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

In the Matter of	)	
	)	
Improving Public Safety Communications in the 800 MHz Band	)	WT Docket No. 02-55
	)	
	)	
New 800 MHz Band Plan for Puerto Rico	)	

COMMENTS

North Sight Communications, Inc. ("North Sight"), through counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby submits the following Comments in response to the Commission's *Second Further Notice of Proposed Rule Making* in the above-captioned proceeding.[1] In the *Second Further Notice*, the Commission seeks comments on a band plan developed by the 800 MHz Transition Administrator ("TA") for rebanding in Puerto Rico.

I. INTRODUCTION

North Sight is the C-Block Economic Area ("EA") licensee for the Puerto Rico-U.S. Virgin Islands EA 174, and has constructed an iDEN-architecture cellular ESMR system on a combination of its wide-area EA channels and site-based licenses held for frequencies below 862 MHz.[2] To its knowledge, North Sight is the only iDEN-architecture operator in Puerto Rico.

North Sight has provided comments in numerous parts of this proceeding, including filings on: January 28, 2005; May 4, 2005; and January 27, 2006. Further, on January 19, 2006 North Sight informed the TA of North Sight's desire to:

---

[1] 73 FR 40274 (July 14, 2008)(hereinafter "*Second Further Notice*."

[2] Letter from Alan S. Tilles, Esq., counsel to North Sight Communications, Inc., et al., to Robert B. Kelly, Office of the 800 MHz Transition Administrator, January 28, 2005 (on file with the Commission) ("North Sight Letter").

1. Maintain its EA license, WPLM205, with 120 frequencies (863-866 MHz), in the ESMR block;
2. Maintain within the ESMR block it's thirty-two (32) frequencies currently supporting ESMR operations (FCC Call Signs WPBH826, WNMJ534, WNNP545, WNXZ680, WNXE795 and WNNP549);
3. Move North Sight's 1-120 and interleaved frequencies within the ESMR block (FCC Call Signs WPFA281, WPHN735, WNNP549, WNXZ680, WNMJ534, WPBH626, WNXE795, and WNNP549).[3]

The *Second Further Notice* proposes to adopt the TA's recommendation with regard to Puerto Rico spectrum allocations as follows:

1. Expansion Band - Expand the Expansion Band as compared to the non-border regions of the United States, creating an Expansion Band from 860.0000 to 861.5000 MHz;
2. Guard Band - Reduce the size of the Guard Band, as compared to the non-border regions of the United States, creating a Guard Band from 861.5000 to 862.0000 MHz;
3. New NPSPAC Band - Maintain the same new NPSPAC Band as the non-border regions of the United States;
4. Non-ESMR Incumbents - Non-ESMR Incumbents in the 862-866 MHz band will be relocated to the non-ESMR band;
5. ESMR Band - Licensees eligible to be located in the ESMR Band would be allocated spectrum on a pro-rata basis.[4]

II. COMMENTS

As the only cellular architecture licensee operating in the 800 MHz band in Puerto Rico, North Sight is significantly impacted by the FCC's proposal. Initially, North Site does not object to the proposal for the dividing lines between the Expansion Band, the Guard Band and the ESMR band. However, with regard to the TA's proposal to apportion spectrum amongst ESMR licensees, the TA and the Commission have not provided specifics as to: (1) which licensees are envisioned as being eligible to be located in the ESMR band; and (2) how much of a pro-rata reduction is being proposed. Without such information, North Sight cannot properly evaluate the proposal.

[3] See North Sight's filing with the Commission of January 19, 2006.
[4] *Second Further Notice* at 2-3.

This is particularly important in the case of Puerto Rico, because it is not clear to North Sight as to whether it is the TA's intention to permit Preferred Communications Systems, Inc. ("Preferred") to become licensed for frequencies in the ESMR band. In this regard, to North Sight's knowledge, Preferred has never constructed facilities on the overwhelming number of its 800 MHz frequencies in Puerto Rico, only briefly constructed conventional channels on some of the 800 MHz 1-120 frequencies which it purchased, and has not had any operations on any 800 MHz frequencies in Puerto Rico for several years.

Further, it is North Sight's understanding that the Commission is presently conducting a hearing to determine whether to revoke all of Preferred's licenses because Preferred allegedly: (1) failed to disclose a real-party-in-interest and engaged in unauthorized transfers of control of Commission licenses; (2) misrepresented material facts to the Commission; (3) lacked candor in its dealings with the Commission; (4) failed to disclose the involvement of convicted felons in ownership and control of its licenses; (5) failed to file required forms and information and respond fully to Enforcement Bureau letters of inquiry; and (6) discontinued operation of certain licenses.[5]

To the extent that the TA proposes to assign any ESMR channels to Preferred or its related entities, North Sight opposes the TA's plan. Since its inception, Preferred has done nothing that demonstrates any intention to construct an ESMR system in Puerto Rico, and the Commission should not reward Preferred's lack of diligence for many years and, if the Commission's allegations are true, its fraud upon the Commission. North Sight cannot envision any valid rational which would reduce the number of North Sight's already operational frequencies to give channels to

[5] Order To Show Cause And Notice Of Opportunity For Hearing, *Pendleton C. Waugh, Charles M. Austin and Jay R. Bishop, Preferred Communication Systems, Inc. and Preferred Acquisitions, Inc.*, FCC 07-125, released July 20, 2007 (attached hereto).

Preferred. However, without the detail of what licensees are proposed by the TA for the band, and what level of pro-ration will take place, North Sight is unable to provide more detailed comments. Therefore, North Sight requests that the TA provide that level of information in the record, and that parties be permitted to provide comments on the specifics of the plan.

III. CONCLUSION

WHEREFORE, the premises considered, it is respectfully requested that the Commission act in accordance with these Comments.

Respectfully submitted,

NORTH SIGHT COMMUNICATIONS, INC.

By: Alan S. Tilles, Esquire
Laura Smith, Esquire

Its Attorneys

Shulman Rogers Gandal Pordy & Ecker, P.A.
11921 Rockville Pike, Third Floor
Rockville, Maryland 20852
301-230-5200

Dated: August 8, 2008

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

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		

ORDER TO SHOW CAUSE AND NOTICE OF OPPORTUNITY FOR HEARING

Adopted: July 18, 2007 **Released: July 20, 2007**

By the Commission:

I. INTRODUCTION

1. By this *Order to Show Cause and Notice of Opportunity for Hearing* ("*Order*"), we commence a hearing proceeding before an administrative law judge to determine whether Pendleton C. Waugh ("Waugh"), Jay R. Bishop ("Bishop"), Charles M. Austin ("Austin"), and the entities they own and control, Preferred Communication Systems, Inc. ("PCSI"),[1] parent

[1] Preferred Communication Systems, Inc., is the licensee of the following Specialized Mobile Radio ("SMR"), site-by-site stations, which are the subject of this *Order to Show Cause and Notice of Opportunity for Hearing*: WPDU206 (Santurce, PR); WPDU210 (Santurce, PR); WPDU218 (Santurce, PR); WPDU222 (Santurce, PR); WPDU263 (Santurce, PR); WPDU266 (Santurce, PR); WPDU271 (Santurce, PR); WPDU275 (Santurce, PR); WPDU279 (Santurce, PR); WPDU287 (Santurce, PR); WPEF461 (Santurce, PR); WPEU434 (Santurce, PR); WPEX345 (Santurce, PR); WPEY418 (Santurce, PR); WPEY419 (Santurce, PR); WPEY421 (Santurce, PR); WPEY422 (Santurce, PR); WPEY423 (Santurce, PR); WPEY424 (Santurce, PR); WPEY425 (Santurce, PR); WPEY427 (Santurce, PR); WPEY429 (Santurce, PR); WPEY430 (Santurce, PR); WPEY431 (Santurce, PR); WPEY432 (Santurce, PR); WPEY445 (Santurce, PR); WPEY446 (San Juan, PR); WPEY447 (Santurce, PR); WPEY448 (Santurce, PR); WPEY450 (Santurce, PR); WPEY451 (Santurce, PR); WPEZ750 (Santurce, PR); WPFA265 (San Juan, PR); WPFA266 (Santurce, PR); WPFA268 (Santurce, PR); WPFA269 (Santurce, PR); WPFA270 (Santurce, PR); WPFA273 (Santurce, PR); WPFA278 (Santurce, PR); WPFA280 (Continued...)

company of Preferred Acquisitions, Inc. ("PAI") (collectively, "Preferred"),[2] licensee of the referenced stations, are qualified to be and remain Commission licensees. As discussed below, the record before us indicates that these individuals, two of whom are convicted felons, and the referenced entities, individually and collectively, among other things, apparently (1) failed to disclose a real-party-in-interest and engaged in unauthorized transfers of control of Commission licenses; (2) misrepresented material facts to the Commission; (3) lacked candor in their dealings with the Commission; (4) failed to disclose the involvement of convicted felons in ownership and control of the licenses; (5) failed to file required forms and information and respond fully to Enforcement Bureau letters of inquiry; and (6) discontinued operation of certain licenses. Evidence of such misconduct raises material and substantial questions requiring further inquiry at hearing as to whether the referenced licenses[3] should be revoked and whether forfeitures should issue against one or more of the persons and/or entities identified above.

(Continued from previous page.)
(Santurce, PR); WPFD607 (Santurce, PR); WPFD808 (Santurce, PR); WPFD809 (Santurce, PR); WPFD810 (Santurce, PR); WPFD811 (Santurce, PR); WPFD812 (Santurce, PR); WPFE472 (Santurce, PR); WPFE934 (Cayey, PR); WPFG589 (no ULS address; coordinates 18-16-08.8 N, 066-04-00.5 W); WPFG599 (Caguas, PR); WPFM597 (Cayey, PR); WPFM600 (San Juan, PR); WPFN354 (Aguada, PR); WPFN600 (Anasco, PR); WPFN636 (Anasco, PR); WPFN725 (Anasco, PR); WPFQ293 (Charlotte Amalie, VI); WPFS846 (Saint Croix, VI); WPFS856 (Saint Croix, VI); WPFT334 (Saint Croix, VI); WPFT335 (Saint Croix, VI); WPFT335 (Aguada, PR); WPFT356 (Aguada, PR); WPFT357 (Saint Croix, VI); WPFT369 (Charlotte Amalie, VI); WPFT416 (Charlotte Amalie, VI); WPFT417 (Saint Croix, VI); WPFT968 (Charlotte Amalie, VI); WPFV692 (Charlotte Amalie, VI); WPFV884 (Mayaguez, PR); WPFX997 (Mayaguez, PR); WPFZ805 (Mayaguez, PR); WPFZ806 (Mayaguez, PR); WPFZ807 (Mayaguez, PR); WPFZ808 (Mayaguez, PR); WPGD852 (Mayaguez, PR); and WPGD855 (Mayaguez, PR). Preferred originally acquired 86 licenses, as discussed *infra*, but 9 have since expired for lack of renewal.

[2] Preferred Acquisitions, Inc., is the licensee of the following SMR Economic Area ("EA") stations: WPRQ941 (BEA013 - Washington-Baltimore, DC-MD-VA-WV-PA); WPRQ942 (BEA015 - Richmond-Petersburg, VA); WPRQ943 (BEA016 - Staunton, VA-WV); WPRQ944 (BEA017 - Roanoke, VA-NC-WV); WPRQ945 (BEA048 - Charleston, WV-KY-OH); WPRQ946 (BEA164 - Sacramento-Yolo, CA); WPRQ947 (BEA165 - Redding, CA-OR); WPRQ948 (BEA174 - Puerto Rico and the U.S. Virgin Islands); WPRQ949 (BEA016 - Staunton, VA-WV); WPRQ950 (BEA017 - Roanoke, VA-NC-WV); WPRQ951 (BEA048 - Charleston, WV-KY-OH); WPRQ952 (BEA162 - Fresno, CA); WPRQ953 (BEA165 - Redding, CA-OR); WPRQ954 (BEA174 - Puerto Rico and the U.S. Virgin Islands); WPRQ955 (BEA016 - Staunton, VA-WV); WPRQ956 (BEA017 - Roanoke, VA-NC-WV); WPRQ957 (BEA048 - Charleston, WV-KY-OH); WPRQ958 (BEA162 - Fresno, CA); WPRQ959 (BEA163 - San Francisco-Oakland-San Jose, CA); WPRQ960 (BEA164 - Sacramento-Yolo, CA); WPRQ961 (BEA165 - Redding, CA-OR); WPRQ962 (BEA174 - Puerto Rico and the U.S. Virgin Islands); WPRQ963 (BEA013 - Washington-Baltimore, DC-MD-VA-WV-PA); WPRQ964 (BEA015 - Richmond-Petersburg, VA); WPRQ965 (BEA016 - Staunton, VA-WV); WPRQ966 (BEA017 - Roanoke, VA-NC-WV); WPRQ967 (BEA174 - Puerto Rico and the U.S. Virgin Islands); WPRQ968 (BEA013 - Washington-Baltimore, DC-MD-VA-WV-PA); WPRQ969 (BEA015 - Richmond-Petersburg, VA); WPRQ970 (BEA016 - Staunton, VA-WV); WPRQ971 (BEA017 - Roanoke, VA-NC-WV); WPRQ972 (BEA174 - Puerto Rico and the U.S. Virgin Islands); WPRQ973 (BEA013 - Washington-Baltimore, DC-MD-VA-WV-PA); WPRQ974 (BEA015 - Richmond-Petersburg, VA); WPRQ975 (BEA016 - Staunton, VA-WV); WPRQ976 (BEA017 - Roanoke, VA-NC-WV); WPRQ977 (BEA162 - Fresno, CA); and WPRQ978 (BEA164 - Sacramento-Yolo, CA).

[3] *See* licenses listed *supra*, note 1-2.

II. BACKGROUND

A. Pendleton C. Waugh

2. In 1990, Waugh, an attorney who was licensed to practice law in Texas, formed Express Communications, Inc. ("Express") and several affiliated entities, to acquire wireless licenses.[4] Waugh became president and was a majority owner of Express. In 1993, Waugh came under investigation by federal authorities for activities relating to his involvement in Express. As a result of that investigation, Waugh was indicted in 1994 in the United States District Court for the Northern District of Texas on one count of conspiracy to structure financial transactions to evade securities and banking reporting requirements and one count of money laundering, both felonies.[5] Waugh ultimately pled guilty to the first count, and the second count was dismissed.[6] In 1995, as a result of the plea agreement, Waugh was sentenced to 21 months in federal prison, followed by three years of probation, and payment of $20,000 in fines.[7] As part of his plea agreement, Waugh agreed not to violate any federal, state, or local laws, and specifically regulations or orders issued by the United States Securities and Exchange Commission ("SEC") or any equivalent state agency. He also agreed to divest himself, without compensation, of any ownership interests in Express and its affiliated entities.

3. Thereafter, in 1997, the United States District Court for the District of Columbia granted the SEC summary judgment against Waugh for violations of various securities regulations stemming from his involvement in Express.[8] Waugh was ordered to pay the federal government nearly $13 million of illegally acquired funds. He also was permanently enjoined from violating various securities laws.[9]

4. In 1999, Waugh was convicted of securities fraud, a felony, in a case brought by the State of Texas, arising from his failure, in 1993, to disclose to a potential investor that he was under investigation by federal authorities for activities relating to his involvement in Express.[10] Waugh was sentenced to four years in state prison, all of which were suspended pending

---

[4] *See U.S. v. Waugh*, Indictment, Case No. 3:94-CR-160-T (N.D. Tex. May 11, 1994).

[5] *See id.*

[6] *See U.S. v. Waugh*, Plea Agreement, Case No. 3:94-CR-160-T (N.D. Tex. July 13, 1994).

[7] *See U.S. v. Waugh*, Judgment, Case No. 3:94-CR-160-T (N.D. Tex. Jan. 25, 1995).

[8] *See Securities and Exchange Commission v. Express Communications, Inc.*, Complaint by Securities and Exchange Commission, Case No. 95-CV-2268 (D.D.C. Dec. 13, 1995).

[9] *See Securities and Exchange Commission v. Express Communications, Inc.*, Revised Final Judgment of Permanent Injunction and Other Relief Against Defendant Pendleton C. Waugh, Case No. 95-CV-2268 (D.D.C. Mar. 7, 1997).

[10] *See Texas v. Waugh*, Judicial Confession and Consent to Stipulation of Evidence, Case No. F-9703517 (Crim. Dist. Ct. Dallas, TX Mar. 5, 1999).

successful completion of probation.[11] He also was ordered to pay $72,000 in restitution and to complete 500 hours of community service.[12]

5. Later in 1999, Waugh was determined to have violated the terms of his parole from federal prison and his probation on his state conviction by traveling to Puerto Rico to engage in activities relating to cellular telephone securities.[13] As a result, Waugh was sentenced to six additional months in federal prison and four years in state prison.[14]

B. Jay R. Bishop

6. In the early 1990s, Bishop was one of three shareholders in Continental Wireless Cable Television, Inc. ("Continental"), a company that held itself out to investors as a business constructing cable systems. In 1994, as a result of the company's activities, the SEC filed an enforcement action against Continental for defrauding investors after the company raised approximately $41 million from nearly 3,000 investors, only about 10 % of which was used for building cable systems.[15] The SEC obtained a restraining order against Continental, seized its assets, and froze its bank accounts and those of its principals. Continental was placed into involuntary receivership.[16]

7. In 2001, Bishop was convicted of two felonies in United States District Court for the Southern District of California for conspiracy to defraud the Internal Revenue Service and attempted tax evasion, relating to his personal and business tax returns in 1993 and 1994 as a shareholder in Continental.[17] Bishop was sentenced to 30 months in federal prison.[18]

C. Charles M. Austin

8. According to material provided by PCSI, during the 1990's, Austin served as Investment Representative of a wireless cable development company, American Wireless;

---

[11] *See Texas v. Waugh*, Judgment, Case No. F-9703517 (Crim. Dist. Ct. Dallas, TX May 17, 1999).

[12] *See Texas v. Waugh*, Judgment, Case No. F-9703517 (Crim. Dist. Ct. Dallas, TX May 17, 1999).

[13] *See U.S. v. Waugh*, Judgment in a Criminal Case (For Revocation of Probation or Supervised Release), Case No. 3:94-CR-160-T (N.D. Tex. N.D. Tex. July 9, 1999).

[14] *See U.S. v. Waugh*, Order Granting in Part and Denying in Part Defendant's Motion to for Authorization to Travel, Case No. 3:94-CR-160-T (N.D. Tex. N.D. Tex. Aug. 26, 1996). In particular, the court noted that "[t]he probation office has informed the Court that Waugh may be engaged in calling and sending information to potential investors to solicit their money, in violation of a previous order of this Court." *See id. See also Texas v. Waugh*, Judgment Revoking Community Supervision, Case No. F-9703517 (Crim. Dist. Ct. Dallas, TX Jan. 11, 2001).

[15] *See* U.S. Securities and Exchange Commission, Continental Wireless Cable Television, at http://sec.gov/divisions/enforce/claims/contwire.htm (last visited May 24, 2007).

[16] *U.S. v. Bishop*, 291 F.3d 1100 (9th Cir. 2002).

[17] *See U.S. v. Bishop*, Judgment Including Sentence, Case No. 98CR3260-IEG (S.D. Cal. March 6, 2001), *affirmed*, *U.S. v. Bishop*, 291 F.3d 1100 (9th Cir. 2002), *cert. denied*, *Bishop v. U.S.*, 537 U.S. 1176 (2003).

[18] *See id.*

Investment Representative of an SMR development capital company, Walmac LLC; Vice-President of a wireless licensing and acquisitions company, Communications Equity Associates, L.L.C.; and President of an infomercial funding company, MediaResponse, LLC.[19] The record does not indicate that he has been convicted of any felonies.

D. Applications for Authorizations

9. In approximately 1997,[20] Waugh, Bishop, Austin and another individual, Charles Guskey,[21] formulated a business plan to acquire FCC wireless licenses and sell them for a profit. They created two corporations for this purpose: PCSI and a wholly-owned subsidiary, PAI.

10. In 1998, PCSI sought to acquire multiple SMR licenses stemming from the so-called "Goodman-Chan" proceeding and filed assignment applications from a variety of licensees.[22] In 1999, the Commission granted PCSI's applications, and PCSI became the licensee of 86 site-based SMR licenses located in the U.S. Virgin Islands and Puerto Rico.[23]

11. Thereafter, on July 17, 2000, PAI, PCSI's subsidiary, filed an application on FCC Form 175, Application to Participate in an FCC Auction ("Short Form"), to participate in Auction No. 34, in which the Commission intended to auction spectrum for the 800 MHz SMR service in the General Category Band (851 MHz to 854 MHz). In its Short Form, PAI represented that Austin held 100 % of PCSI's common shares. PAI also stated with respect to its parent company:

> PCSI has agreed to issue additional shares that would dilute the ownership of Mr. Austin, conditioned upon receipt of prior FCC approval. PCSI expects to file an application seeking such FCC approval with respect to PCSI's incumbent 800 MHz licenses in the near future. However, as PCSI is contractually committed to seek such FCC approval, PCSI is providing the information herewith to show what the ownership would be on a fully diluted basis after a receipt of FCC approval and after conversion into equity of all existing convertible debt instruments.[24]

PAI then noted that the ownership would be diluted as follows: (1) Austin, 32.7 %; (2) Raymond A. Hebrank Irrevocable Voting Trust, 32.7 %; and (3) Bishop Irrevocable Voting Trust,

---

[19] *See* Second LOI Response at 16 and related exhibits.

[20] *See* Letter from Charles J. Ryan, III, Attorney at Law, to Dana Leavitt, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated January 25, 2007, at 1, 13, 16 ("Second LOI Response").

[21] Charles Guskey, a former business colleague of Bishop, served as an outside accountant to Continental Wireless Cable Television, Inc.

[22] *Daniel R. Goodman, Receiver; Dr. Robert Chan, Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission's Rules,* Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 21944 (1998); *pet. for review denied, Daniel Goodman v. FCC,* 182 F.3d 987 (D.C. Cir. 1999).

[23] *See Applications of Preferred Communication Systems, Inc.*, Order, 14 FCC Rcd 20,648 (WTB 1999).

[24] *See* Preferred Acquisitions Inc., FCC Form 175, dated July 17, 2000, at Exhibit A, at 1 n.1 ("Form 175").

32.7 %.[25] Notably, PAI made no explicit reference in its Short Form to the involvement in the application, if any, by Waugh.

12. Auction No. 34 lasted from August to September 2000, during which time PAI was the successful bidder of 38 SMR Economic Area ("EA") licenses, located in California, Kentucky, Maryland, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, the U.S. Virgin Islands, Virginia, Washington, D.C., and West Virginia.[26]

13. On September 18, 2000, in further regard to its participation in Auction No. 34, PAI filed a FCC Form 602, FCC Ownership Disclosure Information for the Wireless Telecommunications Services Form ("Ownership Disclosure Form"), with the Commission.[27] Therein, PAI again identified Austin as holding 100 % of PCSI common shares. PAI did not specify any other person or entity holding disclosable interests.[28]

14. Following Auction No. 34, PAI filed an FCC Form 601, FCC Application for Wireless Telecommunications Bureau Radio Service Authorization ("Long Form"), to obtain the grant of its licenses.[29] In its application, PAI again identified Austin as holding 100 % interest in the applicant.[30] The Long Form, at page 2, required PAI to disclose the name of the real party in interest of the applicant, if different from the applicant.[31] PAI did not disclose the name of any other individual or entity.[32] In addition, at page 3 of the Long Form, the applicant was required to state whether "the applicant or any party to this application, or any party directly or indirectly controlling the applicant" has ever been "convicted of a felony by any state or federal court."[33] PAI responded in the negative.[34] The Long Form, at page 4, required PAI to certify that it "either (1) has current required ownership data on file with the Commission, (2) is filing updated ownership data simultaneously with this application, or (3) is not required to file ownership data

[25] *See id.* at 1-2.

[26] *See Wireless Telecommunications Bureau Grants 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Licenses*, Public Notice, 16 FCC Rcd. 1427, 1429 (WTB 2000).

[27] *See* Preferred Acquisitions Inc., FCC Form 602, FCC Ownership Disclosure Information for the Wireless Telecommunications Services, Schedule for Disclosable Interest Holders, dated September 20, 2000.

[28] *See id.* at 1.

[29] *See* Preferred Acquisitions Inc., FCC Form 601, FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, dated September 27, 2000.

[30] *See* Preferred Acquisitions Inc., FCC Form 601, FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, dated September 27, 2000, at Exhibit A, at 2.

[31] *See* Preferred Acquisitions Inc., FCC Form 601, FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, dated September 27, 2000, at 2.

[32] *See id.*

[33] *Id.* at 3.

[34] *See id.*

under the Commission's rules."[35] Austin executed the certification on behalf of PAI. PAI did not reference Waugh anywhere in its Long Form as having any attributable interest or involvement.

15. Under Section 90.685 of the Commission's Rules, PAI was required to 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.[36] PAI's five-year build-out deadline for its SMR licenses was December 20, 2005, but it failed to meet this deadline. Instead, PAI filed a waiver request on December 14, 2005 ("Waiver Request"), with the Wireless Telecommunications Bureau to waive the build-out deadline for all of its SMR licenses.[37] In requesting its waiver, PAI relied on the standard outlined in the Commission's ongoing 800 MHz rebanding proceeding.[38] The Commission recognized in this proceeding that some licensees might seek waivers of their construction deadlines prior to their being scheduled for relocation. The Commission stated that a licensee making such a request would be required to demonstrate "that it would have constructed but for the fact that band reconfiguration would affect its proposed facilities" and that it has commenced construction; for example, 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."[39] In its Waiver Request, PAI represented to the Commission that it "has commenced construction . . . . It has the necessary frequency radio neutral equipment on hand or on firm order. It has the necessary commitments for tower site locations."[40] PAI also stated that, "[a]ll leases have been or will be executed by both parties as of December 20, 2005," in each of the EA's in which PAI's SMR licenses are located.[41] PAI's Waiver Request remains pending.

---

[35] *See id.* at 4.

[36] 47 C.F.R. § 90.685(b).

[37] *See* Preferred Acquisitions Inc., FCC Form 601, FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, dated December 14, 2005 ("Waiver Request"). PAI subsequently amended this filing on December 22, 2005.

[38] *See 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) (*800 MHz Rebanding R&O).*

[39] *See id.*

[40] *See* Waiver Request at Exhibit 1 at 5.

[41] *Id.* at Declaration of Charles M. Austin, at 1-2 (containing the cited statement concerning efforts regarding preparation to meet construction deadlines on PAI's licenses in each of BEAs 13 (Washington/Baltimore), 15 (Richmond/Petersburg), 16 (Staunton), 17 (Roanoke), 48 (Charleston, WV), 162 (Fresno), 163 (San Francisco), 164 (Sacramento), 165 (Redding), and 174 (Puerto Rico and U.S. Virgin Islands)).

E. Enforcement Bureau Investigation

16. On June 1, 2006, the Commission's Enforcement Bureau ("Bureau") received information suggesting that PCSI may have transferred control of all of its licenses[42] to Waugh without prior Commission authorization. The Bureau immediately commenced an investigation, and, on June 30, 2006, issued the first of two comprehensive letters of inquiry to PCSI.[43] The Bureau's First LOI directed PCSI to provide information and documents relating to its corporate composition as well as the nature and extent of Waugh's involvement in PCSI and control of its licenses. PCSI responded on July 27, 2006.[44]

17. In its response, PCSI described itself as an early stage company, stating that its "primary focus" has been to "secure funding to complete its acquisitions of licenses according to its business plan and to fund construction and operation of its facilities."[45] PCSI stated that financial difficulties "significantly impacted the Company's business plan," and complicated "use of the frequencies as intended by the Company . . . impairing its continued ability to raise the necessary capital . . . ."[46]

18. Although the Bureau's First LOI directed PCSI to describe its corporate composition for each year beginning in 1998, PCSI provided information only for the year 1999. As of that year, PCSI described its corporate structure as follows: Austin, 77.78 % of voting stock, 54.97 % of total equity (including non-voting preferred stock); Gerald E. Setka, 19.9 % of voting stock, 14.09 % of total equity, including non-voting preferred stock; and Amide Pharmaceutical, Inc., 14.50 % of total equity of PCSI (all non-voting, preferred stock).[47] It is unclear during what time period beyond 1999, if any, that this corporate structure may have existed.

19. PCSI acknowledged in its First LOI Response that Waugh was and had been, since the inception of the company, involved in its operations.[48] PCSI maintained, however, that Waugh had not exercised control of PCSI. In this regard, PCSI claimed that that Waugh possessed no independent authority to act on PCSI's behalf, made no decisions on policy matters, had no firing or hiring authority over PCSI employees or outside consultants, and was not responsible for

---

[42] As referenced elsewhere in this order, PCSI received 86 licenses through assignment, 9 of which have expired for failure to file a renewal, and its wholly owned subsidiary, PAI, acquired 38 licenses at auction. *See, supra*, notes 1-2.

[43] *See* Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Charles M. Austin, President, Preferred Communication Systems, Inc., dated June 30, 2006 ("First LOI").

[44] *See* Letter from Paul C. Besozzi, Patton Boggs LLP, to Dana Leavitt, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 27, 2006 ("First LOI Response").

[45] *See id.* at 5.

[46] *See id.*

[47] *See id.* at 9-10.

[48] *See id.* at 23-25.

financing PCSI's operations.[49] PCSI further represented that Waugh did not share PCSI's profits and had no authority regarding PCSI's bank accounts.[50]

20. The documents that PCSI provided to the Commission in its First LOI Response suggested, however, that Waugh was more involved in PCSI than the company otherwise claimed in its narrative response. In this regard, PCSI provided approximately 2,000 pages of documents,[51] consisting primarily of e-mail exchanges between Austin and Waugh during the period from 2004 to 2006. The e-mails involved a variety of matters relating to the daily operations of PCSI. Specifically, they identified Waugh as having engaged, on behalf of PCSI, in recruiting, hiring, training, and supervising personnel, and procuring leases, office equipment, and other necessities for the day-to-day operation of PCSI's sales office in Escondido, California. Such e-mails and other correspondence also suggested that Waugh dealt extensively with outside counsel and other parties in negotiations on behalf of PCSI. Additionally, the documents provided by PCSI indicated that Waugh drafted filings on behalf of the company that were submitted to the Commission. The documents showed that Waugh drafted internal memoranda on PCSI goals. Further, the documents suggested that Waugh had actively solicited potential and current PCSI investors.

21. Documents that the Bureau independently gathered also suggest that Waugh had a more significant interest in PCSI (and, thus, in PAI) than PCSI had admitted in its First LOI Response. Among them is a copy of a stock certificate apparently indicating that 800,000 shares of PCSI stock had been transferred to Waugh through the Raymond A. Hebrank Irrevocable Voting Trust that PAI had referenced in its Short Form Application. Notably, the stock certificate was dated April 14, 2000, *after* PCSI acquired its 86 site-based SMR licenses, but *before* PAI filed its Short Form application to participate in Auction No. 34, in which it later acquired 38 EA SMR licenses.

22. Apparent inconsistent information about the extent and timing of Waugh's interests and involvement in PCSI raised several concerns: (1) whether control of PCSI (and the site-based SMR licenses that it held) was transferred to Waugh without prior Commission consent; (2) whether Waugh was an undisclosed real-party-in-interest in PAI (and in the EA SMR licenses that it acquired at auction); (3) whether PAI misrepresented material facts or lacked candor in its three auction filings (Short Form, Ownership Disclosure Form, and Long Form); and (4) whether PCSI had misrepresented material facts or lacked candor in its First LOI Response. Accordingly, the Bureau, on December 27, 2006, directed a second letter of inquiry to PCSI.[52] The Bureau

[49] *See id.*

[50] *See id.*

[51] PCSI requested confidentiality for these documents. Pursuant to our confidentiality rules, we are giving the documents confidential treatment while its request is pending.

[52] *See* Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Charles M. Austin, President, Preferred Communication Systems, Inc., dated December 27, 2006 ("Second LOI").

directed PCSI to provide an explanation regarding, among other things, Waugh's ownership interests in PCSI. PCSI responded to the Second LOI on January 25, 2007.[53]

23. In its Second LOI Response, PCSI acknowledged that Waugh was in fact the beneficiary of the Raymond A. Hebrank Irrevocable Voting Trust that PAI referenced in its Short Form application.[54] PCSI also conceded that Waugh was one of PCSI's founders.[55] Further, PCSI authenticated the copy of the referenced stock certificate, which, on its face, appeared to transfer 800,000 shares of PCSI voting stock to the Raymond A. Hebrank Irrevocable Voting Trust for Waugh's benefit.[56] PCSI claimed, however, that the stock certificate was ineffectual because it suffered from procedural defects, and it provided a copy of the same document with "VOID" handwritten across it. PCSI claimed that a transfer of ownership interests to Waugh never actually took place.[57]

24. PCSI also acknowledged in its Second LOI Response that Bishop, too, was a founder of PCSI, and that a voting trust was to be formed, pursuant to which PCSI would transfer shares to Bishop and his wife, Michelle, who served as PCSI's Secretary/Treasurer until 2001.[58] PCSI also stated that Bishop had worked for the company as a "consultant" from 1998-2001.[59]

25. The Bureau also directed PCSI to provide information about Gerald E. Setka; the company initially revealed Setka as an interest holder in PCSI in its First LOI Response. PCSI indicated that Setka had acquired his PCSI stock through investments in the company in 1998-1999.[60] PCSI explained that it did not disclose Setka's involvement in PAI's auction filings because "[b]y contract and agreement, Mr. Setka was to hold no more than a slightly over 5 %

[53] *See* Letter from Charles J. Ryan, III, Attorney at Law, to Dana Leavitt, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated January 25, 2007 ("Second LOI Response").

[54] *See id.* at 1-4.

[55] *See id.* at 7-8. Waugh's own affidavit submitted with the same response states that, although he was a member of the core group of PCSI, he was not a founding member. *See id.* at Affidavit of Pendleton C. Waugh, at 1.

[56] *See id.* at 1-4. When asked to state whether the stock certificate was a true and correct copy of a stock certificate signed by Michelle Bishop, PCSI's Secretary, and Austin, PCSI's President, issuing 800,000 shares of stock to the Hebrank voting trust held for the benefit of Waugh, PCSI responded "Yes, the document . . . is a Xerox copy of a copy of stock certificate C-17 from PCSI's corporate book." *See id.* at 1.

[57] PCSI denied that the trust documents were valid, citing procedural defects, such as a lack of a filing to obtain taxpayer identification number, lack of compensation from Waugh to his trustee, and lack of payment from Waugh to the trustee to tender to PCSI in exchange for the shares of stock. *See id.* at 1-4 & Exhibit marked Bates Stamp 00000.

[58] *See* Second LOI Response at 1-4, 7-8. PCSI's Second LOI Response stated, however, that the Bishop voting trust was never formed. *See id.* at 1-4.

[59] *See id.* at 26-29.

[60] *See id.*

ownership interest in Preferred."[61] PCSI further stated that its calculation of Setka's shares "did not reflect verbal agreements to issue shares to the Raymond A. Hebrank Voting Trust and the voting trust to be formed for the benefit of the Bishops."[62]

26. In its Second LOI Response, PCSI also provided additional information, as directed by the Bureau, about the lease arrangements referenced by PAI in its Waiver Request for waiver of the five-year construction deadline for the 38 SMR EA licenses that PAI won at auction. Although PAI had affirmatively stated to the Commission in support of its Waiver Request that all tower site leases had been or would be executed by December 20, 2005, copies of leases that PCSI submitted in its Second LOI Response reveal that at least some of them were executed later than what PCSI had represented.[63]

27. The Bureau also directed PCSI to describe the circumstances under which Waugh became employed by the company as a consultant. PCSI explained that Austin hired Waugh as a consultant to aid PCSI in acquiring SMR licenses.[64] PCSI further stated that "[i]n exchange for providing consulting services based on his knowledge of the wireless industry and licensing in Puerto Rico, Mr. Austin agreed that Mr. Waugh would receive one-third of the profit from the sale of such licenses to Telecellular."[65]

28. The Bureau also specifically directed PCSI to provide copies of tax returns for PCSI, Waugh, and Bishop, and criminal conviction and sentencing records for Waugh and Bishop. As with other material in response to the Bureau's inquiries in this proceeding, such copies were due within 30 days of the Bureau's second letter of inquiry. PCSI, however, provided no such information in its Second LOI Response. Instead, PCSI represented in its Second LOI Response that such information would be provided to the Bureau at a later date.[66] To date, PCSI still has not provided any of the required tax returns or criminal records.

29. PCSI's responses to both LOIs also raised concerns regarding its use of the licenses for the purpose of raising capital, rather than operation. Independent investigation by the Bureau and the Wireless Telecommunications Bureau yielded the following information. Several tower operators in Puerto Rico and the U.S. Virgin Islands informed Commission staff during telephone conversations that PCSI was not a customer of any of the towers in those areas at least since December 2005, and possibly earlier. Further, PCSI's own website related similar information, stating that "Preferred now is raising equity capital and arranging debt financing to launch a major ESMR system in Puerto Rico and the U.S. Virgin Islands and to construct networks in its other markets by satisfying Federal Communications Commission ('FCC') construction

[61] *See id.* at 17.

[62] *See id.*

[63] The leases appear to have been executed on various dates in 2006. Furthermore, it appears from information gathered by the Bureau from other sources that PAI may be in default on a number of tower leases and that it may have allowed several leases which formed the basis for the Waiver Request to lapse.

[64] *See* Second LOI Response at 16.

[65] *See id.*

[66] *See* Second LOI Response at 42, 48.

standards."[67] As a part of its business objectives, PCSI stated that it plans to "[p]rovide a full package of wireless voice and data services."[68]

III. DISCUSSION

30. The hearing proceeding will consider issues related to Preferred's undisclosed real-party-in-interest and unauthorized transfer of control; Preferred's misrepresentation and lack of candor; the criminal convictions of individuals who appear to be Preferred's principals; Preferred's failure to file required forms or information; whether PCSI failed to operate its licenses; and, the effect of all of these issues on Preferred's qualifications to be and remain a Commission licensee. The hearing also will determine whether forfeitures and/or revocation of PAI's licenses are warranted based on whether and which violations of the Commission's rules are determined at hearing.

A. Undisclosed Real-Party-In-Interest and Unauthorized Transfer of Control

31. Section 1.2112 of the Commission's Rules requires entities participating in FCC auctions to disclose the real party or parties in interest in the applicant or application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant.[69] The record indicates that Waugh may have obtained 800,000 shares of stock in PCSI, of which PAI is a wholly-owned subsidiary, in April 2000, *prior to* PAI's participation in Auction No. 34.[70] In addition, the documentary evidence indicates that Waugh may have been deeply involved in the day-to-day operations of PCSI.[71] Together, the evidence before us pertaining to Waugh's ownership interest and personal involvement in company operations raises a material and substantial question of fact as to whether Waugh in fact controlled the company.[72] Based on such information, PAI may have been required

[67] *See* Preferred Communication Systems Inc., Corporate Profile, *at* http://www.precomsys.com/corporateprofile.html, last visited 6/12/07.

[68] *See id.*

[69] *See* 47 C.F.R. § 1.2112.

[70] *See* paragraph 21, *supra.* The record contains conflicting evidence as to what percentage of outstanding PCSI stock shares Waugh would own if he, in fact, acquired 800,000 shares of PCSI stock. For example, PAI's auction filings contemplate that PCSI would dilute Austin's ownership and transfer 32.7% to Waugh. *See* Preferred Acquisitions Inc., FCC Form 175, dated July 17, 2000, at Exhibit A, at 1-2. However, PCSI also represented in its First LOI Response that Austin held 800,000 shares of PCSI stock as of 1999, and in its auction filings, PAI represented that Austin held 100% of outstanding PCSI stock. *See* Second LOI Response at 11; Preferred Acquisitions Inc., FCC Form 601, FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, dated September 27, 2000, at Exhibit A, at 2. If Waugh acquired 800,000 shares before the auction filing representations were made, then his ownership interest could be equivalent to that of Austin by the time that PAI submitted its auction filings. *See* paragraphs 11-14 and 18-21, *supra.*

[71] *See* paragraph 20, *supra.*

[72] Under Commission precedent, the Commission examines the following factors to determine whether control over licenses rests with an entity other than the licensee: (a) does the licensee have unfettered use of all facilities and equipment; (b) who controls daily operations; (c) who determines and carries out policy decisions, including preparing and filing applications with the Commission; (d) who is in charge of (Continued...)

to disclose Waugh's interest in its Short Form, in its Ownership Disclosure Form, and in its Long Form applications. None of the applications, however, reveals any references by PAI to Waugh. Rather, PAI identified Austin as the sole (100 %) shareholder in the company in each of its filings.[73]

32. Evidence of Waugh's participation in PAI at the time PAI participated in Auction No. 34 raises material and significant questions of fact as to whether Waugh was an undisclosed real party in interest in PAI who, pursuant to Section 1.2112 of the Commission's Rules, should have been identified in applications filed in Auction No. 34. Accordingly, appropriate issues will be specified below for further inquiry at hearing.

33. The record before us also raises questions as to whether Waugh and/or Bishop may have acquired control of PCSI without prior Commission consent. Essentially, it appears from the stock certificate transferring 800,000 shares of stock to Waugh and documents independently gathered by the Bureau that the corporate structure of PCSI may have changed between the time that PCSI acquired its site-based SMR licenses via assignment in 1999 and when PAI bid on its EA SMR licenses at auction in 2000.[74] Additionally, in its responses to the Bureau's letters of inquiry, PCSI indicated that it also transferred shares of stock to Bishop and Setka. Together, these transfers of interests to Waugh, Bishop, and/or Setka may have had the consequence of effectuating a transfer of control of PCSI for which Commission approval would have been required under Section 310(d) of the Communications Act of 1934, as amended[75] and Section 1.948 of the Commission's Rules.[76] Questions about the corporate composition of PCSI and whether control of the company was transferred without prior Commission consent require further inquiry at hearing, as specified in the Ordering Clauses below.

(Continued from previous page.)
employment, supervision and dismissal of personnel; (e) who is in charge of the payment of financing obligations, including expenses arising out of operating; and (f) who receives monies and profits from the operation of the facilities. The Commission has also stated that "[o]wnership of the licensed facilities by someone other than the licensee is not necessarily inconsistent with these incidents of control. At a minimum, however, where ownership rests in hands other than those of the licensee, the maintenance and retention of the latter's exclusive right to operate must be clearly reflected." *See Marc Sobel*, Decision, 17 FCC Rcd 1872, 1877 (2002)(citing Intermountain Microwave, 24 RR 983, 984 (1963)).

[73] *See* Preferred Acquisitions Inc., FCC Form 602, FCC Ownership Disclosure Information for the Wireless Telecommunications Services, Schedule for Disclosable Interest Holders, dated September 20, 2000, at 1; Preferred Acquisitions Inc., FCC Form 601, FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, dated September 27, 2000, at 2; Preferred Acquisitions Inc., FCC Form 175, dated July 17, 2000, at Exhibit A, at 1-2. *See also* paragraphs 11-14, *supra*.

[74] Evidence concerning PCSI's corporate structure in 1999 has been gathered based on its LOI responses, whereas the evidence concerning its corporate structure in 2000 is being inferred from its auction applications and other evidence in the Bureau's possession, such as a stock certificate purporting to transfer 800,000 shares of PCSI stock to Waugh. *See* paragraphs 11-14 and 18, *supra*.

[75] *See* 47 U.S.C. § 310(d):

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

[76] *See* 47 C.F.R. § 1.948.

B. Misrepresentation and Lack of Candor

34. Section 1.17 of the Commission's Rules prohibits misrepresentations and lack of candor in Commission filings.[77] "The bedrock requirement for absolute truth and candor from a Commission licensee or from a licensee or applicant is, simply stated, this agency's *quintessential* regulatory demand."[78] Material misrepresentations to the Commission or an intentional lack of candor with respect to matters affecting an applicant's basic eligibility status are two species of misconduct that thoroughly disqualify applicants for the public trust embodied in a Commission license.[79] Where an applicant has knowingly attempted to mislead the Commission on an underlying matter of decisional import, complete disqualification of such an untrustworthy licensee or applicant has consistently resulted.[80] As the Court of Appeals for the D.C. Circuit stated:

> [A]pplicants before the FCC are held to a high standard of candor and forthrightness. The Commission must license [thousands of] stations in the public interest, and therefore relies heavily on the completeness and accuracy of the submissions made to it. . .Thus, "applicants . . . have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate."[81]

35. The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing."[82] "Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission."[83] Misrepresentation is "a false statement of fact made with intent to deceive."[84] Lack of candor is concealment, evasion, or other failure to be

---

[77] *See* 47 C.F.R. § 1.17.

[78] *California Broadcasting Corporation*, 2 FCC Rcd 4175, 4177 (Rev. Bd. 1987) (italics in original).

[79] *See, e.g., RKO General, Inc. v. FCC*, 670 F.2d 215 (D.C. Cir. 1981); *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132 (D.C. Cir. 1985); *Sea Island Broadcasting Corp. of S.C. v. FCC*, 627 F.2d 240 (D.C. Cir. 1980); *FCC v. WOKO*, 329 U.S. 223 (1946).

[80] *See, e.g., Contemporary Media, Inc.*, 13 FCC Rcd 14,437 (1998); *Catoctin Broadcasting Corp. of New York*, 2 FCC Rcd 2126, 2136-38 (Rev. Bd. 1987); *TeleSTAR, Inc.*, 2 FCC Rcd 5 (Rev. Bd. 1987); *Mid-Ohio Communications, Inc.*, 104 FCC 2d 572 (Rev. Bd. 1986); *Bellingham Television Associates, Ltd.*, 103 FCC 2d 222 (Rev. Bd. 1986).

[81] *See WHW Enterprises*, 753 F.2d at 1139 (internal citations omitted).

[82] *See Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (*Contemporary Media*)).

[83] *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1210-11 ¶ 60 (1986)).

[84] *Fox River Broadcasting, Inc.*, Order, 93 F.C.C. 2d 127, 129 (1983) (*Fox River Order*). A false certification may also constitute a misrepresentation. *San Francisco Unified School District*, Hearing (Continued...)

fully informative, accompanied by intent to deceive.[85] Intent to deceive is established if a licensee knowingly makes a false statement,[86] and can also be inferred when the surrounding circumstances clearly show the existence of an intent to deceive.[87] The Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.[88]

36. In the instant case, in each of its three Auction No. 34 filings (Short Form, Ownership Disclosure Form, and Long Form applications), PAI affirmatively represented to the Commission that Austin was the sole (100 %) shareholder in PCSI.[89] In its Long Form, when asked to disclose the identity of any real parties in interest in the applicant, PAI failed to name Waugh or anyone else.[90] Additionally, in the Long Form, when required to identify any party, directly or indirectly controlling the applicant who had ever been convicted of a felony, PAI affirmatively responded in the negative.[91] Finally, PAI certified to the veracity of all the information in each of its auction-related applications.

37. In contrast to these representations, the evidence before the Commission indicates that Waugh may have held an ownership interest in, and/or exercised control, of PCSI, PAI's parent company, before PAI filed even its first auction-related application. Contrary to PCSI's representations, among other things, the referenced stock certificate transferring 800,000 shares to Waugh, the two voting trusts for Waugh's benefit,[92] and numerous internal e-mails and correspondence provide convincing evidence that Waugh may have been far more than a minor player in the affairs of PCSI.

38. Moreover, it appears that PCSI had every reason to conceal Waugh's participation in the company from the Commission. As a convicted felon, Waugh's deep

---

(Continued from previous page.)
Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334 ¶ 19 nn.40-41 (2004)(subsequent history omitted).

[85] An applicant has a duty to be candid with all facts and information before the Commission, regardless of whether that information was elicited. *See Fox River Order*, 93 F.C.C. 2d at 129 ¶ 6.

[86] *Leflore Broadcasting, Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980).

[87] *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n.39 (1981), *aff'd sub nom.* KXIV, Inc. v. FCC, 704 F.2d 1294 (D.C. Cir. 1983).

[88] *Contemporary Media*, 214 F.3d at 196.

[89] *See* Preferred Acquisitions Inc., FCC Form 602, FCC Ownership Disclosure Information for the Wireless Telecommunications Services, Schedule for Disclosable Interest Holders, dated September 20, 2000, at 1; Preferred Acquisitions Inc., FCC Form 601, FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, dated September 27, 2000, at 2; Preferred Acquisitions Inc., FCC Form 175, dated July 17, 2000, at Exhibit A, at 1-2. *See also* paragraphs 11-14, *supra*.

[90] *See* Preferred Acquisitions Inc., FCC Form 601, FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, dated September 27, 2000, at 2.

[91] *See id.* at 3.

[92] The original trust was dated April 14, 2000, and the amended trust was dated April 14, 2005.

involvement in PCSI could have jeopardized PAI's qualifications to participate in Auction No. 34. His status as a convicted felon also could have threatened PCSI's qualifications to retain its site-based SMR licenses.

39. PAI's pattern of deception apparently did not stop with the filing of its auction-related applications. PAI asserted in its Waiver Request of the construction deadlines for its auction-related EA SMR licenses, that it had secured lease commitments necessary to operate its licenses and that all leases would be executed by the time that the construction deadline applicable to those licenses would have lapsed absent a waiver, December 20, 2005.[93] The evidence before us, however, indicates that some of the leases were not executed until 2006.

40. PAI's intent to misrepresent its operational readiness to the Commission may be inferred because its Waiver Request would be subject to dismissal and its licenses, for which it had paid substantial sums of money at auction, could terminate automatically for failure to timely construct.[94] PAI clearly would not want to jeopardize its investment in its licenses.

41. More recently, PCSI also apparently continued its pattern of misinformation in its responses to official letters of inquiry from the Bureau. For example, in its First LOI Response, PCSI stated that Waugh had not exercised control of PCSI and that he had: no sharing of PCSI's profits, no firing or hiring authority over PCSI employees or outside consultants, no independent authority to act on PCSI's behalf, no decisional authority on policy matters, and no responsibility for financing PCSI's operations. Numerous e-mails and other correspondence independently gathered by the Bureau indicate, however, that Waugh's involvement in the daily operations of PCSI, and, by extension, PAI, was significant. In this regard, the evidence reveals that Waugh shared in PCSI's profits and was involved in: supervising, hiring, and firing of personnel; negotiating of agreements on behalf of PCSI; procuring office equipment and space; drafting of Preferred's filings before the Commission; and raising capital for the company. PCSI also continued to maintain in its Second LOI Response that Waugh had no ownership interest in PCSI and was not a major player in its affairs.

42. In sum, the record before us raises significant and material questions as to whether PCSI and PAI committed misrepresentations and/or lacked candor in its dealings with the Commission. Accordingly, appropriate issues will be specified below.

C. Criminal Convictions

43. In assessing character qualifications, the Commission considers relevant "evidence of any conviction for misconduct constituting a felony."[95] The Commission has found that "[b]ecause all felonies are serious crimes, any conviction provides an indication of an applicant's or licensee's propensity to obey the law" and to conform to provisions of both the

[93] *See* Waiver Request at Exhibit 1 at 5 and at Declaration of Charles M. Austin, at 1-2.

[94] 47 C.F.R. § 90.685(d). As discussed *infra*, note 125, PAI's Waiver Request may be subject to dismissal because it is indebted to the Commission.

[95] *1990 Modifications of Character Policy Statement*, 5 FCC Rcd at 3252 ¶ 4. *See, e.g., Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (Commission properly considered any felony conviction of broadcast licensee's principal as a relevant factor in evaluating propensity of licensee to obey the law).

Communications Act of 1934, as amended, and the agency's rules and policies.[96] Thus, felony convictions raise potential questions regarding a licensee's qualifications.

44. The record before us reveals that Waugh is now and was, at the time PCSI acquired its 86 site-based SMR licenses via assignment and PAI acquired its 38 EA SMR licenses at auction, a convicted felon. Waugh's felony convictions are particularly relevant to our consideration of his character (and the character of PCSI and PAI) because they involved elements of fraud. As such, they provide a reliable barometer as to whether Waugh and the entities he controls can be trusted to deal truthfully with the Commission in the future. Accordingly, an appropriate issue will be specified regarding the impact, if any, of Waugh's felony convictions on the qualifications of PCSI and PAI to be and remain Commission licensees.[97]

45. As discussed above, Bishop is also a convicted felon to whom PCSI transferred or contemplated transferring stock shares through a voting trust, and PAI highlighted this potential transfer in its auction applications.[98] Two voting trusts and a stock certificate indicate that a transfer of interest to Waugh may have taken place; in contrast, the record does not contain sufficient documentation to determine if Bishop formed a trust to receive the contemplated transfer of stock shares. Like Waugh, however, Bishop's felony convictions are particularly relevant to our consideration of his character (and the character of PCSI and PAI) because they involved elements of fraud. The fraud convictions are of particular relevance here because the underlying conduct involved seeking investors for a potential Commission licensee. Accordingly, an appropriate issue will be specified regarding the impact, if any, of Bishop's felony convictions on the qualifications of PCSI and PAI to be and remain Commission licensees.[99]

D. Failure to File Required Forms or Information

46. Under Commission precedent and Sections 4(i), 4(j), 218, 308, and 403 of the Communications Act of 1934, as amended, failure to respond appropriately to a Bureau letter of inquiry constitutes a violation of the Commission's Rules, potentially subjecting the party doing so to serious sanctions.[100] Section 1.65 of the Commission's Rules requires applicants to file substantial and significant changes in information furnished by applicants to the Commission within 30 days of such changes.[101]

47. The record indicates that PAI may have failed to update the Commission regarding substantial and significant changes in information it furnished as a part of its pending construction Waiver Request. In its Waiver Request, PAI represented that it has met operational

[96] *1990 Modifications of Character Policy Statement*, 5 FCC Rcd at 3252 ¶ 5. *See also* 47 U.S.C. § 312(a)(1) (authorizing license revocation "for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308").

[97] The facts of Waugh's felony convictions are *res judicata* and will not be retried in this hearing.

[98] *See* Preferred Acquisitions Inc., FCC Form 175, dated July 17, 2000, at Exhibit A, at 1-2.

[99] The facts of Bishop's felony convictions are *res judicata* and will not be retried in this hearing.

[100] *See SBC Communications, Inc.*, Order of Forfeiture, 17 FCC Rcd. 7589 (2002); 47 U.S.C. §§ 154(i), 154(j), 218, 308, and 403.

[101] *See* 47 C.F.R. § 1.65.

benchmarks that would allow it to construct timely on its licenses but for the rebanding of the 800 MHz spectrum.[102] To that end, PAI represented that it has secured tower commitments and that all leases would be executed by December 20, 2005.[103] The information before us, however, suggests that some of the leases upon which PAI is relying in support of its Waiver Request may have lapsed. PAI is required to maintain the continuing accuracy of its Waiver Request, and its failure to inform the Commission of material changes therein is inconsistent with its obligations as a licensee and adversely affects the Commission's ability to determine whether grant of the Waiver Request would serve the public interest.

48. The record before us also reveals that PCSI failed to respond fully and completely in its Second LOI Response. The Bureau specifically directed PCSI to provide copies of tax returns for PCSI, Waugh, and Bishop, and criminal conviction and sentencing records for Waugh and Bishop. Such records were due within 30 days of the date of the letter of inquiry. PCSI, however, provided no such information in its Second LOI Response. Instead, PCSI represented in its Second LOI Response that such information would be provided to the Bureau at a later date.[104] To date, PCSI has not provided any of the required tax returns or criminal records.

49. PCSI's failure to maintain the continuing accuracy of the information in its Waiver Request and its failure to respond fully and completely to the Bureau's direction for information require further exploration at hearing, as specified in the Ordering Clauses below.

E. Lack of Operation of PCSI Licenses

50. Under Section 90.157 of the Commission's Rules, by operation of law, a wireless licensee's licenses cancel for discontinuation if the licensee has failed to operate its licenses for over one year and not obtained permission from the Commission to discontinue such operation.[105] PCSI's LOI responses indicated that when its founding members initially formed the idea of acquiring SMR licenses, their intention was to sell rather than operate them.[106] Information from several tower operators in Puerto Rico and the U.S. Virgin Islands indicates that PCSI ceased to be a customer of the tower operators since at least December 2005. PCSI's LOI responses and website indicated that it is currently in the business of raising capital, rather than operating its licenses.[107] The evidence suggests that PCSI has discontinued operation of its licenses for at least one year, without informing the Commission of its intent to do so. If it is determined that PCSI has not operated its licenses, then, by operation of law, the licenses shall cancel. Accordingly, issues will be specified below to determine whether, in fact, the licensee has permanently discontinued operation of its licenses for more than one year. If it is found that PCSI has done so, then the licenses shall automatically cancel. Therefore, as to this matter, the only issue for the Presiding Judge to determine is whether the licensee discontinued the operation of its licenses for more than one year. Whether the licenses shall cancel is a matter that follows as a function of law, and the

[102] *See* Waiver Request at Exhibit 1, at 5, & at Declaration of Charles M. Austin, at 1-2.

[103] *See id.*

[104] *See* Second LOI Response at 42, 48.

[105] *See* 47 C.F.R. § 90.157.

[106] *See, e.g.*, Second LOI Response at 16.

[107] *See* First LOI Response at 5; Preferred Communication Systems Inc., Corporate Profile, *at* http://www.precomsys.com/corporateprofile.html, last visited 6/12/07.

Presiding Judge may direct the Wireless Telecommunications Bureau to delete the cancelled call signs from its database.

F. Licensee Character

51. Section 312(a)(2) of the Act provides that the Commission may revoke any license or construction permit "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application."[108] The character of the applicant is among those factors that the Commission considers in its review of applications to determine whether the applicant has the requisite qualifications to be a Commission licensee.[109]

52. The Commission takes licensee character qualifications very seriously. The extent of a licensee's candor with the Commission and compliance with its rules are paramount concerns when determining whether such licensees should gain or continue to hold existing authorizations. Evidence in the record shows a disregard for the Commission's rules by two experienced licensees[110] which includes: failure to disclose the real party in interest; unauthorized transfers of control; numerous misrepresentations; prior, undisclosed felony convictions of persons such as Bishop and Waugh holding ownership interests in a licensee entity; and failure to file required forms and information which would tend to disclose the ownership or control of such persons in the licensee entity. Such egregious misconduct could constitute a basis for serious sanctions such as revocation of licenses.[111] Considering the overall record, there remain genuine

---

[108] 47 U.S.C. § 312(a)(2).

[109] *See Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, Policy Statement and Order, 5 FCC Rcd 3252, 3252 (1990) ("*1990 Modifications of Character Policy Statement*"), *recon. on other grounds*, 6 FCC Rcd 3448 (1991), *modified on other grounds*, 7 FCC Rcd 6564 (1992). The Commission has consistently applied these broadcast character standards to applicants and licensees in the other radio services. *See, e.g., Schoenbohm v. FCC*, 204 F.3d 243, 246-49 (D.C. Cir. 2000), *cert. denied*, 531 U.S. 968 (2000) (affirming the Commission's denial of an amateur radio operator's license renewal application based on the licensee's felony conviction for fraudulently using counterfeit access codes to obtain long distance telephone services, as well as its lack of candor regarding such conviction); *Ronald Brasher et al.*, Decision, 19 FCC Rcd 18462 (2004) (affirming Administrative Law Judge's Initial Decision revoking, denying, or dismissing licensees' private land mobile radio licenses and applications based on the licensees' misrepresentations and lack of candor, unauthorized transfers of control, and abuse of process).

[110] PCSI and PAI have held numerous Commission licenses for several years each and have actively engaged in Commission proceedings such as that involving the rebanding of the 800 MHz band.

[111] *See id.*; *Schoenbohm v. FCC*, 204 F.3d 243, 246-49 (D.C. Cir. 2000), *cert. denied*, 531 U.S. 968 (2000) (affirming the Commission's denial of an amateur radio operator's license renewal application based on the licensee's felony conviction for fraudulently using counterfeit access codes to obtain long distance telephone services,, as well as its lack of candor regarding such conviction); *Marc Sobel*, Decision, 17 FCC Rcd. 1872 (EB 2002) (revoking certain licenses based on unauthorized *de facto* transfer of control); *Terry Keith Hammond*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 21 FCC Rcd 10267 (EB 2006) (ordering licensee to show cause why license should not be revoked for felony convictions, misrepresentations, and lack of candor violations, and designating renewal application for hearing).

and material issues of fact regarding whether PCSI is qualified to be and remain a Commission licensee. Accordingly, it shall be considered whether the violations, if any, of the Commission's rules that are found to have occurred warrant revocation of PCSI's and PAI's licenses.

G. Forfeitures

53. Under Section 503(b)(1) of the Communications Act of 1934, as amended (the "Act"), any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a monetary forfeiture penalty.[112] In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.[113] The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.[114] As we set forth below, PCSI and PAI may be liable for forfeitures if it is found at the hearing ordered below that they violated the Commission's rules.

54. The Commission's rules allow a base forfeiture of $8,000 for unauthorized transfers of control; $4,000 for a failure to file required forms or information; and the statutory maximum for each service for misrepresentation and a lack of candor.[115] Further, the Commission allows a maximum forfeiture of $130,000 for each violation or each day of a continuing violation, except that the amount assessed shall not exceed $1,325,000 for any single continuous violation.[116] Section 1.80(b)(4) of the Commission's Rules also specifies that, in determining the amount of a forfeiture penalty, the Commission or its designee will take into account "the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[117] Unremedied, unauthorized transfers of control may be considered to be continuous violations,[118] but other violations identified above are likely subject to a statute of limitations.[119] Depending on the violation, the statute of limitations may bar forfeitures, but not license revocation.[120]

---

[112] *See* 47 U.S.C. § 503(b)(1).

[113] *See* 47 U.S.C. § 503(b)(4).

[114] *See, e.g.*, *SBC Communications, Inc.*, Order of Forfeiture, 17 FCC Rcd. 7589, 7591 (2002).

[115] *See* 47 C.F.R. § 1.80.

[116] *See* 47 C.F.R. § 1.80.

[117] 47 C.F.R. § 1.80(b)(4).

[118] *See Lee W. Schubert, Esq.*, Letter, 17 FCC Rcd. 15487 (MB 2002) (issuing $8,000 forfeiture for continuous violation of unauthorized transfer of control and finding continuous violation); *Danville Television Partnership*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd. 9314, 9316-9317 (MB 2001) (issuing $10,000 forfeiture for apparent liability for unauthorized transfer of control and finding continuous violation); *Melvin N. Eleazer*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 16 FCC Rcd. 9322, 9325 (MB 2001) (issuing $8,000 forfeiture for continuous violation of unauthorized transfer of control and finding continuous violation).

[119] *See* 47 U.S.C. § 503 (b)(6)(B).

[120] *See* 47 U.S.C. § 503 (b)(6)(B).
(Continued...)

55. Accordingly, based on all of these factors, it shall be determined, as specified below, whether PCSI may be liable for forfeitures not to exceed $5,820,000:[121] for violating Sections 1.948 and 1.2110-1.2112 of the Commission's Rules;[122] Section 1.17 of the Commission's Rules; Section 1.65 of the Commission's Rules; and Section 308(b) of the Act, for any such violations that occurred or continued within the applicable statute of limitations.[123]

H. Waiver Request

56. Although the referenced Waiver Request, seeking waiver of the construction deadlines for PAI's 38 EA SMR licenses, remains pending, we are not, in the context of this hearing proceeding, designating an issue to determine whether the Waiver Request should be granted. Evidence as to whether the Waiver Request contained misrepresentations and whether PAI failed to maintain its continuing accuracy will be considered herein, only as discussed above. If it is found, based on the totality of the evidence, that PAI is unqualified to be a licensee and its referenced licenses should be revoked,[124] the pending Waiver Request will be rendered moot. Accordingly, the presiding Administrative Law Judge is specifically directed to consider the Waiver Request insofar as it provides probative evidence relating to the issues below. The ultimate disposition of the Waiver Request, however, shall be determined by the Wireless Telecommunications Bureau.[125]

I. Effect on PCSI/PAI Licenses in 800 MHz Rebanding

57. We note that all of PCSI and most of PAI's licenses at issue in this proceeding are in the 806-809/851-854 MHz portion of the 800 MHz band, and are therefore subject to relocation as part of the 800 MHz rebanding proceeding to clear the spectrum for relocation of 800 MHz public safety licensees currently operating in the 821-824/866-869 MHz NPSPAC band.[126] Thus, notwithstanding the pendency of this hearing proceeding, PCSI and PAI must relocate from their 806-809/851-854 MHz spectrum holdings in time to allow NPSPAC licensees to relocate into the band by the June 26, 2008 deadline for completion of the rebanding process.[127] Accordingly, the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau

---

(Continued from previous page.)

[121] *See* paragraph 59, *infra*.

[122] 47 C.F.R. §§ 1.948, 1.2110-1.2112.

[123] *See* 47 U.S.C. § 503(b)(6).

[124] *See supra*, note 2.

[125] We note that PAI remains indebted to the Commission. *See Preferred Acquisitions, Inc.*, Letter, 17 FCC Rcd 15816 (WTB 2002) (advising PAI of debt it owes the Commission); Letter from Claudette E. Pride, Chief, Revenues and Receivable, Operations Group, Office of the Managing Director, to Etta Jalloh, Department of the Treasury, dated August 11, 2004 (referring PAI's debt to the Treasury Department for lack of payment). The Commission's rules require the Commission to withhold action on applications and other requests for benefits when the entity applying for or seeking benefits is delinquent in non-tax debts owed to the Commission, and to dismiss such applications or other request if the delinquency is not resolved. *See* 47 C.F.R. § 1.1910(b)(3). *Also see generally* 47 C. F. R. Part 1, Subpart O.

[126] *800 MHz Rebanding R&O*, 19 FCC Rcd 15051, ¶ 151.

[127] *Id.* at 19 FCC Rcd 15052, 15055,¶¶ 153, 159.

will exercise their authority under the 800 MHz rebanding orders to modify PCSI and PAI's licenses as needed to enable NPSPAC licensees in geographic proximity to PCSI/PAI to relocate to the 806-809/851-854 MHz band in accordance with the rebanding schedule.[128]

58. In addition, unless their licenses are revoked or otherwise terminated in this proceeding, PCSI and PAI have the right to relocate from the 806-809/851-854 MHz band to "comparable spectrum" higher up in the 800 MHz band as provided in the rebanding proceeding.[129] In the case of PAI's EA licenses, however, the right to relocate is also contingent on grant of PAI's Waiver Request discussed in Section III.H. above.[130] Therefore, we will defer assigning replacement spectrum to PAI until the conclusion of this proceeding and resolution of the Waiver Request.[131] With respect to the PSCI licenses, the Public Safety and Homeland Security Bureau and the 800 MHz Transition Administrator will provide for relocation of PCSI in accordance with the rebanding rules. Should we determine that PCSI is an unqualified licensee, however, PCSI's relocated licenses will be subject to revocation.

IV. ORDERING CLAUSES

59. Accordingly, **IT IS ORDERED**, pursuant to sections 312(a) and 312(c) of the Act,[132] and section 1.91 of the Commission's Rules,[133] that Preferred Acquisitions, Inc., its principals, and by extension its ultimate owner Preferred Communication Systems, Inc., and its principals, shall **SHOW CAUSE** why the referenced licenses **SHOULD NOT BE REVOKED** in a consolidated hearing proceeding.[134] These entities shall appear before an administrative law judge at a time and place to be specified in a subsequent Order and provide evidence upon the following issues:

---

[128] *Id.*

[129] *See Improving Public Safety Communications in the 800 MHz Band, et al.*, Supplemental Order and Order on Reconsideration, 19 FCC Rcd. 25120, 2155 ¶ 70 (2004). While PCSI and PAI have the right to comparable spectrum, we note that Sprint Nextel is not required to pay for relocation of PCSI/PAI's facilities. According to its Waiver Request, PAI has not finalized construction and is not currently operating facilities under any of its EA licenses. Waiver Request at 2. Moreover, in the rebanding proceeding, PCSI and PAI have elected to convert from non-cellular to cellularized Enhanced Specialized Mobile Radio (ESMR) operations, which requires them rather than Sprint Nextel to pay for any such conversion. *See Improving Public Safety Communications in the 800 MHz Band, et al.*, Memorandum Opinion and Order, 20 FCC Rcd. 16015, 16026-28 ¶¶ 23-28 (2005)

[130] *See* paragraph 56, *supra*. If the Waiver Request is denied, PAI's licenses will cancel automatically.

[131] Deferral of relocation does not prejudice PAI because it has no operating facilities for any of its EA licenses and has requested that it not be required to construct and commence operations until after it has been relocated. We direct the Public Safety and Homeland Security Bureau and the 800 MHz Transition Administrator to ensure that replacement spectrum for PAI will be made available in the event that PAI relocates.

[132] 47 U.S.C. § 312(a), (c).

[133] 47 C.F.R. § 1.91.

[134] *See supra*, notes 1-2.

a. To determine whether Pendleton C. Waugh was an undisclosed real party in interest in filings before the Commission, in willful and/or repeated violation of Section 1.2112 of the Commission's Rules;[135]

b. To determine whether PCSI engaged in an unauthorized transfer of control, in willful and/or repeated violation of Section 310(d) of the Communications Act of 1934, as amended;[136]

c. To determine whether PCSI and/or PAI misrepresented material facts to, and/or lacked candor in its dealings, with the Commission, in willful and/or repeated violation of Section 1.17 of the Commission's Rules;[137]

d. To determine the effect of Pendleton C. Waugh's and Jay R. Bishop's felony convictions on their qualifications and those of PCSI and PAI to be and remain Commission licensees;

e. To determine whether PCSI and/or PAI failed to maintain the continuing accuracy of filings pending before the Commission in willful and/or repeated violation of Section 1.65 of the Commission's Rules;[138]

f. To determine whether PCSI failed to respond fully and completely to official requests for information from the Commission, in willful and/or repeated violation of Section 308(b) of the Communications Act of 1934, as amended;[139]

g. To determine whether, in fact, PCSI discontinued operation of its licenses for more than one year, pursuant to Section 90.157 of the Commission's Rules;[140]

h. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the captioned individuals and/or entities are qualified to be and remain Commission licensees;

i. To determine, in light of the evidence adduced pursuant to the foregoing issue, whether the referenced authorizations should be revoked.

---

[135] 47 C.F.R. § 1.2112.

[136] 47 U.S.C. § 310(d).

[137] 47 C.F.R. § 1.17.

[138] 47 C.F.R. § 1.65.

[139] 47 U.S.C. § 308(b).

[140] *See* 47 C.F.R. § 90.157.

60. **IT IS FURTHER ORDERED**, that, in accordance with section 312(d) of the Act,[141] and section 1.91(d) of the Commission's Rules,[142] the burden of proceeding with the introduction of evidence and the burden of proof with respect to these issues shall be on the Commission's Enforcement Bureau.

61. **IT IS FURTHER ORDERED**, that, irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to section 503(b)(1) of the Act,[143] whether an **ORDER OF FORFEITURE** in the amounts specified herein shall be issued against Preferred Acquisitions, Inc. and Preferred Communication Systems, Inc. with respect to the following apparent willful and/or repeated violations of: Sections 1.948 and 1.2110-1.2112 of the Commission's Rules,[144] in an amount not to exceed $2,650,000; Section 1.17 of the Commission's Rules, in an amount not to exceed $260,000; and Section 1.65 of the Commission's Rules, Commission precedent requiring full responses to letters of inquiry, and Sections 4(i), 4(j), 218, 308, and 403, of the Communications Act of 1934, as amended[145] in an amount not to exceed $2,910,000; for any such violations that occurred or continued within the applicable statute of limitations.[146] The forfeiture, if any, shall be adjusted based upon consideration of the factors enumerated in section 503(b)(2)(D), such as "the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay and such other matters as justice may require."[147]

62. **IT IS FURTHER ORDERED**, that, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to section 503(b)(3) of the Act.[148]

63. **IT IS FURTHER ORDERED**, that the Chief, Enforcement Bureau IS MADE A PARTY to this proceeding without the need to file a notice of appearance.

64. **IT IS FURTHER ORDERED**, that a copy of each document filed in this proceeding by Preferred Acquisitions, Inc., and/or Preferred Communication Systems, Inc. **SHALL BE SERVED** on Gary A. Oshinsky and Anjali K. Singh, counsel of record appearing on behalf of the Chief, Enforcement Bureau. Such service **SHALL BE ADDRESSED** to Gary A. Oshinsky and Anjali K. Singh, Investigations and Hearings Division, Enforcement Bureau,

---

[141] 47 U.S.C. § 312(d).

[142] 47 C.F.R. § 1.91(d).

[143] 47 U.S.C. § 503(b)(1).

[144] 47 C.F.R. §§ 1.948, 1.2110-1.2112.

[145] *See SBC Communications, Inc.*, Order of Forfeiture, 17 FCC Rcd. 7589 (2002); 47 U.S.C. §§ 154(i), 154(j), 218, 308, and 403.

[146] *See* 47 U.S.C. § 503(b)(6).

[147] *See Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines,* Report and Order, 12 FCC Rcd 17087, 17100-01, ¶ 27, 17112 Appendix A (1997), *recon. denied,* 15 FCC Rcd 303 (1999); *see also* 47 C.F.R. § 1.80(b).

[148] 47 U.S.C. § 503(b)(3).

Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554.

65. **IT IS FURTHER ORDERED**, that, to avail themselves of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, pursuant to sections 1.91(c) and 1.221of the Commission's Rules,[149] each of the captioned individuals and entities, in person or by attorney, shall file within 30 calendar days of the release of this Order, a written appearance in triplicate stating that they will appear at the hearing and present evidence on matters specified in this Order. If any of the captioned individuals or entities fails to file a written notice of appearance within the time specified, or a petition to accept, for good cause shown, such written appearance beyond the expiration of the 30-day time period, the right to a hearing on the issues in this proceeding shall be deemed to be waived.[150] In the event that a hearing on the issues is waived, the Chief Administrative Law Judge (or presiding officer if one has been designated) shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission.[151]

66. **IT IS FURTHER ORDERED**, that a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested, and by regular first class mail to Preferred Acquisitions, Inc., and Preferred Communication Systems, Inc. to the attention of Charles M. Austin, at 6311 North O'Connor Boulevard N24, Irving, Texas 75039, and Charles J. Ryan, III, Attorney At Law, Post Office Box 4782, Upper Marlboro, Maryland, 20775.

67. **IT IS FURTHER ORDERED**, that the Secretary of the Commission shall cause to have this Order or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[149] 47 C.F.R. §§ 1.91, § 1.221.

[150] *See* 47 C.F.R. § 1.92(a).

[151] *See* 47 C.F.R. § 1.92(c).