

EX PARTE OR LATE FILED

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April 8, 1998

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary  
Federal Communications Commission  
1919 M Street NW, Room 222  
Washington, DC 20554

**PERMIT-BUT-DISCLOSE  
EX PARTE PRESENTATION  
NOTICE**

Re: Amendment of Part 90...to Provide for the Use of the 220-222  
MHz Band..., PR Docket No. 89-552; Implementation of Sect-  
ions 3(n) and 332 of the Communications Act, GN Docket No. 93-252;  
93-252; Implementation of Section 309(j) of the Communica-  
tions Act -- Competitive Bidding, 220-222 MHz, PR Docket  
No. 93-253

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's Rules, please be advised that Robyn G. Nietert and David J. Kaufman of this law firm, representing Incom Communications Corporation, met with Commissioner Harold Furchtgott-Roth and Senior Legal Adviser Paul Misener regarding the above-referenced rulemaking proceedings (collectively, the "220MHz Rulemaking"), and presented a one-page set of bullet points (copy enclosed) outlining our views respecting the pending petitions for reconsideration of the Commission's decision in the 220 MHz Rulemaking. The discussion followed the bullet points. We also indicated our support for an expedited decision on reconsideration.

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,



David J. Kaufman

Enclosure

cc: Incom Communications Corporation  
Honorable Harold Furchtgott-Roth

## 220 MHz Bullet Points

- ▶ Change the protected service contour for incumbent licensees to a 28/18 dBu contour (It is now a 38/28 dBu contour).
- ▶ The 28/18 dBu contour will not give incumbents any more coverage than they now experience - it simply reflects the reliable service area being covered by existing operations.
- ▶ 800 MHz has a 36/18 dBu protected service contour and that band is higher up in the spectrum and transmits a weaker signal.
- ▶ The 38/28 dBu contour will cause a severe problem to Phase I and Phase II licensees alike because it creates a 20 mile dead zone between base stations that is simply unusable
- ▶ There does not seem to be any opposition to protecting incumbents to the 28/18 dBu service contour. No comments were filed opposing this protection standard. The existing unrealistic contour seems to have been developed by the Policy Division in a vacuum. There was no input from the industry; there is no basis in reality that supports a 38/28 dBu protected service area for incumbents.
- ▶ There should be no minimum bid for 220 MHz spectrum in the auctions. Except for the "other nationwide" channels, all of the 220 MHz spectrum to be licensed at auction is currently occupied by incumbent licensees in all major metropolitan areas. It has little value except to the incumbent and setting minimum bids may discourage any bids at all on such heavily incumbered spectrum. It also penalizes the incumbent operator (who has already made a substantial investment in developing his operations) by requiring a minimum bid for him to acquire the same spectrum in adjacent areas.
- ▶ Minimum bids are appropriately applied to cases where the spectrum is unencumbered.