

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

**FCC 17M-07
10763**

| | | |
|--|---|---|
| In the Matter of |) | WTB Docket No. 17-17 |
| |) | FRN: 0016049017 |
| ACUMEN COMMUNICATIONS |) | |
| |) | |
| 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

Issued: February 24, 2017

Released: February 24, 2017

I. Background

This case was designated for hearing by *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing*, DA 17-33, released January 10, 2017 (*HDO*), issued under delegated authority by the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau. The *HDO*'s issues are set to determine "whether Acumen repeatedly made misrepresentations to and lacked candor with the Commission" in failing to disclose the alleged felony conviction of Mr. Hector Manuel Mosquera, an apparent principal of Acumen. *HDO* at 1, para. 2; *id.* at 6, para. 16.

A summary of the *HDO* was published in the Federal Register on January 19, 2017. 82 FR 6549-01. A Notice of Appearance – conforming to the requirements of 47 CFR § 1.221 – was required to be filed within 20 calendar days of the release of the *HDO*. See *HDO* at 7, para. 18. Rini O'Neil, PC, timely filed a Notice of Appearance on behalf of third-party Mobile Relay Associates (MRA)¹ on January 24, 2017. Apparently, Acumen emailed a Notice of Appearance to counsel, but had not filed it with the Commission, contrary to the *HDO* and Commission rules.

On February 23, 2017, the Enforcement Bureau filed a Request for Status Conference "to determine whether this case should go forward," given Acumen's improper filing. *Id.* at 3. For the reasons below, the Bureau's request is GRANTED.

¹ MRA was made a party to this matter after having objected to Acumen's modification applications. See *HDO* at 7, para. 22; *id.* at 3, para. 7.

II. Acumen's Notice of Appearance

It was not until the Bureau filed its Request for Status Conference that the Office of Administrative Law Judges (OALJ) became aware that on January 30, 2017, Acumen had emailed a Notice of Appearance to counsel for the Enforcement Bureau and counsel for MRA. However, while emailing of the Notice of Appearance may serve as a form of notice, it does not constitute a filing in accord with Commission rules.

Section 1.221(c) of the Commission's Rules provides in pertinent part:

In order to avail himself of the opportunity to be heard, the applicant [whose application has been designated for hearing], in person or by his attorney, shall, within 20 days of the mailing of the notice of designation for hearing . . . , *file with the Commission*, in triplicate, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified in the order.

(Emphasis added.)

Acumen failed to file a Notice of Appearance with the Commission as required.² Therefore, its applications could "be dismissed with prejudice for failure to prosecute." *See* 47 CFR § 1.221(c); *HDO* at 7, para. 19. A Status Conference will be held on **Tuesday, March 14, 2017 at 11:00 AM**, at which time the proper method of service and the effect of an unfiled Notice of Appearance will be discussed.

III. Improper Emails

There shall be no further substantive email communications with OALJ without authorization of the Presiding Judge. Substantive emails such as those recently sent by Harold Pick³ on behalf of Acumen are unauthorized and unacceptable. *See* Attachment A. Pick's email communications are not to be recognized as filings, and therefore the Presiding Judge will not respond to such emails or any issue raised therein. In other words, the issues set for hearing will not be litigated by email.

It has also come to the attention of OALJ staff that the email address provided by Hector Mosquera (Radiobuy1728@msn.com) in Acumen's Notice of Appearance is inaccurate, inoperative, or invalid. *See* Attachment B. Therefore, Acumen must forthwith provide OALJ and counsel for all parties with a functioning email address for Mr. Mosquera.

IV. Rulings

IT IS ORDERED that the Enforcement Bureau's Request for Status Conference, joined by MRA, is GRANTED.

² Just as "[t]he filing of a document with the Commission does not constitute service upon Commission counsel," 47 CFR § 1.47(c), the reverse is also true: sending a document to Commission counsel does not constitute a filing with the Commission.

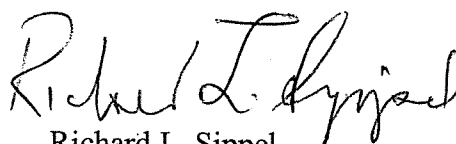
³ It is also noted that the authority of Harold Pick to act on behalf of Acumen and/or Hector Manuel Mosquera has not been shown and cannot be determined.

IT IS FURTHER ORDERED that the Status Conference will be held in Hearing Room TW-A363 at Commission Headquarters, located at 445 12th Street, S.W., Washington, D.C. 20554, on **Tuesday, March 14, 2017 at 11:00 AM.**

IT IS FURTHER ORDERED that the Chief Administrative Law Judge Richard L. Sippel shall serve as Presiding Judge in the above-entitled proceeding,⁴ and that the parties are on notice that they are to be fully cognizant of Part 1 of the Commission's Rules concerning Practice and Procedure.⁵

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION⁶



Richard L. Sippel
Chief Administrative Law Judge

⁴ Courtesy copies of Notices of Appearance, Pleadings, and Motions are to be emailed or faxed to the Office of Administrative Law Judges (OALJ). Email is the preferred means of providing copies to the Presiding Judge and counsel. OALJ email addresses to be included are: richard.sippel@fcc.gov, rachel.funk@fcc.gov, and patricia.ducksworth@fcc.gov. Alternatively, the OALJ fax number is (202) 418-0195.

⁵ 47 CFR Part 1, Subparts A and B.

⁶ Courtesy copies of this Order will be sent via email and U.S. mail on issuance to the parties listed in the *HDO* (DA 17-33), released January 10, 2017.

Attachment A

Rachel Funk

From: Harold Pick <haroldpick@yahoo.com>
Sent: Thursday, February 23, 2017 12:05 PM
To: Pamela Kane; Radiobuy1728@msn.com; doug@caraenterprises.com; dkaufman@rinioneil.com
Cc: Richard Sippel; Rachel Funk; Monique Gray; Pamela Smith; Patricia Ducksworth; Michael Engel
Subject: Re: 2 23 17 WTB Docket No. 17-17

Your request makes no sense. Acumen has filed a notice to appear and you have a copy.

As you know Acumen Inc is pro se and followed all rules to file a notice to appear and now you want a default.

Let Acumen know what do you want done?

We object to the FCC denying the Acumen notice to appear.

Harold

From: Pamela Kane <Pamela.Kane@fcc.gov>
To: "Radiobuy1728@msn.com" <Radiobuy1728@msn.com>; "haroldpick@yahoo.com" <haroldpick@yahoo.com>; "doug@caraenterprises.com" <doug@caraenterprises.com>; "dkaufman@rinioneil.com" <dkaufman@rinioneil.com>
Cc: Richard Sippel <Richard.Sippel@fcc.gov>; Rachel Funk <Rachel.Funk@fcc.gov>; Monique Gray <Monique.Gray@fcc.gov>; Pamela Smith <Pamela.Smith@fcc.gov>; Patricia Ducksworth <Patricia.Ducksworth@fcc.gov>; Michael Engel <Michael.Engel@fcc.gov>
Sent: Thursday, February 23, 2017 8:12 AM
Subject: 2 23 17 WTB Docket No. 17-17

Enclosed please find service copies of a pleading filed earlier today by the Enforcement Bureau.

Pamela S. Kane
Special Counsel -- Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
202-418-2393

Rachel Funk

From: Harold Pick <haroldpick@yahoo.com>
Sent: Thursday, February 23, 2017 12:24 PM
To: Rachel Funk; David Kaufman; Pamela Kane; doug@caraenterprises.com; Hector Mosquera; Harold Pick
Cc: Richard Sippel; Monique Gray; Pamela Smith; Patricia Ducksworth; Michael Engel
Subject: Re: 2 23 17 WTB Docket No. 17-17

We are asking for due processes and not accepting the notice of appearance is a violation of due processes and does not require a motion.

From: Rachel Funk <Rachel.Funk@fcc.gov>
To: David Kaufman <dkaufman@telecommediatechlaw.com>; Harold Pick <haroldpick@yahoo.com>; Pamela Kane <Pamela.Kane@fcc.gov>; "Radiobuy1728@msn.com" <Radiobuy1728@msn.com>; "doug@caraenterprises.com" <doug@caraenterprises.com>
Cc: Richard Sippel <Richard.Sippel@fcc.gov>; Monique Gray <Monique.Gray@fcc.gov>; Pamela Smith <Pamela.Smith@fcc.gov>; Patricia Ducksworth <Patricia.Ducksworth@fcc.gov>; Michael Engel <Michael.Engel@fcc.gov>
Sent: Thursday, February 23, 2017 9:11 AM
Subject: RE: 2 23 17 WTB Docket No. 17-17

Counsel,

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Rachel B. Funk
Attorney Advisor
Office of the Administrative Law Judges
Federal Communications Commission
(202) 418-2268

From: David Kaufman [mailto:dkaufman@telecommediatechlaw.com]
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To: Harold Pick <haroldpick@yahoo.com>; Pamela Kane <Pamela.Kane@fcc.gov>; Radiobuy1728@msn.com; doug@caraenterprises.com
Cc: Richard Sippel <Richard.Sippel@fcc.gov>; Rachel Funk <Rachel.Funk@fcc.gov>; Monique Gray <Monique.Gray@fcc.gov>; Pamela Smith <Pamela.Smith@fcc.gov>; Patricia Ducksworth <Patricia.Ducksworth@fcc.gov>; Michael Engel <Michael.Engel@fcc.gov>
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I'm not sure why a for-profit entity can make a business decision to not spend money to hire counsel, but then avoid the consequences of that business decision. Mobile Relay Associates will file a pleading joining in the request for a status conference.

David J. Kaufman
202-955-5516 office
202-997-0025 cell

The information contained in this message, including attachments, may contain privileged or confidential information that is intended to be delivered only to the person identified above. If you are not the intended recipient, or the person responsible for delivering this message to the intended recipient, we

request that you immediately notify the sender and ask that you do not read the message or its attachments, and that you delete them without copying or sending them to anyone else.

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To: Pamela Kane <Pamela.Kane@fcc.gov>; Radiobuy1728@msn.com; doug@caraenterprises.com; David Kaufman <dkaufman@telecommediatechlaw.com>

Cc: Richard Sippel <Richard.Sippel@fcc.gov>; Rachel Funk <Rachel.Funk@fcc.gov>; Monique Gray <Monique.Gray@fcc.gov>; Pamela Smith <Pamela.Smith@fcc.gov>; Patricia Ducksworth <Patricia.Ducksworth@fcc.gov>; Michael Engel <Michael.Engel@fcc.gov>

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Harold

From: Pamela Kane <Pamela.Kane@fcc.gov>

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Enclosed please find service copies of a pleading filed earlier today by the Enforcement Bureau.

Pamela S. Kane
Special Counsel -- Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
202-418-2393

Rachel Funk

From: Harold Pick <haroldpick@yahoo.com>
Sent: Thursday, February 23, 2017 12:33 PM
To: Rachel Funk; David Kaufman; Pamela Kane; Radiobuy1728@msn.com; doug@caraenterprises.com; Hector Mosquera
Cc: Richard Sippel; Monique Gray; Pamela Smith; Patricia Ducksworth; Michael Engel
Subject: Re: 2 23 17 WTB Docket No. 17-17

Let me know what you want it sent to and you must follow Acumen Inc due process of law.

You can not deny the receipt of a notice or appearance when you have a copy and it was filed by mail and email.

This is a violation of the US Construction rights of Acumen Inc and the officers.

Harold

From: Rachel Funk <Rachel.Funk@fcc.gov>
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David J. Kaufman
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Rachel Funk

From: Harold Pick <haroldpick@yahoo.com>
Sent: Thursday, February 23, 2017 12:41 PM
To: Rachel Funk; David Kaufman; Pamela Kane; Radiobuy1728@msn.com; doug@caraenterprises.com; Hector Mosquera
Cc: Richard Sippel; Monique Gray; Pamela Smith; Patricia Ducksworth; Michael Engel
Subject: Re: 2 23 17 WTB Docket No. 17-17

This is notice to the FCC that Acumen Inc does not have the money to hire legal counsel in this case. Acumen Inc hereby demands the FCC to provide legal counsel to represent Acumen Inc in this matter.

Harold

From: Rachel Funk <Rachel.Funk@fcc.gov>
To: David Kaufman <dkaufman@telecommediatechlaw.com>; Harold Pick <haroldpick@yahoo.com>; Pamela Kane <Pamela.Kane@fcc.gov>; "Radiobuy1728@msn.com" <Radiobuy1728@msn.com>; "doug@caraenterprises.com" <doug@caraenterprises.com>
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We object to the FCC denying the Acumen notice to appear.

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Subject: Re: 2 23 17 WTB Docket No. 17-17

The FCC has failed to send out a LOI letter to Acumen Inc and to date Acumen has never gotten it, The Hearing order was not served on Acumen as required by law. The Hearing order was mailed to Acumen January 25 2017 not giving Acumen time to respond. And now the FCC rejects Acumen's notice to appear.

The FCC has Failed to follow Due Process and required by the US Constitution and has failed to follow the Laws of the FCC rules.

The FCC has also failed to provide service under 47 CFR 1.211 and 47 CFR 1.47

Acumen has a right under US Code to have due process.

Harold

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To: David Kaufman <dkaufman@telecommediatechlaw.com>; Harold Pick <haroldpick@yahoo.com>; Pamela Kane <Pamela.Kane@fcc.gov>; "Radiobuy1728@msn.com" <Radiobuy1728@msn.com>; "doug@caraenterprises.com" <doug@caraenterprises.com>
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Washington, D.C. 20554
202-418-2393

Attachment B

Rachel Funk

From: Mail Delivery Subsystem <MAILER-DAEMON@mx0b-0024ed01.pphosted.com>
Sent: Thursday, February 23, 2017 12:13 PM
To: Rachel Funk
Subject: Returned mail: see transcript for details
Attachments: ATT00001; RE: 2 23 17 WTB Docket No. 17-17

The original message was received at Thu, 23 Feb 2017 17:11:54 GMT from m0102174.pops.net [127.0.0.1]

----- The following addresses had permanent fatal errors ----- <Radiobuy1728@msn.com>
(reason: 550 Requested action not taken: mailbox unavailable)

----- Transcript of session follows -----

451 4.4.1 reply: read error from mx3.hotmail.com.

... while talking to mx1.hotmail.com.:

>>> DATA

<<< 550 Requested action not taken: mailbox unavailable

550 5.1.1 <Radiobuy1728@msn.com>... User unknown <<< 503 Need Rcpt command.