

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

FILED/ACCEPTED
JUL 23 2009
Federal Communications Commission
Office of the Secretary

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

To: Chief Administrative Law Judge
Richard L. Sippel

**ENFORCEMENT BUREAU'S OPPOSITION TO
MOTION FOR LIMITED INTERVENTION**

1. The Enforcement Bureau ("Bureau"), pursuant to Sections 1.4, 1.223, and 1.293 of the Commission's Rules, 47 C.F.R. §§ 1.4, 1.223 and 1.293, hereby requests the Presiding Judge to deny the Motion for Limited Intervention, filed by Michael D. Judy, et al. ("Movants") on July 17, 2009 ("Motion").¹ The Presiding Judge has already rejected similar previous intervention attempts by Preferred Investors Association, Inc., and Charles D. Guskey,² and the instant Motion presents nothing new. The Bureau

¹ See *Pendleton C. Waugh, et al.*, EB Docket No. 07-147, Motion for Limited Intervention (filed July 17, 2009) ("Motion").

² See *Pendleton C. Waugh, et al.*, EB Docket No. 07-147, Memorandum Opinion and Order, FCC 09M-48 (ALJ Sippel, rel. July 16, 2009) (denying Motion to Intervene filed by Preferred Investors Association,

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respectfully submits that the Presiding Judge should reject the Motion. In support whereof, the Bureau hereby shows the following.

2. Movants, comprising 28 purported PCSI shareholders with “at least 16,666” shares of stock, claim a strong interest in a limited intervention in this proceeding to gain standing to seek an abeyance of pending settlement negotiations until the Movants’ private litigation resolves.³ Movants filed the lawsuit, which purportedly underpins the instant Motion, in the Court of Chancery of the State of Delaware, on July 8, 2009, to compel Charles M. Austin to conduct an annual meeting for the first time since 1998 and to appoint additional directors to Preferred Communication Systems, Inc.’s (“PCSI”) Board of Directors.⁴ Movants claim that their involvement on this limited basis will assist the Presiding Judge with consideration of any proposed settlement because they challenge Austin’s authority to represent PCSI,⁵ and excuse their delayed intervention as tied to the recently filed Delaware lawsuit.⁶

3. Section 1.223(b) of the Commission’s Rules, 47 C.F.R. § 1.223(b), contemplates that petitions to intervene must be filed, if at all, within 30 days after publication of the hearing designation or a summary thereof in the Federal Register. Section 1.223(c) of the Commission’s Rules, 47 C.F.R. § 1.223(c), provides that a person seeking to intervene beyond the 30 day limit must “set forth the interest of the petitioner in the proceeding, show how such petitioner’s participation will assist the Commission in

Inc.); *Pendleton C. Waugh, et al.*, Memorandum Opinion and Order, FCC 08M-09, (ALJ, rel. Feb. 19, 2008) (citing *Victor Muscat*, 31 FCC 2d 620, 621 (1971)).

³ See Motion. at 2.

⁴ See *id.* at 2 & Exhibit 2 at 1.

⁵ See *id.* at 5.

⁶ See *id.* at 5-6.

the determination of the issues in question . . . must set forth reasons why it was not possible to file a petition within the time proscribed . . . [and that s]uch petition shall be accompanied by the affidavit of a person with knowledge of the facts set forth” therein.

4. The grossly untimely Motion presents an even more unpersuasive request for intervention than that which the Presiding Judge recently denied.⁷ For example, the Movants appear to have deliberately timed their proposed intervention to influence the Delaware litigation through the instant proceeding when it was entirely within their ability and control both to file the Delaware litigation and to seek intervention at an earlier time. The tardiness of the Motion is especially egregious given that this case was designated for hearing over two years ago⁸ and stayed for the purpose of negotiating a settlement more than four months ago.⁹ These disputes that the Movants seek to resolve belong in the Delaware Court rather than in the instant forum.¹⁰

5. Moreover, Movants fail to present a unique, compelling interest to justify the limited intervention they seek. Movants seek a limited intervention for the purpose of requesting a stay of the instant proceeding’s settlement negotiations until they resolve their private disputes concerning Charles M. Austin’s management of PCSI. Yet they fail to demonstrate that such purpose is proper or would be warranted.

⁷ See *Pendleton C. Waugh, et al.*, EB Docket No. 07-147, Memorandum Opinion and Order, FCC 09M-48 (ALJ Sippel, rel. July 16, 2009) (denying Motion to Intervene filed by Preferred Investors Association, Inc.).

⁸ See *Pendleton C. Waugh, et al.*, Order to Show Cause and Notice of Opportunity for Hearing, FCC 07-125 (July 20, 2007). This Order was published in the Federal Register shortly thereafter. See *Pendleton C. Waugh, Charles M. Austin, and Jay R. Bishop, Preferred Communication Systems, Inc., Preferred Acquisitions, Inc. – Order to Show Cause and Notice of Opportunity for Hearing*, Notice, 72 Fed. Reg. 42088 (2007) (“Notice”); correction published at 72 Fed. Reg. 45049 (2007).

⁹ See *Pendleton C. Waugh, et al.*, Order, FCC 09M-27, EB Docket No. 07-147 (ALJ Sippel, rel. Mar. 11, 2009).

¹⁰ See *Metromedia Company*, Memorandum Opinion and Order, 3 FCC Rcd 595 (1988) (declining to intervene in parties’ private contractual disputes).

6. Specifically, the Presiding Judge has already ruled that Austin is the proper representative of the above-captioned licensees in the instant proceeding.¹¹ The Movants' attempts to distinguish themselves, another group of minority shareholders, from the prior Motion to Intervene, which prompted that ruling, fail, and furthermore, they fail to show that their intervention, if permitted, would serve the purpose they seek, namely that a stay would be warranted here.¹²

7. First, the Movants are not unique in the interests that they purport to represent. No party to the settlement negotiations, least of all the Bureau, is interested in expending time and effort in negotiating, executing, and complying with a settlement that would ultimately fail due to Austin's lack of authority.

8. Second, Movants fail to assert that they constitute a majority of PCSI's outstanding shareholders or voting interests, or that, therefore, there exists any likelihood of a victory in their underlying cause of action in the Delaware Court.¹³ To the contrary, a thorough reading of the Motion makes clear that it represents a subterfuge to apply pressure in a private contractual dispute.

9. Third, this proceeding, including any settlement or hearing thereof, relates to PCSI's alleged misconduct before the hearing designation, not to the longstanding, ongoing, internal corporate disputes that the Movants aver. In fact, the Movants' affidavit is deficient in that it fails to demonstrate any personal knowledge about ongoing

¹¹ See authorities cited, *supra*, note 7.

¹² The Bureau submits that Movants fail to demonstrate the likelihood of a meritorious outcome or irreparable harm, as federal rules would require. See, e.g., *Virginia Petroleum Jobbers Assn. v. FPC*, 104 U.S.App.D.C. 106, 110, 259 F.2d 921, 925 (1958).

¹³ See Motion at Exhibits 1-2.

settlement negotiations, the issues being settled, or their outcome.¹⁴ Accordingly, the results of Movants' private litigation, even if successful, would not invalidate settlement negotiations or execution, and the two matters are unrelated.

10. Additionally, the Movants' participation will not assist the Presiding Judge with considering the proposed settlement, and this claim is logically inconsistent with others in their Motion. The Movants state that they do not seek to participate in this proceeding separately from PCSI or to participate in settlement negotiations. Rather, they only seek to prevent such a settlement from even being filed, let alone considered by the Presiding Judge, before the Movants resolve their private, self-interested litigation. The Bureau submits that neither of these roles advances the Presiding Judge's consideration of the settlement.

11. The Bureau also respectfully submits that the Movants' excuse for failure to intervene earlier does not pass muster. Specifically, the Movants' claim that a combination of Austin's management since 1998 and his conduct during settlement negotiations form the basis for the attempted intervention at this late date still reflects an unexplainable delay of at least months, if not years. The Bureau submits that the Movants could have filed their lawsuit, and corresponding intervention, years ago. To the extent that settlement conduct prompted the Motion, the Bureau submits that several months of negotiations have passed. Movants' intervention now appears to be nothing more than an attempt to use the two unrelated proceedings to gain leverage over PCSI

¹⁴ The Movants assert that the settlement will include sale of the above-captioned licensees' licenses and that these licensees will drop appeals in unrelated litigation. *See* Motion at 3 & Exhibit A at 7-8 (describing that Austin is attempting to sell the above-captioned licensees' licenses and to withdraw their pending claims in other court proceedings). No party has filed a settlement to that effect, and thus, these claims are specious.

and Austin for their own private purposes. Consequently, the Movants' purported justifications are suspect.

12. Accordingly, the Bureau respectfully requests the Presiding Judge to reject the Motion.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

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July 23, 2009

CERTIFICATE OF SERVICE

Moris Martinez, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has, on this 23rd day of July, 2009, sent by first class United States mail or electronic mail, as noted, copies of the foregoing "Enforcement Bureau's Opposition to Motion for Limited Intervention," to:

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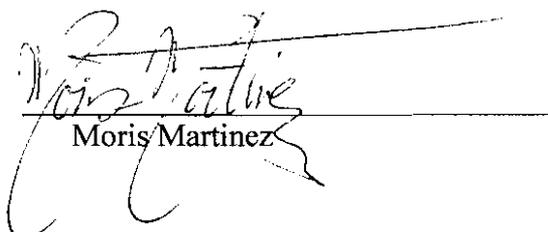
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