

July 1, 2005

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Submission – WT Docket No. 02-55 – Continued Qualifications Of Transition Administrator/Access To Accurate Data

Dear Ms. Dortch:

Preferred Communication Systems, Inc. (“Preferred”) hereby responds to the separate May 13, 2005 ex parte filings by members of the Transition Administrator team BearingPoint, Inc. (“Bearing Point” or “Company”) and Squires, Sanders & Dempsey (“SSD”). Both filings were made in response to Preferred’s May 2, 2005 letter, also filed herein.

BearingPoint does not contest any of the factual issues that were raised by Preferred about recent developments at the Company. It has no basis for doing so since these facts were taken directly from filings made by BearingPoint with the United States Securities and Exchange Commission (“SEC”). Indeed, since Preferred’s May 2 letter, there have been yet further developments that reflect ongoing instability and uncertainty at BearingPoint. These include the inability of BearingPoint to file its first quarter 2005 financial report with the SEC and the departure of its Chief Financial Officer after a stay of only two months.¹

BearingPoint’s response to all this negative news is, in effect, to tell the Commission to ignore it as irrelevant, on the grounds that it has nothing to do with the Company’s ability to perform its obligations as part of the TA team. Yet the Commission’s Acting General Counsel only recently stated “[i]mplementing the reconfiguration of the 800 MHz band will require a high degree of administrative coordination and organization by the TA in order to achieve the Commission’s goals in an efficient and expeditious manner.”² This primarily involves the oversight and

¹ See Form 12b-25, dated May 11, 2005 and Form 8-K, dated May 24, 2005, both filed at the SEC.

²In the Matter of Improving Public Safety Communications in the 800 MHz Band, DA 05-1613, Memorandum Opinion And Order, Acting General Counsel, released June 7, 2005, at p. 3-4 (“GC Order”).

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administration of “the complex process of” relocating many incumbent licensees like Preferred.³ Preferred’s point remains a quite simple one – in light of the critical complexity of this effort which is about to begin and span at least the next 36 months, how can the Commission continue to put its faith in a Company that cannot keep track of its own books. At a very minimum, the internal accounting reexaminations, shareholder lawsuits⁴, and executive turnover constitute a decided distraction from what Preferred believes even BearingPoint would concede is a highly detailed exercise.

With respect to the SSD response, disclaimers aside, it is only fair, reasonable and indeed required that somewhere, whether it be through the TA or the TA and Commission working together, accurate and complete data be available to non-Nextel and non-Southern Linc licensees who are being required to relocate. This is particularly the case where such licensees are required to accommodate incumbents “originally licensed” contours in accordance with Section 90-683 of the Commission’s Rules. SSD concedes that the TA Tools database should not be relied upon by Preferred or any other licensee. It also notes that the FCC’s database includes cancelled licenses and therefore, presumably, is not accurate. Indeed, in its recently posted “Frequency Proposal Report Fact Sheet”, the TA describes the FCC database as “known to have inaccuracies and in consistencies.”

In addition, the FCC data available on line does not provide information going back to the grant of some of the original licenses. As a result Preferred has recently been forced to file a Freedom of Information Act request seeking this information.⁵ At this point the Commission is still processing the request, even as the rebanding process has started.

The burden should not be placed on the affected licensees to ferret out this information. The TA, if it is to fairly and accurately administer and oversee this “complex process” should, working with the Commission, ensure that it is made available in a timely fashion. To date, the current TA team has failed to do so. This failure directly affects the “fundamental fairness and integrity” of the process that the Commission has only recently claimed is essential and prejudices licensees like Preferred that paid millions for their licenses.⁶

³ *Id.*, at p. 3.

⁴ See Form 8-K, dated April 26, 2005.

⁵ A copy is attached hereto.

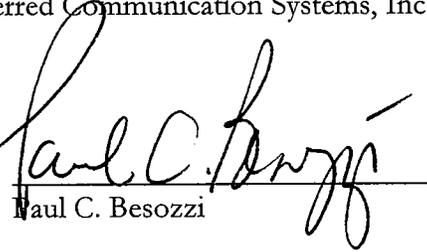
⁶ See *GC Order, supra*, at p. 3.



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Respectfully, submitted

Preferred Communication Systems, Inc.

By: 
Paul C. Besozzi

cc: Charles M. Austin

June 1, 2005

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BY ELECTRONIC MAIL

Managing Director
Attention: FOIA Officer
Federal Communications Commission
445 12th Street, S.W., Room 1-A835
Washington, D.C. 20554

Re: Freedom of Information Act Request – Preferred Communication Systems, Inc.

Dear Mr. Fishel:

In accordance with Section 0.461 of the Commission's Rules, 47 C.F.R. § 0.461, Preferred Communication Systems, Inc. ("Preferred"), acting through counsel, hereby submits this request for information in the Commission's files which Preferred believes has not generally been made available to the public.

Preferred is an Economic Area ("EA") and site-based licensee for the provision of Specialized Mobile Radio ("SMR") services in the 800 MHz band. As such, Preferred is currently subject to the terms and conditions of Part 90 of the Commission's Rules, as modified by the *Rebanding Orders*.¹ Under the terms of Section 90.683 of those Rules, as an EA licensee Preferred has certain obligations to protect an incumbent licensee's² service area as defined by its "originally licensed" contour. This requires Preferred to establish accurately what those "originally licensed" contours actually are. In an effort to do so, Preferred has examined the FCC's Private Land Mobile Radio Band (806-824 MHz/851-869 MHz) Part 90 license databases ("FCC Part 90 Database") publicly available from the FCC as of end of year 2000 forward. However, these FCC Part 90 Databases do not permit Preferred to accurately determine the "originally licensed"

¹*In the Matter of Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd. 14969 (2004), as amended by *Erratum*, released September 10, 2004, *Erratum*, DA 04-3208, 19 FCC Rcd. 19651 and *Erratum*, DA 04-3459, released October 29, 2004, *recon. and appeal pending* ("Initial Report and Order"); *Supplemental Order and Order On Reconsideration*, 19 FCC Rcd. 25120 (2004), *recon. and appeal pending* ("Supplemental Order") (collectively, "Rebanding Orders").

²Incumbent licensees are all 800 MHz licensees authorized in the 809-821/854-866 MHz band that obtained licenses or filed applications on or before December 15, 1995.

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contours of these incumbent licensees because many of these licenses were originally issued prior to 2000.

FCC Staff have orally told Preferred's authorized engineering consultant, Concepts To Operations, Inc. that certain pre-2000 FCC Part 90 Databases exist but have not been made available to the public because they are in a different format and not included in the Universal Licensing System ("ULS"). However, the FCC Staff made no representation that these Databases would not or could not be made available to the public.³ In addition, Preferred has considered whether the Transition Administrator ("TA") on-line database would be another source of these data. However, the TA's web site has specifically warns 800 MHz licensees like Preferred that the ULS, upon which the TA is relying in determining where to relocate affected 800 MHz licensees within the Private Mobile Radio Band, is not necessarily accurate or complete.⁴ For example, the TA specifically warned Preferred that the FCC's ULS on-line database does not delete cancelled licenses.⁵ Moreover, on May 25, 2005, the Wireless Telecommunications Bureau announced that it was postponing implementation of an electronic feature that would allow users of the ULS to identify licenses for which a timely notice of construction or waiver has not been filed and, therefore, the license is automatically terminated.⁶

In light of the foregoing, Preferred is requesting, pursuant to the Freedom Of Information Act, a copy of the FCC Part 90 Database as of year-end 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998 and 1999 ("Requested Databases"). Preferred requests that the Requested Databases be made available in electronic format (preferably on DVDs). If the Commission lacks the equipment to provide the requested information, Preferred will, at its own expense, make such equipment available to the Commission.

Preferred requests that the FCC provide the requested information in its entirety. In each case the Requested Database so provided should include at least the following information:

- 1) Data structure and format (such as identities of the various data fields);

³For example, there was no representation that the database was exempt from disclosure under the exemption provisions of the Freedom of Information Act.

⁴See, e.g., [http://tatools.800ta.org/CallsignChecker/\(bev1b155dohiw2yjirddb3al\)TaToolsCallSignChecker.aspx](http://tatools.800ta.org/CallsignChecker/(bev1b155dohiw2yjirddb3al)TaToolsCallSignChecker.aspx).

⁵See attached letter from the TA to Preferred on a related matter, which is filed in WT Docket No. 02-55.

⁶FCC *Public Notice*, DA 05-1362, released May 25, 2005. Preferred notes that the Commission is giving licensees who failed to comply with the notification requirements. See also FCC *Public Notice*, DA 05-137, released January 21, 2005.

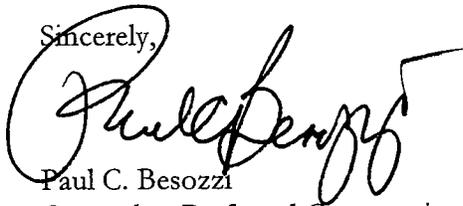
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- 2) Name of the licensee;
- 3) Call sign administrative information;
- 4) Site information (latitude and longitude coordinates and physical address);
- 5) Frequency information;
- 6) Unit(s) of measurement (for example; feet or meters); and
- 7) The meaning of all the abbreviations used for each such separate years.

Preferred is prepared to pay the maximum search fee of \$67.74 per hour listed in Section 0.467(a) of the Commission's Rules if necessary to required obtain a copy of the Requested Databases.

Please direct all questions concerning this request to the undersigned counsel.

Sincerely,



Paul C. Besozzi
Counsel to Preferred Communication Systems, Inc.

cc: Charles M. Austin
Michael J. Wilhelm
Kathryn Garland



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May 13, 2005

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Response of the 800 MHz Transition Administrator to *Ex Parte* Submission of Preferred Communication Systems, Inc. - WT Docket No. 02-55

Dear Ms. Dortch:

The 800 MHz Transition Administrator (“TA”) hereby responds to the *ex parte* letter of Preferred Communication Systems, Inc. (“Preferred”) that was filed with the Commission in the above-referenced docket on May 2, 2005 (“Preferred Letter”).¹ The Preferred Letter makes reference to an April 21, 2005 disclosure by BearingPoint to the Securities and Exchange Commission (“SEC”) regarding steps that the company is taking to address internal accounting issues. The Preferred Letter also suggests that minor web programming difficulties with the “TA Tools” portion of the TA’s website support the removal of BearingPoint from the TA team.

The TA addresses in this response the allegations of Preferred that focus on the independence and operation of the TA. BearingPoint is filing separately its own response, which addresses its SEC disclosures.

The Preferred Letter argues that BearingPoint’s SEC disclosure undermines “the credibility of the Company’s ‘Independence Management Plan’ to maintain appropriate controls separating those working for Nextel and those working for the TA.”² The TA, however, and not BearingPoint, established and maintains the Independence Management Plan. The TA’s Independence Management Plan is applicable to all members of the TA team, including BearingPoint. The TA’s General Counsel, Squire, Sanders & Dempsey L.L.P. (“Squire Sanders”), oversees the administration of the Independence Management Plan.

¹ See Letter from Paul C. Besozzi, et al., counsel to Preferred Communication Systems, Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 02-55 (May 2, 2005) (“Preferred Letter”).

² *Id.*, at 3.

The Preferred Letter makes reference to a technical problem with the TA's searchable reconfiguration database, which was recently made available to the public as a part of the "TA Tools" portion of the TA's website. The database was intended as a convenience to licensees to provide them with information about their frequencies and locations that may be affected by the reconfiguration and their procedural status in the reconfiguration process. A disclaimer on the website clearly indicates that the database was not intended to be an engineering resource.³

In addition to displaying such relevant information as the call sign, the licensee mailing address, the existing frequency band and channel number, the relevant NPSPAC region, the assigned reconfiguration wave, the post-reconfiguration service category and the procedural status of the license in the overall reconfiguration process, the TA's database also provides the latitude and longitude of each licensed site. This information was produced based on the FCC's Universal Licensing System ("ULS"). Although the coordinate information is not necessary to make use of the database, the TA provided the coordinates for informational purposes. As a result of a minor and immaterial software coding error on the website, however, the database repeated latitude information in both the latitude and longitude columns. The TA has since corrected the software to present the correct information in the appropriate columns.

The Preferred Letter also notes that the TA's searchable tool includes some cancelled licenses. As noted above, the license data included in the TA's database was obtained directly from the FCC's ULS database. The FCC does not remove cancelled licenses from its ULS database. The TA is preparing an updated database search tool, which will include a field to identify cancelled licenses.

Sincerely,

/s/ Robert B. Kelly
Robert B. Kelly
Squire, Sanders & Dempsey L.L.P.

³ The TA Tools portion of the TA's website notes, *inter alia*, that the search tools are intended only to assist site-based 800 MHz licensees to determine whether or not they are required to reconfigure their 800 MHz systems and the 800 MHz Transition Administrator cannot guarantee the accuracy of the data included. See [http://tatools.800ta.org/CallsignChecker/\(vi14ax55k5grkuytqpxyjg55\)/TaToolsCallsignChecker.aspx](http://tatools.800ta.org/CallsignChecker/(vi14ax55k5grkuytqpxyjg55)/TaToolsCallsignChecker.aspx) (last visited on May 10, 2005).