

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

In the Matter of
Hexagram, Inc.
Petition for Reconsideration of Hexagram
Application for Review of the i2way Corporation
Request for Declaratory Ruling Regarding the
Ten-Channel Limit of Section 90.187(e) of the
Commission's Rules
File No. 2004011722

ORDER ON RECONSIDERATION

Adopted: January 31, 2007

Released: January 31, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This order on reconsideration addresses a petition filed by Hexagram, Inc. (Hexagram) on June 4, 2004 (Second Petition), seeking reconsideration of the Commission's Memorandum Opinion and Order (MO&O) affirming the dismissal of the above-captioned Request for Declaratory Ruling. The MO&O also denied Hexagram's Application for Review of the Commercial Wireless Division's decision released on April 1, 2003, which dismissed Hexagram's petition to deny i2way Corporation's (i2way) Request for Declaratory Ruling (First Petition). For the reasons discussed below, we dismiss Hexagram's Second Petition as repetitious.

II. BACKGROUND

2. On June 7, 2002 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

1 Petition for Reconsideration filed by Hexagram, Inc. (Jun. 4, 2004) (Second Petition).

2 In the Matters of i2way Request for Declaratory Ruling Regarding the Ten-Channel Limit of Section 90.187(e) of the Commission's Rules and Hexagram Petition to Deny i2way Applications, Memorandum Opinion and Order, 19 FCC Rcd 8460 (2004).

3 Application for Review filed by Hexagram, Inc. (May 1, 2003) (Application for Review).

4 In late 2003, the Commission's Wireless Telecommunications Bureau was reorganized. Many of the mobile radio services licensing issues formerly under the Bureau's Commercial Wireless Division, including operations that i2way proposed in its applications and Hexagram argued against in its Petition to Deny, are now under the purview of the Bureau's Mobility Division. See FCC's Wireless Bureau Announces Reorganization, Public Notice (rel. Nov. 24, 2003).

5 In the Matter of i2way Request for Declaratory Ruling Regarding the Ten-Channel Limit of Section 90.187(e) of the Commission's Rules and Hexagram Petition to Deny i2way Applications, Order, 18 FCC Rcd 6293 (2003) (Branch Order).

6 Petition to Deny filed by Hexagram, Inc., (Feb. 28, 2002).

Commission's rules.⁷ The Commission released the Public Notice regarding i2way's applications on December 19, 2001, with a corresponding filing deadline for petitions to deny of January 18, 2002.⁸ On February 28, 2002, nearly six weeks later, Hexagram filed its petition to deny certain i2way applications.⁹

3. 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.¹⁰ The Bureau denied Hexagram's petition on April 1, 2003, citing Hexagram's failure to meet the required 30 day filing deadline, among other reasons.¹¹ Hexagram then filed its Application for Review arguing that the public notice listing i2way's applications did not provide actual notice. On May 5, 2004, the full Commission denied Hexagram's Application, reasoning that the Commission's public notices do indeed provide sufficient information to alert existing licensees and those with pending applications that the Commission has received a proposal that may affect existing services or other pending proposals and, therefore, Hexagram's petition was without merit.¹² Following the Commission's denial of its Application for Review, on June 4, 2004, Hexagram filed the instant Petition for Reconsideration.¹³ On March 23, 2005, the U.S Court of Appeals for the D.C. Circuit, denied i2way's Petition for Review.¹⁴

III. DISCUSSION

4. We dismiss Hexagram's Second Petition as repetitious under Section 1.106(b) of the Commission's rules because Hexagram fails to support its arguments with any new facts or circumstances that changed after the filing of its Application for Review.¹⁵ Hexagram contends that the Commission's explanation for the denial of the Application for Review did not address the substantive questions of Hexagram's petition or properly consider its arguments.¹⁶ We find that the Commission addressed Hexagram's substantive arguments in the MO&O and that Hexagram has not complied with Commission

⁷ Request for Declaratory Ruling filed by i2way Corporation (Jun. 7, 2002).

⁸ Wireless Telecommunications Bureau Site-by-Site Accepted for Filing, *Public Notice*, Report No. 1047 (Dec. 19, 2001).

⁹ First Petition.

¹⁰ 47 C.F.R. § 1.939(a)(2).

¹¹ Branch Order, 18 FCC Rcd 6293.

¹² MO&O, 19 FCC Rcd 8460, 8465 ¶10.

¹³ Second Petition.

¹⁴ *I2way Corporation v. Federal Communications Commission*, 161 Fed. Appx. 1 (D.C. Cir. March 23, 2005).

¹⁵ 47 C.F.R. § 1.106(b). Section 1.106(b)(2) of the Commission's Rules provides that where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances is present: "(i) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters, or (ii) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity." *Id.* § 1.106(b)(2). Section 1.106(b)(3) provides that "[a] petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious." *Id.* § 1.106(b)(3).

¹⁶ Second Petition at 1.

rules by simply reiterating its arguments and failing to provide any new or changed facts or circumstances in the Second Petition. We therefore dismiss Hexagram's Second Petition as repetitious.¹⁷

IV. ORDERING CLAUSE

5. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 0.331 and 1.106(b) of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.106(b), the Petition for Reconsideration filed by Hexagram, Inc. on June 4, 2004, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Lloyd W. Coward
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Wireless Telecommunications Bureau

¹⁷ We note that this matter also appears to have been resolved because the D.C. Circuit, as noted above, denied i2way's Petition for Review, and the Commission has dismissed the i2way applications associated with Hexagram's pleadings.