



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
ftn fcc.gov

DA 02-1827

July 29, 2002

**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON
I2WAY CORPORATION'S REQUEST FOR DECLARATORY RULING REGARDING THE
TEN-CHANNEL LIMIT OF SECTION 90.187(e)
WT Docket No. 02-196**

Comment Date: August 28, 2002

Reply Comment Date: September 12, 2002

On June 7, 2002, i2way Corporation (i2way) filed a Request for Declaratory Ruling¹ pursuant to Section 1.2 of the Commission's rules,² seeking clarification of the ten-channel limit set forth in Section 90.187(e) of the Commission's rules.³ Certain i2way applications were returned because either the applications did not comply with Section 90.187(e) or the Division sought certification that the applications complied with Section 90.187(e).⁴ i2way states that it intends to provide nationwide dispatch

¹ i2way Corporation Request for Declaratory Ruling (June 7, 2002). Prior to the submission of the subject Request for Declaratory Ruling, i2way filed a number of individual, substantially similar requests for declaratory rulings, each arising from the return of i2way's applications based upon Section 90.187(e). These requests were each associated with an application and were filed electronically as attachments to i2way's applications via the Commission's Universal Licensing System. Pleadings associated with licensing matters may not be electronically filed at this time and instead must be filed manually. *See* Certain Actions Provided For in the Commission's Rules Are Not Yet Available For Electronic Filing via the Universal Licensing System (ULS) and Must Be Filed Manually, *Public Notice*, 16 FCC Rcd 12,886 (rel. June 25, 2001). Accordingly, i2way's prior requests are dismissed as improperly filed. We note, however, that the issues raised in i2way's prior requests are essentially the same issues raised in the Request for Declaratory Ruling at issue in this public notice.

² 47 C.F.R. § 1.2.

³ Section 90.187(e) provides that "[n]o more than 10 channels for trunked operation in the Industrial/Business Pool may be applied for in a single application. Subsequent applications, limited to an additional 10 channels or fewer, must be accompanied by a certification . . . that all of the applicant's existing channels authorized for trunked operation have been constructed and placed in operation." 47 C.F.R. § 90.187(e).

⁴ i2way provides file numbers for twenty-six applications and states that these file numbers "reflect i2way Corporation's best efforts to identify all of the applications that the Federal Communications Commission has found may be in violation of the Commission's interpretation of the 10-channel limit set forth in Section 90.187(e)." Request for Declaratory Ruling at n.1.

service using both full power and lower power frequencies.⁵ To accommodate its system, i2way's applications seek Commission consent to use frequencies in the 150-174 MHz and 450-470 MHz bands.⁶

In response to the return of these applications, i2way seeks clarification in its Request for Declaratory Ruling regarding whether the ten-channel limit "compels the return or dismissal of applications in situations where a single applicant has filed multiple applications, each requesting 10 channels, for different sites within the same general service area."⁷ According to i2way, Section 90.187(e) only requires that applicants request no more than ten channels in a single application. i2way argues that Section 90.187(e) does not prohibit applicants from simultaneously filing multiple ten-channel applications for different sites within the same geographic area.⁸ i2way claims that the ten-channel limit was adopted to prevent the "warehousing" of spectrum and that the Commission adopted Section 90.187(e) prior to modifying its rules to incorporate the concept of decentralized trunking.⁹ i2way further argues that because licensees cannot warehouse shared spectrum, the ten-channel limit was not intended to apply to shared spectrum.¹⁰ i2way asserts that interpreting Section 90.187(e) to prohibit the filing of multiple applications within a metropolitan area violates the notice and comment provisions of the Administrative Procedure Act and expands Section 90.187(e) beyond its logical limits.¹¹ i2way claims that the Commission must provide clear notice of its rules and clearly articulate the standard used as the basis of dismissal.¹² Finally, i2way states that the Commission's current interpretation of Section 90.187(e) will not afford i2way sufficient spectrum to make its proposed operations successful and will adversely affect the public interest.¹³

Pursuant to Section 1.1206(a)(3), declaratory ruling proceedings are conducted as non-restricted, "permit-but-disclose" proceedings under the Commission's *ex parte* rules.¹⁴ In this case, however,

⁵ Request for Declaratory Ruling at 2, 10.

⁶ Frequencies in these bands generally are available for shared use and are not assigned for the exclusive use of any licensee. See 47 C.F.R. § 90.173(a).

⁷ Request for Declaratory Ruling at 1-2.

⁸ Request for Declaratory Ruling at 4-5.

⁹ Request for Declaratory Ruling at 6. In a "centralized trunked system," the base station controller provides dynamic channel assignments by automatically searching all channels in the system for and assigning to a user an open channel within that system. In a "decentralized trunked system," which is also a system of dynamic channel assignment, the system continually monitors the assigned channels for activity both within the trunked system and outside the trunked system, and transmits only when an open channel is found. See Wireless Telecommunications Bureau Establishes a New Station Class Code in Connection with Licensing Trunked Radio Systems Operating between 150-512 MHz, *Public Notice*, 16 FCC Rcd 7515, n.1 (2001). In July, 2000, the Commission released an Order revising the definition of trunked systems in Section 90.7 so that Section 90.187 now governs all trunking systems (centralized, decentralized and hybrid) in the bands between 150 MHz and 512 MHz. See *In the Matter of 1998 Biennial Regulatory Review -- 47 C.F.R. Part 90 -- Private Land Mobile Radio Services, Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 98-182, 15 FCC Rcd 16,673 (2000).

¹⁰ Request for Declaratory Ruling at 5-7.

¹¹ Request for Declaratory Ruling at 7-8.

¹² Request for Declaratory Ruling at 8.

¹³ Request for Declaratory Ruling at 8-9.

¹⁴ 47 C.F.R. § 1.1206(a)(3).

i2way's Request for Declaratory Ruling relates directly to the processing of its underlying applications, which initially are treated as restricted proceedings.¹⁵ Under such circumstances, we typically would treat the declaratory ruling proceeding as a restricted proceeding as well. Because i2way's Request for Declaratory Ruling implicates broader policy issues that are of interest to other users of shared spectrum, however, we believe the more flexible "permit-but-disclose" regulations should apply. Moreover, because of the interrelationship between i2way's Request for Declaratory Ruling and i2way's underlying applications, we believe that these proceedings should be governed by the same *ex parte* provisions. Accordingly, pursuant to our discretion to modify the applicable *ex parte* rules when the public interest so requires,¹⁶ we announce that the permit-but-disclose *ex parte* procedures that are applicable to nonrestricted proceedings under Section 1.1206 of the Commission's rules¹⁷ will govern both i2way's underlying applications and the subject Request for Declaratory Ruling.¹⁸ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.¹⁹ Other rules pertaining to *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules.²⁰

We invite comment on i2way's Request for Declaratory Ruling. All filings concerning matters referenced in this Public Notice should refer to **WT Docket No. 02-196** and reference i2way's Request for Declaratory Ruling. Interested parties may file comments no later than August 28, 2002. Replies may be filed no later than September 12, 2002. All filings should indicate in the caption that this matter is before the Wireless Telecommunications Bureau, Commercial Wireless Division, Policy and Rules Branch. Submissions in this matter may be filed electronically via the Commission's Electronic Comment Filing System (ECFS) or by paper, as explained below.

- **If filed by ECFS**, comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in

¹⁵ Pursuant to Section 1.1208, applications for authority under Title III of the Communications Act are treated as restricted proceedings. 47 C.F.R. § 1.1208.

¹⁶ See 47 C.F.R. §§ 1.1200(a), 1.1208, n.2.

¹⁷ 47 C.F.R. § 1.1206.

¹⁸ We note that i2way currently has a number of applications pending for CMRS authorizations, not all of which are among the twenty-six file numbers listed in the caption of i2way's Request for Declaratory Ruling. In the interest of administrative efficiency and in minimizing the potential for any confusion among interested parties, and because i2way's applications implicate similar issues, we uniformly apply the permit-but-disclose *ex parte* standard to all of i2way's current pending applications.

¹⁹ See 47 C.F.R. § 1.1206(b).

²⁰ 47 C.F.R. § 1.1206(b).

reply.

- **If filed by paper**, an original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.²¹ The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.²² The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings) to: (1) the Commission's duplicating contractor, Qualex International, at qualexint@aol.com or (202) 863-2898 (facsimile); and (2) Milton Price, Commercial Wireless Division, Wireless Telecommunications Bureau, at mprice@fcc.gov or (202) 418-7447 (facsimile).

i2way's Request for Declaratory Ruling is available for public inspection and copying in the FCC's Reference Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Copies of the request may also be obtained from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or e-mail at qualexint@aol.com. The request is also available electronically through ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov/e-file/ecfs.html> by entering the Docket Number of this proceeding, WT Docket No. 02-196.

For further information, contact Rose Crellin, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-0620.

By the Deputy Division Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.

²¹ Please note that we continue to experience delays in receiving U.S. Postal Service mail.

²² See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22,165 (2001).