

1 regular voting trust.

2 Q Okay.

3 A Because it's the individual that I
4 chose, and filing the proper documentation and
5 approval, obtaining the approval from the FCC.

6 Q For what?

7 A What do you mean?

8 Q You said it was contingent upon
9 him establishing the trust and obtaining the
10 approval of the FCC. Obtaining their approval
11 for what?

12 A Transfer of stock into -- transfer
13 of stock which obviously would involve a
14 change of control.

15 Q Because of the amount of the
16 stock?

17 A The amount of the stock, number
18 one. And, number two, it also would involve
19 a review of the trust, his felony issue, and
20 it would have to be approved by the FCC in
21 order for him to own it.

22 So, I mean, it goes beyond just

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1 the transfer of control. But, it's all-
2 encompassing because it would involve prior
3 approval.

4 Q All right. Well, how did you
5 anticipate that the trust would be reviewed?

6 A I anticipated that we would file a
7 transfer of control application, detailing the
8 Ray Hebrank voting trust, as well as full
9 disclosure of Pendleton Waugh's felony
10 convictions which, you know, is not a big
11 secret.

12 And the FCC is well-aware of who
13 he is, and anticipating getting a yea or a nay
14 back from the FCC in reference to his
15 involvement and owning stock in the company.

16 Q And when did you anticipate that
17 that would occur, that you'd be filing the
18 transfer of control?

19 A I wanted to file the application
20 prior to Auction 34.

21 Q Okay. But you did not?

22 A There was -- no, we did not.

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1 Q And why didn't you?

2 A Well, the trust was never
3 completed. Part and parcel to it in its -- it
4 wasn't particularly fair to Pen and Ray, but
5 the other requirement was that Jay Bishop form
6 a trust, not that he had a felony, but you
7 know, saw the writing on the wall and we were
8 trying to get a trust established for him and
9 we were met with a lot of resistance.

10 Q On the Jay Bishop trust?

11 A Yes.

12 Q And why was that, if you know?

13 A I would be putting words in his
14 mouth. I don't know.

15 Q Well, did you have your own idea
16 about why? Did you form an idea about why?

17 A I don't think that he wanted to
18 own stock. I think he wanted to be bought
19 out. I think he -- he needed cash. I think
20 he was -- I think he was scared, and he -- he
21 didn't want to form a trust because he knew it
22 would be an expense that he couldn't keep up.

1 There's a number of reasons why I
2 think he didn't do it, but that's my
3 perception.

4 Q Well, does this have anything to
5 do with what you referred to as the writing on
6 the wall?

7 A Could be. I -- you know --

8 Q Well, can you explain what that
9 meant?

10 A Well, I think he saw that he was
11 going to go to prison and --

12 Q Okay. So, was this around the
13 time -- let's see. His conviction was -- and
14 I apologize. I cannot remember the date you
15 said it was. You ended your association with
16 him I think you said in 2001.

17 A Yes.

18 Q And so -- and that was the time of
19 his conviction?

20 A It was right around the corner.

21 Q Okay. And so whatever it is,
22 those things take some time to develop, and he

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1 could foresee his conviction, in effect, and
2 you could as well? Is that what you're
3 telling us?

4 A Yes. Then the public defender. I
5 mean, it wasn't looking good.

6 Q Okay. And so he was resistant to
7 setting up the trust because he preferred to
8 have his interest bought out entirely? Is
9 that a fair assessment?

10 A In saying that, he never said,
11 "Hey, buy me out." So, it's just a perception
12 on my part. You know, then it could also be
13 that I think he was a little twisted up at
14 that point and it was -- he didn't know what
15 direction to go in. I don't know. So, bottom
16 line, he did not.

17 We worked extremely hard to make
18 it, you know, to put the trust in place and
19 anticipated being able to have both of the
20 trusts finalized and file the application
21 prior to the auction.

22 Q And you're telling us that you

1 wanted to do this before you participated in
2 the auction in relation to both of these
3 trusts?

4 A Yes.

5 Q Okay. Why was that?

6 A So -- well, I think it could be
7 said that we would have preferred to have it
8 done a lot earlier than that but, you know,
9 participating in the auction, if Chandu wanted
10 to participate economically, we had a Form 175
11 coming up, and we wanted to formalize it as
12 opposed to -- you know, because the verbal
13 agreements, it -- we wanted it clean and
14 defined as opposed to, you know, what we had
15 to do, which was footnote the verbal
16 agreement.

17 I wanted to get the verbal
18 agreements out of verbal and solidified and/or
19 rejected, whatever the Commission -- but I
20 wanted it resolved prior to the auction.

21 Q Okay. And can you tell us about
22 the reference to the trust in the Form 175

1 auction application?

2 A Yes. We footnoted that there was
3 verbal agreement to issue shares to the Ray
4 Hebrank voting trust and the Jay Bishop -- or
5 the Bishop trust.

6 Q And -- hold on just one second.

7 (Off the record comments.)

8 MS. SINGH: We can go off the
9 record if you want, Gary.

10 MR. OSHINSKY: No, it's not
11 necessary at this point. I think we're going
12 to be -- I'm going to be running after -- it's
13 now past 12:30.

14 THE WITNESS: I was only kidding.

15 MR. OSHINSKY: No, I understand.

16 (Off the record comments.)

17 MR. OSHINSKY: Well, it is now
18 12:35. I have passed the point of being
19 hungry, so if you want to continue on or does
20 anybody want to take a break for lunch? What
21 do we want to do?

22 MS. SINGH: I think -- let's go

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1 off the record.

2 (Whereupon, the above-entitled
3 matter went off the record at 12:40 p.m. and
4 resumed at 12:41 p.m.)

5 BY MR. OSHINSKY:

6 Q Okay. Now, you were responsible
7 for the notation in the Form 175 --

8 A No.

9 Q I'm sorry?

10 A No.

11 Q No? Okay.

12 A You're putting words in my mouth.

13 Q Who was?

14 A David Kaufman.

15 Q All right. Can you -- can you
16 give us -- can you expand on that a little
17 bit? We're talking about the notation in the
18 Form 175 regard the trust or trusts.

19 A Yes, I can.

20 Q Okay. Would you?

21 A Michelle's filling out the Form
22 175 and we, you know, kind of anticipated this

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1 issue and -- and so she got on the phone with
2 David Kaufman and explained to David the
3 dilemma, knowing that, you know, this is a
4 rather important issue.

5 You know, we're not -- you know,
6 we're not unaware of the whole felony, you
7 know, situation with Pendleton Waugh, and we
8 know that the FCC's aware that he's working
9 with us, and we're also very aware of his past
10 run-in's with the FCC.

11 So, wanted to make sure, you know,
12 that's one of the reasons why we wanted to
13 have things clarified before the auction. But
14 here we had a problem because even though
15 technically no, but there's a verbal
16 agreement. How do we handle it?

17 Q The verbal agreement being --

18 A I've had a verbal agreement -- you
19 know, it should have been in -- you know, it
20 probably should have been writing.

21 Q A verbal agreement between you and
22 Pendleton Waugh.

1 A And Jay Bishop.

2 Q Okay.

3 A And knowing that there's a verbal
4 agreement, we didn't want to file the
5 application without disclosing it.

6 So, Michelle got on the phone with
7 David and so she sent over to David what she,
8 you know -- you know, he said, you know,
9 "Disclose" -- "you know, this is what you need
10 to do," and verbally told her, you know, that
11 you need to disclose the verbal agreement.

12 So Michelle types it up and then
13 sends it over to David. And I think
14 originally Michelle had -- and David Kaufman's
15 documents will testify to this, is that she
16 had the name Pendleton Waugh and Jay Bishop,
17 and then David sent it back saying, "No, you
18 need to put the name of the actual entity
19 that's going to hold the stock," which is the
20 Ray Hebrank voting trust, and -- because Pen
21 had already chosen the name or we'd already
22 had a trustee for that, and we -- you know,

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1 just arbitrarily assumed that, you know, we'd
2 just call it the Bishop Trust.

3 So, anyway -- obviously I'm
4 getting hungry now. That was -- that's --

5 (Off the record comments.)

6 THE WITNESS: Yes, that's how that
7 came about, I guess.

8 BY MR. OSHINSKY:

9 Q Okay. Well, I actually have a
10 couple of questions based on what you said.
11 What were the run-in's that you referred to
12 that Pendleton Waugh had with the FCC?

13 A Well, CECR versus FCC.

14 Q Okay. Can you --

15 A That was the cellular -- can we go
16 off the record.

17 Q Sure.

18 (Whereupon, the above-entitled
19 matter went off the record at 12:44 p.m. and
20 resumed at 12:45 p.m.)

21 MR. OSHINSKY: Okay. We can go
22 back on the record. The record can reflect

1 that Ms. Singh has left the room for a few
2 minutes.

3 BY MR. OSHINSKY:

4 Q Okay. So you mentioned one of the
5 run-ins, and can you explain what that is, and
6 your knowledge of it?

7 A He had challenged the FCC on the
8 uncellular -- the unservice cellular license
9 lottery allocation, and it was pretty big. It
10 was a pretty big deal in its day.

11 Q And about when was it?

12 A That was when all these problems
13 came down, which would have been '94, '95.

14 Q Okay. I think that's the time of
15 his state court involvement. Is that what you
16 recall? You're recalling that's his federal
17 problem?

18 A Yes, around -- it was, you know,
19 mid-nineties.

20 Q And was -- were his felony
21 convictions directly tied to Express
22 Communication or was it some other operation

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1 he was doing?

2 A Express.

3 Q It was Express. Okay. And so, in
4 other words, his challenge was in the form of
5 filing comments to a proposed plan by the FCC?

6 A No, lawsuit.

7 Q I'm sorry.

8 A It was huge.

9 Q Okay.

10 A There was guys that -- how I
11 understood it, there is -- it was the -- I
12 don't know how relevant any of this is, but
13 the cellular license for, say, Los Angeles,
14 MSA, you know, may represents this piece of
15 paper, but they were granted a 30 -- they had
16 three years to build out a certain footprint.
17 Just keep it simple.

18 And then they can expand. And
19 once it got to that then whatever's left over
20 goes back to a lottery. And, in fact, the
21 Commission had put in a public notice and then
22 yanked it.

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1 McElroy Electronics filed in that
2 short window. Express called the FCC and they
3 said don't file it and in response forms ECR
4 versus FCC, FCC didn't follow its rules.

5 And what made it so -- so
6 important is that he was going up against the
7 big wireless firms and, you know, and it was
8 during the change. Billions of dollars worth
9 of spectrum is at -- was on the table.

10 And I remember it was about the
11 time that I met him. A lot of people were
12 concerned that, you know, he's going to be
13 taken out. It was huge.

14 Q Taken out in what way?

15 A You know, --

16 Q In the traditional meaning of the
17 words --

18 A Traditional, yes. And there's,
19 you know --

20 Q Taken out by somebody from these
21 huge wireless companies?

22 A Yes. Now, there's a lot going on

1 at the time and we heard rumors of guys being
2 forced to falsify, you know, engineering, and
3 there's a lot of games being played at the
4 time and Pen was a thorn and people were --
5 you know, kind of jokingly referring to it.

6 And there was also, you know, a
7 whole lot of heat from the regulators to force
8 him out of the business, and there was a
9 presumption of what was behind, you know, the
10 FBI sting operation on the, you know --

11 Q As a result of this lawsuit?

12 A Yes. Yes.

13 Q And who were the -- can you give
14 us a few names of the wireless companies that
15 would have been affected by it?

16 A No companies. I mean, the A side,
17 B side cellular license, licensees, you know.
18 But that was the presumption at the time.

19 Q Did you ever see any evidence to
20 show that his conviction was somehow tied to
21 this legal --

22 A Yes.

1 Q You did.

2 A But not -- you know, in my own --

3 Q I hope you're not jeopardizing
4 your life here by revealing some of this
5 information. I'm just joking. Go ahead.

6 A I was on the internet one day, and
7 I don't know who it was. It may have been
8 Reed Hundt who was thanking AMTA or CTIA in
9 helping the FCC. The FCC, Department of
10 Corporations and the FBI stamp out unwanted
11 speculation in the wireless industry.

12 And I go, yes, I don't know of any
13 other speculation firm out there that had FBI
14 problems. I sent it over to Pen and said, are
15 they talking about you.

16 Q And he said yes?

17 A Yes, you know, who knows.

18 Q All right.

19 A But we're having fun now.

20 Q That was strictly -- that was a
21 strictly legal activity that Pen was involved
22 in, in filing his lawsuit?

1 A Yes. He had the right to do that
2 and he went through the process and it, you
3 know --

4 Q And do you know how that lawsuit
5 was ultimately resolved?

6 A They lost. They lost the lawsuit.

7 Q They lost it at the judicial
8 level?

9 A At the judicial, yes.

10 Q Okay.

11 A There was some changeover and I'll
12 tell this story here -- there's -- you know,
13 they're real close and had the original --
14 there was a lot of concern that the current
15 panel of judges was going to approve it and
16 there was a changeover and they lost.

17 And then, fittingly, McElroy
18 Electronics, ten years -- several years later,
19 won his appeal and he was granted LA and
20 Denver. And the reason that he wanted to --
21 so he filed the application. So, the lawsuit
22 had a lot of merit, and it pissed a lot of

1 people off, and it -- and he had a lot of
2 enemies because of it, across the board.

3 Q Okay.

4 A And that's -- that's my
5 understanding. It may not be true, but that's
6 -- not just mine, but a lot of people's
7 perception of what was going on and the root
8 -- root cause behind a lot of the problems
9 that Express was having.

10 Q Okay. Well, that actually leads
11 me to an area I was going to ask you about
12 later, but how did it -- I realize that the
13 events you just mentioned made -- probably do
14 color your perception of this, but how was it
15 working with somebody with the, you know,
16 felony convictions that Pen Waugh had?

17 Did that give you pause? Did that
18 make you worried? I understand it probably
19 worried you on some level because we've been
20 discussing that, but how did you feel about
21 dealing with an individual like that?

22 Did you feel he was unfairly

1 persecuted and, therefore, it didn't give you
2 that much concern?

3 A Well, concern that the association
4 with him, there was concern about that. His
5 mentality is -- and of course, we knew that
6 there would be a lot more scrutiny, so we'd
7 have to -- you know, there's going to be a
8 whole lot more scrutiny on us than anybody
9 else because of the association, and we were
10 attempting to make sure that we were dotting
11 all our I's and crossing all of our T's.

12 And so, yes, there was a lot of
13 concern, and --

14 Q Well, did you feel that the
15 convictions that he got were merited?

16 A Well, there's only one conviction.
17 The other one he plead guilty or cut a deal
18 and they backed out of the deal. I -- you
19 know, Pen -- my belief is that Pen is a good
20 guy.

21 He is -- he doesn't -- I don't --
22 whatever trouble he got into in reference to

1 that -- now, it could have been, and there's,
2 you know, who knows, whether the powers that
3 be were trying to put him out of business --
4 I think there was certainly good cause to try
5 to do that, but at the same time he put
6 himself in a position and exposed himself and
7 he has -- he has, you know, a tendency to, you
8 know, expose himself to that.

9 I -- ultimately, I looked at him
10 as a good guy, and I looked at -- and I knew
11 him well enough to know that he is a good man,
12 and I thought that by Preferred acquiring and
13 building and operating it would restore his
14 reputation to be the good person I knew him to
15 be.

16 Q And did he also feel that way?

17 A Yes. And, you know -- and had we
18 taken care of business in 98 and 99, I think
19 that would have gone a long ways towards, you
20 know, restoring that.

21 Q And by taking care of business,
22 you --

1 A You know, acquiring the licenses
2 and building and operating them.

3 Q Meaning the auction licenses --

4 A No, no, no. We had an opportunity
5 to wrap up the island before the auction even
6 began.

7 Q Okay.

8 A And had we been able to pull that
9 off, that would have --

10 Q What prevented that in '91?

11 A We could have wrapped it up if
12 we'd acquired -- cut a deal with Ed Nemeth and
13 TCI -- or TPR. I'm sorry.

14 Q Okay.

15 A Get the other, you know, YX
16 licenses. We could have wrapped it up before
17 the auction ever came around.

18 Q All right. Refresh my
19 recollection. What prevented that?

20 A Couldn't get the deal done.

21 Q Just couldn't get it done. Not
22 lack of funding, or was that the reason?

1 A Chandu was -- we could have gotten
2 it for a fraction of what we spent in the
3 auction. Just could not --

4 Q Close the deal.

5 A Could not -- understand that Ed
6 Nemeth was originally a partner in TCI, and
7 it's a long history there. We're not going to
8 get into it today. We just did not -- Ed
9 Nemeth wouldn't -- wouldn't deal with us, and
10 we got in a battle over the, you know, trying
11 to get the license corps to work with us, and
12 --

13 Q Okay. That's right. You talked
14 about that.

15 A So, you know, had we done that
16 and, you know, it would have gone a long way
17 and, you know, Pen, of course, was -- you
18 know, was being very, very, very, very careful
19 and I, you know --

20 Q All right. Well what was the
21 other -- you said a couple of run-ins, and you
22 told us about the lawsuit. What was the other

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1 one, or others?

2 You said he had run-in's with the FCC.

3 A Well, you know -- yes, that's the
4 main one but, you know, I think in -- you know
5 they were also filing applications and they
6 were also -- Express at the time was trying to
7 get their hands on SMR licenses at a time when
8 Nextel was, you know, fleet call and building
9 their organization. So, there's --

10 Q You mean legitimately and by
11 purchasing from individual licensees?

12 A Yes. Yes.

13 Q It's just about one o'clock. I
14 can continue on, but why don't we take a
15 break.

16 (Off the record comments.)

17 MR. OSHINSKY: We can go off the
18 record for a second.

19 (Whereupon, the above-entitled
20 matter went off the record at 12:59 p.m. and
21 resumed at 2:03 p.m.)

22 MR. OSHINSKY: Back on the record.

1 BY MR. OSHINSKY:

2 Q Okay. I have to ask you, during
3 the break, did you ingest any substances, or
4 did you suffer any illnesses that might affect
5 your ability to hear and understand my
6 questions and to answer them truthfully?

7 A No.

8 Q Okay. I guess we'll continue.
9 I'm trying to remember where I was.

10 MR. OSHINSKY: Can you read back
11 my last question or his last answer?

12 Actually, I know what it is. You
13 don't have to. I can pick up with it.

14 BY MR. OSHINSKY:

15 Q I wanted to talk to you, just a
16 couple more questions about the notation in
17 the Form 175. Please excuse me. I'm fighting
18 a cold.

19 We talked about the run-ins that
20 you said that Pendleton Waugh had and after
21 that, my note here says that you indicated
22 that you and maybe certain others wanted to

1 include more details about the trust agreement
2 arrangement in the Form 175. Is that correct?
3 Is that what you told us?

4 A No. Those aren't the words that I
5 used.

6 Q Okay.

7 A I said that Michelle, in
8 referencing the verbal agreement to issue
9 stock had Pendleton Waugh's name and Jay
10 Bishop's name, and that David changed it to
11 the name of the trust.

12 Q Okay. And did you ever get an
13 explanation for why he did that?

14 A Because he said that you need --
15 yes, I did, and I don't know that it was any
16 more than that's how you're supposed to do it.

17 Michelle Bishop would know more
18 than I as to why David recommended doing that.

19 Q And that --

20 A I would only be --

21 Q And that's because why? Why would
22 she know more?

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