EA 158 - Phoenix-Mesa, AZ:

100 kHz spectrum block represents 10% of 1 MHz (100 kHz [divided by] 1 MHz =
.10)
.10 MHz x \$0.02 = 0.002.
\$0.002 - 25% incumbency rate = \$0.0015
\$0.0015 x total EA population
\$0.0015 x 2,365,002 = \$3,548
Minimum opening bid = \$3,548

Under SEA's proposed formula, auction participants whose minimum opening bid calculation fell below \$2,500 would be required to pay a minimum opening bid of \$2,500. For example, if the formula is applied to EA 001 - Bangor, Maine, which has a population of 533,135, the result would be a minimum opening bid calculation of \$800. However, under SEA's proposal, an auction participant bidding on this license would pay a minimum opening bid in the amount of \$2,500.

SEA believes that this method of calculating the minimum opening bid is the most appropriate for purposes of the 220 MHz service auction. First, this approach meets Congress' objective in enacting the reserve price/minimum opening bid provision. Specifically, the minimum opening bids calculated using this formula would allow the Commission to avoid selling licenses in the 220 MHz service at unreasonably low prices, a result that was contemplated by Congress when it enacted the minimum bid requirement. As a result, this approach is consistent with Section 309(j)(3)(C) of the Communications Act which requires that the Commission recover for the public a portion of the value of the public spectrum resource. 47 U.S.C. § 309(j)(3)(C).

(5) See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, FCC 97-57 (released March 12, 1997).

Moreover, use of this formula would not produce prices that are so unreasonably high as to discourage wide and robust bidding in the 220 MHz service. As such this proposal is also consistent with Section 309(j)(3)(B) of the Communications Act in that it would encourage the dissemination of licenses to a wide variety of applicants.

In addition, use of this formula could encourage faster deployment of this service to the public and, therefore, would be consistent with Section 309(j)(3)(A) of the Communications Act. As explained further below, SEA's proposal is consistent with Commission precedent and provides a simplified approach to calculating the minimum opening bid for the 220 MHz auction. As such, adoption of this formula would expedite the auctioning of licenses in the 220 MHz spectrum and, as a result, would encourage faster deployment of spectrally efficient technologies which was the central reason for reallocating these two megahertz of spectrum in the first place.(6)

The formula proposed by SEA is consistent with Commission precedent. Recently, the Commission adopted a similar formula (*i.e.*, \$0.02 per MHz per unit of population) for calculating minimum opening bids for the upper 10 MHz block of the 800 MHz SMR service auction. *See Auction of 800 MHz SMR Upper 10 MHz Band*, Order, DA 97-2147 (WTB, released October 6, 1997) ("*800 MHz Minimum Bid Order*"). In so doing, the Commission took into account the high level of incumbency within this portion of the 800 MHz SMR band, as reflected in the 75% incumbency rate discount. The 220 MHz service is similar to the 800 MHz SMR service in that both services are two-way mobile voice and data communications. Accordingly, there is no public interest rationale for subjecting the 220 MHz service auction to a different type of minimum opening bid formula than that used for the 800 MHz service.(7)

(6) *See Report and Order*, Gen. Docket No. 87-14, 3 FCC Rcd 5287 ¶¶ 14, 17 (1988) (Allocation Order), recon. denied, 4 FCC Rcd 6407 (1989), *aff'd American Radio Relay League, Inc. v. FCC and United States of America*, No. 89-1602 (D.C. Cir. 1990), appealed on other grounds, *United States of America v. FCC*, No. 89-1635, voluntarily dismissed (D.C. Cir. 1989).

(7) Moreover, this formula is similar to the formula used to calculate the upfront payment amounts for both the 800 MHz SMR and the 900 MHz SMR auctions. *See* Public Notice, "Auction of 800 MHz Specialized Mobile Radio Service Licenses," DA 97-1672 (WTB, released August 6, 1997) ("*800 MHz Auction*"); Public Notice, "FCC Announces Auction of 900 MHz Specialized Mobile Radio Service," Report No. Auc-95-07 (WTB, 1995) ("*900 MHz SMR Auction*").

SEA's formula takes into account the existence of incumbents on the 220 MHz band. As noted above, there is Commission precedent for taking into account a level of incumbency in establishing minimum opening bids. *See 800 MHz Minimum Opening Bid, supra*. Moreover, the Commission has recognized previously the encumbrance of a service in establishing upfront payments for auctions. *See 800 MHz Auction, supra; 900 MHz SMR Auction, supra.*⁽⁸⁾ Specifically, for both the 800 MHz SMR and the 900 MHz SMR auctions, the Commission has taken into account the presence of incumbents in the formulas used to calculate the upfront payments required for those auctions. SEA believes that there is no public interest rationale for not following that precedent with respect to 220 MHz service. However, SEA does acknowledge that the level of incumbents in the 220 MHz service is significantly lower than the level for 800 MHz SMR. Accordingly, it proposes that an incumbency discount rate be set at 25%. However, as there are no incumbents using the 220 MHz nationwide licenses to be auctioned, we believe it would be appropriate to apply an incumbency discount rate to the formula only for the REAG and EA licenses.

Finally, the approach suggested by SEA serves the public interest. As noted above, SEA's proposal meets the public interest objectives of the Communications Act. More specifically, following this approach will help to expedite the 220 MHz auction which will, in turn, get 220 MHz licenses in the hands of those who value them the most and encourage faster deployment of the 220 MHz service. It is imperative that the 220 MHz service auction commence at the earliest possible date. Over the years, the 220 MHz service has been plagued by significant delays in the ability to deploy service, due to uncertainties stemming from court challenges, ongoing regulatory proceedings, and licensing freezes. This has hampered the ability of 220 MHz licensees and equipment manufacturers, such as SEA, to develop products and services that will meet SMR user needs. This, in turn, has resulted in a diminished availability of spectrum to meet the growing need for low cost SMR dispatch communications services. SEA believes that use of a simplified approach to calculating the minimum opening bid will fulfill the objectives of Congress and the Commission without resulting in unnecessary delays in commencing the 220 MHz service auction.

(8) *See also Amendment of Part 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, 11 FCC Rcd 2639, 2682 (1995).

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Should you have any questions regarding SEA's proposal, please do not hesitate to contact the undersigned.

Respectfully submitted

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cc: William E. Kennard, Esq.
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