

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED
FEB 19 2008
Federal Communications Commission
Office of the Secretary

In the Matter of	)	EB Docket No. 07-147
)	
PENDLETON C. WAUGH, CHARLES M. AUSTIN, and JAY R. BISHOP	)	File No. EB-06-IH-2112
	)	NAL/Acct. No. 200732080025
)	
PREFERRED COMMUNICATION SYSTEMS, INC.	)	FRN No. 0003769049
)	
Licensee of Various Site-by-Site Licenses in the Specialized Mobile Radio Service.)	
)	
PREFERRED ACQUISITIONS, INC.	)	FRN No. 0003786183
)	
Licensee of Various Economic Area Licenses in the 800 MHz Specialized Mobile Radio Service)	
)	

To: The Honorable Judge Arthur I. Steinberg

ENFORCEMENT BUREAU'S
MOTION TO COMPEL DOCUMENT PRODUCTION
AND INTERROGATORY ANSWERS
FROM CHARLES M. AUSTIN

The Enforcement Bureau ("Bureau") moves, pursuant to 47 C.F.R. § 1.325, for an order compelling Charles M. Austin ("Austin") to produce responsive documents which Austin has withheld from production as well as answers to interrogatories which Austin has failed to produce. Despite the Bureau's good faith efforts, it has been unable to informally resolve this discovery dispute. In support hereof, the Bureau states as follows:

1. On or about October 15, 2007, the Bureau served its First Request for Production of Documents (the "Document Requests") and its First set of Interrogatories (the "Interrogatories") to Austin (collectively, the "Discovery Requests"), each appended

No. of Copies rec'd 046
List A B C D E

hereto as Attachments A and B, respectively. Austin's responses to the Document Requests were due on October 25, 2007, and his answers to the Interrogatories were due on October 29, 2007.

2. On October 23, 2007, November 8, 2007, and November 21, 2007, Austin sought extensions of time to respond to both the Bureau's Document Requests and the Bureau's Interrogatories. On or about November 26, 2007, Austin filed broad objections to the Bureau's Document Requests, but failed to produce or otherwise make available the accompanying responsive documents to which he had no objections.¹

3. On November 26, 29, and 30, 2007, Austin sought additional extensions of time to respond to the Bureau's Interrogatories, none of which the Bureau acquiesced to. Austin apparently assumed that the Bureau would grant his seriatim requests, and Austin unilaterally availed itself of whatever additional time it thought it might need without regard to rules of procedure governing this case.

4. On November 30, 2007, Austin finally allowed the Bureau to inspect and copy responsive documents. This amounted to approximately 6,600 pages of purportedly responsive documents. No index was provided to identify which documents were responsive to which Requests.

5. Although Austin committed numerous times to answering the Bureau's Interrogatories, the Bureau did not receive any answers until December 3, 2007.² Even those responses, as outlined below, are deficient.

6. The responses to the Document Requests raised numerous meritless, vague, and overbroad objections which should be rejected. Moreover, objections as to

¹ Austin's objections are appended as Attachment C.

² Answers to Interrogatories are appended hereto as Attachment D.

privilege were raised but no privilege log was produced to substantiate such objections and the corresponding withholding of otherwise responsive information. These objections should be stricken and Austin should be ordered to respond to the Bureau's Document Requests. Austin should also be ordered to immediately produce a privilege log so that his claims of privilege can be evaluated.

7. The Bureau served separate document requests in this proceeding on Preferred Communication Systems, Inc. ("PCSI"), its subsidiary, Preferred Acquisitions, Inc. ("PAI"), and on the purported majority shareholder of these two companies, Austin, all of which are named parties in this case. In response to the Bureau's Document Requests served on Austin, Austin commingled his responsive documents with those from PCSI and PAI. Moreover, none of the responsive documents were organized in a manner which would permit the Bureau to distinguish from which party the documents were provided or to which itemized request the documents were responsive. In essence, Austin (as well as PCSI and PAI) did a "document dump" on the Bureau. Such practice is prejudicial to the Bureau's efforts to prosecute this case, smacks of bad faith, and should not be tolerated.³

8. Despite the Bureau's good faith efforts to resolve these matters informally, many issues remain unresolved. Section 1.323 of the Commission's Rules provides that the Bureau must file any motion to compel answers to Interrogatories within seven days of any objection or otherwise incomplete answer.⁴ Section 1.325 of the Commission's Rules provides that the Bureau must file any motion to compel "within five business days

³ As such, the Bureau may need to file another Motion to Compel at a later date if certain materials that Austin purports to provide are not actually present in the document production from PAI, PCSI, and Austin.

⁴ See 47 C.F.R. § 1.323

of the objection or claim of privilege” regarding Document Requests.⁵ The Bureau has not yet had the opportunity to review fully the Respondents’ document production or privilege log(s) (as they have yet to be produced). The Bureau attempted to resolve these discovery issues with Austin, through his counsel, on November 27 and December 5, 2007. Austin agreed to extend the Bureau’s deadline to file any necessary Motion to Compel as to Austin’s discovery responses.⁶ Austin also agreed to supplement his Interrogatory answers.⁷ Accordingly, the Bureau respectfully states that the instant motion is timely and requests that the Presiding Judge accept and rule on the instant pleading.

A. Document Requests and Responses – Attachments A and C

1. The Document Requests Are Not Vague, Overbroad, Burdensome, or Irrelevant.

a. Objections Regarding Breadth, Burden, and Relevance: Document Requests 1-16.

9. Austin objects generally to Document Requests 1-16 on the basis that the documents were previously provided to the Bureau prior to designation, the documents sought would duplicate records already in the Bureau’s possession, and producing them now would be overly burdensome.⁸

10. Austin’s objections are meritless. The documents sought are clearly relevant to the designated issues.⁹ The Commission specifically designated for hearing

⁵ See 47 C.F.R. § 1.325.

⁶ The Bureau also, out of an abundance of caution, filed its Unopposed Motion for Extension of Filing Deadline, on November 30, 2007, which is still pending with the Presiding Judge.

⁷ As such, the Bureau may need to file another Motion to Compel at a later date if certain materials that Austin purports to provide are not actually present in the document production from PAI, PCSI, and Austin.

⁸ See Attachment C at 1-2 (generally objecting to all Document Requests).

⁹ See 47 C.F.R. §1.311 (announcing general rules applicable to specific discovery rules).

whether Pendleton C. Waugh's ("Waugh") role relating to PCSI's and PAI's personnel and operations amounted to *de facto* control, whether PCSI misrepresented his involvement in responses to Bureau letters of inquiry, and whether PAI misrepresented his involvement in its auction applications or other filings.¹⁰ As the Commission discussed in the Order to Show Cause and Notice of Opportunity for Hearing ("OSC"), elements of *de facto* control include allowing someone other than the licensee to assume control of policy decisions, hire, fire, and supervise personnel, draft FCC filings and business plans evidencing a licensee's policy decisions, and assume financing obligations.¹¹ Additionally, PAI had incentive to misrepresent in its auction applications that Waugh was not enmeshed with its and PCSI's affairs, due to his felony convictions. By seeking documents relating to Austin's responsibilities with respect to PCSI and PAI, the Bureau seeks to verify which of PCSI's and PAI's claims are supportable, *i.e.*, whether these companies allowed Waugh to assume responsibilities that should have remained Austin's responsibility and lied to the Commission about it.

11. The Document Requests seek documents regarding Austin's role in crucial operative areas for PCSI and PAI including, but not limited to, drafting Commission filings and business plans reflecting these companies' policy and financial documents, hiring and firing of employees, assuming financial obligations, and the negotiating of contracts or agreements with others.

12. Based upon areas designated by the OSC and Commission precedent regarding *de facto* control, every question regarding Austin's involvement or the company's overall business and finances is at issue, as are questions about how and when

¹⁰ See *Pendleton C. Waugh, et al.*, Order to Show Cause and Notice of Opportunity for Hearing, 22 FCC Rcd 13363, 13370-13374 (2007) ("OSC").

he came to learn about Waugh's and Bishop's convictions. Without documents pertaining to these areas, it would be extremely difficult, if not impossible, for the Bureau to know whom to depose, whom to cross-examine, what issues such examination should concern, and who may possess information otherwise relevant to the hearing issues. Accordingly, the Document Requests are not irrelevant, overly broad, vague, or unduly burdensome, and the Bureau respectfully requests that Presiding Judge overrule these objections and order Austin to produce responsive documents to the extent he has not already done so.

b. Document Requests 2-3, 5-6, 8, 11-13, 15.

13. In addition to making general objections, Austin recites the same objections (that Requests are vague, overbroad, unduly burdensome,¹² and/or duplicative of materials already submitted to the Bureau)¹³ with respect to certain enumerated Requests seeking information relating to Austin's knowledge regarding Waugh's and Bishop's felony convictions and in Austin's involvement in crucial areas of PCSI's and PAI's respective daily operations.

14. For the reasons outlined above, the Bureau respectfully submits that these objections are without merit. The documents sought by the Bureau are necessary to corroborate when and how Austin learned of the convictions and to see how such knowledge influenced Waugh's and Bishop's respective ownership of stock and roles in PCSI's and PAI's affairs. The Document Requests are clearly relevant to the character issues set for hearing as to PCSI and PAI. Whether Austin already provided such documents prior to hearing designation is irrelevant and does not excuse Austin from

¹¹ See *id.*

¹² See Attachment A at 5-6; Attachment C at 3-6, Responses to Document Requests 5-6, 11-13, and 15.

having to provide them on request. Furthermore, the documents sought relate to Austin's involvement in crucial operative areas for PCSI and PAI, as already discussed in Section A.I.a. above. Accordingly, the Presiding Judge should order Austin to produce documents that are responsive to these requests.

c. Document Requests 1, 7.

15. Austin also objects to Document Requests 1 and 7 which seek his federal income tax returns as well as documents relating to any financial obligations that Austin has incurred on behalf of PCSI on the grounds that such Requests are irrelevant.¹⁴ In support Austin claims that neither any application filed by PCSI or PAI with the Commission nor the OSC designated any financial issues for hearing.¹⁵

16. These objections lack merit. Austin's financial viability to operate the licenses he allegedly controls or owns (of PCSI's and PAI's) is directly relevant to the designated issue of whether PAI misrepresented its operational readiness to meet construction deadlines applicable to its licenses in a construction waiver request pending before the Commission.¹⁶ Further, issues relating to "who is in charge of the payment of financing obligations, including expenses arising out of operating . . . and . . . who receives monies and profits from the operation of the facilities" are bedrock questions in the determination of whether PCSI and PAI have conducted unauthorized transfer of de facto control as alleged.¹⁷

17. The Commission has specifically stated that licensees, such as PAI, seeking waiver of construction deadlines due to the ongoing 800 MHz rebanding

¹³ See Attachment A at 4; Attachment C at 3, Responses to Document Requests 2-3.

¹⁴ See Attachment A at 4-5; Attachment C at 2-4, Responses to Document Requests 1, 7.

¹⁵ See Attachment C at 2-4, Responses to Document Requests 1, 7

¹⁶ See OSC, 22 FCC Rcd at 13378.

proceeding must demonstrate “that it would have constructed but for the fact that band reconfiguration would affect its proposed facilities” and that it has commenced construction.¹⁸ To accomplish this, a licensee should demonstrate that it “[has] on hand, or [has] placed a firm order for, non-frequency sensitive equipment, [has] erected a tower, obtained a commitment for tower space, etc.”¹⁹

18. In order to meet the threshold standard for grant of the waiver, Austin, PCSI, and PAI must demonstrate that, but for the 800 MHz proceeding, PAI has the financial wherewithal to meet the deadlines applicable to its licenses. At issue in this proceeding is whether PAI misrepresented its operational capacity and/or readiness.²⁰ In order to investigate that issue, the Bureau must review financial information regarding Austin, the purported majority shareholder of PCSI and PAI.²¹

19. As discussed briefly in the Bureau’s Motion for Ruling, filed November 9, 2007, in objecting to the Bureau’s Requests for Admission of Facts and Genuineness of Documents, PCSI has already asserted, contrary to the dictates of 47 C.F.R. § 90.685 and the Commission’s announced standard for licensees like PAI seeking to waive the standard, that its financial viability is irrelevant to this proceeding.²² Austin compounds PCSI’s earlier error by asserting the same objection in response to Request Nos. 1 and 7. For the reasons discussed in the Bureau’s November 9 Motion for Ruling (incorporated

¹⁷ See *id.* at 13374-13375 and n.72 (internal citations omitted).

¹⁸ See *Improving Public Safety Communications in the 800 MHz Band, et al.*, 19 FCC Rcd. at 15079 ¶ 205 (2004).

¹⁹ See *id.*

²⁰ See *OSC*, 22 FCC Rcd at 13378-13380.

²¹ 47 C.F.R. § 90.685 provides that, PAI, must provide coverage to at least two-thirds of the population of the service areas of each of the SMR stations for the licenses that it won at auction within five years of the grant of the initial licenses. In the alternative, Economic Area (“EA”) licensees like PAI may provide substantial service to their markets within five years of the grant of their license.

herein by reference), and in the instant Motion, the Presiding Judge should overrule Austin's objections and compel him to produce the relevant documents. Austin's financial viability is directly relevant to PAI's pending waiver request.

2. Claims of Privilege Are Unsupported, and Production of Responsive Documents Should be Compelled.

Objections Regarding Privilege: Document Requests 1-16.

20. Austin generally objects to providing responsive documents prepared or otherwise created after the designation of this hearing.²³ Austin also asserts that some responsive documents generated within this period of time constitute privileged material or attorney work product. Without a privilege log detailing which documents Austin is referring to and which privilege it believes is applicable to each, it is impossible to evaluate the validity of Austin's objection. By asserting a claim of privilege, Austin has the burden of establishing which documents he believes the privilege applies to and any basis for such privilege.²⁴ Because he has failed or otherwise refused to provide a privilege log, the Bureau respectfully requests that the Presiding Judge reject Austin's claims of privilege as insufficient and unsubstantiated, and order him to produce responsive documents.²⁵

3. The Bureau's Document Requests Are Not Premature.

Objections Regarding Timing: Document Request 15-16.

²² See 47 C.F.R. §90.685; *Improving Public Safety Communications in the 800 MHz Band, et al.*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd. 14969, 15079 ¶ 205 (2004).

²³ See Attachment C at 2 (applying general privilege objections to every Document Request).

²⁴ See Attachment C at 3-5, Responses to Document Requests 5-6, 9-12.

²⁵ In the alternative, the Bureau respectfully requests the Presiding Judge order Austin to produce a privilege log and give the Bureau an opportunity to review such log and raise objections as necessary and appropriate.

21. Austin objects to Document Request Nos. 15 and 16 as being premature.²⁶ These Requests seek all documents supporting each of Austin's answers to the Bureau's Interrogatories and all documents on which Austin intends to rely to support any legal or factual premise at any hearing in this proceeding. The Bureau carries the burden of proof in this case. By refusing to turn over the requested documents, Austin is hampering the Bureau's ability to prosecute its case. Austin's attempt to avoid legitimate discovery by refusing to turn over documents that are fundamentally relevant to the designated issues should not be tolerated. Accordingly, the Presiding Judge should overrule such objections and compel Austin to produce any and all responsive documents.

4. Incomplete Responses to Document Requests Do Not Comply with Discovery Rule Requirements.

Additional, Incomplete Responses: Document Requests 5-6, 9-12.

22. Austin states that certain documents are not in his possession and he will continue searching for responsive documents and will produce non-privileged documents upon their recovery.²⁷ Austin provides no timeline for when he will produce the requested documents. Such vague and open-ended responses regarding when, if at all, Austin will provide documents functions to unduly delay discovery and will undoubtedly handicap the Bureau's case-in-chief. Such gamesmanship should not be tolerated. Austin should be compelled to forthwith provide responsive documents that are in his possession, custody and control. If he is not immediately able to do so, he should explain fully why and provide a date certain when he will fully comply.

B. Interrogatories and Responses – Attachments B and D

²⁶ See Attachment A at 6; Attachment C at 6, Responses to Document Requests 15-16.

²⁷ See Attachment A at 4-7; Attachment C at 2-8, Responses to Document Requests 1-7, 9-11, 13, 15-19.

1. The Interrogatories Are Not Vague, Overbroad, Burdensome, or Irrelevant.

a. Objections Regarding Breadth, Burden, and Relevance: Interrogatories 24-29, 38-39:

23. Austin objects to these Interrogatories alleging they are vague, overly broad, unduly burdensome, and/or irrelevant.²⁸ These Interrogatories seek the following information:

- Identification of all individuals that have prepared documents containing the phrase “action items” on behalf of PCSI or PAI and a general explanation of the content of each document;²⁹
- Identification of all individual(s) who have ever prepared, or assisted in preparing, correspondence or other materials to investors on behalf of PCSI or PAI and a general explanation of the content of such materials;³⁰
- Identification of all individual(s) who have ever been responsible for negotiating contracts, investment agreements, and/or other documents on behalf of PCSI or PAI, and as to each such person, a description of such negotiations, including parties thereto and date;³¹
- Specification of the licensee name, address, telephone number, call sign, service, location, and expiration date for all licenses held and/or controlled by Austin,³² and

²⁸ See Attachment B at 4-5, 8-10; Attachment D at 2, 7-11, Responses to Interrogatories 2-4, 24-29, 38-39.

²⁹ See Attachment B at 8; Attachment D at 7, Responses to Interrogatories 24-25.

³⁰ See Attachment B at 8; Attachment D at 8, Responses to Interrogatories 26-27.

³¹ See Attachment B at 8-9; Attachment D at 8-9, Responses to Interrogatories 28-29.

³² See Attachment B at 10; Attachment D at 10-11, Response to Interrogatory 38.

- Identification by the file number, application title, date of filing, purpose, and disposition each and every application filed with the Commission by or on behalf of Austin and/or entities controlled by him and, as to each, identification of each person engaged in the planning, preparation, review, and/or filing of the application and description of that person's involvement.³³

As discussed more fully in Section A. 1., above, and for the same reasons, Austin's objections to these Interrogatories should be denied. The Interrogatories at issue seek information regarding whether or not Waugh's has assumed *de facto* control over PCSI's and PAI's affairs. These Interrogatories relate directly to the issues set for hearing and/or are otherwise reasonably calculated to lead to the discovery of admissible evidence insofar as they are tailored to information regarding who controls key aspects of PCSI's and PAI's operations, such as negotiating on the companies' behalf with other parties, preparing documents reflecting business plans, operations, and/or policy goals, preparing of correspondence to investors, and drafting documents containing the phrase "action items." If it is determined that Waugh has not assumed *de facto* control, the Bureau must uncover who has what role in PCSI's and PAI's affairs in order to fully and fairly litigate the issues in this proceeding and for the Presiding Judge to evaluate the overall extent of Waugh's control of the companies.

24. Additionally, the *OSC* questions whether unauthorized transfers of control may have extended over other licenses which Austin, entities owned or controlled by him, or those enmeshed in entities owned or controlled by him, held or controlled. Accordingly, in its Interrogatories, the Bureau seeks a list of licenses over which Waugh

³³ See Attachment B at 10; Attachment D at 11, Response to Interrogatory 39.

may have exerted control (by virtue of his control over PCSI and PAI or its officers, directors, or shareholders) to determine the full extent of his involvement and the impact of that involvement over Commission licenses.

25. The Bureau respectfully submits that these Interrogatories are reasonably calculated to lead to the discovery of admissible evidence directly related to the issues set for hearing. They are not overly broad, vague, unduly burdensome, or irrelevant. Notably, in an effort to resolve this dispute informally, the Bureau specifically asked Austin whether or how it could clarify or further narrow any of the Interrogatories. After some discussion, Austin agreed to attempt to answer the Interrogatories at issue more fully. Despite his agreement to do so, Austin has not submitted additional responsive information. The Bureau respectfully requests that the Presiding Judge overrule these objections and order Austin to answer to these Interrogatories.

b. Interrogatories 2-4:

26. Austin also makes a relevance objection to Interrogatory Nos. 2-4, in what appears to be a continuing effort to block the production of financial information which is directly relevant to PAI's waiver application. Austin objects to responding to the question of whether he has had a financial interest of any kind, or controlling interest in, any business entity. He also objects to providing detailed information about each such entity and about the nature of his financial or controlling interest.³⁴ Austin further objects to indicating whether or not he has filed federal income tax returns from 1998 to present.³⁵ For the same reasons asserted in Section A.1.c., above, Austin's objections are

³⁴ See Attachment B at 4-5; Attachment D at 2, Responses to Interrogatories 2-3.

³⁵ See Attachment B at 4-5; Attachment D at 2, Responses to Interrogatory 4.

meritless and should be overruled. Austin should be ordered to fully and frankly answer Interrogatory Nos. 2-4.

2. The Interrogatories Do Not Seek Information Subject to Legal Opinion.

Legal Opinion Objections: Interrogatories 8-9:

27. Austin objects to Interrogatory Nos. 8-9, alleging they seek legal opinions.³⁶ These Interrogatories seek information regarding Austin's purported role as the sole real-party-in-interest behind PCSI's and/or PAI's licenses. The Bureau is not seeking legal opinions. The Bureau seeks factual information necessary to resolve the issues designated in this hearing relating to Waugh's position as an undisclosed real-party-in-interest behind PAI's licenses, as discussed in the *OSC*.³⁷ Further, Austin clearly understood and answered the question.³⁸ Accordingly, no objection lies. The Bureau respectfully requests that the Presiding Judge overrule these objections and order Austin to answer these Interrogatories.

3. The Interrogatories Rightfully Seek Pre-Designation Information.

Interrogatories 47-48:

28. Austin also objects to Interrogatory Nos. 47-48 on the ground that they ask, in a broader fashion, the same questions the Bureau already asked PCSI and PAI prior to hearing designation.³⁹ This is not an appropriate basis for objection and Austin, in raising it, offers no legal authority to support his failure to respond to this Interrogatory. By these Interrogatories, the Bureau seeks to determine whether the

³⁶ See Attachment B at 5; Attachment D at 3-4, Responses to Interrogatories 8-9.

³⁷ See *OSC*, 22 FCC Rcd at 13374-13375.

³⁸ See Attachment D at 3-4 (stating within the objection to Interrogatory 8 that "Austin voluntarily offers the following limited response, making a good faith effort to provide information known to him that is responsive to the interrogatory interpreted as a general factual question..." and incorporating by reference that same objection for Interrogatory 9).

³⁹ See Attachment B at 12; Attachment D at 13-14, Responses to Interrogatories 47-48.

statements Austin and/or PCSI made in response to the Bureau's letters of inquiry remain accurate and whether Austin has any information or materials to supplement such responses. The Bureau respectfully submits that it has already refuted similar objections in Sections A.1.a. – A.1.b., above. For the same reasons referenced in those sections and as discussed herein, the information sought is clearly relevant - it factored in to the evidence discussed in the *OSC* as a basis for setting this case for hearing.⁴⁰ The Bureau simply seeks additional information, to the extent it exists, to supplement that which Austin or PCSI already supplied. Such a request is appropriate, particularly when considering the length of time that has elapsed since the issuance of the letters of inquiry. Accordingly, the Bureau respectfully requests that the Presiding Judge overrule these objections and compel Austin to answer the Interrogatories.

4. Austin's Incomplete Answers To The Interrogatories Do Not Comply With The Discovery Rules.

Incomplete Answers: Interrogatories 4, 8-9, 20-21, 24-29, 38-39, 47-51:

29. As discussed above, as a result of his objections, Austin has either not responded to the Interrogatories at all (*e.g.*, Nos. 4, 24-25, 48) or responded only partially (*e.g.*, Nos. 8-9, 26-29, 38-39, 47).⁴¹ Discovery rules do not permit a party to fail or otherwise refuse to respond to an interrogatory fully unless a timely objection is made.⁴²

30. In addition to the above-mentioned incomplete answers, in other instances Austin provided only partial answers (*e.g.*, Interrogatory Nos. 20-21), or refrained

⁴⁰ See *OSC*, 22 FCC Rcd at 13370-13374 (discussing, in detail, the evidence contributed by the Bureau's investigation of this case prior to hearing designation).

⁴¹ See Attachment D at 2-4, 7-9, 10-11, 13-14, Responses to Interrogatories 4, 8-9, 24-29, 38-39, 47-48.

⁴² See 47 C.F.R. § 1.323.

altogether from answering certain Interrogatories despite his failure to raise objections to those inquiries (Interrogatory Nos. 49-51).⁴³

31. Interrogatory Nos. 20-21 request descriptions of Austin's responsibilities with respect to PCSI's and PAI's daily operations. Austin answered that PAI has no employees and that Austin, through PCSI, has sole responsibility for all of PCSI's and PAI's daily operations. In response to Interrogatory No. 20, Austin further responds that "others may have assisted with such functions from time to time, but only under the direct supervision of Austin."⁴⁴ He again incorporates that answer by later reference for Interrogatory No. 21.⁴⁵ Due to his failure to identify which "others" were involved under his "direct supervision," Austin's answers to the Interrogatories are incomplete. Because this proceeding concerns a possible unauthorized transfer of control, the requested information is not only relevant, but also necessary to enable the Bureau to evaluate PCSI's and PAI's claims that such a rule violation has not occurred and to determine its list of witnesses for deposition and/or hearing.

32. Finally, Austin has refrained from objecting to or answering Interrogatory Nos. 49-51. The Bureau respectfully submits that Austin has therefore waived his right to object to these inquiries. Due to a lack of any objection or other explanation as to why he has failed and otherwise refused to answer, the Presiding Judge should compel Austin to furnish full and complete responses to these interrogatories.

33. For the above reasons, the Bureau respectfully requests that the Presiding Judge order Austin to immediately furnish full and complete answers to the Bureau's Interrogatories.

⁴³ See Attachment D at 6, 9-10, Responses to Interrogatories 20-21, 30-33, 36.

⁴⁴ See *id.* at 6, Responses to Interrogatories 20-21.

C. Good Faith Certification

34. The Bureau hereby represents it has made a good faith effort to informally resolve the dispute outlined in this pleading and has been unable to do so.⁴⁶

D. Summary, Conclusion, and Prayer for Relief

35. The Bureau accordingly summarizes, per Document Request and Interrogatory, the relief it seeks. Generally, the Bureau respectfully requests that the Presiding Judge compel Austin to produce any responsive documents not already produced and to delineate exactly which responsive documents pertain to which Document Requests that the Bureau asked Austin. The Bureau also respectfully requests that the Presiding Judge order Austin to produce a privilege log for those documents he asserts are protected by the attorney-client, work product, or other privilege. Specifically as to each Document Request, the Bureau requests the following.

36. Document Request No. 1: The Bureau requests that the Presiding Judge find that, both generally and specifically, this Document Request is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's claims of privilege are unsupported.

37. Document Request No. 2: The Bureau requests that the Presiding Judge find that, both generally and specifically, this Document Request is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's claims of privilege are unsupported.

⁴⁵ *See id.*

⁴⁶ *See Pendleton C. Waugh, et al.*, EB Docket No. 07-147, Revised Transcript at 20-21 (Sept. 12, 2007) (instructing the parties to certify that they have made a good faith effort to work out informally any discovery disputes before filing motions before the Presiding Judge).

38. Document Request No. 3: The Bureau requests that the Presiding Judge find that, both generally and specifically, this Document Request is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's claims of privilege are unsupported.

39. Document Request No. 4: The Bureau requests that the Presiding Judge find that this Document Request is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's claims of privilege are unsupported.

40. Document Request No. 5: The Bureau requests that the Presiding Judge find that: (1) both generally and specifically, this Document Request is not overly broad, vague, unduly burdensome, or irrelevant; (2) Austin's claims of privilege are unsupported; and (3) Austin's incomplete response fails to comply with the discovery rules.

41. Document Request No. 6: The Bureau requests that the Presiding Judge find that: (1) both generally and specifically, this Document Request is not overly broad, vague, unduly burdensome, or irrelevant; (2) Austin's claims of privilege are unsupported; and (3) Austin's incomplete response fails to comply with the discovery rules.

42. Document Request No. 7: The Bureau requests that the Presiding Judge find that, both generally and specifically, this Document Request is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's claims of privilege are unsupported.

43. Document Request No. 8: The Bureau requests that the Presiding Judge find that this Document Request is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's claims of privilege are unsupported.

44. Document Request No. 9: The Bureau requests that the Presiding Judge find that: (1) this Document Request is not overly broad, vague, unduly burdensome, or irrelevant; (2) Austin's claims of privilege are unsupported; and (3) Austin's incomplete response fails to comply with the discovery rules.

45. Document Request No. 10: The Bureau requests that the Presiding Judge find that: (1) this Document Request is not overly broad, vague, unduly burdensome, or irrelevant; (2) Austin's claims of privilege are unsupported; and (3) Austin's incomplete response fails to comply with the discovery rules.

46. Document Request No. 11: The Bureau requests that the Presiding Judge find that: (1) both generally and specifically, this Document Request is not overly broad, vague, unduly burdensome, or irrelevant; (2) Austin's claims of privilege are unsupported; and (3) Austin's incomplete response fails to comply with the discovery rules.

47. Document Request No. 12: The Bureau requests that the Presiding Judge find that: (1) both generally and specifically, this Document Request is not overly broad, vague, unduly burdensome, or irrelevant; (2) Austin's claims of privilege are unsupported; and (3) Austin's incomplete response fails to comply with the discovery rules.

48. Document Request No. 13: The Bureau requests that the Presiding Judge find that, both generally and specifically, this Document Request is not overly broad,

vague, unduly burdensome, or irrelevant, and Austin's claims of privilege are unsupported.

49. Document Request No. 14: The Bureau requests that the Presiding Judge find that this Document Request is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's claims of privilege are unsupported.

50. Document Request No. 15: The Bureau requests that the Presiding Judge find that: (1) both generally and specifically, this Document Request is not overly broad, vague, unduly burdensome, or irrelevant; (2) Austin's claims of privilege are unsupported; and (3) this Document Request is not premature.

51. Document Request No. 16: The Bureau requests that the Presiding Judge find that: (1) this Document Request is not overly broad, vague, unduly burdensome, or irrelevant; (2) Austin's claims of privilege are unsupported; and (3) this Document Request is not premature.

52. As to the Interrogatories, generally, the Bureau respectfully requests that the Presiding Judge compel Austin to produce full and complete answers to the Interrogatories. Specifically as to each Interrogatory, the Bureau respectfully requests the following.

53. Interrogatory No. 2: The Bureau requests that the Presiding Judge find that this Interrogatory is not overly broad, vague, unduly burdensome, or irrelevant.

54. Interrogatory No. 3: The Bureau requests that the Presiding Judge find that this Interrogatory is not overly broad, vague, unduly burdensome, or irrelevant.

55. Interrogatory No. 4: The Bureau requests that the Presiding Judge find that this Interrogatory is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's incomplete response fails to comply with the discovery rules.

56. Interrogatory No. 8: The Bureau requests that the Presiding Judge find that this Interrogatory does not seek legal opinions, and Austin's incomplete response fails to comply with the discovery rules.

57. Interrogatory No. 9: The Bureau requests that the Presiding Judge find that this Interrogatory does not seek legal opinions, and Austin's incomplete response fails to comply with the discovery rules.

58. Interrogatory No. 20: The Bureau requests that the Presiding Judge find that Austin's incomplete response fails to comply with the discovery rules.

59. Interrogatory No. 21: The Bureau requests that the Presiding Judge find that Austin's incomplete response fails to comply with the discovery rules.

60. Interrogatory No. 24: The Bureau requests that the Presiding Judge find that this Interrogatory is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's incomplete response fails to comply with the discovery rules.

61. Interrogatory No. 25: The Bureau requests that the Presiding Judge find that this Interrogatory is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's incomplete response fails to comply with the discovery rules.

62. Interrogatory No. 26: The Bureau requests that the Presiding Judge find that this Interrogatory is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's incomplete response fails to comply with the discovery rules.

63. Interrogatory No. 27: The Bureau requests that the Presiding Judge find that this Interrogatory is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's incomplete response fails to comply with the discovery rules.

64. Interrogatory No. 28: The Bureau requests that the Presiding Judge find that this Interrogatory is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's incomplete response fails to comply with the discovery rules.

65. Interrogatory No. 29: The Bureau requests that the Presiding Judge find that this Interrogatory is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's incomplete response fails to comply with the discovery rules.

66. Interrogatory No. 38: The Bureau requests that the Presiding Judge find that this Interrogatory is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's incomplete response fails to comply with the discovery rules.

67. Interrogatory No. 39: The Bureau requests that the Presiding Judge find that this Interrogatory is not overly broad, vague, unduly burdensome, or irrelevant, and Austin's incomplete response fails to comply with the discovery rules.

68. Interrogatory No. 47: The Bureau requests that the Presiding Judge find that Austin's incomplete response fails to comply with the discovery rules.

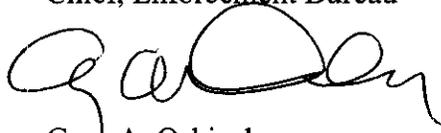
69. Interrogatory No. 48: The Bureau requests that the Presiding Judge find that Austin's incomplete response fails to comply with the discovery rules.

70. Interrogatory No. 49: The Bureau requests that the Presiding Judge find that Austin's incomplete response fails to comply with the discovery rules.

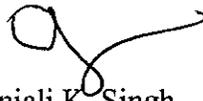
71. Interrogatory No. 50: The Bureau requests that the Presiding Judge find that Austin's incomplete response fails to comply with the discovery rules.

72. Interrogatory No. 51: The Bureau requests that the Presiding Judge find that Austin's incomplete response fails to comply with the discovery rules.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau



Gary A. Oshinsky
Attorney, Investigations and Hearings Division



Anjali K. Singh
Attorney, Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420

February 19, 2008

ATTACHMENT A

OCT 15 2007

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
Federal Communications Commission
Office of the Secretary

In the Matter of	)	EB Docket No. 07-147
)	
PENDLETON C. WAUGH, CHARLES M. AUSTIN, and JAY R. BISHOP	)	File No. EB-06-IH-2112
	)	NAL/Acct. No. 200732080025
)	
PREFERRED COMMUNICATION SYSTEMS, INC.	)	FRN No. 0003769049
)	
Licensee of Various Site-by-Site Licenses in the Specialized Mobile Radio Service.)	
)	
PREFERRED ACQUISITIONS, INC.	)	FRN No. 0003786183
)	
Licensee of Various Economic Area Licenses in the 800 MHz Specialized Mobile Radio Service)	
)	

To: Charles M. Austin

ENFORCEMENT BUREAU'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO CHARLES M. AUSTIN

The Enforcement Bureau ("Bureau"), pursuant to Section 1.325 of the Commission's Rules, 47 C.F.R. § 1.325, hereby requests that Charles M. Austin ("Austin") produce the documents specified herein for inspection and copying. Production shall be made at the offices of the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Suite 4-C330, 445 12th Street, S.W., Washington, DC 20554 (or at some other location that is mutually acceptable to the Bureau and Austin) within 10 days of the date of this request.