

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

FILED/ACCEPTED

AUG - 4 2009

Federal Communications Commission  
Office of the Secretary

In the Matter of	)	EB Docket No. 07-147
	)	
<b>PENDLETON C. WAUGH, CHARLES M. AUSTIN, and JAY R. BISHOP</b>	)	File No. EB-06-IH-2112
	)	NAL/Acct. No. 200732080025
	)	
<b>PREFERRED COMMUNICATION SYSTEMS, INC.</b>	)	FRN No. 0003769049
	)	
Licensee of Various Site-by-Site Licenses in the Specialized Mobile Radio Service.	)	
	)	
<b>PREFERRED ACQUISITIONS, INC.</b>	)	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 RESPONSE TO  
PENDLETON C. WAUGH'S AND MICHAEL D. JUDY'S PLEADINGS**

1. The Enforcement Bureau ("Bureau"), pursuant to Section 1.294 of the Commission's Rules, 47 C.F.R. § 1.294, hereby responds to the following pleadings: (1) Comments in Support of Limited Intervention, filed by Pendleton C. Waugh on July 28, 2009 ("Comments"); (2) Motion for Leave to File Reply to Opposition to Motion for Limited Intervention, filed by Michael D. Judy, et al. ("Judy") on July 30, 2009 ("Motion"); and (3) Reply to Opposition to Motion for Limited Intervention, filed by Judy on July 30, 2009 ("Reply"). In support whereof, the Bureau shows the following.<sup>1</sup>

<sup>1</sup> The Bureau is filing simultaneously herewith a motion for leave to file the instant responsive pleading.

2. On July 17, 2009, Judy filed a Motion for Limited Intervention in this proceeding, purportedly on behalf of a group of investors. Thereafter, on July 23, 2009, the Bureau filed an Opposition to the Motion for Limited Intervention (“Opposition”).

3. Under 47 C.F.R. § 1.294, “[a]ny party may file an opposition to an interlocutory request filed in that proceeding[,]” but “replies to oppositions will not be entertained.” The Bureau respectfully submits that, under 47 C.F.R. § 1.294, Mr. Waugh’s and Judy’s pleadings are impermissible and should be stricken,<sup>2</sup> but barring that, the Bureau respectfully requests the Presiding Judge to consider the following clarifications and corrections to help build a more complete record.

4. In his Comments, Mr. Waugh inserts irrelevant issues into the proceeding, and misstates and distorts the record concerning the Bureau’s position regarding Judy’s Motion for Limited Intervention. First, Mr. Waugh claims that Charles M. Austin never received 800,000 shares of PCSI stock, and that, accordingly, Mr. Austin lacks the authority to conduct settlement negotiations, and produces purportedly new documents to support this allegation.<sup>3</sup> However, the issues designated for hearing do not include how many shares of PCSI stock Mr. Austin owns, and to date, there has been no dispute in the record as to that stock ownership, based on PCSI’s responses to Bureau letters of inquiry, supported by sworn affidavits from Mr. Austin and Mr. Waugh.<sup>4</sup> Second, Mr. Waugh

---

<sup>2</sup> The Bureau is concurrently submitting a request that these pleadings be stricken.

<sup>3</sup> See Comments at 3.

<sup>4</sup> See *Pendleton C. Waugh, et al.*, Order to Show Cause and Notice of Opportunity for Hearing, 22 FCC Rcd 13363, 13374-78 (discussing unauthorized transfer of control and undisclosed real-party-in-interest issues and discussing misrepresentation issues, including those related to PCSI’s and PAI’s ownership structure) (2007) (“OSC”). See also *id.* at 13374 n.70 (noting that Austin has 800,000 shares of PCSI stock according to PCSI’s statements). The Bureau respectfully submits that Mr. Waugh’s injection of new ownership issues, at this late stage, would require, at the minimum, a premature determination of the merits of the materials attached to the Comments and the questions they may raise, and at the maximum, a designation of additional issues for hearing and/or settlement. None of these issues are currently before the

asserts that the Bureau cites no support for its statement that Judy constitutes a minority group of investors.<sup>5</sup> However, Judy does not purport to comprise a majority shareholder group,<sup>6</sup> and if, as the *OSC* indicates, PCSI issued Mr. Austin 800,000 shares, this issuance dwarfs, in comparison, the “at least 16,666” shares of PCSI stock that Judy purports to hold. Third, Mr. Waugh posits that the Bureau cites no support for the charge that Judy’s efforts to intervene represent a subterfuge to apply pressure in a private contractual dispute.<sup>7</sup> Yet, to the contrary, the Bureau’s Opposition is replete with references to the Judy Motion for Limited Intervention and related attachments basing the proposed intervention in the instant case on their interests in a Delaware lawsuit delineating PCSI’s internal corporate affairs.<sup>8</sup> Finally, Mr. Waugh grossly mischaracterizes the Bureau’s statements concerning whether Judy’s interest is unique enough to support its proposed intervention.<sup>9</sup> Specifically, Mr. Waugh, focusing on one sentence taken out of context, states that the Bureau is concerned that it is negotiating with Mr. Austin, who purportedly lacks negotiating authority, and that he shares those “concerns.”<sup>10</sup> These assertions directly contradict the record and the Bureau’s position.<sup>11</sup>

---

Presiding Judge and the Bureau respectfully submits that the Presiding Judge need not consider them. Heeding Mr. Waugh’s assertions implicates fundamental changes in the *OSC* and brings larger consequences than simply allowing Judy to intervene or staying the settlement negotiations.

<sup>5</sup> See Comments at 3.

<sup>6</sup> See Opposition at 2 and 4 (noting that according to its own motion, Judy comprised shareholders of “at least 16,666” shares of PCSI stock, but that the group never asserted that it comprised a majority shareholder).

<sup>7</sup> See Comments at 3-4.

<sup>8</sup> See Opposition at 2, 4-5 (citing various portions of Judy’s Motion for Limited Intervention and attached exhibits describing Delaware litigation).

<sup>9</sup> See Opposition at 4 (stating that “[Judy is] not unique in the interests that they purport to represent” and that “[n]o 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”); Comments at 3 (purporting to share a “concern” of the Bureau’s which does not exist).

<sup>10</sup> See Comments at 3-4.

5. Judy also grossly mischaracterizes the Bureau's position in the same manner. The Bureau does not share Judy's "concern"<sup>12</sup> that Mr. Austin lacks authority to negotiate a settlement in this case. Instead, the Bureau has pointed out, and reiterates here, that Judy's concern is unfounded and insufficient to support its request to intervene.

6. Accordingly, the Bureau respectfully requests the Presiding Judge to reject the Comments, the Motion, and the Reply, and to deny the relief sought therein.

Respectfully submitted,  
Kris Anne Monteith  
Chief, Enforcement Bureau



---

Gary A. Oshinsky  
Anjali K. Singh  
Attorneys, Investigations and Hearings Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 4-C330  
Washington, D.C. 20554  
(202) 418-1420

August 4, 2009

---

<sup>11</sup> See, e.g., *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. and upholding Austin's authority to represent PCSI); *OSC* at 13374 n.70 (noting that Austin has 800,000 shares of PCSI stock according to PCSI's statements).

<sup>12</sup> See Motion at 2; Reply at 1-2.

**CERTIFICATE OF SERVICE**

Moris Martinez, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has, on this 4th day of August, 2009, sent by first class United States mail or electronic mail, as noted, copies of the foregoing "Enforcement Bureau's Response to Pendleton C. Waugh's and Michael D. Judy's Pleadings" to:

Charles M. Austin  
Preferred Acquisitions, Inc.  
Preferred Communication Systems, Inc.  
400 East Royal Lane, 9 Suite N-24  
Irving, TX 75039  
precomsys@aol.com

Jay R. Bishop  
P.O. Box 5598  
Palm Springs, CA 92262  
jaybishopps@aol.com  
michellebishopps@aol.com

William D. Silva\*\*  
Law Offices of William D. Silva  
5335 Wisconsin Ave., NW  
Suite 400  
Washington, DC 20015-2003  
bill@luselaw.com  
Attorney for Pendleton C. Waugh

Michael D. Judy  
5874 Nees Avenue  
Clovis, CA 93611

David L. Hill, Esq.  
1120 20<sup>th</sup> Street, NW  
Suite 700, North Building  
Washington, DC 20036-3406  
Attorney for  
Preferred Investor  
Association, Inc.

Chief Administrative Law Judge Richard L. Sippel\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 1-C768  
Washington, DC 20054

  
Moris Martinez

\* Hand-Delivered and Courtesy Copies Sent Via E-Mail and Facsimile  
\*\* Service Copies May Be Sent Via E-Mail (E-Mail service acceptable in lieu of hard copies for files 4 MB or less per agreement.)