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Before the
Federal Communications Commission
Washington, D.C. 20554

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

MEMORANDUM OPINION AND ORDER

Issued: June 30, 2008

Released: July 2, 2008

1. Under consideration are the Enforcement Bureau's Motion to Compel Document Production and Interrogatory Answers from Preferred Acquisitions, Inc., filed February 19, 2008, by the Enforcement Bureau ("Bureau"); a Response to Enforcement Bureau's Motion to Compel Re Document Production from Preferred Acquisitions, Inc., filed March 6, 2008, by Preferred Acquisitions, Inc. ("Acquisitions"); and a Response of Preferred Acquisitions, Inc. to the Enforcement Bureau's Motion to Compel [sic] Interrogatory Answers, filed March 10, 2008, by Acquisitions.

2. General Objections and Document Requests 1-2, 4-5, 9-10, 13-15, 22-24. Acquisitions's general objections are sustained to the extent that it need not produce documents or provide information relating to documents *created* after July 20, 2007, the date of release of the order designating this case for hearing. *Order to Show Cause and Notice of Opportunity for Hearing*, 22 FCC Rcd 13,363 (2007) ("*OSC*"). For the reasons stated in Acquisitions's March 6, 2008, Response to the Bureau's Motion to Compel Document Production, at 4-5, such documents do not "appear[] reasonably calculated to lead to the discovery of admissible evidence"¹

3. In all other respects, Acquisitions's general objections are overruled. In this regard, the document requests and interrogatories are neither overly broad nor vague, and responding to them would not be unduly burdensome when viewed in the context of the nature, scope, and complexity of the issues specified in the *OSC*. Moreover, the Bureau's requests "appear[] reasonably calculated to lead to the discovery of admissible evidence."² Further, contrary to Acquisitions's assertion, the Bureau is entitled to know which documents are responsive to which

¹ Section 1.311(b) of the Commission's Rules..

² *Id.*

document requests. Therefore, Acquisitions must provide the Bureau with a detailed index containing that information.

4. Document Requests 3, 6-8, 11-12, 20-21; Interrogatory 5. Inasmuch as Acquisitions represented that there are no such documents, no further response to these requests will be required.

5. Document Request 14. Acquisitions's objection is overruled. Although there is no financial qualifications issue, documents relating to financial accounts "appear[] reasonably calculated to lead to the discovery of admissible evidence"³ in connection with the undisclosed real party in interest, unauthorized transfer of control, and misrepresentation/lack of candor issues.

6. Document Requests 16-19. Acquisitions's objections are sustained to the extent that it need not produce copies of pleadings, letters, applications, and amendments already on file with the Commission. However, documents relating to the planning, preparation, review, and filing of such applications and amendments "appear[] reasonably calculated to lead to the discovery of admissible evidence"⁴ and must be produced.

7. Document Request 24. The request for documents supporting interrogatory answers is a routine request and, in any event, "appears reasonably calculated to lead to the discovery of admissible evidence."⁵

8. Document Request 25. The documents Acquisitions may utilize to defend itself at the hearing need not be produced or disclosed until the exhibit exchange date in this proceeding. Consequently, Acquisitions need not produce such documents at this time.

9. Interrogatories 3, 31-36. Acquisitions's objections are overruled. These requests are not overly broad and responding to them would not be unduly burdensome when viewed in the context of the nature, scope, and complexity of the issues specified in the OSC. In addition, the requests "appear[] reasonably calculated to lead to the discovery of admissible evidence"⁶ in connection with the unauthorized transfer of control issue.

10. Interrogatory 23. Acquisitions's answer is incomplete insofar as it only identifies Charles M. Austin ("Mr. Austin"). Acquisitions's answer should be supplemented to identify all other individuals, if any, who had responsibility for control of its daily operations.

11. Interrogatory 24. Acquisitions's answer is nonresponsive. However, Mr. Austin's responsibilities were detailed in his Supplemented and Revised Responses to the Bureau's First Set of Written Interrogatories, dated December 3, 2007 (Interrogatories 20, 21),⁷ and no further response will be required.

12. Interrogatories 37, 39. Acquisitions's answers to these interrogatories were responsive and no further answers will be required. The fact that the Bureau "has reason to

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See Attachment "D" to the Enforcement Bureau's Motion to Compel Document Production and Interrogatory Answers from Charles M. Austin, filed February 19, 2008,

believe" that these responsibilities were "shared between a number of people"⁸ does not provide an adequate basis for requiring supplementation.

13. Interrogatories 46-48, 64. These interrogatories were answered by Acquisitions notwithstanding its objections. No further responses will be required.

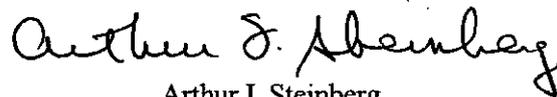
14. Interrogatories 56-60. Acquisitions's objections are sustained for the reasons stated in its March 10, 2008, Response to the Bureau's Motion to Compel Interrogatory Answers, at 4-6.

15. Privilege Log. If Acquisitions raises a claim of privilege, a privilege log must be produced which contains a full description of the documents withheld (author, recipient(s), date, title, specific subject matter), and the precise basis for the privilege claimed. If a document contains both privileged and non-privileged matter, the non-privileged portion(s) of the document must be produced.

Accordingly, IT IS ORDERED that the Enforcement Bureau's Motion to Compel Document Production and Interrogatory Answers from Preferred Acquisitions, Inc., filed on February 19, 2008, IS GRANTED to the extent discussed above, and IS DENIED in all other respects.

IT IS FURTHER ORDERED that Preferred Acquisitions, Inc., SHALL PRODUCE the documents requested by the Bureau and PROVIDE ANSWERS to the Bureau's interrogatories on or before July 20, 2008, or within such other period of time as the parties may mutually agree.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

⁸ Motion to Compel, at 15.