

invited Judy to withdraw his appeal so that the FCC may reconsider the Intervention Motion. (*Id.*) On September 8, 2009, Judy filed a Withdrawal of Appeal and a Renewed Motion for Limited Intervention, which are pending. (Exs. J and K to Walsh Aff.)

Most recently, the Chief ALJ scheduled a conference for September 9, 2009, to discuss procedures for terminating the FCC Hearing as to all parties without a hearing, and to set a schedule of further pleadings, if needed. (Ex. I to Walsh Aff., Order issued September 4, 2009.) Judy understands that, during that hearing, the Chief ALJ requested the parties to reach a new settlement by September 21, 2009, or renew the proceedings, due to concerns raised regarding the Settlement Agreement. In either case, whether by settlement or full resolution of the proceedings, there is a substantial risk that certain or all of the Company's licenses will either be surrendered or revoked.

ARGUMENT

I. THE SUMMARY JUDGMENT STANDARD

Summary judgment will be granted to the moving party where there is “no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” Ct. Ch. R. 56(c). “Once the moving party has demonstrated such facts, and those facts entitle it to summary judgment, the burden shifts to the non-moving party to present ‘specific facts showing that there is a genuine issue of fact for trial.’” *Del-Chapel Assoc’s. v. Conectiv*, 2008 Del. Ch. LEXIS 50, at *10 (Del. Ch.).¹³ In meeting its burden of rebuttal, the non-moving party “may not rest upon mere allegations or denials.” Ct. Ch. R. 56(e); *see also Del-Chapel Assoc’s.*, 2008 Del. Ch. LEXIS 50, at *10; *accord XO Commc’ns, LLC v. Level 3 Commc’ns, Inc.*, 948 A.2d 1111, 1117 (Del. Ch. 2007). As demonstrated herein, there are no genuine issues of material fact as to any of Judy’s three (3) claims for relief, and he is entitled to judgment in his favor as a matter of law.

II. PLAINTIFF IS ENTITLED TO INSPECT THE COMPANY’S BOOKS AND RECORDS

A. The Standard

Where a stockholder seeks inspection of books and records (other than the company’s list of stockholders), the stockholder must establish that (1) he is a stockholder, (2) he has complied with Section 220’s requirements as to the form and manner of the demand, and (3) the inspection is for a proper purpose. 8 *Del. C.* § 220(b). Where the stockholder seeks inspection of the stock ledger and related materials, and the stockholder has demonstrated that he is stockholder and has complied with the requirements as to the form and manner of the demand,

¹³ A compendium of unreported decisions is filed herewith.

“the burden of proof shall be upon the corporation to establish that the inspection such stockholder seeks is for an improper purpose.” 8 *Del. C.* § 220(c)(3).

B. Plaintiff Is A Stockholder And His Demand Complied With The Statute

Judy is a stockholder of record of the Corporation, as evidenced by the stock certificates provided to him. (Ex. A to Judy Aff.) Austin does not contest that Judy is a stockholder; rather, he asserts only that Plaintiff “holds less than one percent” of the shares. (Declaratory Judgment Answer ¶ 65.) Judy does not agree with that assertion; however, for present purposes, the percentage of shares owned by Judy is irrelevant. *See Madison Ave. Inv. Partners, LLC v. Am. First Real Estate Inv. Partners, L.P.*, 806 A.2d 165, 176 n.27 (Del. Ch. 2002) (“The right to inspect and copy documents is not ‘conditioned . . . on any minimum threshold investment on the part of the stockholder.’”) (citations omitted).

In his 220 Answer, Austin, on behalf of the Company, also asserts that Judy’s demand was not made in the proper form or manner because he “failed to provide documentary evidence of beneficial ownership of the stock” (220 Answer ¶ 45.) As noted, however, Judy is a stockholder of *record*. Accordingly, no documentary evidence of Plaintiff’s beneficial ownership is required. *See 8 Del. C.* § 220(b).

Austin further asserts on behalf of the Company that Plaintiff failed to provide the requisite power of attorney or other writing that authorizes his attorneys to act on his behalf. (*See* 220 Answer ¶ 45.) Again, this “defense” misses the mark because Judy, not his attorneys, made the demand and thus no power of attorney is required. *See 8 Del. C.* § 220(b).

C. Plaintiff Has A Proper Purpose

Under Section 220, a proper purpose is “a purpose reasonably related to such person’s interest as a stockholder.” 8 *Del. C.* § 220(b). Judy stated a proper purpose in his

Demand, which made clear that he requested inspection of the Company's books and records to assist him "(1) in communicating with other stockholders of the Company and on matters relating to their interest in the Company and (2) in investigating possible mismanagement of the Company by the officers and directors of the Company" (Ex. A to 220 Compl.)

1. Investigating Possible Mismanagement

It is well settled that the investigation of possible mismanagement is a proper purpose under Section 220. *See Seinfeld v. Verizon Comm'cns, Inc.*, 909 A.2d 117 (Del. 2006); *Security First Corp. v. United States Die Casting & Dev. Co.*, 687 A.2d 563, 567 (Del. 1997); *Rales v. Blasband*, 634 A.2d 927 (Del. 1993). A stockholder seeking to investigate possible mismanagement is not obligated to prove the existence of wrongdoing to secure inspection of relevant books and records. *See Thomas & Betts Corp. v. Leviton Mfg. Co. Inc.*, 681 A.2d 1026, 1031 (Del. 1996); *Deephaven Risk Arb Trading, Ltd. v. Unitedglobalcom, Inc.*, 2004 Del. Ch. LEXIS 130, at *28 (Del. Ch.) (rejecting the argument that a stockholder seeking demand "had an obligation to identify specific actions of specific officials of the Company to meet its pleading burden"). Rather, a stockholder need only demonstrate some credible evidence of possible mismanagement sufficient to warrant further investigation to determine whether such activity is, in fact, taking place. *See Polygon Global Opportunities Master Fund v. West Corp.*, 2006 Del. Ch. LEXIS 179, at *9 (Del. Ch.). As the Delaware Supreme Court has explained:

A stockholder is not required to prove by a preponderance of the evidence that the waste and mismanagement are actually occurring. Stockholders need only show, by a preponderance of the evidence, a credible basis from which the Court of Chancery can infer there is possible mismanagement that would warrant further investigation—a showing that may ultimately fall well short of demonstrating that anything wrong occurred. That threshold may be satisfied by a credible showing, through documents, logic, testimony or otherwise, that there are legitimate issues of wrongdoing.

Seinfeld, 909 A.2d at 123 (internal citations, quotations, and brackets omitted).

Austin's mismanagement is practically self-evident; he has failed and/or refused even to retain competent counsel to represent the Company in this and other proceedings. He has completely insulated the Company from stockholders other than himself, refusing to provide stockholders even the most basic information about the Company's business, or providing them with proof of certain of their investments in the Company. (*See, e.g.* Judy Aff. ¶¶ 3, 6-7.) He has denied stockholders of their fundamental right to an annual meeting by refusing *ever* to convene such a meeting, even in the face of requests to do so. (Judy Aff. ¶ 5; Stockholder Aff. ¶ 2.; Ex. F to Judy Aff., Stockholder Letters.)

Judy also has reason to believe that Austin has also made inaccurate representations to the FCC and/or has failed to properly represent the Company before the FCC, thereby jeopardizing the Company's interests in certain of the FCC Licenses—the Company's most significant asset and main source of potential revenue. (Declaratory Judgment Compl. ¶ 19.) Austin has thwarted efforts by stockholder groups (including PSD) to provide the Company with effective legal representation in the FCC Hearing, and instead has sought to settle quickly the FCC Hearing on behalf of the Company on terms that many stockholders believe are highly unfavorable to the Company. (Declaratory Judgment Compl. ¶ 18.)

In short, Plaintiff has a credible basis to suspect that Austin is mismanaging the Company. Accordingly, Plaintiff has a proper purpose to inspect the Company's books and records.

2. Communicating With Other Stockholders Of The Company

It is also well-settled that where a stockholder makes a demand for a list of the Company's stockholders, the desire to communicate with other stockholders on matters relating

to their interests in the Company constitutes a proper purpose under Section 220. *Food & Allied Serv. Trades v. Wal-Mart Stores, Inc.*, 1992 Del. Ch. LEXIS 317, at *3 (Del. Ch.). A stockholder is not limited to communicating with other stockholders through management, but rather has “a right to go to stockholders directly, without procedural impediment if he desires to do so.” *Kerkorian v. Western Airlines, Inc.*, 253 A.2d 221, 225 (Del. Ch. 1969), *aff’d*, 254 A.2d 240 (Del. 1969). Here, in advance of a meeting of stockholders, Judy seeks to obtain accurate information as to who the stockholders of PCS are, and to communicate with them about the state of the Company, the FCC proceedings, and its management. Simply put, by enlisting the support of other stockholders, Judy hopes to be able to keep afloat what is otherwise a sinking ship under Austin’s control.

D. Plaintiff’s Stated Purpose Is His True Proper Purpose

In addition to asserting that Judy lacks a proper purpose to justify his inspection of the Company’s books and records, the 220 Answer discusses at length an alleged “multifaceted conspiracy” between Judy and a gentleman by the name of Pendleton Waugh. Plaintiff assumes that the Company has included these allegations in its 220 Answer to suggest that Judy’s stated purposes is not his true proper purpose.

Judy has made substantial investments in the Company (to the tune of over \$70,000). (Judy Aff. ¶ 2.) In filing the 220 Complaint, as well as the 211 Complaint and the Declaratory Judgment Complaint, Plaintiff wishes only to ensure that his investment in the Company is adequately protected and managed, and that his interests as a stockholder are honored and respected. Waugh does claim to be a shareholder of PCS, and is represented separately in the FCC proceedings by his own counsel. Waugh is not a party to this action and is not represented by the undersigned counsel. (Walsh Aff. ¶ 2.) To the extent Waugh has a

common interest with Judy in protecting his investment, there is nothing improper or illegal in their supporting each other's efforts to bring about change. As evidenced by the answers which Austin has filed in this case, he has nothing but disdain for stockholders other than himself, especially those who dare to challenge his authority. But that myopic view of the world does not defeat Judy's legitimate interest in obtaining information. At bottom, Austin has utterly failed to rebut Judy's proper purposes for the inspection.

E. The Requested Documents Are Necessary And Essential To Satisfy Plaintiff's Purposes And Plaintiff's Request Is Not Overly Broad

The documents that Plaintiff seeks relate to the ownership, governance, and business of the Company, and the scope of this request is reasonably narrow and specifically targeted at investigating potential instances of mismanagement that Plaintiff has discussed above. Indeed, the information requested includes only the information necessary to ensure that Austin is properly managing and keeping records of the Company, and not making business decisions to serve his own personal interests. The request is not, as Austin asserts, "overly broad and unreasonably burdensome."

Moreover, the requested documents are records that any properly run corporation should keep in the ordinary course of business, and the production of such documents should be of little burden to the Company. Nonetheless, if Defendants can demonstrate that the production of these documents would indeed be unreasonably burdensome, Judy is prepared to narrow his list of requested documents in a way that would still allow Plaintiff to adequately fulfill his proper purposes. However, for Judy to fulfill his immediate proper purposes (in view of the request for a meeting of stockholders), it is necessary and essential that he receive the following documents in advance of the annual meeting:

- A stock ledger and stock list of stockholders of the Company, including an indication as to (i) how many shares of stock are held by each stockholder

(voting or non-voting), (ii) the particular series or class of stock held by each stockholder, and (iii) each stockholders' address and other contact information recorded by the Company;

- A copy of the Bylaws of the Company as are currently in effect;
- A copy of all records of any and all voting trusts between stockholders of the Company; and
- Copies of all records of any and all options, warrants, or other securities or holdings that are exchangeable for voting stock in the Company, including an indication as to (i) how many instruments are held by each holder, (ii) the conditions under which such instruments may be convertible to voting stock and at what rate, and (iii) each instrument holder's address and other contact information recorded by the Company.

F. The Company's Privilege Defenses Do Not Circumvent Plaintiff's Right To Inspect The Company's Books And Records

In the 220 Answer, the Company asserts privilege or immunity-related defenses to Judy's request to inspect the Company's books and records. Surely, many (if not most) of the documents and information Judy seeks to inspect are not subject to any privilege or immunity. And, to the extent some documents are privileged, Judy is not requesting at this time that such documents be made available for inspection. So long as Austin is prepared to identify truly privileged documents on a privilege log, there is no need to produce such documents (although Judy reserves the right to contest any entries on the privilege log).

III. PLAINTIFF IS ENTITLED TO AN ORDER THAT THE COMPANY CONVENE AN ANNUAL MEETING OF STOCKHOLDERS

A. Plaintiff Has Established A Prima Facie Case Under Section 211

Section 211(c) of the DGCL provides relief to a stockholder who makes a *prima facie* showing that a meeting to elect directors has not been held for more than 13 months or has not been held within 30 days of the date originally designated for the annual meeting. *See Saxon Indus., Inc. v. NKFV Partners*, 488 A.2d 1298, 1301 (Del. 1984); *Tweedy, Browne, & Knapp v. Cambridge Fund, Inc.*, 318 A.2d 635 (Del. Ch. 1974). Once the stockholder has made such a

prima facie showing, this Court is empowered under Section 211 to summarily order a meeting of stockholders. 8 *Del. C.* § 211(c). Indeed, it has been held that “the right of a shareholder to compel an annual meeting under [Section] 211 may be virtually absolute.” *Savin Bus. Machines Corp. v. Rapifax Corp.*, 375 A.2d 469, 472 (Del. Ch. 1977).

Plaintiff has been a stockholder of the Company since 1999, and to his knowledge, an annual meeting of stockholders of the Company has never been convened. (Judy Aff. ¶¶ 1, 5.) As such, Plaintiff has established a *prima facie* case under Section 211 of the DGCL and, therefore, respectfully requests the entry of an order compelling the Company to hold an annual meeting of stockholders.

In the 211 Answer “Defendant denies and/or contests the allegations that it . . . never held an annual meeting of stockholders,” but, of course, does not state when (if ever) such a meeting occurred. (See 211 Answer ¶ 22.) Nevertheless, it is undisputed that no such meeting has been held in the past 13 months. (See 211 Answer.) Although Austin admits that there are (at least) 20 stockholders of the Company (Declaratory Judgment Answer ¶ 64),¹⁴ according to Austin, the holding of an annual meeting would be meaningless because “Mr. Austin will elect individuals who support his position and efforts regarding the Company.” (211 Answer ¶ 35.) On that basis, Austin states that “[t]his Court cannot (or should not) eradicate the authority of the current Board or otherwise supplant its judgment as to whether or not it is practical or prudent for the Company to conduct an annual meeting of its stockholders” (211 Answer ¶ 37(a).) Austin’s arguments against the holding of an annual meeting are plainly without any legal basis.

¹⁴ On information and belief, Plaintiff does not agree with Austin’s assertion that there are only 20 stockholders of the Company, but instead there exists a far greater number of stockholders. For example, there are 17 stockholders of the Company alone that are members of PSI, the stockholder group of which Plaintiff is the President (Judy Aff. ¶ 4), and there are numerous stockholders who are not members of PSI. Therefore, Plaintiff has reason to believe that the total number of stockholders of Company is a far greater number.

Hoschett v. TSI Int'l Software Ltd, 683 A.2d 43, 45-46 (Del. Ch. 1996). (“[I]t is nevertheless a not unimportant feature of corporate governance that at a noticed annual meeting a form of discourse (i.e., oral reports, questions and answers and in rare instances proxy contests) among investors and between shareholders and managers is possible. The theory of the annual meeting includes the idea that a deliberative component of the meeting may occur.”) Understandably, Austin wishes to avoid discourse among stockholders and questions directed to him about his regime, but that is fair game. Moreover, the stockholders have a right to convene and be heard and to elect directors of their choice.

B. This Court Has Discretion In Setting The Meeting Date

Once a stockholder has established a *prima facie* case under Section 211, the Court retains a measure of discretion in fixing the time, place, and conditions for such a meeting. 8 *Del. C.* § 211(c) (“The Court of Chancery may issue such orders [compelling an annual meeting] as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date for determination of stockholders entitled to vote, and the form of notice of such meeting.”); *see also McKesson Corp. v. Derdiger*, 793 A.2d 385, 392 n.21 (Del. Ch. 2002) (“The discretionary nature of § 211 with regard to whether, and when, to cause a corporation to hold an annual meeting is clear from its language”); *Shay v. Morlan Int'l, Inc.*, 1983 Del. Ch. LEXIS 405, at *5 (Del. Ch.) (“[C]ontrol of the time frame and conditions for the meeting lie within the discretion of this Court.”).

Under the circumstances, Judy believes it is appropriate that the meeting be scheduled and proceed as follows:

i). Date: Judy requests that the meeting be scheduled on or about December 9, 2009.¹⁵ This will allow for timely notice, as well as permit review of documents produced in response to Judy's demand, including the stock ledger.

ii). Notice: Judy requests that the Court approve the form of Notice of Annual Meeting of Stockholders of the Company, which is attached as Exhibit A to the proposed order filed herewith.

iii). Location: Judy requests that the meeting occur in Wilmington, Delaware, at a hotel or other neutral location.¹⁶

iv). Other conditions: Judy further requests that the Court appoint a master for the meeting to ensure that it will be conducted in accordance with proper protocols and procedures.¹⁷

IV. PLAINTIFF IS ENTITLED TO A DECLARATION THAT AUSTIN IS WITHOUT AUTHORITY TO ACT AS SOLE DIRECTOR OF THE COMPANY.

A. There Exists An Actual Controversy That Is Ripe For Judicial Determination

An actual controversy exists between Plaintiff, on the one hand, and the Company and Austin, on the other, and that controversy is ripe for judicial determination.¹⁸ Austin claims

¹⁵ While Plaintiff would like an expeditious resolution to this matter, and under other circumstances would likely request that the Court order an annual meeting of stockholders be held at an earlier date, Plaintiff requests an annual meeting date of December 9, 2009, to allow sufficient time for Plaintiff to receive and review the requested books and records, to provide the stockholders with notice of the annual meeting, and to retain a Master to oversee the proceedings of the annual meeting.

¹⁶ Counsel for Judy is prepared to make arrangements for the meeting to be held at the Hotel DuPont.

¹⁷ Pursuant to Section 227 of the DGCL, the Court of Chancery is expressly empowered to appoint a master to hold any meeting ordered pursuant to Section 211, with such orders and powers as the Court deems proper. 8 *Del. C.* § 227(b). The PSI stockholder group is prepared to pay the reasonable attorney fees of a local corporate lawyer to serve as master of the Company's annual meeting.

¹⁸ Delaware's Declaratory Judgment Act enables the Delaware courts to "declare rights, status and other legal relations whether or not further relief is or could be claimed." 10 *Del. C.* § 6501. For a declaratory judgment claim to be justiciable, there must be an "actual controversy," which means the controversy

that he is able to act alone on behalf of the Board and in the Company's name. Judy disagrees and further asserts that, since 2007, the Company has been without a properly constituted Board, because the holders of the Series A Preferred Stock have the right to appoint a director and the Board must consist of no less than four (4) directors. When Judy filed his Declaratory Judgment Complaint on July 8, 2009, he alleged that he had "reason to believe that the FCC EB and Austin, negotiating on behalf of PCS, are seeking a settlement that would require the Company to, *inter alia*, (a) sell certain of the FCC Licenses in Puerto Rico and the U.S. Virgin Island . . . at substantially less than fair market value" (Declaratory Judgment Compl. ¶ 20.) It was further alleged that "[t]he Company's loss of its rights to certain of the FCC Licenses would eliminate its main source of future revenue and drastically impair the value and future earning potential of the Company." (Declaratory Judgment Compl. ¶ 21.) To remedy such harm, Plaintiff sought, among other relief, a declaration "that the Board, with Austin as its sole director, is prohibited from taking any action on behalf of the Company or the stockholders, including entering into a settlement agreement with the FCC, until a special meeting of the stockholders is called in order to elect directors." (Declaratory Judgment Compl. ¶ 47(a).)

On August 6, 2009, Plaintiff's concerns were realized, when it was publicly announced that the FCC EB and Austin, in his own name and on behalf of the Company, entered into the Settlement Agreement (Ex. E to Walsh Aff., Notice of Filing (attaching Settlement Agreement)), the effects of which, as described above, could have dire consequences for the Company. Most recently, the Chief ALJ scheduled a conference for September 9, 2009, to discuss procedures for terminating the FCC Hearing as to all parties without a hearing, and to set

must: (1) involve the rights or other legal relations of the party seeking declaratory relief; (2) involve a claim of right or other legal interest asserted against one who has an interest in contesting the claim; (3) be between parties whose interests are real and adverse; and (4) involve an issue that is ripe for judicial determination. *Energy Partners, Ltd. v. Stone Energy Corp.*, 2006 Del. Ch. LEXIS 182, at *22 (Del. Ch.) (citing *Rollins Int'l v. Int'l Hydronics Corp.*, 303 A.2d 660 (Del. 1973)).

a schedule of further pleadings, if needed. (Ex. I to Walsh Aff., Order issued September 4, 2009.) Judy understands that, during that hearing, the Chief ALJ requested the parties to reach a new settlement by September 21, 2009, or renew the proceedings, due to concerns raised regarding the Settlement Agreement. In either case, whether by settlement or full resolution of the proceedings, there is a substantial risk that certain or all of the Company's licenses will either be surrendered or revoked, without opportunity for a fully constituted Board to act on the Company's behalf in these proceedings. Accordingly, Judy seeks prompt declaratory relief (as described below) to address this situation and to obtain clarification of the Board composition for purpose of his request for an annual meeting of stockholders.

B. The Company's Certificate Of Incorporation And Delaware Law Make Clear That Austin Lacks Authority To Act On The Company's Behalf

On March 27, 2007, the Company's Certificate of Incorporation was amended to provide, at Article FOURTH, Section 2(f)(iii), that as long as greater than 100,000 shares of Series A Preferred Stock are issued and outstanding, the holders of the Series A Preferred Stock shall have the power to elect one director to the Board at any annual meeting. (Ex. A to Walsh Aff.) That section further provides that, so long as the holders of the Series A Preferred Stock have the right to elect a director, "the Board shall consist of no less than four (4) and no more than nine (9) members." (Ex. A to Walsh Aff.) There are currently greater than 100,000 shares of Series A Preferred Stock of the Company issued and outstanding (a fact that Austin does not contest), and there have been such sufficient number of shares since the amended Certificate of Incorporation was filed in 2007. (Declaratory Judgment Compl. ¶ 24; Declaratory Judgment Answer ¶ 25.)

As a consequence, since March 27, 2007, the Series A Preferred Stock have had the right to elect a director to the Board, and since that time, the Certificate of Incorporation has

mandated that the Board consist of at least four (4) directors. Austin acknowledges this fact: “In 2007, the Certificate of Incorporation was amended to provide for a BoD to be comprised of from four (4) to nine (9) members.” (Declaratory Judgment Answer ¶ 67.) Nonetheless, since 2007, the Company has not held a annual meeting of the stockholders to elect these four (4) directors.

The indisputable facts demonstrate that there exists an actual controversy that is ripe for determination by this Court. That dispute and the rights of the parties can be decided by application of the unambiguous language in the Company’s Certificate of Incorporation. Accordingly, it is appropriate for this Court to declare that: (1) Austin is currently without authority to act on behalf of the Board; and (2) for purposes of the annual meeting to be ordered by this Court, the Board shall consist of one (1) director appointed by the Series A Preferred Stockholders and three (3) appointed by the holders of the Company’s common stock.¹⁹

¹⁹ Austin’s claim that he has authority to enter into the Settlement Agreement on the Company’s behalf, without a validly elected Board, because he is an officer is without merit. Officers do not have authority to make such extraordinary business decisions (arising outside of the usual and regular course) without board approval. *See Int’l Equity Capital Growth Fund, L.P. v. Clegg*, 1997 Del. Ch. LEXIS 59, at *28 (Del. Ch.) (holding that officer’s decision to sell a substantial portion of the corporation’s assets was extraordinary and thus required board approval). Here, without Board approval, Austin entered into the Settlement Agreement, which will result in the surrender of FCC Licenses that are critical to the Company. (Ex. E to Walsh Aff., Notice of Filing (attaching Settlement Agreement).) Further, Austin is conflicted in so surrendering the Company’s assets, as he is an individual respondent in the FCC Hearing being settled.

CONCLUSION

For the reasons stated, plaintiff Michael Judy respectfully requests that this Court grant his Motion For Summary Judgment: (1) compelling the inspection of books and records under Section 220, (2) compelling an annual meeting of the stockholders under Section 211, and (3) declaring that Austin is without authority to act on behalf of the Board and that the Board of Directors should consist of one (1) director appointed by the Series A holders and three (3) directors appointed by the common stockholders.

POTTER ANDERSON & CORROON LLP

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Attorneys for Plaintiff Michael D. Judy

Dated: September 9, 2009

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2009, a copy of Brief in Support of Plaintiff's Consolidated Motion for Summary Judgment was served upon the following in the manner indicated:

BY E-MAIL & FIRST CLASS MAIL

Charles M. Austin
7545 Cortina Avenue
Atascadero, CA 93422

BY FIRST CLASS MAIL

Preferred Communication Systems, Inc.
P.O. Box 153164
Irving, TX 75015-3164

/s/ Peter J. Walsh, Jr.

Peter J. Walsh, Jr. (#2437)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MICHAEL D. JUDY)	C.A. No. 4662-CC
)	
Plaintiff,)	
)	
v.)	
)	
PREFERRED COMMUNICATION)	
SYSTEMS, INC., a Delaware corporation,)	
)	
Defendant.)	

MICHAEL D. JUDY)	C.A. No. 4720-CC
)	
Plaintiff,)	
)	
v.)	
)	
PREFERRED COMMUNICATION)	
SYSTEMS, INC., a Delaware corporation,)	
)	
Defendant.)	

MICHAEL D. JUDY)	C.A. No. 4721-CC
)	
Plaintiff,)	
)	
v.)	
)	
PREFERRED COMMUNICATION)	
SYSTEMS, INC., and CHARLES M. AUSTIN,)	
)	
Defendants.)	

**COMPENDIUM OF UNREPORTED DECISIONS
TO THE BRIEF IN SUPPORT OF PLAINTIFF'S
CONSOLIDATED MOTION FOR SUMMARY JUDGMENT**

POTTER ANDERSON & CORROON LLP
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Dated: September 9, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2009, a copy of the within document was served upon the following in the manner indicated:

BY E-MAIL & FIRST CLASS MAIL

Charles M. Austin
7545 Cortina Avenue
Atascadero, CA 93422

BY FIRST CLASS MAIL

Preferred Communication Systems, Inc.
P.O. Box 153164
Irving, TX 75015-3164

/s/ Peter J. Walsh, Jr.
Peter J. Walsh, Jr. (#2437)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MICHAEL D. JUDY)	C.A. No. 4662-CC
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Plaintiff,)	
)	
v.)	
)	
PREFERRED COMMUNICATION)	
SYSTEMS, INC., a Delaware corporation,)	
)	
Defendant.)	

MICHAEL D. JUDY)	C.A. No. 4720-CC
)	
Plaintiff,)	
)	
v.)	
)	
PREFERRED COMMUNICATION)	
SYSTEMS, INC., a Delaware corporation,)	
)	
Defendant.)	

MICHAEL D. JUDY)	C.A. No. 4721-CC
)	
Plaintiff,)	
)	
v.)	
)	
PREFERRED COMMUNICATION)	
SYSTEMS, INC., and CHARLES M. AUSTIN,)	
)	
Defendants.)	

AFFIDAVIT OF MICHAEL D. JUDY

I, Michael D. Judy, being first duly sworn according to law, do depose and say:

1. I am the stockholder of record of at least 16,666 shares of Class A Common Stock ("Class A Common Stock") of Preferred Acquisitions, Inc. (the "Company"). I first became a stockholder of the Company on or about February 10, 1999.

2. Since my original purchase of about 8,333 shares of Class A Common Stock in February 1999 (which, as a result of a two-for-one stock split, now amount to 16,666

shares of Class A Common Stock), I have made the following purchases of capital stock in the Company:

Date	Amount Invested	Shares Purchased¹
April 12, 1999	\$10,199.19	3,333 shares of Series A Preferred Stock
October 2, 2007	30,000.00	4,000 shares of Series B Preferred Stock
February 7, 2008	40.00	4,000 shares of Class B Common Stock
June 19, 2008	20,000.00	21,000 shares of Class A Common Stock
June 27, 2008	1,550.00	5,000 shares of Class A Common Stock ²
August 12, 2008	9,000.00	35,000 shares of Class A Common Stock ³

3. True and correct copies of the stock certificates issued by the Company evidencing my ownership of shares of capital stock of the Company are attached hereto as Exhibit A. I have stock certificates for all shares that I have purchased from the Company, except shares that I own as a result of a two-for-one stock split of Class A Common Stock.

4. I am the President of Preferred Spectrum Investments, LLC ("PSI"), a group of 17 stockholders of the Company formed in 2009. Among other things, PSI was formed with the goal of protecting the member stockholders' respective investments in the Company and preserving the interests of the Company generally. PSI has sought to intervene in the action

¹ The stock purchases made on June 19, 2008, June 27, 2008, and August 12, 2008 were purchases from other stockholders of the Company and not stock purchases directly from the Company itself.

² The stock certificate evidencing this purchase of 5,000 shares of Class A Common Stock has a typographical error. The face of the certificate indicates in one place that it represents 5,000 shares, and in another place indicates that it represents 21,000 shares.

³ Of these 35,000 shares of Class A Common Stock purchased on August 12, 2008, 25,000 shares were issued pursuant to a stock certificate indicating that they were shares of Class B Common Stock. By email dated August 12, 2008, however, Charles M. Austin, the purported President of the Company indicated that the 25,000 shares of Class B Common Stock issued pursuant to the stock certificate would be exchanged for an equal number of Class A Common Stock. To date, I have never received a corrected stock certificate. Austin's email is attached as Exhibit A along with my stock certificates.

before the Federal Communications Commission (the "FCC") styled *In the Matter of Pendleton C. Waugh, et al.*, E.B. Docket No. 07-14 (the "FCC Hearing"). PSI's counsel in the FCC Hearing is the law firm of Wilkinson Barker Knauer LLP, which firm does not represent Pendleton C. Waugh.

5. On May 17, 2008 and September 1, 2008, I sent letters to Charles M. Austin, the purported chairman of the board of directors and president of the Company, requesting that Austin convene an annual meeting of stockholders of the Company. True and correct copies of these letters are attached hereto as Exhibits B and C, respectively. Austin never responded to these letters, and has never convened, nor, to my knowledge, provided notice of an annual meeting of stockholders of the Company.

6. On November 11, 2008, I sent a letter to Mr. Lance Hardenburg of Hallett & Perrin, P.C., counsel to the Company, requesting the inspection of various books and records of the Company. A true and correct copy of that letter is attached hereto as Exhibit D. Reed Runnels of Hallett & Perrin, P.C., responded to my letter indicating that, as outside counsel to the Company, he did not have the authority to release the requested books and records. A true and correct copy of Mr. Runnels' letter is attached hereto as Exhibit E.

7. On November 6, 2008, I made a verbal request to Austin to inspect certain books and records of the Company. In response to my request, Austin indicated that he would "see what he could do" and promised to "work on it." To date, Austin has never allowed me to inspect the requested books and records.

8. In addition to my efforts to have Austin convene an annual meeting of stockholders, various stockholders of the Company have sent letters to Austin requesting that he convene an annual meeting of stockholders of the Company. True and correct copies of certain

of these letters are attached hereto as Exhibit F. To my knowledge, Austin has not convened or noticed any annual meeting of stockholders in response to these letters.

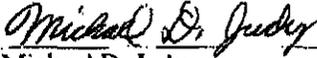
9. Attached hereto as Exhibit G is a true and correct copy of the opinion (the "Opinion"), dated October 24, 2005, prepared by Kagan Media Appraisals, as to the fair market value of the Company's portfolios of SMR licenses located in the 800-900 MHz SMR bands in Puerto Rico, the U.S. Virgin Islands, and two regions within the continental United States, as described in the Opinion.

10. To my knowledge, Austin has made no monetary investment in the Company, despite his purported ownership of 75% of the common stock of the Company.

FROM :

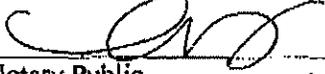
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Sep. 09 2009 04:13PM P1



Michael D. Judy
Date: 9/9/09

SWORN AND SUBSCRIBED
before me this 9th day of September, 2009.



Notary Public

My commission expires: April 10, 2013

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