

APR 15 2008

Before the
FEDERAL COMMUNICATIONS COMMISSION Federal Communications Commission
Washington, D.C. 20554 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
SECOND MOTION TO COMPEL INTERROGATORY ANSWERS
FROM PREFERRED COMMUNICATION SYSTEMS, INC.

The Enforcement Bureau ("Bureau") moves, pursuant to 47 C.F.R. § 1.323, for an order compelling Preferred Communication Systems, Inc. ("PCSI") to produce answers to interrogatories which PCSI has failed to provide. The answers the Bureau seeks contain information crucial to the Bureau's prosecution of its case. Despite the Bureau's good faith attempts, it has been unable to informally resolve this discovery dispute. In support hereof, the Bureau states as follows:

1. On or about November 5, 2007, the Bureau served its first interrogatories to PCSI ("Interrogatories"), appended hereto as Attachment A. PCSI's answers to the Interrogatories were due on November 19, 2007.

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2. As outlined in detail in the Bureau's February 19, 2008 Motion to Compel as to PCSI, PCSI requested numerous extensions of time to respond to the Bureau's Interrogatories – on November 21, and December 7, 13, and 17, 2007. Although the Bureau did not grant the last three of these extensions, PCSI unilaterally availed itself of the additional time. Despite the additional time, PCSI provided only partial answers to the Interrogatories on or about December 17, 2007. Those answers to the Interrogatories (hereinafter "Answers") are appended hereto as Attachment B.

3. On or about March 10, 2008, PCSI responded to the Bureau's Motion to Compel. PCSI asserts that, but for four of the Bureau's Interrogatories to which PCSI intentionally deferred responding, its responses were otherwise complete.¹ PCSI also stated unequivocally that it would provide answers to the four Interrogatories to which it had earlier deferred *within 24 hours*.²

4. More than *one month* has passed since PCSI filed its response to the Bureau's Motion to Compel, and PCSI has yet to answer the four Interrogatories. Under any reasonable interpretation, PCSI's "foot dragging" is manifestly unacceptable and inexcusable. Despite the Bureau's additional attempts to resolve these matters informally, the additional information PCSI admits it withheld remains outstanding. Section 1.323 of the Commission's Rules provides that the Bureau must file any motion to compel answers to Interrogatories within 7 days of any objection or otherwise incomplete answer.³ As outlined below, PCSI answered the Interrogatories only partially, based on both meritless objections and its recalcitrant stance regarding full and

¹ See Response of Preferred Communication Systems, Inc. to the Enforcement Bureau's Motion to Compel Interrogatory Answers, Docket No. 07-147, at 1-2 (filed March 10, 2008).

² See *id.* at 2.

³ See 47 C.F.R. § 1.323

complete responses to discovery. The Bureau attempted to resolve these discovery issues with PCSI, through its counsel on November 27, December 5, 2007, and February 19, 2008. During these conferences PCSI promised to supplement its Interrogatory answers. In light of the foregoing, PCSI agreed to extend the Bureau's deadline to file any necessary Motion to Compel with respect to PCSI's discovery responses.

5. 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.⁴ Accordingly, for the reasons discussed above, the Bureau states that the instant motion is timely and respectfully requests that the Presiding Judge accept, and rule on, the instant pleading.

6. In the hope of limiting the scope of requested relief containing in this Motion to Compel, the Bureau has waited for PCSI to fulfill its commitments to provide the deferred answers, as well as other answers. The Bureau's counsel believed that PCSI informally agreed to supplement this information notwithstanding its earlier objections. Unfortunately, due to PCSI's ongoing delay, the instant Motion became necessary.

7. As mentioned above, PCSI admits that it has not yet fully answered the Bureau's Interrogatories.⁵ In the event that PCSI files its answers before the Presiding Judge rules on the instant Motion and/or the Bureau's February 19, 2008 Motion to Compel PCSI's Interrogatory Answers, then the Bureau may supplement, or withdraw entirely, this portion of the Motion. Such withdrawal would depend, of course, on whether PCSI answers the Interrogatories fully, without the frivolous objections which have been raised to date by Preferred Acquisitions, Inc. ("PAI"), and Charles M. Austin

⁴ 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).

⁵ See, *supra*, ¶¶ 2-3.

("Austin") in their answers.⁶ Accordingly, the Bureau respectfully reserves its right to supplement, or withdraw, the relevant portions of the instant pleading.⁷

8. The Bureau also respectfully notes that, to the extent that the discovery sought relates to operation of licenses, the information is *crucial* to the Bureau's prosecution of its case.

A. Interrogatories and Responses

1. General Objections (Interrogatory Nos. 1-78)

9. PCSI objects by incorporating the same general objections as to each Interrogatory that it did for each of the Bureau's document requests to PCSI, alleging that the Interrogatories seek:⁸ (1) previously produced materials; (2) materials available in the Commission's files; and (3) documents created after the designation of this hearing, including privileged material or attorney work product. For the reasons discussed in the Bureau's Motion to Compel Document Production and Interrogatory Answers from PCSI, filed February 19, 2008, at 4-9 and 10-11, incorporated herein by reference, the Bureau respectfully requests that the Presiding Judge overrule these broad, unsupported objections.

10. The Bureau also notes that because of these general objections, the Bureau is unable to determine whether PCSI has provided full responses in its Answers to Interrogatories. Accordingly, in the alternative, the Bureau respectfully requests the Presiding Judge to order PCSI to delineate which general objections correspond with

⁶ PAI's and Austin's answers to the Bureau's Interrogatories to them are subject to separate motions to compel filed on February 19, 2008.

⁷ The Bureau respectfully submits that Section 1.323 of the Commission's Rules allows the Bureau 7 days after any objections to, or incomplete answers of, Interrogatories by PCSI to file a motion to compel. Further, as discussed, PCSI has agreed to an extension of time for the Bureau to file any Motion to Compel. See 47 C.F.R. § 1.323.

which Interrogatories, identify how each such Interrogatory warrants the objection(s) raised, and state whether PCSI produced a full and complete answer despite such objections. Absent the Presiding Judge's overruling the objections outright or ordering this alternative remedy, the Bureau left in a fog regarding whether PCSI answered each Interrogatory completely.

11. Given the foregoing, the Bureau has endeavored to focus the instant Motion on areas in which PCSI has raised specific objections or where the Bureau can discern that PCSI's Answers are, in fact, incomplete.

2. Specific Objections and/or Otherwise Incomplete Answers

a. Interrogatory No. 3:

12. Interrogatory No. 3 seeks a list of all stock certificates PCSI has prepared and/or issued since its inception⁹ and, as to each stock certificate, the person or entity to which it was prepared or issued, the amount and class of stock shares, the dates prepared and issued, and an explanation of why prepared but not issued (if applicable). PCSI answers that, to the extent it has historical records, they are among the documents it produced in response to the Bureau's First Request for Document Production.¹⁰

13. This answer is nonresponsive. Although PCSI purports to have produced documents in response to the Bureau's separate document requests, its failure to delineate which documents responded to which requests within the commingled contents of the 6,600-page production including PAI's and Austin's purportedly responsive documents does not comprise a reasonable response to the Interrogatory. The Bureau does not know

⁸ PCSI's objections to the Bureau's First Request for Production of Documents to PCSI are the subject of the Bureau's separate Motion to Compel filed February 19, 2008.

⁹ See Attachment A at 4.

¹⁰ See Attachment B at 4, Response No. 3.

and cannot reasonably determine which documents respond to this Interrogatory. PCSI's response is not a response at all.

14. PCSI raises no valid objection to this Interrogatory. Because it has not provided a list specifying the information the Bureau seeks, PCSI has failed to respond. Accordingly, the Bureau respectfully requests that the Presiding Judge find that PCSI's "answer" does not comply with discovery rules and order PCSI to respond fully to this Interrogatory.

b. Interrogatory No. 6:

15. Interrogatory No. 6 seeks information regarding whether PCSI has filed federal income tax returns for each year from 1998 to present and, if not, for an explanation.¹¹ PCSI objects to this Interrogatory by incorporating its objections from several other pleadings filed by it, PAI, and Austin.¹² The basic grounds for the objection appear to be that the Interrogatory allegedly seeks financial information that PCSI claims is irrelevant to this proceeding.

16. As the Bureau has previously discussed in its Motions to Compel filed against PCSI, PAI, and Austin, incorporated herein by reference,¹³ PCSI's financial viability is directly relevant to whether its subsidiary, PAI, has the wherewithal to operate

¹¹ See Attachment A at 5.

¹² See Attachment B at 5, Response No. 6.

¹³ In this regard, while PCSI notes that it is incorporating by reference its objection to Document Request No. 12 from the Bureau's First Request for Production of Documents, the Bureau respectfully notes that PAI did not object to that Document Request. The Bureau believes PCSI meant to refer to its objection based on similar grounds to Document Request No. 14. Accordingly, the Bureau incorporates by reference the appropriate segments of its previously filed motions to compel. See Enforcement Bureau's Motion to Compel Document Production and Interrogatory Answers from Preferred Communication Systems, Inc., EB Docket No. 07-147, at 7-9 (filed February 19, 2008) (refuting PCSI's objections to Document Request No. 14); Enforcement Bureau's Motion to Compel Document Production and Interrogatory Answers from Preferred Acquisitions, Inc., Docket No. 07-147, at 6-8, 12 (filed February 19, 2008) ("PAI Motion") (refuting PAI's objections to Document Request No. 12 and Interrogatory No. 5); Enforcement Bureau's Motion to Compel Document Production and Interrogatory Answers from Charles M. Austin, Docket No.

its licenses. Further, PAI's operating ability is the subject of a pending request for waiver of construction deadlines applicable to PAI's licenses. As a result of potential misrepresentations, whether PAI accurately represented its operating ability is an issue designated for this hearing. PCSI's objections here only compound earlier errors by it, PAI, and Austin.¹⁴ Accordingly, the Bureau respectfully requests that the Presiding Judge overrule these objections and order PCSI to fully answer this Interrogatory.

c. Interrogatory No. 8:

17. Interrogatory No. 8 seeks information regarding PCSI's Station WPF598 including, but not limited to, whether PCSI has operated this license continuously since December 2005 and, if not, the dates on which PCSI discontinued operation.¹⁵ PCSI's answer does not include this information. PCSI does not specifically object to this Interrogatory. In responding to it, PCSI states that "[t]he authority represented by this license has been superseded by the EA license held by PAI for the same area"¹⁶

18. This response is incomplete. PCSI does not answer whether or not it is currently operating the Station, and, if not, provide the date it discontinued operation. The Bureau respectfully requests that the Presiding Judge find that this answer is incomplete and order PCSI to fully answer this Interrogatory.

d. Interrogatory No. 26:

19. Interrogatory No. 26 seeks information regarding current and former PCSI employees from January 1, 1998 to present.¹⁷ PCSI does not object to this Interrogatory.

07-147, at 7-9, 13-14 (filed February 19, 2008) ("Austin Motion") (refuting Austin's objections to Document Request No. 1 and Interrogatory No. 4).

¹⁴ See, *supra*, note 13.

¹⁵ See Attachment A at 5.

¹⁶ See Attachment B at 6, Response No. 8.

¹⁷ See Attachment A at 8.

Rather, PCSI offers a partial answer, incorporating by reference certain materials it submitted in response to a Bureau letter of inquiry prior to the designation of this hearing.¹⁸ It also states that it is partially or fully deferring the answer for this Interrogatory and will serve those answers as soon as possible.¹⁹ More than three months have passed and no supplemental information has been provided. At this late date, such continued avoidance and delay should be considered unacceptable.

20. Accordingly, the Bureau respectfully requests that the Presiding Judge find that PCSI's incomplete answer does not comply with discovery rules and order PCSI to fully answer this Interrogatory.

e. Interrogatory No. 37:

21. Interrogatory No. 37 seeks identification of all individual(s) that have ever prepared documents containing the phrase "action items" on behalf of PCSI and a brief description of each document.²⁰ PCSI objects that this Interrogatory is allegedly overbroad, unduly burdensome, and irrelevant.²¹

22. PAI raised the same objection in response to a similar Interrogatory by the Bureau.²² For the reasons discussed in the Bureau's Motion to Compel as to PAI,²³ incorporated herein by reference, the Bureau respectfully requests that the Presiding Judge overrule these objections and order PCSI to fully answer this Interrogatory.

f. Interrogatory No. 38:

¹⁸ See Attachment B at 10, Response No. 26.

¹⁹ See *id.*

²⁰ See Attachment A at 10.

²¹ See Attachment B at 13.

²² See Preferred Acquisitions, Inc.'s Supplemented and Revised Responses to the Bureau's First Set of Interrogatories, Docket No. 07-147, at 6-7 (filed December 3, 2007).

²³ See PAI Motion at 10-13.

23. Interrogatory No. 38 seeks information regarding whether Pendleton Waugh (“Waugh”) has ever prepared documents containing the phrase “action items” on behalf of PCSI and, if so, for a description of his participation.²⁴ PCSI incorporates by reference its objection to Interrogatory No. 37, noted above, in Section A.2.f.²⁵

24. For the same reasons as those discussed in Section A.2.f., above, the Bureau respectfully requests that the Presiding Judge overrule PCSI’s objections and order PCSI to answer this Interrogatory.

g. Interrogatory No. 39:

25. Interrogatory No. 39 seeks identification of all individual(s) that have ever prepared or assisted in preparing correspondence or other materials to investors on behalf of PCSI.²⁶ This Interrogatory also requests a general explanation of the content of each such document.²⁷ PCSI objects to the Interrogatory on the grounds that it is purportedly vague, overbroad, and irrelevant.²⁸

26. As the Bureau has stated in its previous Motion to Compel against PAI,²⁹ incorporated herein by reference, the Bureau is seeking information directly relevant to issues designated for hearing, *i.e.*, whether Waugh has *de facto* control over PCSI. Such control would be demonstrated by his role in key aspects of PCSI’s operations, such as drafting documents to investors on PCSI’s behalf. The Interrogatory is narrowly crafted to elicit information regarding whether someone other than Austin has the authority to determine and carry out PCSI’s policy decisions and, if so, to what extent.

²⁴ See Attachment A at 10.

²⁵ See Attachment B at 14, Response No. 38.

²⁶ See Attachment A at 10.

²⁷ See *id.*

²⁸ See Attachment B at 14, Response No. 39.

²⁹ See PAI Motion at 10-13.

27. Accordingly, the Bureau respectfully requests the Presiding Judge to overrule these objections and order PCSI to fully respond to this Interrogatory.

h. Interrogatory No. 52:

28. Interrogatory No. 52 seeks a specification by licensee name, licensee address, licensee telephone number, call sign, service, location, and expiration date all Commission licenses held and/or controlled by PCSI.³⁰ Surprisingly, PCSI objects to this Interrogatory, which requests nothing more than basic license information, on the grounds that it is overbroad, unduly burdensome, and irrelevant because it seeks information regarding licenses that PCSI may have previously held, and which may no longer be reflected in the Commission's Universal Licensing System database.³¹

29. The specious nature of these objections to a simple request for inventory information underscores PCSI's general stall tactics in response to the Bureau's discovery efforts. This proceeding concerns whether PCSI is qualified to be and remain a Commission licensee. To make this determination, PCSI's track record as a licensee must be examined. The Bureau must determine what licenses PCSI has (and/or continues to) held and whether or not PCSI violated any Commission Rules while holding these licenses. Such information is necessary to determine if PCSI has and continues to engage in a pattern of improper behavior such that it is not qualified to remain a Commission licensee.

30. Accordingly, the Bureau respectfully requests that the Presiding Judge overrule these objections and order PCSI to fully answer this Interrogatory.

i. Interrogatory No. 54:

³⁰ See Attachment A at 12.

³¹ See Attachment B at 17, Response No. 52.

31. Interrogatory No. 54 seeks information regarding every application filed with the Commission by or on behalf of PCSI since January 1, 1998.³² PCSI raises a similar objection as it does to Interrogatory No. 52, namely that this Interrogatory is overbroad, unduly burdensome, and irrelevant insofar as it asks for information concerning licenses held in the past.³³

32. The OSC designated for hearing whether PCSI and PAI made misrepresentations to the Commission in Commission applications, *i.e.*, PAI's auction applications and PAI's request for a waiver of construction deadlines applicable to its licenses. If, in fact, it is found that PCSI so violated the Commission rules, the Commission is required to determine whether PCSI made misrepresentations in other Commission applications in order to ascertain whether PCSI has engaged in a pattern of misconduct. Additionally, if the evidence shows that PCSI made different representations in previously filed Commission applications, such evidence may assist the Presiding Judge, as the trier of fact, in considering the issues designated in the instant proceeding.

33. Accordingly, the Bureau respectfully requests that the Presiding Judge overrule these objections and order PCSI to fully answer this Interrogatory.

j. Interrogatory No. 61:

34. Interrogatory No. 61 seeks information regarding all Commission applications that PCSI has filed since January 1, 1998, in which it has responded "No" to the question "Has the applicant to this application or any party directly or indirectly

³² See Attachment A at 12.

³³ See Attachment B at 18, Response No. 54.

controlling the applicant ever been convicted of a felony in federal or state court?"³⁴ The Interrogatory also seeks the file number, application number, application title, date of filing, purpose of the application, and disposition of each such application.³⁵

35. PCSI answers that, to the best of its recollection, and based on good faith information and belief, it answered "No" to that question in every application it filed.³⁶

36. PCSI's answer is incomplete because it fails to provide most of the information specifically requested or otherwise object to the Bureau's request for that information. Accordingly, the Bureau respectfully requests that the Presiding Judge find that PCSI's incomplete answer does not comply with the discovery rules and order PCSI to fully answer this Interrogatory.

k. Interrogatory No. 62:

37. Interrogatory No. 62 seeks information regarding whether and how PCSI acquired its licenses.³⁷ If the licenses were acquired by assignment, Interrogatory No. 62 also seeks information regarding the assignment application(s), including, but not limited to, who was involved in its/their preparation.³⁸

38. PCSI incorporates by reference Austin's objection to the Bureau's Interrogatory No. 39 in its First set of Interrogatories to Austin: that the Interrogatory is allegedly overbroad, unduly burdensome, and irrelevant because it seeks information concerning licenses PCSI previously held.³⁹ The Bureau notes that this objection is similar to those discussed above in Sections A.2.h. and A.2.i.

³⁴ See Attachment A at 14.

³⁵ See *id.*

³⁶ See Attachment B at 20, Response No. 61.

³⁷ See Attachment A at 14.

³⁸ See *id.*

³⁹ Attachment B at 20-21, Response No. 62.

39. The Bureau has previously refuted this argument in a prior Motion to Compel against Austin⁴⁰ and above, in Sections A.2.h. and A.2.i. For the reasons discussed therein, incorporated herein by reference, the Bureau respectfully requests that the Presiding Judge overrule these objections and order PCSI to fully answer this Interrogatory.

l. Interrogatory No. 65:

40. Interrogatory No. 65 seeks information regarding whether PCSI has met construction deadlines on all of its licenses.⁴¹ PCSI incorporates by reference its response to Interrogatory No. 26. This response is discussed in Section A.2.d., above.⁴²

41. For the reasons discussed above, (in Section A.2.d., incorporated herein by reference), the Bureau respectfully requests that the Presiding Judge find that PCSI's incomplete answer does not comply with discovery rules and order PCSI to fully answer this Interrogatory.

m. Interrogatory No. 66:

42. Interrogatory No. 66 seeks information regarding when PCSI acquired its licenses, whether PCSI has been operating each license since acquisition, and if so, the dates of operation.⁴³ PCSI incorporates by reference its response to Interrogatory No. 26. The Bureau discussed this response in Sections A.2.d. and A.2.1., above.⁴⁴

43. For the reasons discussed above, (in Sections A.2.d. and A.2.1., incorporated herein by reference), the Bureau respectfully requests that the Presiding Judge find that

⁴⁰ See Austin Motion at 11-14, 15-16 (refuting Austin's objection to the Bureau's Interrogatory No. 39 to him).

⁴¹ See Attachment A at 15.

⁴² See Attachment B at 21, Response No. 65.

⁴³ See Attachment A at 15.

⁴⁴ See Attachment B at 21, Response No. 66.

PCSI's incomplete answer does not comply with discovery rules and order PCSI to fully answer this Interrogatory.

n. Interrogatory No. 69:

44. Interrogatory No. 69 seeks identification of PCSI's complete customer list since 1998.⁴⁵ PCSI objects, arguing that such request is irrelevant.⁴⁶

45. PCSI's objection should be overruled. The Interrogatory is reasonably calculated to lead to the discovery of admissible evidence.⁴⁷ The *OSC* designated for hearing the issue of whether PCSI's licenses should be cancelled for lack of operation. Information about whether PCSI is or has been serving customers, and if so, who those customers are, is directly and inexorably related to the designated issue.

46. Accordingly, the Bureau respectfully requests that the Presiding Judge overrule these objections and order PCSI to fully answer this Interrogatory.

o. Interrogatory No. 70:

47. Interrogatory No. 70 seeks information regarding the buildout dates for all licenses held by PCSI and if the deadlines were not met, an explanation of why not.⁴⁸ PCSI objects to this Interrogatory, alleging that it calls for a legal conclusion.⁴⁹ PCSI also asserts that the information is already known to the Commission and subject to official notice.⁵⁰ PCSI also contends that the concept of "buildout" is not applicable to the types of authorizations held by PCSI.⁵¹

⁴⁵ See Attachment A at 16.

⁴⁶ See Attachment B at 22, Response No. 69.

⁴⁷ See 47. C.F.R. § 1.311.

⁴⁸ See Attachment A at 16.

⁴⁹ See Attachment B at 22, Response No. 70.

⁵⁰ See *id.*

⁵¹ See *id.*

48. PCSI's response does not comprise an acceptable answer to the Interrogatory. The Bureau respectfully submits that the Interrogatory does not seek a legal opinion. That being the case, PCSI may not refuse to answer the Interrogatory even if, assuming *arguendo*, the matter is subject to official legal notice (which the Bureau contends it is not). By this Interrogatory, the Bureau seeks information regarding the PCSI construction deadlines applicable to its licenses. More importantly, as already discussed, at issue in this proceeding is whether PCSI has operated its licenses or discontinued them, resulting in automatic cancellation. Information regarding whether or not PCSI established buildout dates, made these deadlines, and constructed the licenses would lead to information and/or evidence regarding whether or not it ever operated its licenses.

49. Accordingly, the Bureau respectfully requests that the Presiding Judge overrule these objections, find that PCSI's incomplete answer does not comply with the discovery rules, and order PCSI to fully answer this Interrogatory.

p. Interrogatory No. 72:

50. Interrogatory No. 72 seeks information regarding whether all statements in PCSI's responses to the Bureau's letters of inquiry prior to hearing designation were accurate when submitted to the Commission.⁵² PCSI incorporates by reference Austin's objection to Interrogatory No. 47 in the Bureau's First set of Interrogatories to him: that this Interrogatory allegedly asks, in a broader fashion, the same questions the Bureau already asked PCSI prior to hearing designation.⁵³

⁵² See Attachment A at 17.

⁵³ See Attachment B at 23-24, Response No. 72.

51. The Bureau's Interrogatory – seeking information regarding whether all statements PCSI made in its answers to the Bureau's letters of inquiry were accurate when submitted to the Commission – is well within the bounds of acceptable discovery and requires a direct answer. A simple “yes” or “no” answer would be sufficient.

52. For the same reasons as outlined in the Bureau's Motion to Compel against Austin,⁵⁴ incorporated herein by reference, PCSI's objections are without merit. As discussed in the Bureau's Motion, this is not an appropriate basis for objection.⁵⁵ Tellingly, PCSI, in raising the objection, offers no legal authority for it. The accuracy of the information PCSI provided in its answers to the Bureau's letters of inquiry is clearly relevant, as this information formed, at least in part, the basis for the *OSC*.

53. Accordingly, the Bureau respectfully requests that the Presiding Judge overrule this objection and order PCSI to fully answer this Interrogatory.

q. Interrogatory No. 73:

54. Interrogatory No. 73 seeks information regarding whether all statements in PCSI's responses to the Bureau's letters of inquiry prior to hearing designation remain accurate.⁵⁶ PCSI incorporates by reference its objection to Interrogatory No. 72. The Bureau discussed PCSI's response to Interrogatory No. 72 in Section A.2.p., above.⁵⁷

55. For the reasons discussed in the Bureau's Motion to Compel against Austin⁵⁸ and in Section A.2.p., above, both of which are incorporated herein by reference, the

⁵⁴ See Austin Motion at 14-16 (refuting Austin's objection to Interrogatory No. 47).

⁵⁵ See *id.*

⁵⁶ See Attachment A at 17.

⁵⁷ See Attachment B at 24, Response No. 73.

⁵⁸ See *id.* (refuting Austin's objection to Interrogatory No. 47 and Interrogatory No. 48, the latter of which is similar to the instant Interrogatory).

Bureau respectfully requests that the Presiding Judge overrule these objections and order PCSI to fully answer this Interrogatory.

r. Interrogatory No. 74:

56. Interrogatory No. 74 seeks information regarding whether PCSI has any materials that would supplement its responses to the Bureau's letters of inquiry prior to hearing designation.⁵⁹ PCSI objects by incorporating by reference its objection to Interrogatory No. 72. This objection is discussed above in Sections A.2.p. and A.2.q.⁶⁰

57. For the reasons discussed in the Bureau's Motion to Compel against Austin⁶¹ and above, in Sections A.2.p. and A.2.q., both of which are incorporated herein by reference, the Bureau respectfully requests that the Presiding Judge overrule these objections and order PCSI to fully answer this Interrogatory.

s. Interrogatory No. 76:

58. Interrogatory No. 76 asks PCSI to authenticate and explain certain of its statements in its response to the Bureau's second letter of inquiry.⁶² PCSI objects by incorporating by reference its objection to Interrogatory No. 72. PCSI's response to Interrogatory No. 72 is discussed in Sections A.2.p., A.2.q., and A.2.r., above⁶³

59. For the reasons discussed in Sections A.2.p., A.2.q., and A.2.r., above, incorporated herein by reference, the Bureau respectfully requests that the Presiding Judge overrule these objections and order PCSI to fully answer this Interrogatory.

t. Interrogatory No. 77:

⁵⁹ See Attachment A at 17.

⁶⁰ See Attachment B at 24, Response No. 74.

⁶¹ See Austin Motion at 14-16 (refuting Austin's objection to Interrogatory No. 47).

⁶² See Attachment A at 18-22.

⁶³ See Attachment B at 28, Response No. 76.

60. Interrogatory No. 77 seeks information regarding whether PCSI, or any entity controlled or operated by PCSI, has been involved in litigation from January 1, 1998 to present.⁶⁴ Interrogatory No. 77 also seeks identification of all parties and a description of the nature and status of all such litigation.⁶⁵ In response, PCSI incorporates by reference its answer to Interrogatory No. 65, which incorporated by reference PCSI's answer to Interrogatory No. 26. The Bureau addressed PCSI's responses to these Interrogatories in Sections A.2.1. and A.2.d., above.⁶⁶

61. For the reasons discussed in Sections A.2.d. and A.2.1., above, incorporated herein by reference, the Bureau respectfully requests that the Presiding Judge find that PCSI's incomplete answer does not comply with discovery rules and order PCSI to fully answer this Interrogatory.

B. Conclusion and Prayer for Relief

62. For the reasons discussed above, the Bureau respectfully requests that the Presiding Judge overrule PCSI's general and specific objections to the Bureau's Interrogatories, find that PCSI's incomplete answers do not comply with discovery rules, and order PCSI to fully and immediately respond to Interrogatory Nos. 1-78.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau



Gary A. Oshinsky
Anjali K. Singh
Attorneys, Investigations and Hearings Division

⁶⁴ See Attachment A at 22.

⁶⁵ See *id.*

⁶⁶ See Attachment B at 28, Response No. 77.

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(202) 418-1420
April 15, 2008

ATTACHMENT A

FILED/ACCEPTED

NOV - 5 2007

Federal Communications Commission
Office of the Secretary

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

In the Matter of	)	EB Docket No. 07-147
)	
PENDLETON C. WAUGH, CHARLES M.	)	File No. EB-06-IH-2112
AUSTIN, and JAY R. BISHOP	)	NAL/Acct. No. 200732080025
)	
PREFERRED COMMUNICATION	)	FRN No. 0003769049
SYSTEMS, INC.)	
)	
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: Preferred Communication Systems, Inc.

ENFORCEMENT BUREAU'S FIRST INTERROGATORIES
TO
PREFERRED COMMUNICATION SYSTEMS, INC.

1. The Enforcement Bureau ("Bureau"), pursuant to Sections 1.311 and 1.323 of the Commission's rules, 47 C.F.R. §§ 1.311 and 1.323, submits the following interrogatories to Preferred Communication Systems, Inc. ("PCSI").

2. PCSI shall deliver its responses to the offices of the Investigations and Hearings Division, Enforcement Bureau, Suite 4-C330, 445 12th Street, S.W., Washington, DC 20554 (or at some other location that is mutually acceptable to the Bureau and PCSI) within 14 days of the date of these interrogatories.

3. The obligation of PCSI to answer these interrogatories is continuing in nature.

PCSI has an obligation to provide in the future any and all additional responsive

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information that may come to its attention subsequent to its answering these interrogatories but not initially disclosed at the time, date and place set forth herein or in any supplemental answers that it submits. In this regard, PCSI must supplement its initial and supplemental responses if it learns that, in some material respect, the responses initially provided, or as supplemented, were incomplete or incorrect or if additional responsive information is acquired by or has become known to it after its initial or supplemental responses.

Definitions and Instructions

- a. As used herein, the term "PCSI" means Preferred Communication Systems, Inc., its subsidiaries and affiliates.
- b. The term "Commission" means Federal Communications Commission and includes any and all Bureaus, Divisions, Branches, and offices thereof.
- c. The terms "relate to" and "relating to" mean constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or in any way is pertinent to the specified subject, including documents concerning the preparation of the documents.
- d. The term "and" also means "or" and the term "or" also means "and."
- e. The term "each" also means "every" and the term "every" also means "each."
- f. The term "all" also means "any" and the term "any" also means "all."
- g. The term "identify" when used with reference to a person or persons, means to state his or her full name; last known business and residence addresses; and last known business and residence telephone numbers.
- h. The term "Document" means the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original

because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, videotaped, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any book, pamphlet, periodical, contract, agreement, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minutes, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tapes, disks and such codes or instructions as will transform such computer materials into easily understandable form) in the possession, custody, or control of PCSI.

i. With regard to each answer, identify the person(s) or document(s) relied upon by PCSI in determining the substance of the answer.

j. The terms "authorization," "authorizations," "license" or "licenses" refer to those licenses identified in footnotes 1-2 of the Commission's Order in the above-captioned proceeding, *Pendleton C. Waugh, et al.*, Order to Show Cause and Notice of Opportunity for Hearing, FCC 07-125, released July 20, 2007, as amended October 22, 2007.

Interrogatories

1. Describe fully PCSI's corporate structure for each year from January 1, 1998, to the present.

2. Identify all officers, directors, shareholders, and creditors of PCSI at any and all times during each year from January 1, 1998, to the present. As to each such

person:

- a. Specify his or her office, title, or position held with PCSI and dates of service in each office or position;
- b. Specify the nature and extent of his or her stock interest in PCSI, including percentages of ownership and voting rights; and
- c. If the person no longer is an officer, director, shareholder, and/or creditor of PCSI, specify the date and reason that the person ceased being an officer, director, shareholder, and/or creditor of PCSI.

3. List all stock certificates PCSI has prepared and/or issued since its inception.

For each such stock certificate:

- a. Identify the person or entity to which the stock certificate was prepared or issued;
- b. specify the amount and class of stock shares;
- c. specify the date that the stock certificate was prepared and, if also issued, the date that the stock certificate was issued;
- d. if the stock certificate was prepared, but not issued, explain fully why it was not issued and identify the persons who were involved in making the decision not to issue the stock certificate.

4. Identify the name of all entities under which PCSI has done business at any time during the period from January 1, 1998, to the present. For each such entity:

- a. Specify the principal place of business;

- b. Specify the telephone number;
 - c. Specify the dates of operation; and
 - d. Specify the nature of such business.
5. Describe any ownership interest in any business that PCSI has held at any time during the period from January 1, 1998, to the present, and, for each such business, provide the dates of operation.
6. State whether PCSI has filed federal income tax returns for each year between January 1, 1998, and the present. If not, explain fully why not.
7. Describe each and every professional and/or trade license held by PCSI between January 1, 1998, and the present.
8. With respect to Station WCFG598 (Aguada, PR):
 - a. State whether PCSI holds the license for this Station;
 - b. State whether PCSI has completed construction of the facilities for this license. If not, explain fully the reasons why PCSI has not completed construction of the facilities for this license;
 - c. State whether PCSI has operated this license continuously since December 2005. If not, specify the date(s) on which PCSI discontinued operations for this license for more than one year.
9. State whether Pendleton C. Waugh has ever held an interest of any kind and to any extent whatsoever in PCSI, its applications, and or its licenses. If so, describe fully.