

**TRANSCRIPT OF PROCEEDINGS**  
**BEFORE THE**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, D.C. 20554**

In the Matter of:

METRO TWO-WAY, LLC

Licensee of Various Authorizations in the  
Wireless Radio Services

Applicant for New Authorization

WTB Docket No. 18-133

FRN: 0023715899

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ORIGINAL

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THE FEDERAL COMMUNICATIONS COMMISSION  
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	:	18-133
METRO TWO-WAY, LLC	:	
	:	FRN 0023715899
Licensee of Various	:	
Authorizations in the	:	
Wireless Radio Services	:	
	:	
Applicant for New	:	
Authorization	:	

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Tuesday,  
June 5, 2018

Federal Communications Commission  
445 12th Street, SW  
Hearing Room A  
Washington, D.C. 20554

The above-entitled matter came on for hearing, pursuant to notice, at 1:00 p.m.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL,  
Chief Administrative Law Judge

## APPEARANCES:

## On Behalf of Mobile Relay Associates:

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On Behalf of the Federal Communications  
Commission:

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## ALSO PRESENT:

RACHEL FUNK, Clerk

P-R-O-C-E-E-D-I-N-G-S

(12:56 p.m.)

JUDGE SIPPEL: This is a prehearing, first prehearing conference in the case of Two-Way, well I'll refer to it as the Two-Way case, Metro Two-Way. And the HDO was issued on this, let's see, it was May 3rd, 2018. And it's Docket No. -- this is enforced, it's WTB Wireless -- is that wireless?

MR. O'NEIL: Yes, Your Honor.

MS. KANE: Yes, Your Honor.

JUDGE SIPPEL: Wireless Docket No. 18-133. And I'll take the appearances first of the Enforcement Bureau.

MS. KANE: Good afternoon, Your Honor. On behalf of the Enforcement Bureau is Pamela Kane.

JUDGE SIPPEL: Ms. Kane.

MR. ENGEL: Your Honor, Michael Engel --

JUDGE SIPPEL: Mr. Engel.

MR. ENGEL: -- for the Bureau.

JUDGE SIPPEL: And you?

MR. O'NEIL: Your Honor, David O'Neil on behalf of Mobile Relay Associates.

JUDGE SIPPEL: Mobile Relay Associates?

MR. O'NEIL: Yes, Your Honor.

JUDGE SIPPEL: Which is different than Two-Way?

MR. O'NEIL: Correct.

JUDGE SIPPEL: And so I see that's the only counsel

1 at the party's table, the private party's table, so I take it  
2 that there's no appearance from Metro Two-Way. Am I correct?

3 MS. KANE: Your Honor, as far as we can tell, we've  
4 received no notice of appearance. There's nothing that's been  
5 filed on the electronic system. There doesn't appear to be  
6 anything filed in the docket.

7 So it would be our position that Metro Two-Way has  
8 not filed a notice of appearance and, therefore, waives its  
9 right to appear at a hearing. And at this point I, it's  
10 appropriate for you to terminate the hearing and dismiss the  
11 pending applications as well as revoke the authorizations for  
12 licenses that Metro Two-Way currently holds.

13 JUDGE SIPPEL: Do I have a record to do that with,  
14 other than just the non-appearance?

15 MS. KANE: Pursuant to Section 1.221(c) of the rules,  
16 Your Honor, you, at a minimum, have the ability to terminate  
17 the hearing and dismiss the pending application with  
18 prejudice.

19 Pursuant to 1.91(c), I believe, of the rules as well,  
20 failure to provide a notice of appearance may lead to  
21 continuing action from the judge. And we actually did put in  
22 the HDO, I believe at Paragraph 18, notice to the parties that  
23 if they failed to provide a notice of appearance that their  
24 rights to appear before the hearing, in this hearing matter,  
25 would be waived.

1 JUDGE SIPPEL: All right, the only thing I'm  
2 concerned about is reaching the conclusion on question 50.  
3 But maybe I don't even have to get into that. There'll be  
4 enough to, certainly there's enough stated there, I realize,  
5 to dismiss the proceeding and to decline the application for  
6 a new license.

7 Maybe, if you can come up with something just please  
8 let me know. I'm not totally worried about it, but I'd like  
9 to know that I'm on the right track, I'm skating the right  
10 rink. That's a, kind of an ice hockey analogy.

11 MR. O'NEIL: Your Honor, if I could inquire the  
12 court, what's the question the court would like clarification  
13 on?

14 JUDGE SIPPEL: Whether or not there is sufficient  
15 information and evidence in the record to make findings upon  
16 the question 50, which is a false answer. I'm answering no,  
17 that there hasn't been convicted of a felony. That was  
18 basically the question.

19 MR. O'NEIL: Well, Your Honor, under the Paragraph  
20 18 of the Hearing Designation Order, I apologize if we're  
21 doubling, but under Paragraph 18 of the Hearing Designation  
22 Order, it's really self-effectuating, the dismissal of the  
23 application. They have failed to enter an appearance, they  
24 being Metro Two-Way. And failure to enter appearance  
25 constitutes waiver of a hearing.

1 JUDGE SIPPEL: Right.

2 MR. O'NEIL: So they've defaulted and so there's  
3 nothing left for the court. It says, the court shall dismiss.  
4 So it's, the case is done.

5 JUDGE SIPPEL: That I will do.

6 MR. O'NEIL: Yes, Your Honor.

7 JUDGE SIPPEL: But that still doesn't answer the  
8 question about revocation of the other licenses.

9 MS. KANE: Well, it would be our argument, Your  
10 Honor, that they've waived the opportunity to defend  
11 themselves against any of the allegations set forth in the HDO  
12 by failing to appear.

13 And in terms of whether or not to make a particular  
14 factual finding, I think those factors, it's in essence a  
15 default judgment. Those, it would be and should be considered  
16 the same in the essence that those allegations should be  
17 deemed to be true in the absence of any evidence or  
18 presentation by Metro Two-Way to the opposite.

19 And on that basis alone there should be sufficient  
20 information in the HDO itself on which to base a finding that  
21 those licenses should be revoked.

22 JUDGE SIPPEL: Well, that's what I'm not sure about,  
23 whether or not I've got all I need. And there's nothing  
24 there. I mean, it's just the allegation is there. And I, the  
25 language, in effect, makes it self-defeating, or

1 self-executing. But --

2 MS. KANE: I believe there is actual evidence that's  
3 identified in the footnotes, Your Honor, of the HDO that  
4 establishes what the answer to question 50 and other  
5 information in the record, the California record, about the  
6 owners of the company and that that would be a, that alone  
7 would be sufficient to demonstrate that they lied on question  
8 50 on their applications.

9 JUDGE SIPPEL: But what I'd be interested in seeing  
10 would be a copy of the judgment, or the copy of the record of  
11 forfeiture, some, probably from the state court, if that is  
12 around any place.

13 In other words, he's being charged with lying that  
14 he didn't, he's never had a felony. And yet, you know there  
15 is evidence of, he is a, you take a position that he is, has  
16 lied about that. And I'm accepting all of that.

17 But now I'm supposed to make a finding that's going  
18 to pull his licenses. And I think you need a little bit more,  
19 I need a little bit more than just him not showing up. Some  
20 kind of a record evidence, which wouldn't require, to my mind,  
21 wouldn't require anything more than just a proof of  
22 conviction, of the conviction. I'm sorry, I didn't get your  
23 appearance, sir.

24 MR. O'NEIL: David O'Neil for Mobile Relay.

25 JUDGE SIPPEL: Yes, do you know anything about this?



1 MR. O'NEIL: Actually, I was looking at, coming from  
2 Acumen where there would cached, a judgment against Mr.  
3 Mosquera.

4 JUDGE SIPPEL: Right.

5 MR. O'NEIL: So I think --

6 JUDGE SIPPEL: Go ahead.

7 MR. O'NEIL: I think there's already a record. I  
8 mean, I'm not sure. I could go back into our record and see  
9 if it was attached to our petition. But I do think there's  
10 documentary evidence that the question about Mr. Mosquera's  
11 qualifications and whether he was convicted and lied, I think  
12 that might be in the record already.

13 JUDGE SIPPEL: Well, it's going to be in that  
14 document as record, not this record.

15 MS. KANE: Well, I believe it's cited in the HDO,  
16 Your Honor.

17 JUDGE SIPPEL: It is cited, yes. It is cited. And  
18 I have no question about that.

19 MR. ENGEL: It actually, yes, it's a link to, the  
20 cite is a link to where the pardon to where the conviction --

21 JUDGE SIPPEL: Can we link into this? Or do you want  
22 to send me a copy of that?

23 MS. KANE: I believe the abstract of judgment is  
24 attached --

25 JUDGE SIPPEL: That's what I'm looking for.

1 MS. KANE: -- to one of the filings that Mobile Relay  
2 made, which is cited in the HDO. So I think all of the  
3 evidence upon which we relied for our allegations is set forth  
4 in the footnotes of the HDO and can be easily determined.

5 That being said, if the court would like us to  
6 provide you with the documentation upon which we relied I  
7 don't see that there should be any issue with that.

8 JUDGE SIPPEL: No it's, I, it should be something  
9 very simple. I'm not looking for the record, I just want what  
10 should be just about one piece of paper that verifies, some  
11 official record that verifies that he was, in fact, whether he  
12 plead or was convicted of a felony. And other than that  
13 everything's --

14 MS. KANE: As I said, Your Honor, I believe it's an  
15 attachment to Mobile Relay's informal objection to this  
16 application, which we cited and we linked to in the HDO. But  
17 should it be more convenient for Your Honor that we provide  
18 you with specific copies of that, we're happy to do so.

19 JUDGE SIPPEL: Yes, please do that. Okay. You're  
20 off the hook, Mr. O'Neil. They're going to give me what I  
21 need.

22 MR. O'NEIL: Okay, thank you, Your Honor.

23 JUDGE SIPPEL: So, what's that? We never get calls  
24 to this thing, the nonexistent phone. Okay, is there anything  
25 else?

1 MS. KANE: I don't believe so, Your Honor.

2 MR. O'NEIL: No, Your Honor.

3 JUDGE SIPPEL: Okay. Hope the rest of our cases go  
4 this well. Okay, well you all have a good day. Thank you  
5 for, also, for accommodating me on my schedule. And you all  
6 have a good day today. It's going to rain late this afternoon  
7 so you want to be careful you have an umbrella. Okay.

8 MS. KANE: Thank you, Your Honor.

9 JUDGE SIPPEL: We're finished here. This conference  
10 is terminated, closed. And the case will be terminated as  
11 requested by the bureau subject to my receiving that one, just  
12 one document, whatever it was, a couple documents. Thank you.

13 MS. KANE: Thank you, Your Honor.

14 MR. O'NEIL: Thank you, Your Honor.

15 (Whereupon, the above-entitled matter went off the  
16 record at 1:06 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Metro-Two Way, LLC

Before: US Federal Communications Commission

Date: 05-06-18

Place: Washington, DC

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*Neal R Gross*

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Court Reporter

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Metro Two-Way, LLC

\_\_\_\_\_  
Name of Hearing

WTB DOCKET NO. 18-133

\_\_\_\_\_  
Docket No. (if applicable)

445 12<sup>th</sup> STREET, S.W., WASHINGTON, D.C.

\_\_\_\_\_  
Place of Hearing

June 5, 2018

\_\_\_\_\_  
Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 10, inclusive, are the true, accurate and complete transcript prepared from the reporting by

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June 5, 2018

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