

FILED/ACCEPTED  
AUG - 5 2009  
Federal Communications Commission  
Office of the Secretary

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

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

**JOINT REQUEST**  
**FOR APPROVAL OF SETTLEMENT AGREEMENT AND**  
**TERMINATION OF PROCEEDING**

1. The Enforcement Bureau, Preferred Communication Systems, Inc. ("PCSI"), Preferred Acquisitions, Inc. ("PAI"), Charles M. Austin, and Jay R. Bishop (collectively, the "Parties"), hereby jointly request the Presiding Judge to accept the executed Settlement Agreement being submitted simultaneously herewith under separate

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cover,<sup>1</sup> and issue an order adopting the Settlement Agreement and terminating this proceeding.<sup>2</sup> In support whereof, the following is shown.

2. On July 20, 2007, the Commission released the Order to Show Cause and Notice of Opportunity for Hearing in this proceeding.<sup>3</sup> The Show Cause Order directed the Presiding Judge to determine, among other things, whether the above-captioned licenses held by PCSI and/or PAI should be revoked on issues including those relating to the apparent failure by PCSI and PAI to disclose the felony convictions of two individuals involved in the companies, Pendleton C. Waugh and Jay R. Bishop; undisclosed real-party-in-interest; and unauthorized transfer of control.

3. Subsequently, on March 10, 2009, the Parties and Pendleton C. Waugh informed the Presiding Judge that they were engaged in settlement negotiations which, if successful, would eliminate the need for hearing in this proceeding. The Presiding Judge, on March 11, 2009, stayed the procedural schedule pending the disposition of such settlement negotiations.<sup>4</sup> The Parties are pleased to further inform the Presiding Judge that their negotiations have resulted in a settlement, the terms and conditions of which are contained in the referenced Settlement Agreement being submitted under seal.

4. The Settlement Agreement contemplates the resolution of issues specifically relating to PCSI and PAI and their qualifications to be and remain

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<sup>1</sup> The proposed Settlement Agreement is being submitted under separate cover accompanied by a joint motion that it be kept under seal until approved.

<sup>2</sup> The Parties respectfully submit that the submittal of the concurrently filed Settlement Agreement satisfies the Presiding Judge's order that the Parties submit a joint status report on the status of settlement negotiations by August 11, 2009. *See Pendleton C. Waugh, et al.*, Order, FCC 09M-44 (ALJ Sippel, rel. June 12, 2009).

<sup>3</sup> *See Pendleton C. Waugh, et al.*, Order to Show Cause and Notice of Opportunity for Hearing, FCC 07-125 (July 20, 2007) ("Show Cause Order").

<sup>4</sup> *See Pendleton C. Waugh, et al.*, Order, FCC 09M-27 (ALJ Sippel, rel. March 11, 2009). The Presiding Judge granted further stays on May 6, 2009, and June 12, 2009. *See Pendleton C. Waugh, et al.*, Order,

Commission licensees. Because neither Pendleton C. Waugh nor Jay R. Bishop -- both of whom are convicted felons -- is presently a licensee or applicant in his own right, grant of the Settlement Agreement will eliminate the need at this time to inquire into their respective individual qualifications.<sup>5</sup> Thus, the issue in this proceeding to determine the effect, if any, of each individual's felony conviction on his qualifications to be a Commission licensee<sup>6</sup> will necessarily be moot insofar as this proceeding is concerned.<sup>7</sup>

5. The Parties represent that a settlement in this case, if approved by the Presiding Judge, would obviate the need for a protracted hearing, thereby conserving valuable public and private resources. The Parties believe that the proposed Settlement Agreement provides for a fair and equitable resolution of the captioned proceeding and is therefore in the public interest. In addition, the terms and conditions of the Settlement Agreement are such that the concerns expressed by the Commission in its Show Cause Order will, as a practical matter, be substantially resolved. Finally, approval of the

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FCC 09M-39 (ALJ Sippel, rel. May 6, 2009); *Pendleton C. Waugh, et al.*, Order, FCC 09M-44 (ALJ Sippel, rel. June 12, 2009).

<sup>5</sup> Indeed, if the Settlement Agreement is approved, a hearing at this time on the individual qualifications of Pendleton C. Waugh and Jay R. Bishop would be akin to rendering a declaratory ruling in the absence of a live case or controversy. *See, e.g., Guam Telephone Authority*, Order, 12 FCC Rcd 13938 (1997) (finding insufficient case or controversy and dismissing petition for preemption); *APCC Services, Inc. v. IDT Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 7817 (Enf. Bur. 2006) (finding insufficient case or controversy and dismissing complaint as moot).

<sup>6</sup> *See* Show Cause Order at para. 59(d).

<sup>7</sup> Neither the proposed Settlement Agreement nor this Joint Request contemplates an adverse ruling in this proceeding with respect to the qualifications of Pendleton C. Waugh or Jay R. Bishop. In the event that either individual applies to be a licensee (or a principal thereof) in the future, the Commission could exercise its discretion at that time and designate the application for hearing on issues relating to their qualifications. Thus, it is not an impediment to a grant of the instant Joint Request and termination of this hearing proceeding that Pendleton C. Waugh is not a signatory to the Settlement Agreement, as questions relating to his individual qualifications, should there be any, could be revisited in the event he presents himself before the Commission at a later date in the context of a pending application.

instant Settlement Agreement would be consistent with the manner in which other similar hearing proceedings have been resolved.<sup>8</sup>

6. PCSI, PAI, Charles M. Austin, and Jay R. Bishop represent that they have read this Joint Request for Approval of Settlement Agreement, concur with the representations therein, and have authorized the undersigned to file this Joint Request for Approval of Settlement Agreement on their behalf.

7. Accordingly, the Parties respectfully request that the Presiding Judge accept the referenced Settlement Agreement and issue an order adopting the Settlement Agreement and terminating this proceeding.

Respectfully submitted,  
Kris Anne Monteith  
Chief, Enforcement Bureau



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Gary A. Oshinsky  
Anjali K. Singh  
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August 5, 2009

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<sup>8</sup> See *Business Options, Inc.*, Consent Order, FCC 04M-08 (ALJ Sippel, rel. February 20, 2004) (approving Consent Decree and ordering that all issues designated for hearing to be resolved); *Commercial Radio Service, Inc.*, Memorandum Opinion and Order, FCC 07M-12 (ALJ Steinberg, rel. April 26, 2007) (approving Settlement Agreement, determining concerns prompting hearing designation to be resolved, and ordering hearing to be terminated).

**CERTIFICATE OF SERVICE**

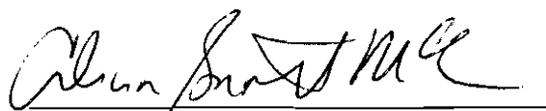
Alicia Smothers McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 5th day of August 2009, sent by first class United States mail or electronic mail, as noted, copies of the foregoing "Joint Request for Approval of Settlement Agreement and Termination of Proceeding," to:

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Alicia Smothers McCannon

\* 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.)