

- (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.

3. The *Order to Show Cause* directed Metro, in person or by attorney, to file with the Commission within 20 calendar days a written appearance stating that it would appear at the hearing and present evidence on the specified issues.⁴ The *Order to Show Cause* informed Metro that if it failed to file a timely appearance, its right to a hearing would be deemed to be waived pursuant to Section 1.92, and the Chief Administrative Law Judge would thereafter issue an order terminating the hearing and certifying the case to the Commission for resolution.⁵ In addition, the *Order to Show Cause* provided notice that if any applicant to any of the captioned applications failed to file a timely written appearance, the captioned applications would be dismissed with prejudice for failure to prosecute pursuant to Section 1.221 of the Commission's rules.⁶

4. On June 11, 2018, the ALJ released the *Hearing Termination Order* concluding that Metro had waived its right to a hearing, terminating the hearing proceeding, and certifying the case to the Commission.⁷ The *Order* stated that Metro failed to file a notice of appearance and failed to appear at a Prehearing Conference held on June 5, 2018.⁸ The *Hearing Termination Order* stated that “[b]y failing to appear at the Prehearing Conference and otherwise failing to file a Notice of Appearance, Metro Two-Way has waived the right to be heard and is now in default.”⁹

⁴ *Order to Show Cause* at para. 17.

⁵ *Id.* at para. 18; see 47 CFR § 1.92.

⁶ *Order to Show Cause* at para. 18; 47 CFR § 1.221.

⁷ *Hearing Termination Order*, FCC 18M-04 at 2.

⁸ *Id.* at 1-2.

⁹ *Id.* at 2 (citing section 1.221(c) of the Commission's rules, which provides that where an applicant fails to file a written appearance within the time specified, its application “will be dismissed with prejudice for failure to prosecute”). The *Hearing Termination Order* also notes that the *Hearing Designation Order* states that “if Metro Two-Way fails to file a written appearance within the requisite time period, ‘the captioned application shall be dismissed with prejudice for failure to prosecute.’” *Order to Show Cause* at para. 7; *Hearing Termination Order* at 2, n.3).

B. Factual Background

5. 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.¹⁰

6. 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 WQUF826¹¹ using Commission Form 601. That form—entitled “FCC Application for Radio Service Authorization”—is used for applications for radio service authorizations from the Wireless Bureau and from the Public Safety and Homeland Security Bureau.¹² 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.”¹³ Question 50 provides the Applicant with a place in which it can respond either “Y” for Yes or “N” for No.¹⁴ In connection with its application for a new license for PLMR Station WQUF826, Metro responded “N.”¹⁵ Metro also answered “N” to Question 50 in four subsequent Commission Form 601 submissions applying for new licenses,¹⁶ most recently on September 29, 2014.¹⁷

7. 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.¹⁸ 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.”¹⁹ 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, 2014,²⁰ 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, 2017.²¹ Consequently, it appears from the evidence presented that Mr. Mosquera has controlled Metro since Metro’s June 16, 2014, submission of its first Commission application.²²

¹⁰ See *Order to Show Cause* at para. 4.

¹¹ See *id.* at para. 5

¹² See 47 CFR § 1.913(a)(1).

¹³ See, e.g., Commission Form 601 at Question 50.

¹⁴ See *id.*

¹⁵ See *Order to Show Cause* at para. 5.

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See *Order to Show Cause* at para. 6.

¹⁹ See *id.*

²⁰ See *id.*

²¹ See *id.*

²² See *id.*

8. In addition to his role with Metro, Mr. Mosquera was an officer and the sole shareholder of Acumen.²³ 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.²⁴ 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.²⁵ 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 Wireless Bureau commenced a hearing proceeding before the 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.²⁶ 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.²⁷ The licenses were revoked in 2018.²⁸

9. On May 3, 2018, the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, released the *Order to Show Cause*, which commenced a hearing proceeding before the Chief Administrative Law Judge to determine whether Metro is qualified to be and to remain a Commission licensee, and as a consequence thereof, whether any or all of its licenses should be revoked, and whether the application to which Metro is a party should be denied.²⁹ The *Order to Show Cause* stated that there are substantial and material questions of fact as to whether Metro repeatedly made misrepresentations to and lacked candor with the Commission in its submission of several applications in connection with various Wireless Radio Service authorizations.³⁰

10. The *Hearing Termination Order* terminated the proceeding based on Metro’s waiver of its right to a hearing, revoked all of Metro’s licenses and authorizations, denied with prejudice Metro’s pending application, and certified the case to the Commission in accordance with Section 1.92 of the Commission’s rules.³¹

III. DISCUSSION

11. Metro was given numerous opportunities to correct the record and to show cause why it is qualified to be and to remain a Commission licensee. Metro waived its right to a hearing, and repeatedly made misrepresentations to and lacked candor with the Commission, in its submission of several applications in connection with various Wireless Radio Service authorizations, by failing to disclose the felony conviction of Mr. Hector Manuel Mosquera, an apparent principal of Metro. Based on this evidence, Metro has demonstrated it is not qualified to remain a Commission licensee. It is therefore

²³ See *Order to Show Cause* at para. 7.

²⁴ See *Order to Show Cause* at para. 7.

²⁵ See *id.*

²⁶ See *Acumen Communications*, Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing, 32 FCC Rcd 243 (WTB MD 2017).

²⁷ See *Acumen Communications*, WT Docket No. 17-17, Order, FCC 17M-20 (ALJ rel. Apr. 10, 2017).

²⁸ See *Acumen Communications*, Order of Revocation, 33 FCC Rcd 4 at 10, para. 19 (EB 2018) (*Acumen Revocation Order*).

²⁹ *Order to Show Cause* at para. 1.

³⁰ *Id.* at para. 2.

³¹ See *Hearing Termination Order* at 2.

ordered that Metro's licenses are revoked, and its application is dismissed with prejudice for failure to prosecute, pursuant to Section 1.221(c) of the Commission's rules.

12. Section 312(a) of the Act provides that the Commission may revoke any license "for false statements knowingly made . . . in the application" or "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application."³² The character of the licensee or applicant is among the factors that the Commission considers in determining whether the applicant has the requisite qualifications to operate the station for which authority is sought.³³ The Commission's character assessments focus on misconduct that demonstrates the licensee's or applicant's proclivity to deal truthfully with the Commission and to comply with its rules or policies.³⁴

13. *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."³⁵ 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.³⁶ Misrepresentation is a false statement of fact made with the intent to deceive the Commission.³⁷ Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission.³⁸ A necessary and essential element of both misrepresentation and lack of candor is intent to deceive.³⁹ Fraudulent intent can be found from "the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity."⁴⁰ Intent can also be found from motive or logical desire to deceive.⁴¹

³² 47 U.S.C. § 312(a)(1)-(2).

³³ See 47 U.S.C. § 308(b).

³⁴ See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1190-91 (1986), *recons. granted in part on other grounds*, Memorandum Opinion and Order, 1 FCC Rcd 421 (1986) ("1986 Character Policy Statement"), *appeal dismissed sub nom., National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987), *modified*, Policy Statement and Order, 5 FCC Rcd 3252 (1990) ("1990 Character Policy Statement"), *on reconsideration*, Memorandum Opinion and Order, 6 FCC Rcd 3448 (1991), *modified in part*, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992).

³⁵ *Contemporary Media Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000); *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 461 (D.C. Cir. 1980) (stating that "effective regulation is premised upon the agency's ability to depend upon the representations made to it by its licensees" and "the Commission may refuse to renew a license where there has been willful and knowing misrepresentation or lack of candor in dealing with the Commission.").

³⁶ See 47 CFR § 1.17(a)(1).

³⁷ *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983); *Discussion Radio, Incorporated*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7435 (2004).

³⁸ *Fox River Broadcasting, Inc.*, 93 FCC 2d at 129; *Discussion Radio*, 19 FCC Rcd at 7435.

³⁹ *Trinity Broadcasting of Florida, Inc.*, Initial Decision, 10 FCC Rcd 12020, 12063 (1995); *Discussion Radio*, 19 FCC Rcd at 7435; see also *James A. Kay, Jr. v. FCC*, 396 F.3d 1184, 1189-90 (D.C. Cir. 2005) (affirming Commission's revocation of Part 90 land mobile radio licenses based on unauthorized transfer of control and lack of candor); *RKO Gen., Inc. v. FCC*, 670 F.2d, 215, 232, 236 (D.C. Cir. 1981) (affirming denial of license renewal based on lack of candor because "the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate" to ensure that the public interest will be served).

⁴⁰ *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)).

14. 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."⁴² 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.⁴³

15. 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.⁴⁴ 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 50.⁴⁵

16. *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.⁴⁶ 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.⁴⁷ 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.⁴⁸

17. Metro's captioned application remains pending.⁴⁹ Thus, Metro has been under a continuing obligation to ensure the accuracy of this application and to amend it as appropriate. 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

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⁴¹ 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)).

⁴² See 47 CFR § 1.17(a)(2).

⁴³ *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 FCC Rcd 1250 (2004).

⁴⁴ See *Order to Show Cause* at para. 12.

⁴⁵ See *id.*

⁴⁶ 47 CFR § 1.65.

⁴⁷ See *id.*

⁴⁸ See *id.*

⁴⁹ See *Order to Show Cause* at para. 14.

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.

18. Metro has been given multiple opportunities to correct the record and to show cause why it is qualified to be and to remain a Commission licensee when "based on the totality of the evidence, there are substantial and material questions of fact as to whether Metro repeatedly made misrepresentations to and lacked candor with the Commission in its submission of several applications in connection with various Wireless Radio Service."⁵⁰ Metro has waived its right to a hearing, and uncontested evidence shows that Metro is not qualified to remain a Commission licensee. Based on the record, it is ordered that Metro's licenses are revoked, and its application is dismissed for failure to prosecute pursuant to Section 1.221(c) of the Commission's rules.⁵¹

19. Accordingly, **IT IS ORDERED**, pursuant to Section 312 of the Communications Act of 1934, as amended,⁵² and Sections 1.92(d), 0.111(a)(18), and 0.131(a) of the Commission's rules,⁵³ that the Wireless Radio Service licenses held by Metro Two-Way, LLC **ARE REVOKED**, effective the fortieth (40th) day after release of this Order, unless Metro files a petition for reconsideration or application for review within thirty (30) days of the release of this Order, in which case the effective date will be suspended, pending further order of the Commission.

20. **IT IS FURTHER ORDERED** that, pursuant to Section 1.221 of the Commission's rules, 47 CFR § 1.221, that the captioned application held by Metro Two-Way, LLC is dismissed with prejudice for failure to prosecute.

⁵⁰ *Order to Show Cause* at para. 2.

⁵¹ 47 CFR § 1.221(c) (stating that where an application has been designated for hearing and where an applicant fails to file a written appearance within the time specified, "the application will be dismissed with prejudice for failure to prosecute").

⁵² *See* 47 U.S.C. § 312.

⁵³ *See* 47 CFR §§ 1.92(d), 0.111(a)(18), and 0.131(a).

21. **IT IS FURTHER ORDERED** that copies of this **ORDER OF REVOCATION** shall be sent by Certified Mail Return Receipt Requested to:

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
3915 N. Charles Ave.
Wichita, KS 67204-3408

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