

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Acumen Communications)	WTB Docket No. 17-17
)	FRN: 0016049017
Licensee of Various Authorizations in the Wireless Radio Services)	Application File Nos. 0005614865, 0005834762, 0005839763, 0005840938, 0005962267, 0006039610, and 0006823865
Applicant for Modification of Various Authorizations in the Wireless Radio Services)	
)	
Applicant for Renewal of Authorization in the Wireless Radio Services)	

ORDER OF REVOCATION

Adopted: January 4, 2018

Released: January 4, 2018

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. Pursuant to section 312 of the Communications Act of 1934, as amended, and section 0.111(a)(18) of the Commission's rules, we hereby revoke the licenses of Acumen Communications (Acumen) and dismiss Acumen's pending applications for modification and renewal of various authorizations in the Wireless Radio Services.¹ This action follows an Order by the Commission's Chief Administrative Law Judge (ALJ) Richard L. Sippel terminating a hearing into Acumen's qualifications to be a licensee after Acumen failed to appear.² We find that Acumen lacks the qualifications to be or remain a Commission licensee because Acumen failed to respond to a Letter of Inquiry (LOI) from the Enforcement Bureau, waived its right to a hearing, and failed to respond to evidence that has been presented to the Commission in its own license application proceedings. The record in this proceeding also indicates that Acumen misrepresented or lacked candor when it failed to disclose on various Commission applications that the person apparently controlling Acumen had a felony conviction in California.³

¹ 47 U.S.C. § 312; 47 CFR § 0.111(a)(18) (delegating to the Enforcement Bureau authority to "[i]ssue or draft appropriate orders after a hearing has been terminated by an Administrative Law Judge on the basis of waiver").

² See *Acumen Communications*, WT Docket No. 17-17, Order, FCC 17M-20 (ALJ 2017) (*Hearing Termination Order*); 47 U.S.C. § 312(c) ("If after hearing, or a waiver thereof, the Commission determines that an order of revocation or a cease and desist order should issue, it shall issue such order . . ."); 47 CFR § 1.92 ("Whenever a hearing is waived . . . the Chief Administrative Law Judge . . . 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.").

³ See *Acumen Communications*, Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing, 32 FCC Red 243 (WTB 2017) (*Order to Show Cause*).

II. BACKGROUND

A. Recent Proceedings

2. On January 10, 2017, the Wireless Telecommunications Bureau released an *Order to Show Cause*, designating this case for hearing before an Administrative Law Judge. The *Order to Show Cause*, at para. 16, specified the following issues:

- (a) To determine whether Hector Manuel Mosquera directly or indirectly controls Acumen;
- (b) To determine whether Acumen engaged in misrepresentation and/or lack of candor in its applications with the Commission;
- (c) To determine whether Acumen failed to amend its pending applications, 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 Acumen is qualified to be and remain a Commission licensee;
- (e) To determine, in light of the foregoing issues, whether the authorizations for which Acumen is the licensee should be revoked; and
- (f) To determine, in light of the foregoing issues, whether the captioned applications filed by or on behalf of Acumen should be granted.⁴

3. The *Order to Show Cause* directed Acumen, 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.⁵ The *Order to Show Cause* informed Acumen 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.⁶ 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.⁷

4. On April 16, 2017, the ALJ released the *Hearing Termination Order* concluding that Acumen had waived its right to a hearing, terminating the hearing proceeding, and certifying the case to the Commission.⁸ The *Hearing Termination Order* stated that Acumen failed to file a notice of appearance and failed to appear at a status conference held on March 21, 2017.⁹ On April 4, 2017, a Show Cause Hearing was held to give Acumen a further opportunity, but no one appeared on behalf of Acumen at the Show Cause Hearing, nor did Acumen otherwise signal its intent to participate.¹⁰ The *Hearing Termination Order* stated that Acumen was warned by the Presiding Judge on the record and in a

⁴ *Order to Show Cause*, 32 FCC Rcd at 248, para. 16.

⁵ *Id.* at 249, para. 19.

⁶ *Id.* See 47 CFR § 1.92.

⁷ *Order to Show Cause*, 32 FCC Rcd at 249, para. 19; 47 CFR § 1.221.

⁸ *Hearing Termination Order*, FCC 17M-20 at 2.

⁹ *Id.* at 1-2.

¹⁰ *Id.*

previous order “that if it again fails to appear or otherwise fails to address these questions, it will be considered to be in default and a bench dismissal may happen.”¹¹

B. Factual Background

5. Acumen holds eight licenses for Private Land Mobile Radio (PLMR) stations in the Los Angeles area, one PLMR license authorizing itinerant operation nationwide, and two licenses for microwave stations in the Los Angeles area.¹²

6. Acumen applied for its first license with the Commission in 2007.¹³ On October 17, 2007, Acumen submitted an application for a new license for PMLR Station WQHT327 on Form 601.¹⁴ Under the heading “Basic Qualification Questions,” Question 50 asks: “Has the Applicant or any party to this application, or any party directly or indirectly controlling the Applicant, ever been convicted of a felony by any state or federal court?” Acumen responded “N” for no to Question 50.¹⁵ Acumen also answered “N” to Question 50 in 49 subsequent Commission Form 601 submissions, either for a new license or to modify an existing license, most recently on May 11, 2015.¹⁶

7. Evidence indicates that Hector Mosquera is, and has been since Acumen’s October 17, 2007 submission of its first Commission application, a manager with Acumen.¹⁷ It further appears that Mosquera is an officer of Acumen, and has been the sole shareholder of Acumen, since its creation.¹⁸ This evidence indicates that Mosquera directly or indirectly controls Acumen.

8. On January 26, 2015, Mobile Relay Associates (MRA) filed an Informal Objection to various Acumen modification applications and supplemented its pending Petition to Dismiss or Deny, or Informal Objection to another one, based on assertions that Acumen “knowingly lied” to the Commission when it responded “N” to Question 50 on the modification applications.¹⁹ MRA asserts that Mosquera is a principal and officer of Acumen who was apparently 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.²⁰ MRA further asserts that because Mosquera signed Acumen’s modification applications, he “knew full well that [the ‘N’] answer was totally false.”²¹ MRA contends that Acumen’s false statements to the Commission were intentional and warrant denial of its pending applications and revocation of its licenses.²²

9. On November 17, 2016, the Enforcement Bureau sent an LOI to Mosquera, investigating, *inter alia*, his control of Acumen, and whether he, or any other person who directly or indirectly controls

¹¹ *Id.* (citing *Acumen Communications*, WT Docket No. 17-17, Order, FCC 17M-10 (ALJ 2017)). See *Acumen Communications*, WT Docket No. 17-17, Order, FCC 17M-07 (ALJ 2017) (ordering a status conference and discussing certain improper emails sent to parties in the case but not filed with the Commission).

¹² *Order to Show Cause*, 32 FCC Rcd at 244, para. 4.

¹³ *Id.*, 32 FCC Rcd at 244, para. 5.

¹⁴ See File No. 0003202174 (<http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=4182411>).

¹⁵ See *id.*, Reference Copy of application.

¹⁶ *Order to Show Cause*, 32 FCC Rcd at 244, para. 5.

¹⁷ *Id.*, 32 FCC Rcd at 244, para. 6.

¹⁸ *Id.*, 32 FCC Rcd at 244-45, para. 6.

¹⁹ *Id.*, 32 FCC Rcd at 245, para. 7.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Acumen, has ever been convicted of a felony.²³ The LOI directed Mosquera to provide the requested information within 30 calendar days (i.e., by December 19, 2016).²⁴ Mosquera never responded to the LOI.²⁵

10. On January 10, 2017, 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 Acumen 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 any or all of the applications to which Acumen is a party should be denied.²⁶ The *Order to Show Cause* stated that there are substantial and material questions of fact as to whether Acumen repeatedly made misrepresentations to and lacked candor with the Commission in its submission of 50 applications in connection with various Wireless Radio Service authorizations.²⁷

11. The *Hearing Termination Order* terminated the proceeding based on Acumen's waiver of its right to a hearing, revoked all of Acumen's licenses and authorizations, denied with prejudice Acumen's pending applications, and certified the case to the Commission in accordance with section 1.92 of the Commission's rules.²⁸ The Chief Administrative Law Judge attached to the *Hearing Termination Order* a document from Superior Court of California, Los Angeles County, Northeast Branch, entitled "Abstract of Judgment – Prison Commitment," which indicates that, on January 27, 1992, Hector Manuel Mosquera was convicted of possession for sale of cocaine and was sentenced to serve two years in state prison beginning on July 20, 1992.²⁹

III. DISCUSSION

12. Acumen has been given numerous opportunities to correct the record and to show cause why it is qualified to be and to remain a Commission licensee. Acumen failed to respond to an LOI, waived its right to a hearing, and failed to respond to the evidence that has been presented to the Commission in its own application proceedings. Based on this evidence, Acumen has demonstrated it is not qualified to remain a Commission licensee. It is therefore ordered that Acumen's licenses are revoked, and its applications are dismissed for failure to prosecute pursuant to section 1.221(c) of the Commission's rules.

13. 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."³⁰ 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

²³ *Id.*, 32 FCC Rcd at 245, para. 18.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Order to Show Cause*, 32 FCC Rcd at 243, para. 1.

²⁷ *Order to Show Cause*, 32 FCC Rcd at 243, para. 2.

²⁸ *Hearing Termination Order*, FCC 17M-20 at 2. See 47 CFR § 1.92(d) (stating that after the Chief Administrative Law Judge terminates a hearing based upon waiver by the respondent, "the Commission will act upon the matters specified in the order to show cause in the regular course of business. The Commission will determine on the basis of all the information available to it from any source, including such further proceedings as may be warranted, if a revocation order . . . should issue, and if so, will issue such order.").

²⁹ *Hearing Termination Order*, FCC 17M-20, Attach.

³⁰ 47 U.S.C. §§ 312(a)(1)-(2).

which authority is sought.³¹ 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.³²

14. 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.”³³ 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.³⁴ Misrepresentation is a false statement of fact made with the intent to deceive the Commission.³⁵ Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission.³⁶ A necessary and essential element of both misrepresentation and lack of candor is intent to deceive.³⁷ Fraudulent intent can be found from “the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity.”³⁸

15. Allegations first surfaced in 2015 that Mosquera was an officer and apparent principal of Acumen, and had been convicted of a felony in California.³⁹ The petitioner that filed this information with the Commission, MRA, also noted that because Mosquera signed various Commission applications, he “knew full well that [the “N”] answer was totally false.”⁴⁰ MRA contends that Acumen's false statements to the Commission were intentional and warrant denial of its pending applications and revocation of its licenses.⁴¹ MRA also asserts that a 2015 Forfeiture Order issued by the Enforcement

³¹ See 47 U.S.C. § 308(b).

³² See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1190-91 (1986), *recons. granted in part on other grounds*, 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*, 5 FCC Rcd 3252 (1990) (“1990 Character Policy Statement”), *on reconsideration*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

³³ *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.”).

³⁴ See 47 CFR § 1.17(a)(1).

³⁵ *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).

³⁶ *Fox River Broadcasting, Inc.*, 93 FCC 2d at 129; *Discussion Radio*, 19 FCC Rcd at 7435.

³⁷ *Trinity Broadcasting of Florida, Inc.*, Initial Decision, 10 FCC Rcd 12020, 12063 (1995); *Discussion Radio*, 19 FCC Rcd at 7435. See *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).

³⁸ *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)).

³⁹ See *Order to Show Cause*, 32 FCC Rcd at 245, paras. 6-7.

⁴⁰ *Id.*, 32 FCC Rcd at 245, para. 7.

⁴¹ *Id.*

Bureau corroborates its contention that Acumen lacks candor and engages in misrepresentation.⁴² MRA states that in the Forfeiture Order, the Enforcement Bureau found that Acumen denied that it was transmitting on 151.580 MHz when in fact it was intentionally transmitting on that frequency.⁴³ Acumen denied it was transmitting on that frequency, even though Enforcement Bureau staff traced the signal to Acumen's transmitter, and even though there was "a sticker on the Acumen transmitter that labeled the transmitter as operating on 151.580 MHz."⁴⁴

16. Mosquera failed to respond to an LOI from the Enforcement Bureau investigating whether he, or any other person who directly or indirectly controls Acumen, has ever been convicted of a felony.⁴⁵ Acumen has waived its right to a hearing to determine, *inter alia*, whether Hector Manuel Mosquera controls Acumen, whether Acumen engaged in misrepresentation and/or lack of candor in its applications with the Commission, and whether Acumen is qualified to be and remain a Commission licensee.⁴⁶

17. The record thus demonstrates that Hector Mosquera was an officer and sole shareholder of Acumen; that he has a felony conviction; and that he filed 50 applications on behalf of Acumen asserting that no "party to this application, or any party directly or indirectly controlling the Applicant, ever been convicted of a felony by any state or federal court."⁴⁷

18. Acumen has been given numerous 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 Acumen repeatedly made misrepresentations to and lacked candor with the Commission in its submission of fifty applications in connection with various Wireless Radio Service authorizations."⁴⁸ As Acumen has failed to respond to the LOI, waived its right to a hearing, and failed to respond to the evidence that has been presented to the Commission in its own application proceedings, uncontested evidence shows that Acumen is not qualified to remain a Commission licensee. Based on the record, it is ordered that Acumen's licenses are revoked, and its applications are dismissed for failure to prosecute pursuant to section 1.221(c) of the Commission's rules.⁴⁹

IV. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED**, pursuant to Section 312 of the Communications Act of

⁴² Mobile Relay Associates, Second Supplement to Petition to Deny and First Supplement to Informal Objection, Applications of Acumen Communications for Modification of Various Licenses in the Private Mobile Radio Services in California, File Nos. 0005614865, 0005834762, 0005839763, 0005840938, 0005962267, and 0006039610, at 1-2 (filed Jul. 15, 2015) (MRA Second Supplement); *see Acumen Communications, Licensee of Station WQJF635, Los Angeles, CA*, Forfeiture Order, 30 FCC Rcd 6472, 6475 (EB 2015) (*Forfeiture Order*) (imposing a forfeiture of \$17,000 after concluding that Acumen willfully and repeatedly violated section 301 of the Act and sections 1.903(a) and 90.403(e) of the Commission's rules by operating its station on a frequency not authorized on its license, and by failing to take reasonable precautions to avoid causing harmful interference).

⁴³ MRA Second Supplement at 2.

⁴⁴ *Id.* (citing *Forfeiture Order*, 30 FCC Rcd at 6474, para. 7).

⁴⁵ *Order to Show Cause*, 32 FCC Rcd at 245-46, para. 8.

⁴⁶ *Hearing Termination Order*, FCC 17M-20 at 2.

⁴⁷ *See Hearing Termination Order*, FCC 17M-20, Attach.; *Order to Show Cause*, 32 FCC Rcd at 247, para. 13.

⁴⁸ *Id.* at 243, para. 2.

⁴⁹ 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").

1934, as amended,⁵⁰ and Sections 1.92(d) and 0.111(a)(18) of the Commission's rules,⁵¹ that the captioned Wireless Radio Service licenses held by Acumen Communications **ARE REVOKED**, effective the fortieth (40th) day after release of this Order, unless Acumen 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 copies of this **ORDER OF REVOCATION** shall be sent by certified mail, return receipt requested, to:

Acumen Communications
c/o Doug Thompson
CARA Enterprises, Inc.
P.O. Box 400124
Las Vegas, NV 89140-0124

Acumen Communications
10670 S La Cienega #C
Inglewood, CA 90304
Attn: Radio Manager

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

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

⁵⁰ See 47 U.S.C. § 312.

⁵¹ See 47 CFR §§ 1.92(d) and 0.111(a)(18).