Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
i2way Request for Declaratory Ruling	)	WT Docket No. 02-196
Regarding the Ten-Channel Limit	)	
of Section 90.187(e) of the Commission's Rules	)	
	)	
Hexagram Petition to Deny i2way	)	
Applications	)	

ORDER

Adopted: March 31, 2003 **Released: April 1, 2003**

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On June 7, 2002, i2way Corporation (i2way) filed a Request for Declaratory Ruling pursuant to Section 1.2 of the Commission's rules, seeking clarification of the ten-channel limit set forth in Section 90.187(e) of the Commission's rules (i2way Request).[1] In this Order, we grant in part and deny in part i2way's Request. Specifically, we reject i2way's argument that Section 90.187(e) does not limit the number of applications that can be filed in an area. Rather, we conclude that Section 90.187(e) limits to ten the number of channels for which an applicant can apply within a service area. A licensee may apply for additional frequencies in that same service area only if it certifies that it has constructed and placed into operation all licensed channels in that area. We grant, however, the request that we return to pending status certain i2way applications that were returned because of a staff mistake during the application review process. We also dismiss the petition filed by Hexagram, Inc. on February 28, 2002, to deny certain i2way applications (Hexagram Petition)[2] because it was not timely filed and does not allege facts sufficient to warrant further investigation.

[1] Request for Declaratory Ruling filed by i2way Corporation (June 7, 2002). Prior to the submission of its Request, i2way filed a number of individual, substantially similar requests for declaratory rulings, each arising from the return of i2way's applications for failure to meet the terms of Section 90.187(e) of the Commission's rules. The Commercial Wireless Division's Policy and Rules Branch dismissed these requests because i2way filed the requests electronically as attachments to i2way's applications via the Commission's Universal Licensing System. Wireless Telecommunications Bureau Seeks Comment on i2way Corporation's Request for Declaratory Ruling Regarding the Ten-Channel Limit of Section 90.187(e), *Public* Notice, 17 FCC Rcd 14541 (2002) (*i2way Public Notice)*. Pleadings associated with licensing matters may not be electronically filed and instead are required to 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 (2001). The issues raised in i2way's prior requests are essentially the same issues raised in the i2way Request. *i2way Public Notice*, 17 FCC Rcd at 14542.

[2] Petition to Deny filed by Hexagram, Inc. (Feb. 28, 2002).

II. BACKGROUND

2. Trunked Operations in the Industrial/Business Radio Pool. i2way filed multiple applications seeking authority to provide trunked operations in the 150-174 MHz and 450-470 MHz bands.[3] Frequencies on those bands are divided between the Industrial/Business Radio Pool and Public Safety Radio Pool and are authorized on a shared basis.[4] While license applications for conventional operations in the Industrial/Business Radio Pool are generally limited to one frequency or one pair of frequencies,[5] Section 90.187(e) of the Commission's rules limits single applications for trunked operations to ten channels in the bands between 150 MHz and 512 MHz (except 220-222 MHz).[6] Subsequent applications for trunked operations in those bands are also limited to ten channels and 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.[7] In adopting the ten-channel limit for trunked operations, the Commission recognized that large public safety applicants may require more than ten channels at a single location.[8] As a result, Section 90.187(e) allows public safety applicants to apply for more than ten channels at a single location, provided the applicant makes a showing of sufficient need.[9]

3. i2way Request for Declaratory Ruling and Hexagram Petition to Deny. i2way states in its Request that it intends to use both full-power and lower-power frequencies to deploy a nationwide

[3] i2way Request at 2. i2way explains that the authority sought in each application is designed to fulfill a specialized role in its overall system design. *Id*. i2way has also filed a number of applications seeking authority to provide conventional operations as well as trunked operations on exclusive frequencies. The applications were accepted for filing on December 19, 2001. Wireless Telecommunications Bureau Site-By-Site Accepted for Filing, *Public Notice*, Report No. 1047 (Dec. 19, 2001).

[4] Section 90.173(a) of the Commission's rules provides that "[e]xcept as otherwise provided …, frequencies assigned to land mobile stations are available for shared use only and will not be assigned for the exclusive use of any licensee." 47 C.F.R. § 90.173(a).

[5] 47 C.F.R. § 90.35(e). Section 90.35(e) provides that "normally only one frequency, or pair of frequencies in the paired frequency mode of operation, will be assigned for mobile service operations by a single applicant in a given area. The assignment of an additional frequency or pair of frequencies will be made only upon a satisfactory showing of need." *Id*.

[6] 47 C.F.R. § 90.187(a); *see* In the Matter of 1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services; Replacement of Part 90 By Part 88 To Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them; and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 16673, 16685-86, ¶¶ 22-25 (2000) (*Part 90 Biennial Review R&O*).

[7] 47 C.F.R. § 90.187(e).

[8] In the Matter of Replacement of Part 90 By Part 88 To Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them; and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, 14 FCC Rcd 10922, 10931, ¶ 18 (1999) (*Part 90 Refarming Third MO&O*).

[9] 47 C.F.R. § 90.187(e). 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, submitted to the certified frequency coordinator coordinating the application, that all of the applicant's existing channels authorized for trunked operation have been constructed and placed in operation. Certified frequency coordinators are authorized to require documentation in support of the applicant's certification that existing channels have been constructed and placed in operation. Applicants in the Public Safety Pool may request more than 10 channels at a single location, provided that any application for more than 10 Public Safety Pool channels must be accompanied by a showing of sufficient need. The requirement for such a showing may be satisfied by submission of loading studies demonstrating that requested channels in excess of 10 will be loaded with 50 mobiles per channel within a five year period commencing with grant of the application." *Id.*

"system for assigning frequency pairs to be used by two-way customers."[10] The Commercial Wireless Division's Licensing and Technical Analysis Branch returned certain i2way applications because the applications were found to be in violation of Section 90.187(e). Specifically, certain applications were returned because they were filed while other applications were pending for the same service area, and other applications were returned because i2way failed to provide the necessary construction certifications for its licensed facilities where its application sought licensing authority in that licensed station's service area.[11] In response to the return of these applications, i2way seeks clarification on 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."[12] The Commercial Wireless Division placed i2way's Request on public notice on July 29, 2002.[13] In response to the public notice*,* The Land Mobile Communications Council (LMCC) and Industrial Telecommunications Association (ITA) filed comments, and Motorola, Inc. (Motorola) and i2way filed reply comments.[14] Finally, the Hexagram Petition requests that the Commission deny sixty-six of i2way's applications unless i2way shows that "it can protect all incumbent users, including Hexagram."[15]

III. DISCUSSION

4. We reject i2way's claim that Section 90.187(e) is only a limitation on the number of frequencies for which a licensee can apply in one application, and not a limitation on the number of applications that can be filed simultaneously within the same area.[16] None of the other commenters in

[10] i2way Request at 2. i2way also states that the requested channels will promote competition in the Commercial Mobile Radio Service, including competition with cellular companies. *Id*. at 8-9.

[11] *See i2way Public Notice*, 17 FCC Rcd at 14541. 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 found to be in violation of the 10-channel limit set forth in Section 90.187(e). *Id.* at n.1.

[12] i2way Request at 1-2.

[13] *i2way Public Notice,* 17 FCC Rcd 14541 (2002). In the *i2way Public Notice*, the Commission designated i2way's Request and the applications relevant to Hexagram's Petition as "permit-but-disclose" proceedings that are governed by Section 1.1206 of the Commission's rules. *Id*. at 14543. i2way also has a number of applications pending for Commercial Mobile Radio Service authorizations that are not among the twenty-six file numbers listed in the caption of the i2way Request. In the interest of administrative efficiency and minimizing the potential for any confusion among interested parties, and because i2way's applications implicate similar issues, the Commission has designated all of i2way's current pending applications as permit-but-disclose proceedings under its *ex parte* rules. *Id*. at 14543, n.18.

[14] Comments of the Land Mobile Communications Council (Aug. 28, 2002) (LMCC Comments); Comments of Industrial Telecommunications Association, Inc. (Aug. 28, 2002) (ITA Comments); Reply Comments of Motorola, Inc. (Sept. 12, 2002) (Motorola Reply Comments); and Reply Comments of i2way Corporation (Sept. 12, 2002) (i2way Reply Comments). Several parties also filed *ex parte* comments in this proceeding, including Entranosa Water & Wastewater Association, Letter from John L. Jones, Entranosa Water & Wastewater Association, to Senator Jeff Bingaman (Feb. 26, 2002) (Entranosa *Ex Parte*); Buck Electric Co., Letter from Robert De Buck, Buck Electric Co., to Senator Peter Domenici (Feb. 21, 2002) (Buck Electric *Ex Parte*); KNS Communications Consultants, Electronic Message from L. Sue Scott-Thomas, KNS Communications Consultants, to Terry Fishel, FCC (Jan. 31, 2002) (KNS *Ex Parte*); Denver Water, Letter from Gayle Heazlett, Denver Water, to Terry L. Fishel, FCC (Aug. 26, 2002) (Denver Water *Ex Parte*); and Letter from Mitchell Lazarus, Counsel for Hexagram, Inc., to Marlene H. Dortch, Secretary FCC (Oct. 25, 2002) (Hexagram *Ex Parte*).

[15] Hexagram Petition at 4. Hexagram is a vendor of automatic meter reading systems and operates Part 90 transmitters under the low-power rules. *Id*. at 1-2. Hexagram states that it objects to "any [i2way] application that proposes to share frequencies with the systems of Hexagram or its customers." Hexagram E*x Parte* at 1.

[16] i2way Request at 4-5 and 7-8. i2way states that it has filed multiple applications for the same areas in many parts of the country because its system requires "a complement of various radio facilities within the same metropolitan area." i2way Request at 2.

this proceeding share i2way's interpretation of the ten-channel rule. LMCC, ITA, and Motorola state that Section 90.187(e) limits an applicant to a request for ten initial channels in an area until those channels are constructed and operational.[17] They argue that spectrum efficiency is important because the frequencies are shared, and that licensees are required to construct before requesting additional channels.[18]

5. To support its interpretation of the ten-channel limit, i2way focuses solely on the first sentence of Section 90.187(e) to the exclusion of all other requirements in Section 90.187. The first sentence limits to ten the number of channels permitted in a single application for trunked operations. Section 90.187(e), however, also describes the circumstances under which a licensee may apply for more than ten channels. Section 90.187(e) clearly provides that "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."[19] Section 90.187(e) further provides that certified frequency coordinators may require documentation in support of an applicant's certification that the applicant has constructed and placed into operation the initial ten channels before processing another application.[20] Thus, a licensee must construct its maximum of ten authorized channels before submitting an application for additional channels.

6. We also reject i2way's claim that Section 90.187 does not define the area relevant to the ten-channel limit. i2way argues that a rulemaking proceeding is required to explain how the Commission "intends to define the service area" when processing applications for trunked operations under Section 90.187.[21] We disagree. Section 90.187(e) limits single applications to ten channels at single locations.[22] The license limit of ten channels at a single location is a function of the Commission's process for licensing trunked systems under Section 90.187 on a site-specific basis. Parties file single applications and individual licenses are granted at single locations. Section 90.187(b) delineates service area contours at 37 dBu and 39 dBu, respectively, for each VHF and UHF station location.[23] Thus, licensees and frequency coordinators must determine the service areas around the single location for which an applicant is licensed and the ten-channel limit of Section 90.187(e) applies to that service area.

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[17] LMCC Comments at 3-4; ITA Comments at 1, 5; Motorola Reply Comments at 2.

[18] LMCC Comments at 3-4; ITA Comments at 3-4; Motorola Reply Comments at 2.

[19] *See* Valley Industrial Communications, Inc., *Order on Reconsideration*, 15 FCC Rcd 14823, 14824, ¶ 4, n.10 (PSPWD WTB 2000) (stating that Section 90.187(e) limits the number of trunked channels that can be requested in one application and noting that additional channels may be requested once the first ten are placed in operation).

[20] 47 C.F.R. § 90.187(e). In adopting the rule, the Commission concluded that the "maximum number of channels that may initially be requested for any given trunked system is ten." *Part 90 Refarming Third MO&O*, 14 FCC Rcd at 10930, ¶ 18. The Commission further explained that a ten-channel limit would not preclude an applicant from requesting additional channels in subsequent applications as long as the applicant files a certification that the channels for which it was authorized have been constructed and placed into operation. *Id*. at 10930-31, ¶ 18.

[21] i2way Request at 7. i2way asserts that interpreting Section 90.187(e) to prohibit the filing of multiple applications within an area violates the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq*., and expands Section 90.187(e) beyond its logical limits. i2way Request at 7-9.

[22] We also note that while the first sentence in the rule section limits single applications to ten channels, the fourth sentence, which allows public safety applicants to request more than ten channels at a single location, expressly limits single applications to single locations. 47 C.F.R. § 90.187(e).

[23] 47 C.F.R. § 90.187(b). Section 90.205 also sets out the maximum allowable station power level depending on the station's tower height and licensed service area for operations in the 150-174 MHz and 450-470 MHz bands. *Id*. § 90.205, Tables 1 and 2.

7. The requirement that licensees limit the number of channels permitted in a single application would have very little meaning if we were to interpret the rule to allow applicants to file multiple applications simultaneously at a single location. Under i2way's interpretation, there is no distinction, for example, between five applications seeking authority to operate ten channels each, and one application seeking authority to operate fifty channels in any given service area. Moreover, i2way does not explain how the construction notification requirement would apply if we allowed simultaneously filed multiple applications. We also reject i2way's assertion that an interpretation of the rule as a prohibition against multiple applications in a single area would violate the Administrative Procedure Act (APA).[24] The Commission adopted the requirements for trunked operations under Section 90.187 in notice and comment proceedings in compliance with the APA and Commission rules.[25] For the same reason, we reject i2way's argument that the Commission has not provided clear notice of the standard used as the basis for dismissing i2way's applications.[26]

8. In addition, we reject i2way's claim that the ten-channel requirement does not apply to decentralized trunked systems on shared spectrum. i2way argues that the Commission did not contemplate decentralized systems at the time it adopted the ten-channel limit[27] and that, because the ten-channel requirement was adopted to prevent the warehousing of spectrum, and shared spectrum cannot be warehoused, the limitation does not apply to shared spectrum.[28] We disagree. After adopting the ten-channel limit for trunked systems, the Commission found that industry members were operating decentralized and hybrid trunked systems in addition to centralized trunked systems.[29] In July 2000, after seeking further comment, the Commission revised the definition of trunked systems to include centralized, decentralized, and hybrid trunked systems and stated that all three systems are subject to Section 90.187.[30] Because the rule applies to all trunked systems, including decentralized operations in the Industrial/Business Radio Pool, it is also clear that Section 90.187(e) applies to shared spectrum.[31]

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[24] i2way Request at 7.

[25] *See supra* notes 6 and 8.

[26] i2way Request at 8.

[27] i2way Request at 6. Motorola also asserts that the ten-channel limit only applies to centralized trunked operations. Motorola Reply Comments at 3.

[28] i2way Request at 5-7. The Commission was guided by industry consensus when it adopted the ten-channel limit to prevent the warehousing of spectrum. *Part 90 Refarming Third MO&O*, 14 FCC Rcd at 10930, ¶ 18.

[29] The Commission has previously stated that in a "centralized trunked system," the base station controller provides dynamic channel assignments by automatically searching all channels in the system 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. A "hybrid trunked system" is one where at least one of the frequencies being trunked, but not all the frequencies being trunked, requires monitoring to prevent harmful interference to other trunked systems. *Part 90 Biennial Review R&O*, 15 FCC Rcd at 16685-86, ¶ 25; Licensing Trunked Radio Systems Operating Between 150-512 MHz, *Public Notice*, 15 FCC Rcd 22062, 22062 at n.1 (2000); 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, 7515 at n.1 (2001).

[30] *Part 90 Biennial Review R&O*, 15 FCC Rcd at 16685-86 ¶¶ 22-26. The application of Section 90.187 to all trunked systems became effective on November 12, 2000. 60 Fed. Reg. 60869 (Oct. 13, 2000).

[31] Commenters raise concerns that i2way's interpretation of Section 90.187(e) would allow licensees to warehouse shared spectrum and its proposed system could overload already extensively used shared channels. ITA argues that spectrum efficiency is a major concern to industry because of the limited quantity and high demand for spectrum. ITA Comments at 3. LMCC and Motorola argue that the ten-channel limit balances concerns with warehousing and flexibility. LMCC Comments at 4, Motorola Reply Comments at 2. Moreover, LMCC states that without the

(continued....)

Significantly, the Commission did not modify Section 90.187 to limit application of the ten-channel rule to centralized systems operating on an exclusive basis when it revised the definition of trunked systems.[32] Arguing now that the ten-channel limit under Section 90.187(e) does not apply to decentralized trunked systems is effectively a late-filed petition for reconsideration of a Commission order that was released over two years ago.

9. Further, we will not grant i2way relief on the basis of its assertion that the Commission's current interpretation of Section 90.187(e) will not afford i2way sufficient spectrum to make its proposed operations successful.[33] This argument is clearly irrelevant to any consideration of how we should interpret the Commission's rules. We further note that i2way has neither sought a waiver of Commission rules limiting the number of applications that may be filed nor provided information in its Request to justify the grant of a waiver.

10. Because we find no basis on which to grant i2way's Request with regard to the ten-channel limit for trunked operations below 512 MHz, we deny the Request, in part, and direct the Licensing and Technical Analysis Branch to process i2way's applications in compliance with Section 90.187. i2way applications that do not comply with Section 90.187(e) shall not be granted.

11. We grant the i2way Request, however, to the extent that certain of its applications for 150-174 MHz were returned based on a "misreading" of the applications as requesting thirty frequencies.[34] Specifically, certain applications filed by i2way in the 150-174 MHz bands requested licensing authority for ten base station frequencies, ten mobile frequencies, and ten frequencies that would be used for "talk around" capability. i2way contends that the "talk-around" frequencies were a redundant set of frequencies from the other base station and mobile frequencies.[35] We conclude that these applications are deemed to request ten channels and may be processed upon release of this item if the applications otherwise meet Commission requirements, including Section 90.187(e).

12. Finally, we dismiss Hexagram's Petition to Deny, which seeks interference protection for all co-channel licensees from i2way's operations in the 450-470 MHz bands. Section 1.939 of the Commission's rules provides that petitions to deny must be filed no later than 30 days after the date of the Public Notice listing the application or major amendment to the application as accepted for filing.[36]

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application of the ten-channel limitation "conventional and trunked licensees alike could be severely compromised." LMCC Comments at 4. A number of *ex parte* filings oppose i2way's applications or Request and warn that i2way's proposal could overload shared channels. Entranosa *Ex Parte* (stating that the large number of frequencies being sought by i2way in the Albuquerque area would "likely overload the use of the frequencies used by rural systems and others, which could result in false signals being generated and interrupting our operations"); Buck Electric *Ex Parte* (stating that the large number of frequencies being sought by i2way in the Denver area could lead to the overloading of radio frequencies, which could "shut down, or disable the operation and supply of water to communities in the affected area"); KNS *Ex Parte* (stating that the i2way system could interfere with alarm systems); Denver Water *Ex Parte* (opposing the i2way Request and multiple applications for frequencies filed by i2way, indicating that Denver Water depends on telemetry channels to monitor and control its water system); Hexagram *Ex Parte* (opposing i2way applications that do not provide protection from interference for incumbent low-power users, including Hexagram).

[32] *Part 90 Biennial Review R&O*, 15 FCC Rcd at 16685-86, ¶¶ 25-27.

[33] i2way Request at 8-9.

[34] We rejected four applications because the applications sought authority to operate on more than ten channels. The file numbers are 0000400857, 0000401688, 0000402494, and 0000609619.

[35] i2way Request at 3-4.

[36] 47 C.F.R. § 1.939(a)(2).

While most of the applications listed in Hexagram's Petition were filed in January 2001, the public notice accepting the latest amendments to the applications listed in Hexagram's Petition was released December 19, 2001.[37] The deadline for filing petitions to deny, therefore, was January 18, 2002. Hexagram filed its Petition on February 28, 2002, nearly six weeks late. Although Hexagram filed its Petition with a request to accept the Petition as late-filed, Hexagram does not provide any explanation for filing its Petition six weeks late.[38] We therefore deny Hexagram's request because it provides no basis on which to grant the request.

13. Moreover, we reject the Petition for failure to provide allegations of fact sufficient to make a *prima facie* showing that grant of the applications would be inconsistent with the public interest.[39] In its Petition, Hexagram describes how its data is transmitted, but does not provide any specific information on which of its licenses would be affected or which of the applications listed in Hexagram's Petition, if granted, would specifically infringe on Hexagram's authority to operate under any of those licenses.[40] We find Hexagram's general statements of facts insufficient to warrant further investigation. Accordingly, we dismiss Hexagram's Petition and all pleadings related to the Petition.[41]

14. While we are dismissing Hexagram's Petition on procedural grounds, we also reject Hexagram's plea to enforce i2way's "promise" not to interfere with any other co-channel licensee's operations regardless of the technology used[42] A "promise," in this case, is not relevant because the Commission has technical rules that govern the protection required against harmful interference between co-channel licensees.[43] We decline in this proceeding to provide protection beyond that afforded under the Commission's rules for secondary or co-primary operations in the 450-470 MHz bands. Finally, we

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[37] Wireless Telecommunications Bureau Site-by-Site Accepted for Filing, *Public Notice*, Report No. 1047 (Dec. 19, 2001). Most of the applications were originally filed in January 2001.

[38] Hexagram contends that its filing is not late, arguing that the public notice accepting the amendments to the applications "did not give actual notice … of the issues that give rise to this opposition." Hexagram then states that "[i]n the alternative, Hexagram respectfully moves for acceptance of this Petition out of time" without providing any explanation. Hexagram Petition at 1-2.

[39] *See* 47 C.F.R. § 1.939(d).

[40] Hexagram explains that its products are battery powered on a very low duty cycle (20-year battery life), transmitting a data burst of fewer than 100 milliseconds two or three times a day. Hexagram Petition at 3. Hexagram argues that i2way's method of monitoring for vacant channels in the 450-512 MHz bands will miss Hexagram's extremely short transmissions or misclassify them as noise. Hexagram asserts that, as a result, the i2way system will mistakenly read these channels as vacant and cause interference to Hexagram's customers. *Id*. at 4. Hexagram also states that i2way's system may seize these channels for periods of time (30-60 seconds) that may disrupt Hexagram communications. Letter from Mitchell Lazarus, Hexagram, to William Caton, Acting Secretary, FCC at 2 (Mar. 5, 2002).

[41] i2way also filed an untimely Opposition to the Hexagram Petition on April 1, 2002, along with a motion to accept its filing as late, Motion for Acceptance of Late-Filed Opposition to Petition to Deny of Hexagram, Inc. filed by i2way Corporation (Apr. 4, 2002). Because we are dismissing the Petition, this request is moot.

[42] Hexagram states that in a letter attached to some of the contested applications "i2way claims to protect 'all co-channel users, whether employing modern digital systems or legacy analog equipment.'" Hexagram Petition at 3, n.4 (citing Letter from Frederick J. Day, Counsel for i2way Corporation to FCC at Enclosure 1 (June 5, 2001)). In its Reply, Hexagram characterizes the statement as a "promise to protect" all other users "regardless of their primary or secondary status." Hexagram Reply at 2. In its *ex parte* presentation, Hexagram contends that i2way's system may interfere with Part 90 low-power devices that operate at an extremely low duty cycle and require that a channel be available when there is an emergency. Hexagram *Ex Parte* at 1-2. Hexagram requests that the Commission direct i2way to protect all incumbent users, including low-power users with short transmissions, from interference. Hexagram Petition at 4; Hexagram *Ex Parte* at 3-5.

[43] *See e.g.*, 47 C.F.R. §§ 90.7, 90.173(a) and (b), 90.403(e).

reject i2way's argument that Hexagram's licenses should be revoked for failure to monitor its channels to prevent harmful interference to other stations because the argument is outside the scope of this proceeding.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 1.2 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.2, the Request for Declaratory Ruling filed by the i2way Corporation on June 7, 2002, is GRANTED to the extent described herein and otherwise DENIED.

16. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(d), and Sections 0.331 and 1.939 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.939, the Petition to Deny filed by Hexagram, Inc. on February 28, 2002, is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

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