



Federal Communications Commission
Washington, D.C. 20554

May 23, 2002

WTB DOCKET NO.
02-196

Robert De Buck
Buck Electric Company
PO Box 1458
Edgewood, NM 87015-1458

Dear Mr. De Buck:

Senator Domenici has forwarded to us your correspondence dated February 21, 2002, regarding the possible licensing of frequencies to i2Way Corp. (i2Way) and requested that we respond directly to the concerns you voiced regarding i2Way having been issued coordination for more than 120 frequencies within a 120 mile radius of Albuquerque. Specifically, you indicate that the licensing of i2Way's requests could have a detrimental effect on the operation of water and wastewater systems for communities in your area.

Initially, by way of background, entities such as i2Way seeking authorization to operate on new frequencies must first obtain coordination of proposed frequency use from a Commission certified and authorized frequency coordinator. While these coordinators are certified and authorized by the Commission, they are private entities. Frequency coordinators identify and recommend the most appropriate frequency(ies) to an applicant based upon applicable technical information. The entity seeking the license must then prepare and file with the FCC an application requesting authority from the Commission to operate on the proposed frequencies. This application must comply with a number of rule requirements, and, depending upon the service involved, may be placed on public notice so that interested parties are aware of the filing and may submit petitions to deny or other comments regarding the application.

i2Way has filed a number of applications as well as petitions for declaratory ruling in connection with its applications. The Commission currently is considering the potential effect that facilities such as those requested by i2Way could have on the co-channel and adjacent channel operating environment. Because of the number of frequencies requested by i2Way on many of its applications that propose trunked operation and concerns regarding that use, i2Way has submitted a request for declaratory ruling to the Commission seeking clarification of the trunked system frequency limit in an area. In addition, petitions to deny or informal objections have been submitted to the Commission in connection with some of i2Way's applications. Processing of i2Way's applications that are affected by the requests for declaratory ruling or petitions to deny will not be completed until the issues raised by these pleadings are resolved. In this regard, please be advised that the Commission has rules regulating *ex parte* presentations.

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Ex parte presentations are communications to decision-making personnel at the Commission that are directed to the merits or outcome of a proceeding. Declaratory ruling requests are classified as permit-but-disclose proceedings and *ex parte* presentations for such proceedings would need to comply with the provisions of Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b). Moreover, license applications that have been contested through a petition to deny would be considered a restricted proceeding, and service of any presentation (such as a written opposition or an e-mail) to FCC decision-makers in such a proceeding would need to be made to all parties to the proceeding as required by Section 1.1208 of the Commission's rules, 47 C.F.R. § 1.1208.

i2Way's applications that are not affected by the request for declaratory ruling or petitions to deny, however, will continue to be processed consistent with our rules and regulations. If you believe that i2Way's applications were not properly coordinated because complete consideration was not given to the applicable technical information, you may want to discuss your concerns with the frequency coordinator that coordinated i2Way's applications and/or identify those issues explicitly for the Commission. In addition, you could file objections with the Commission with respect to the i2Way applications seeking licenses related to the frequencies coordinated in the Albuquerque area. Finally, the Commission may seek comment on i2Way's petition for declaratory ruling.

I hope that this response has identified the current status of i2Way's application requests and the consideration that will be given in processing those requests. Should you have further questions, please do not hesitate to contact me.

Sincerely,



Katherine M. Harris
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

cc: Ms. Carly Beck (office of Senator Pete V. Domenici)

PETE V. DOMENICI
NEW MEXICO

United States Senate
WASHINGTON, DC 20510-3101

COMMITTEES
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APPROPRIATIONS
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March 6, 2002

WPA
700 MHC
1573

Mr. Paul A. Jackson
Acting Director
Federal Communications Commission
445 12th Street, SW
Room 8-C453
Washington, D.C. 20429

Dear Paul:

Because of my desire to be responsive to all inquiries directed to me, and knowing that you share this desire, the attached letter is referred to you for consideration.

I would very much appreciate your evaluating the information presented and taking whatever action is required to resolve the situation. Consistent with all federal laws and regulations, I appreciate your consideration of this request.

At your earliest convenience, I would be grateful if you could respond directly to Robert De Buck at his New Mexico address. In addition, please forward a copy of your response to my Washington office to the attention of Ms. Carly Beck.

Thank you for your assistance.

Sincerely,


Pete V. Domenici
United States Senator

PVD:haw

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21 February 2002

To: Sen. Pete Domenici
328 Hart Senate Office Building
Washington, DC 20510

From: Robert De Buck
Buck Electric Co.
PO Box 1458
Edgewood NM, 87015-1458

Dear Sir,

This letter is to inform you, and to express my concern about the Federal Communications Commission, Wireless Telecommunications Bureau, Commercial Wireless Division issuance of 2 watt offset frequencies.

Radio frequencies are used by water and wastewater systems, across the country to operate Water Wells, Booster Pumps, Distribution Systems, Storage, Purification and Security of Drinking Water. In the past these radio frequencies had been issued by the FCC with care and concern for the effective operation of radio signals.

Recently a corporation, "i 2 Way" has been issued coordination for over 120 frequencies within a 120 mile radius of Albuquerque (over 130 Freq. with 121 mile radius have been issued in the Denver area to the same corporation). The over loading of radio frequencies could shut down, or disable the operation and supply of water to communities in the affected areas. In our case that would include Paa-ko, Sandia Park, and Edgewood.

I am including a email copy of a letter sent to Terry Fishel of the FCC by Sue Thomas of KNS Communications, and a copy of the "Spectrum Report" that will support my concerns.

Thank You,



Robert De Buck, Owner of Buck Electric Co.

Cc;
Roger Cox, Paa-ko Communities
John Jones, Entranosa Water Co-op
Raymond Dennis, Edgewood Water
Ed Cardenas, Thunder Mt. Water

Subj: **Spectrum Report**
Date: 2/14/02 9:40:16 AM Mountain Standard Time
From: Entranosa
To: lthomte@bhinc.com, RDebuck, sue_thomas@knscomm.com

Picked this off an industry web site -- thought you'd be interested.

SPECTRUM REPORT. Water suppliers will need additional telecommunications spectrum in the future to ensure reliable and uninterrupted provision of safe drinking water and fire-control flows, according to a Commerce Department report to Congress on current and future spectrum use by critical energy, water and railroad infrastructure systems. Released Feb. 5 by the National Telecommunication and Information Administration (NTIA), the report concludes that, especially in light of the Sept. 11 terrorist attacks, "it is of utmost importance that the Federal Communications Commission revisit these critical issues in order to accommodate the increasing role these industries play in maintaining quality of life."

Based largely on comments submitted by target industries and organizations, including AWWA, the report found that continued use of spectrum "is essential to the current and future operations of these industries" and that the most common problem cited was "interference caused by congestion in the land mobile portion of the spectrum currently utilized." The report notes that the spectrum used by the three sectors (20 MHz to 25 GHz) "is either congested or quickly approaching critical mass" and that the applications used in these bands, such as SCADA systems and emergency communications networks, "are vital to the core operations of these industries."

While finding no consensus on where new spectrum can be reallocated or obtained, the report notes that AWWA said it believes a 1998 study that predicted water suppliers would need 6.3 MHz more bandwidth by 2010 underestimates the industry's spectrum requirements. NTIA suggested that some of the spectrum needs can be mitigated "with the use of advanced communications technology or newly allocated frequency bands such as the 700 MHz guard bands."

In the report's assessment of water industry issues, NTIA notes the critical role wireless communications play in ensuring delivery of safe water and cites USEPA's comment that loss of spectrum allocation or underestimation of needs "will have dire consequences on operations within the water industry and AWWA's comment that "real time command and control of drinking water treatment operations is crucial to avoiding disruption by vandalism or terrorist assaults on the water industry's infrastructure."

NTIA, meanwhile, will hold a Spectrum Management Summit in Washington, D.C., April 4-5 to assess ways to solicit innovative ideas on spectrum policy, expand secondary markets for spectrum, encourage innovation in wireless technology and define spectrum rights.

Subj: Fw: I2Way
Date: 1/31/02 7:16:01 AM Mountain Standard Time
From: suethomas@knscomm.com
To: RDeBuck@aol.com
Sent from the Internet (Details)

— Original Message —
From: "Terry Fishel" <TFISHEL@fcc.gov>
To: <suethomas@knscomm.com>
Cc: "Jon Sprague" <JSPRAGUE@fcc.gov>
Sent: Wednesday, January 30, 2002 11:16 AM
Subject: Re: I2Way

Dear Ms. Thomas,

Thanks for voicing your concerns. The Commercial Wireless Division (CWD) of the Wireless Telecommunications Bureau is currently reviewing i2way's many application filings for frequency justification. As you will see from the attachments on their filings, they argue that the equipment they use will effectively make their system "invisible" from a coordination perspective. Additionally, they have requested a declaratory ruling on how Section 90.187(e) is to be interpreted for purposes of limiting frequencies requested for the operation of trunked systems. Note that Section 90.35(e) provides a limitation with regard to the number of frequencies that are assignable for a conventional (non trunked) type of system. I will forward your concerns to those individuals in CWD that will be involved in the aforementioned review. Likewise, I will forward your comments to the Private Wireless Division for their consideration.

Thanks!
Fishel

>>> "Sue Thomas" <suethomas@knscomm.com> 01/30/02 11:57AM >>>
Mr. Fishel:

I am extremely concerned. I have just discovered that a company named I2Way has received coordination for multiple frequencies in what was previously the 2 watt offset pool. Many of the Water, Wastewater, and telemetry applications are in this pool.

I first noticed it when I was researching for a client in Albuquerque -- there they had filed over 120 frequencies within a 121 mile radius of Albuquerque.

I just ran across the same thing in Denver - File number 0000372385 - there are in excess of 130 frequencies filed within a 121 mile radius of the federal building in downtown Denver.

Not only does this prevent legitimate users from using the frequency - it seems to be a totally inappropriate use of these frequencies which are designed for shared use among many users. I would anticipate considerable harmful interference if a large network is built by these people. In addition, it makes it impossible to coordinate any other users within certain distances of the center location listed by this user.

Please tell me what we can be done to file a formal complaint. There are auctioned frequencies available for people that want to build large

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networks - but to allow this type of use seems totally inappropriate. I contacted PCIA and they said they were doing this all over the country and did not know what the application was. I pulled a list of many applications which are pending in level 2 at the FCC.

I work with many engineering firms and design water/wastewater telemetry systems. We have typically recommended the 2 watt frequencies to reduce interference to other users and to make good use of the spectrum. This is very alarming. Although these are shared frequencies - this does not seem to be an appropriate use. I would seriously question whether they can meet construction requirements.

Your response would be greatly appreciated.

Jon Sprague in the local office told me I should contact you regarding my concerns

L. Sue Scott-Thomas, President
KNS Communications Consultants
10265 West Evans Avenue
Denver CO 80227-2089
(800) 847-5670 - Cell: (303) 349-9215

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