

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

In the Matter of

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

To: The Commission

**NOTICE OF APPEAL**

Pendleton C. Waugh (“Waugh”), a party to the above-captioned proceeding, hereby submits a Notice of Appeal pursuant to section 1.302 of the Commission’s Rules, 47 CFR Sec. 1.302. In support, the following is shown:

1. This proceeding was initiated by an Order to Show Cause and Notice of Opportunity for Hearing, (FCC 07-125) released July 20, 2007. The Enforcement Bureau was given the burden of proceeding and the burden of proof on the following issues designated against Preferred Communications Systems, Inc (“PCSI”), Preferred Acquisitions, Inc. (“PAI”), Pendleton C. Waugh (“Waugh”), Charles M. Austin (“Austin”), and Jay R. Bishop (“Bishop”):

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;

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;

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

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;

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;

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;

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 adduces pursuant to the foregoing issue, whether the referenced authorizations should be revoked.

3. The Enforcement Bureau ("Bureau") engaged in extensive discovery<sup>1</sup> in the proceeding and the parties entered into settlement negotiations. Waugh did not join in the settlement agreement primarily because the Enforcement Bureau refused to settle the case unless Mr. Waugh was completely severed from any connection at all with PCSI, a company for which Mr. Waugh had worked as a consultant for approximately ten years and pursuant to an agreement entered into by PCSI's management with him ten years ago was entitled to a considerable

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<sup>1</sup> Literally thousands of documents were produced and the Bureau conducted depositions of Messrs. Waugh and Austin here in Washington, D.C., which spanned a full week for each.

beneficial ownership in the company's stock.<sup>2</sup> The Bureau threatened that if Mr. Waugh did not capitulate to its settlement requirements, the Bureau would reach a unilateral settlement with the other parties.

4. On August, 5, 2009, the Bureau, PCSI, PAI, Austin and Bishop filed: (1) Joint Motion to Accept Settlement Agreement under Seal; (2) Joint Request for Approval of Settlement Agreement and Termination of Proceeding; and (3) the proposed Settlement Agreement under Seal. On the very same day, the Presiding Judge issued an Order granting the relief requested. The Judge's Order was released the following day, August 6, 2009.<sup>3</sup>

5. Pursuant to the Settlement Agreement, PCSI, PAI, Austin and Bishop agreed that Mr. Waugh "shall not work for, contract for, consult for, or hold any ownership interest (outright or beneficial interests through stocks, warrants, voting trusts, or any other mechanism) in PCSI, PAI, any Affiliate of PCSA, and or any Affiliate of PAI."

6. Waugh is a party to this proceeding and pursuant to Section 1.302 of the Commission's Rules he is entitled to file an appeal of the Judge's Order terminating this proceeding.<sup>4</sup> See, *e.g.*, *Jersey Shore Broadcasting Corporation v. FCC*, 37 F. 3d 1531, 1535 (D.C. Cir. 1994). This

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<sup>2</sup> Such agreement was referenced in several filings with the Commission including the Form 175 and Form 601 filed by PAI in July and September 2000.

<sup>3</sup> On August 6, 2009, Waugh filed a timely Motion for Summary Decision pursuant to Section 1.251 with the Presiding Judge demonstrating that there were no genuine issues of material fact as to the designated issues, thus seeking to resolve the issues in this proceeding without a hearing. This pleading had obviously been in preparation for some time and the fact that it was filed on the same day that the Judge's Order terminating this proceeding was released should have no legal affect. The Bureau filed an Opposition on August 7 with the Presiding Judge arguing, ironically, that he should dismiss the Motion for Summary Decision since he no longer had jurisdiction of the case.

<sup>4</sup> This proceeding was brought under Sections 308 and 312 of the Communications Act of 1934, as amended, and Section 1.91 of the Commission's Rules. Section 1.93 of the Commission's Rules defines a "consent order" and then states that "[C]onsent orders may not be negotiated with respect to matters which involve a party's basic statutory qualifications to hold a license (See 47 U.S.C Sections 308 and 309)." The Order to Show Cause and Notice of Opportunity for Hearing cited Sections 308 and 312 of the Act and Section 1.91 of the Rules as the basis for this proceeding. Based upon a plain reading of Sections 308 and 312 of the Act and Sections 1.91 – 1.93 of the Rules, the Enforcement Bureau had no authority to negotiate its so-called "Settlement Agreement" and the Presiding Judge was without authority to approve such agreement and issue his Order. See, *e.g.*, *Talton Broadcasting Co.*, 67 FCC 2d 1594, 1596-99 (1978).

Notice is filed pursuant to Section 1.302 (b) to preserve his right to appeal and to stay the effectiveness of the Judge's Order.

Respectfully submitted,  
PENDLETON C. WAUGH

By: /s/ William D. Silva  
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His Attorney

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August 12, 2009

**CERTIFICATE OF SERVICE**

I, William D. Silva, certify that I have caused a copy of the foregoing "Notice of Appeal" to be sent by electronic mail, this 12th day of August, 2009, to the following:

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