

II. BACKGROUND

4. Metro is a California company engaged in the business of providing two-way radio service in Los Angeles County, California. Metro presently holds four licenses for Private Land Mobile Radio (PLMR) stations in the Los Angeles area.⁴

5. Metro applied for its first license with the Commission in 2014. On June 16, 2014, Metro submitted an application for a new license for PLMR Station WQUF826⁵ using Commission Form 601, entitled “FCC Application for Radio Service Authorization,” a form used for applications for radio service authorizations from the Bureau and from the Public Safety and Homeland Security Bureau.⁶ Under the heading “Basic Qualification Questions,” Question 50 asks whether “the Applicant or any party to this application, or any party directly or indirectly controlling the Applicant, [has] ever been convicted of a felony by any state or federal court.”⁷ Question 50 provides the Applicant with a place in which it can respond either “Y” for Yes or “N” for No.⁸ In connection with its application for a new license for PLMR Station WQUF826, Metro responded “N.”⁹ Metro also answered “N” to Question 50 in four subsequent Commission Form 601 submissions applying for new licenses,¹⁰ most recently on September 29, 2014.¹¹

6. On October 14, 2014, Mobile Relay Associates (MRA) filed a Petition to Dismiss or Deny, or Informal Objection (Petition) to Metro’s September 29, 2014, application, alleging that the real party in interest was Acumen Communications (Acumen), which had received multiple Notices of Violation from the Commission’s Enforcement Bureau and was then the subject of an Enforcement Bureau investigation.¹² Metro filed an opposition, disputing MRA’s allegation that Acumen was the real party in interest in the application, and stating that “Metro was started and is controlled by Hector Mosquera.”¹³ Mr. Mosquera is listed as the only manager of Metro on Form LLC-12 (Statement of Information), filed with the Secretary of State of California on June 5, 2014,¹⁴ and as the only officer of Metro on the Form SI-550 (Statement of Information), filed with the Secretary of State of California on October 23, 2017.¹⁵ Consequently, it appears from the evidence before the Bureau that Mr. Mosquera has controlled Metro since Metro’s June 16, 2014, submission of its first Commission application.

⁴ See Attachment A, appended hereto.

⁵ See File No. 0006329910 (<http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=8373812>).

⁶ See 47 CFR § 1.913(a)(1).

⁷ See, e.g., Commission Form 601 at Question 50.

⁸ See *id.*

⁹ See File No. 0006329910, Commission Form 601 at Question 50 (<http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=8373812>).

¹⁰ See Attachment C, appended hereto.

¹¹ See File No. 0006481203, Commission Form 601 at Question 50 (<http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=8583816>).

¹² Petition of Mobile Relay Associates to Dismiss or Deny, or Informal Objection, Application File No. 0006481203, at 2-4 (filed Oct. 14, 2014), available at <http://appsint.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=1853889939&attachmentKey=19504168&attachmentInd=applAttach>.

¹³ See Opposition of Metro Two-Way, LLC to Petition to Deny, at 1 (filed Oct. 27, 2014), available at <http://appsint.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?ATTACHMENTS=976GhH0Jy90QH2TzcHX>

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¹⁴ Available at

<https://businesssearch.sos.ca.gov/CBS/SearchResults?SearchType=LPLLC&SearchCriteria=metro+two+way&SearchSubType=Keyword>.

¹⁵ Available at

<https://businesssearch.sos.ca.gov/CBS/SearchResults?SearchType=NUMBER&SearchCriteria=C4072384>. It appears that Metro has changed from a limited liability corporation to a domestic stock corporation. References herein to Metro apply to the entity as it was organized under both forms.

7. In addition to his rule with Metro, Mr. Mosquera was an officer and the sole shareholder of Acumen.¹⁶ MRA also filed an Informal Objection to several Acumen modification applications based on assertions that Acumen “knowingly lied” to the Commission when it responded “N” to Question 50 on these modification applications.¹⁷ MRA asserted that Mr. Mosquera had been convicted in March 1992 of possession for sale of a controlled substance, in violation of California Health Safety Code Section 11351, and sentenced to serve two years in California State Prison.¹⁸ These allegations raised substantial and material questions of fact as to whether Acumen had repeatedly made misrepresentations to and lacked candor with the Commission in submission of its various applications for Wireless Radio Service authorizations. As a result, the Bureau commenced a hearing proceeding before the Administrative Law Judge (ALJ) to determine whether Acumen was qualified to be and remain a Commission licensee, and as a consequence thereof, whether any or all of its licenses should be revoked, and whether any or all of its then-pending applications should be denied.¹⁹ After Acumen failed to enter an appearance in the proceeding and to appear in person at a Show Cause Hearing ordered by the ALJ, the ALJ terminated the proceeding and certified the case to the Commission.²⁰ The licenses were revoked in 2018.²¹

III. DISCUSSION

8. Pursuant to section 309(e) of the Act, the Commission is required to designate an application for evidentiary hearing if a substantial and material question of fact is presented regarding whether grant of the application would serve the public interest, convenience, and necessity.²² The character of an applicant is among those factors that the Commission considers in determining whether the applicant has the requisite qualifications to be a Commission licensee.²³

9. *Misrepresentation/Lack of Candor and Section 1.17.* The Commission and the courts have recognized that “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”²⁴ In considering an applicant’s character, one of the Commission’s primary purposes is to ensure that licensees will be truthful in their future dealings with the Commission. Full and clear disclosure of all material facts in every application is essential to the efficient

¹⁶ *Acumen Communications*, Order of Revocation, 33 FCC Rcd 4, 9, para. 17 (EB 2018) (*Acumen Revocation Order*).

¹⁷ See Mobile Relay Associates Informal Objection, Application File Nos. 0005834762, 0005839763, 0005840938, 0005962267, and 0006039610, at 1-3 (filed Jan. 26, 2015) (Informal Objection), available at <http://appsint.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=1269524174&attachmentKey=19587208&attachmentInd=applAttach>; Mobile Relay Associates Supplement to Petition to Dismiss or Deny, Or Informal Objection, Application File No. 0005614865, at 2 (filed Jan. 26, 2015) (Supplement to Petition), available at <https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=w0ZVhNzHgG9mxTvJZ8H9sMGvwJnLbdJ2FwpmZBhhZ0vK1QJvZk2s!-1594719211!-1718746281?applType=search&fileKey=2056833799&attachmentKey=19587014&attachmentInd=applAttach>.

¹⁸ See Informal Objection at 1-3 and Abstract of Judgment attached thereto; Supplement to Petition at 1-3.

¹⁹ See *Acumen Communications*, Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing, 32 FCC Rcd 243 (WTB MD 2017).

²⁰ See *Acumen Communications*, WT Docket No. 17-17, Order, FCC 17M-20 (ALJ rel. Apr. 10, 2017).

²¹ See *Acumen Revocation Order*, 33 FCC Rcd at 10, para. 19.

²² See 47 U.S.C. § 309(e).

²³ See, e.g., 47 U.S.C. § 308(b).

²⁴ See, e.g., *Contemporary Media Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (citation omitted).

administration of the Commission's licensing process, and proper analysis of an application is critically dependent on the accuracy and completeness of information and data that only the applicant can provide. Misrepresentation and lack of candor raise serious concerns as to the likelihood of such truthfulness.²⁵

10. Section 1.17(a)(1) of the Commission's rules states that no person shall, in any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading.²⁶ We note that a misrepresentation is a false statement of fact made with the intent to deceive the Commission.²⁷ Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission.²⁸ A necessary and essential element of both misrepresentation and lack of candor is intent to deceive.²⁹ Fraudulent intent can be found from "the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity."³⁰ Intent can also be found from motive or logical desire to deceive.³¹

11. Section 1.17(a)(2) of the Commission's rules further requires that no person may provide, in any written statement of fact, "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading."³² Thus, even absent an intent to deceive, a false statement may constitute an actionable violation of section 1.17 of the Commission's rules if provided without a reasonable basis for believing that the material factual information it contains is correct and not misleading.³³

²⁵ *Character Policy Statement*, 102 FCC 2d 1179 (1986). The fundamental importance of truthfulness and candor on the part of applicants and licensees in their dealings with the Commission is well established. See *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946); *Lebanon Valley Radio, Inc.*, Decision, 35 FCC 2d 243 (Rev. Bd. 1972); *Nick J. Chaconas*, Decision, 28 FCC 2d 231 (Rev. Bd. 1971).

²⁶ See 47 CFR § 1.17(a)(1).

²⁷ *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983); *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7435 (2004).

²⁸ *Fox River Broadcasting, Inc.*, 93 FCC 2d at 129; *Discussion Radio*, 19 FCC Rcd at 7435.

²⁹ *Trinity Broadcasting of Florida, Inc.*, Initial Decision, 10 FCC Rcd 12020, 12063 (1995); *Discussion Radio*, 19 FCC Rcd at 7435.

³⁰ *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (quoting *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980)); see also *Discussion Radio*, 19 FCC Rcd at 7435.

³¹ See *Joseph Bahr*, Memorandum Opinion and Order, 10 FCC Rcd 32, 33 (Rev. Bd. 1994); *Discussion Radio*, 19 FCC Rcd at 7435; *Black Television Workshop of Los Angeles, Inc.*, Decision, 8 FCC Rcd 4192, 4198, n.41 (1993) (citing *California Public Broadcasting Forum v. FCC*, 752 F.2d 670, 679 (D.C. Cir. 1985); *Scott & Davis Enterprises, Inc.*, Decision, 88 FCC 2d 1090, 1100 (Rev. Bd. 1982)). Intent to deceive can also be inferred when the surrounding circumstances clearly show the existence of an intent to deceive. *Commercial Radio Service, Inc.*, Order to Show Cause, 21 FCC Rcd 9983, 9986 (2006) (citing *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816, n.39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983)).

³² See 47 CFR § 1.17(a)(2).

³³ *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4017, para. 4 (2003) (stating that the revision to Section 1.17 is intended to "prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive"), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20

12. In the instant case, Metro represented to the Commission on five occasions that no party directly or indirectly controlling Metro has ever been convicted of a felony by any state or federal court. As discussed above, the information before us shows that Mr. Mosquera, a party directly or indirectly controlling Metro, was convicted of a felony by a state court in California. Yet, in all five applications, Metro answered “N” to Question 50. We therefore designate for hearing appropriate issues to determine whether Metro misrepresented and/or lacked candor in its dealings with the Commission either with an intent to deceive and/or in willful and repeated violation of section 1.17 of the Commission’s rules.

13. *Failure to Maintain Completeness and Accuracy of Pending Applications.* Under section 1.65 of the Commission’s rules, an applicant is responsible for the continuing accuracy and completeness of the information furnished in a pending application or in Commission proceedings involving a pending application.³⁴ Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant must, within 30 days, amend its application so as to furnish the additional or correct information.³⁵ For the purposes of section 1.65, an application is “pending” before the Commission from the time it is accepted for filing until a Commission grant (or denial) is no longer subject to reconsideration by the Commission or review by any court.³⁶

14. In the instant case, Metro’s captioned application remains pending.³⁷ Thus, Metro has been under a continuing obligation to ensure the accuracy of this application and to amend it as appropriate. Nevertheless, Metro has never informed the Commission that its pending application contained information it must have known to be false. Even after the initiation of a hearing proceeding against Acumen based on allegations that Mr. Mosquera had been convicted of a felony that Acumen had failed to disclose to the Commission, and the eventual revocation of Acumen’s licenses, Metro did not amend its pending application. Accordingly, we designate for hearing an appropriate issue to determine whether Metro willfully and/or repeatedly violated section 1.65 of the Commission’s rules.

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FCC Rcd 1250 (2004).

³⁴ 47 CFR § 1.65.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *See* File No. 0006481203.

III. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED**, pursuant to sections 309(e), 312(a)(1), 312(a)(2), 312(a)(4), and 312(c) of the Act, 47 U.S.C. §§ 309(e), 312(a)(1), 312(a)(2), 312(a)(4), 312(c), that Metro Two-Way, LLC **SHALL SHOW CAUSE** why the authorizations for which it is the licensee set forth in Attachment A should not be revoked, and that the above-captioned application filed by Metro Two-Way, LLC is **DESIGNATED FOR HEARING** in a consolidated proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

- (a) To determine whether Hector Manuel Mosquera directly or indirectly controls Metro.
- (b) To determine whether Metro engaged in misrepresentation and/or lack of candor in its applications with the Commission.
- (c) To determine whether Metro failed to amend its pending application, in willful and/or repeated violation of section 1.65 of the Commission's rules.
- (d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Metro is qualified to be and remain a Commission licensee.
- (e) To determine, in light of the foregoing issues, whether the authorizations for which Metro is the licensee should be revoked.
- (f) To determine, in light of the foregoing issues, whether the captioned application filed by or on behalf of Metro should be granted.

16. **IT IS FURTHER ORDERED** that, in addition to the resolution of the foregoing issues, it shall be determined, pursuant to section 503(b)(1) of the Act, 47 U.S.C. § 503(b)(1), whether an **ORDER OF FORFEITURE** should be issued against Metro in an amount not to exceed the statutory limit for the willful and/or repeated violation of each rule section above for which the statute of limitations in section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), has not lapsed.

17. **IT IS FURTHER ORDERED** that, pursuant to section 312(c) of the Act and sections 1.91(c) and 1.221 of the rules, 47 U.S.C. § 312(c) and 47 CFR §§ 1.91(c), 1.221, to avail itself of the opportunity to be heard and to present evidence at a hearing in this proceeding, Metro, in person or by an attorney, **SHALL FILE** with the Commission, within 20 calendar days of the release of this Order, a written appearance stating that it will appear at the hearing and present evidence on the issues specified above.

18. **IT IS FURTHER ORDERED** that, pursuant to section 1.91 of the rules, 47 CFR § 1.91, if Metro fails to file a timely appearance, its right to a hearing shall be deemed to be waived. In the event the right to a hearing is waived, the Chief Administrative Law Judge (or presiding officer if one has been designated) shall, at the earliest practicable date, issue an order reciting the events or circumstances constituting a waiver of hearing, terminating the hearing proceeding, and certifying the case to the Commission. In addition, pursuant to section 1.221 of the Commission's rules, 47 CFR § 1.221, if any applicant to the captioned application fails to file a timely written appearance, the captioned application shall be dismissed with prejudice for failure to prosecute.

19. **IT IS FURTHER ORDERED** that the Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

20. **IT IS FURTHER ORDERED** that pursuant to section 312(d) of the Act, 47 U.S.C. § 312(d), and section 1.91(d) of the Commission's rules, 47 CFR § 1.91(d), the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Enforcement Bureau as to the issues at 15(a)-(e), above, and that, pursuant to section 309(e) of the Act, 47 U.S.C. § 309(e), and section 1.254 of the Commission's rules, 47 CFR § 1.254, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon Metro as to the issue at 15(f), above.

21. **IT IS FURTHER ORDERED** that Mobile Relay Associates shall be made a party to this hearing in its capacity as a petitioner to the captioned application.

22. **IT IS FURTHER ORDERED** that a copy of each document filed in this proceeding subsequent to the date of adoption of this document **SHALL BE SERVED** on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service copy **SHALL BE ADDRESSED** to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

23. **IT IS FURTHER ORDERED** that copies of this document shall be sent via Certified Mail - Return Receipt Requested to the following:

Metro Two-Way, LLC
P.O. Box 2871
Fullerton, CA 92837
Attn: Radio Manager

CARA Enterprises, Inc.
P.O. Box 400124
Las Vegas, NV 89140-0124
Attn: Doug Thompson

Dennis C. Brown
8124 Cook Court, Suite 201
Manassas, VA 20109-7406

Mobile Relay Associates
c/o David J. Kaufman
Rini O'Neil, PC
1200 New Hampshire Avenue, NW
Suite 600
Washington, DC 20036

24. **IT IS FURTHER ORDERED** that a copy of this document, or a summary thereof, shall be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

ATTACHMENT A

The following authorizations of which Metro Two-Way, LLC is the licensee are the subject of this license revocation hearing:

1. WQUF826
2. WQUQ815
3. WQUQ816
4. WQUR829

ATTACHMENT B

The following pending application is designated for hearing in this proceeding:

1. Metro Two-Way, LLC, Application for New Industrial/Business Pool License, File No. 0006481203

ATTACHMENT C

1. Metro Two-Way, LLC, Application for New License, File No. 0006329910
(<http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=8373812>)
2. Metro Two-Way, LLC, Application for New License, File No. 0006455820
(<http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=8548942>)
3. Metro Two-Way, LLC, Application for New License, File No. 0006455821
(<http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=8548943>)
4. Metro Two-Way, LLC, Application for New License, File No. 0006461511
(<http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=8557992>)