

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
i2Way's Request for Declaratory Ruling)	WT Docket No. 02-196
before the Wireless Telecommunications)	
Bureau, Commercial Wireless Division,)	
Policy and Rules Branch)	

REPLY COMMENTS OF MOTOROLA, INC.

Motorola Inc. files the following reply comments in this proceeding in which i2way Inc. ("i2way") seeks a declaratory ruling of Rule Section 90.187(e) that limits applicants for trunked frequencies below 512 MHz to 10 at a time. Basically, Motorola agrees with the comments of the Industrial Telecommunications Association (ITA) who correctly point out that "the intent behind Section 90.187(e) is plainly stated by the Commission" and that there is no need for further clarification of the rule.¹

In its request for declaratory ruling, i2way indicates that it must have more than 10 frequencies in an initial application because it competes with cellular operators who have access to up to 55 MHz of spectrum within a given market. i2way states that if it is limited to 125 kHz per market (10 12.5 kHz channels) it will be unable to gain a foothold in that market.²

Motorola believes that if i2way's interest is to compete with cellular carriers, it should consider operating in other frequency bands. The VHF and UHF bands are heavily used and extensively shared by many different entities eligible for licensing under

¹ Comments of ITA at 5.

² i2way Request at 9.

Part 90 – utilities, taxicabs, manufacturing facilities, hotels, airlines, to name a few.

While there is a place for commercial carriers in this band, to attempt to reconfigure this heavily shared band to suit one potential licensee’s desire to retrofit its technology is not in the best interest of the many other entities that rely on these bands for critical communications.

In its comments filed in this proceeding, the Land Mobile Communications Council (LMCC), correctly notes that when introducing trunking into the bands below 800 MHz, the FCC had to “consider how to promote the development of this efficient technology while ensuring that valuable, scarce spectrum continued to be properly utilized.”³ Motorola agrees with LMCC that the current construction of Section 90.187(e) “properly balances the threat of spectrum ‘warehousing’ with the benefits of flexibility and efficiency in the PLMR shared spectrum bands.”⁴

Further, as ITA’s notes, the 10-channel rule does not prevent i2way from obtaining more than 10 channels in a market.⁵ It simply requires that they first construct before requesting additional channels. If i2way constructs its initial 10 channels within 1 day of grant, it can file for 10 additional channels that very same day. Proceeding in this manner is the correct way to balance providing operational flexibility and preventing spectrum warehousing.

This would be especially true in this case given i2way’s apparent lack of construction of its existing licensed facilities. Motorola randomly checked approximately

³ Comments of LMCC at 4.

⁴ Comments of ITA at 5.

⁵ Comments of ITA at 5.

80 of i2way's 103 call signs and found that i2way has not filed a single construction notification.

Motorola believes that i2way's request has merit in one respect. When the LMCC first crafted its recommendations to the FCC on the implementation of trunking in the bands below 800 MHz, there was no licensing mechanism to differentiate between 'centralized' and 'de-centralized' trunking. It is Motorola's recollection that the 10-channel rule was intended to apply to applications for centralized trunked systems that required channel exclusivity and not to de-centralized trunked systems that do not employ a continuous carrier central controller. In respect to i2way's request that the FCC clarify that the 10-channel rule applies only to applications for "FB8" systems, Motorola concurs. In this regard, however, Motorola agrees with the LMCC's position that Section 90.35(e) states that requests for more than one frequency pair must be justified.⁶ In some cases, i2way's applications seek licensing on over 100 mobile only frequencies. The Commission should require clear justification for such a large number of frequencies, even if those frequencies are requested on a shared basis. On its face, requesting so many frequencies in a market without immediate need looks like spectrum warehousing. This is especially true in this case given that i2way does not appear to have constructed any of the systems for which it is currently licensed.

In conclusion, the shared VHF and UHF bands are the workhorses of Part 90 and their usefulness should not be eroded by eviscerating rules intended to prevent spectrum warehousing. The intent and language of the 10-channel rule is clear and there is no need for the FCC to issue any additional clarification. Motorola supports the comments of

⁶ Comments of LMCC at 2.

ITA and LMCC in this proceeding and urges the Commission to strictly apply the provisions of Section 90.187(e) to all applicants.

Respectfully Submitted,

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