

stockholders that the Company never provided them with any evidence of their investments in the Company despite repeated attempts to obtain such documentation from the Company.

27. In addition, Plaintiff and certain other stockholders never received new stock certificates evidencing their ownership of Company stock after Austin purported to reorganize the corporate structure of the Company on or about March 27, 2007.<sup>1</sup> The reorganization was purportedly accomplished through an agreement between the Company and its then current stockholders, which agreement Plaintiff approved by written consent. However, the amendment and restatement of the Certificate of Incorporation that was filed with the Delaware Secretary of State on March 27, 2007 failed to incorporate any language regarding the forward split of the Common Stock of the Company, par value \$.001 per share (the "Common Stock") or the reclassification of the Common Stock into Class A Common Stock purportedly accomplished pursuant to the reorganization. Thus, it remains unclear to Plaintiff whether the reorganization was effective under Delaware law. Austin's failure to cause the Company to provide certain stockholders evidence of their interests in the Company following the reorganization was likely motivated by Austin's own desire to ensure that this purported controlling interest in the Company could not be challenged.

28. Upon information and belief of Plaintiff, not only has Austin failed to provide investors with evidence of their investments in the Company, Austin has failed to keep an accurate and/or complete stock ledger for the Company and has manipulated the contents

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<sup>1</sup> The reorganization was purportedly done by (i) implementing a forward split of the existing shares of Common Stock on a two-for-one basis; (ii) reclassifying the existing shares of Class A Common Stock; and (iii) creating a new class of common stock designated as Class B Common Stock, par value \$.001 per share (the "Class B Common Stock"). In addition, through the plan of reorganization, the rights of the holders of the Company's existing Series A Preferred Stock, par value \$.001 per share, were purportedly modified and a new series of preferred stock, Series B Preferred Stock, par value \$.001 per share, was created.

thereof to enhance his purported control of the Company. Again, Austin's motivation in manipulating the contents of the stock ledger in this manner is likely a desire to ensure that this purported controlling interest in the Company could not be challenged.

29. Indeed, Austin has consistently refused to recognize other stockholders' interests in the Company and readily rebuffs any challenge to his purported control, despite the fact that it is unsettled, as indicated in the FCC Hearing, whether he indeed has a controlling interest in the Company. For example, Austin refused to recognize the formation of certain stockholder groups formed to protect their interests in the Company.

30. In a further effort to disenfranchise stockholders, the Company (through Austin) has refused previous stockholder requests for books and records of the Company, including a copy of the Company's stock ledger, that stockholders are entitled to inspect pursuant to the General Corporation Law of the State of Delaware (the "DGCL"). In particular, by letter dated May 29, 2009, Plaintiff made a written demand, under oath, pursuant to 8 *Del. C.* § 220 (the "Demand"), to inspect certain books and records of the Company and PAI. On June 5, 2009, the Company, through Austin, responded to the Demand by letter, by making a blanket and baseless rejection of all of Plaintiff's requests for inspection. Austin's refusal, on behalf of the Company, to provide the requested information to Plaintiff was unfounded, as Plaintiff's Demand fully complied in all respects with 8 *Del. C.* § 220 and Delaware law, and was just another instance of Austin's attempt to maintain alleged control over every aspect of the Company and to ensure that his alleged control goes unchallenged.

31. After receiving the rejection of the Demand sent by Austin on behalf of the Company, Plaintiff filed a Verified Complaint under 8 *Del. C.* § 220 in the Court of Chancery on June 12, 2009, in an action styled *Michael D. Judy v. Preferred Communication*

*Systems, Incorporated and Charles M. Austin*, Case No. 4662, seeking an order summarily requiring the Company to allow Plaintiff to inspect the books and records requested in the Demand (the "Section 220 Action"). Once again ignoring his duties as a purported officer and director of the Company, Austin has failed to even cause the Company to file an Answer to Plaintiff's Verified Complaint in the Section 220 Action, and has failed to notify Plaintiff whether he has obtained Delaware counsel on behalf of the Company with respect to this matter, despite repeated attempts by Plaintiff's counsel to discover whether he has done so. Again, Austin's unresponsiveness is clearly an attempt to keep stockholders uninformed and to maintain his purported control of the Company.

32. Plaintiff also has reason to believe that Austin has been derelict in his management of the Company through his failure to pay taxes owed by the Company. For instance, Austin has failed to cause the Company to pay its payroll taxes extending as far back as 1998. The liabilities owed by the Company resulting from these delinquent taxes is estimated to be over \$1 million, most of which is the result of penalties. In addition, Austin has failed to cause the Company to pay certain of its state and federal corporate income taxes, as well as its corporate franchise taxes owing in the State of Delaware. As of the date hereof, the corporate franchise taxes alone owed to the State of Delaware are approximately \$240,000.

33. In short, Austin has taken numerous actions, amounting to a series of breaches of fiduciary duties, to ensure that he maintains his purported control of the Company and that such purported control goes unchallenged. Maintaining his purported control is necessary to furthering his personal agenda of settling quickly with the FCC. But the proposed settlement, which would sell the Company's interests in the FCC Licenses and withdraw the Company's claims in the District Court Action, is not in the best interests of the Company and its

stockholders. As such, Austin should not be permitted to negotiate and enter into such a settlement or similar agreement on behalf of the Company.

### **FIRST CAUSE OF ACTION**

#### **(Declaration of Austin's Inability to Act on Behalf of the Company)**

34. The allegations of paragraphs 1 through 33 above are incorporated by reference as if fully set forth herein.

35. Article FOURTH, Section 2(f)(iii) of the Certificate of Incorporation provides that as long as 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. This Section further provides that so long as the holders of the Series A Preferred Stock have the right to elect a director, the Board must consist of at least four members.

36. There are currently at least 100,000 shares of Series A Preferred Stock issued and outstanding, and therefore such holders have a right to elect a director to the Board and the Board must consist of at least four members.

37. Currently, Austin is the only purported director on the Board. Because he alone does not constitute a quorum of directors as required by the DGCL for a board of directors to take valid action on behalf of the Company and its stockholders, he may not take any action on behalf of PCS and its stockholders.

38. Because Austin has taken and attempted to take action on behalf of the Company and the stockholders despite the fact that he alone does not constitute the requisite quorum of directors, a ripe and justiciable controversy exists, and Plaintiff is entitled to a declaration by the Court that the Board, as currently composed with Austin as its sole director,

lacks the authority to take action on behalf of the Company and its stockholders at least until the Company convenes a meeting of stockholders for the purpose of electing directors to the Board.

39. Plaintiff lacks an adequate remedy at law.

**SECOND CAUSE OF ACTION**

**(Breach of Fiduciary Duties)**

40. The allegations of paragraphs 1 through 39 above are incorporated by reference as if fully set forth herein.

41. Austin purports to be the sole director of the Company, as well as its current Chairman of the Board, and President.

42. Austin, as a purported officer and director of the Company, owes the Company and its stockholders (including Plaintiff) the duties of care and loyalty.

43. As discussed above, Plaintiff has reason to believe Austin has negotiated a settlement with respect to the issues raised in the FCC Hearings which serves his own self-interest. His desire to settle quickly and ability to realize a substantial personal windfall (dependent upon his purported control of the Company, which is an outstanding issue in the FCC Hearing) have led him to negotiate for a settlement involving the sale or surrender of two of the Company's largest and most important assets: certain of the FCC Licenses and the Company's claims in the District Court Action. Such a settlement or similar agreement would not be in the best interests of the Company or its stockholders, as it would greatly jeopardize the future value and earning potential of the Company. Thus, Austin's actions with respect thereto would amount to breaches of the duties of care and loyalty, and his failure to disclose such an agreement would result in a breach of the duty of disclosure owed to stockholders.

44. Moreover, because Austin's personal agenda to settle the FCC Hearing and sell certain of the FCC Licenses requires him to have control of the Company, he has breached his fiduciary duties to the stockholders of PCS in numerous ways in order to ensure that he maintains his purported control and that such purported control goes unchallenged, despite the fact that his control is uncertain and is at issue in the FCC Hearing.

45. The breaches of fiduciary duties alleged herein demonstrate that Austin has consistently refused to act in the best interests of the Company and its stockholders, and instead has acted in a self-interested manner to further his own personal agenda. A settlement or other agreement transferring certain of the FCC Licenses and withdrawing the Company's claims in the District Court Action would cause the Company and its stockholders to be irreparably harmed.

46. As such, Plaintiff is entitled to have the Company, Austin, PAI, or any affiliate thereof enjoined from entering into a settlement agreement with the FCC, or entering into any other agreement or taking any other action that would result in the sale of any of the FCC Licenses, the withdraw of the Company's claims in the District Court Action, or any other action that is not in the best interests of the Company or the stockholders, such as Plaintiff.

47. Plaintiff does not have an adequate remedy at law.

**WHEREFORE**, Plaintiff seeks the following relief:

(a) 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 stockholders is called in order to elect directors.

(b) the issuance of a temporary restraining order or preliminary injunctive relief enjoining Austin, the Company, PAI, or any affiliate thereof from entering into a settlement agreement with the FCC, or entering into any other agreement, or taking any other action that would result in the sale of any of the FCC Licenses, the withdraw of the Company's claims in the District Court Action, or any other action that is not in the best interests of the Company or the stockholders, such as Plaintiff;

(c) an award of damages in an amount appropriate to compensate Plaintiff for the damages he has sustained or will sustain due to Defendants' actions; and

(d) an award of attorneys' fees, costs, and such further relief as the Court may deem just and proper.

POTTER ANDERSON & CORROON LLP

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Attorneys for Plaintiff Michael D. Judy

Dated: July 8, 2009

923084/34360



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MICHAEL D. JUDY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. _____
	)	
PREFERRED COMMUNICATION SYSTEMS,	)	
INC., a Delaware Corporation,	)	
	)	
Defendant.	)	

**VERIFIED COMPLAINT TO COMPEL ANNUAL MEETING  
PURSUANT TO 8 DEL. C. § 211**

Plaintiff Michael D. Judy ("Plaintiff"), upon knowledge as to himself and upon information and belief as to all other matters, for his Verified Complaint against Defendant Preferred Communication Systems, Inc. ("PCS" or the "Company"), hereby alleges as follows:

**NATURE OF THE ACTION**

1. This action is brought pursuant to 8 *Del. C.* § 211 to compel defendant PCS to hold an annual meeting of stockholders for the election of directors and to consider such other matters as properly come before the meeting. Since it was incorporated on January 15, 1998, PCS has never held an annual meeting. Urgent matters now make it appropriate and necessary that the Company be forced finally to convene a meeting. Accordingly, Plaintiff seeks an order of the Court requiring PCS to hold the annual meeting on a date certain within 30 days of the entry of such order.

**PARTIES**

2. Plaintiff is the record owner of at least 16,666 shares of Class A Common Stock of the Company.

3. PCS is a corporation organized under the laws of the State of Delaware. Through the ownership of telecommunications licenses, the Company is in the early stages of development to become a full services wireless telecommunications provider in key market areas across the United States and Puerto Rico.

#### **BACKGROUND**

4. In 1999, the Company and its wholly-owned subsidiary, Preferred Acquisitions, Incorporated, a company incorporated under the laws of the Commonwealth of Puerto Rico ("PAI"), acquired 86 site-based SMR licenses located in the U.S. Virgin Islands and Puerto Rico. Thereafter, in 2000, PAI filed an application to participate in an auction conducted by the Federal Communications Commission (the "FCC"), so-called Auction No. 34, during which PAI was the successful bidder of 38 SMR economic area ("EA") licenses along the eastern seaboard, the western coast of California, as well as in Puerto and the U.S. Virgin Islands (together, the "FCC Licenses"). The FCC Licenses are potentially extremely valuable.

5. In order to maintain its continued ownership of the FCC Licenses, the Company is required to file, in a timely manner, license renewal applications and related documents with the FCC related to the existing FCC Licenses. It has come to the attention of Plaintiff that the Company has failed to make certain of the license renewal filings with the FCC, thereby jeopardizing the Company's continued interest in the FCC Licenses.

6. The current Chairman of the Board, President, and sole director of the Company is Charles M. Austin ("Austin").

7. The Company is also party to certain matters currently before the FCC Enforcement Bureau, styled *In the Matter of Pendleton C. Waugh, Charles M Austin, and Jay R. Bishop, Preferred Communication Systems, Inc., Preferred Acquisitions, Inc.*, E.B. Docket No.

07-147 (the "FCC Hearing"). The FCC Hearing relates to numerous issues, including, among other matters, (i) whether the Company and PAI committed misrepresentations and/or lacked candor in its dealings with the FCC, (ii) issues relating to certain stockholders' ownership interests in the Company, the outcome of which could affect Austin's purported control over the Company, (iii) alleged transfers of control of certain licenses held by the Company without FCC approval, and (iv) the qualifications of the Company, PAI, and their principals, to be and remain FCC licensees. On March 11, 2009, the FCC Hearing was suspended for the purpose of permitting the parties to attempt to reach a negotiated settlement. Since commencement of the FCC Hearing in 2007, the Company and Austin have not responded to inquiries by its stockholders regarding developments in the FCC Hearing.

8. The Company has failed to regularly provide the Company's stockholders with information, financial or otherwise, about the Company. Moreover, the Company has *never* held an annual meeting of stockholders, thereby denying the Company's stockholders the opportunity to contest Austin's management of the Company as its sole director and officer and preventing stockholders from obtaining information about the Company of the sort generally provided to stockholders in connection with annual meetings.

9. In addition to the failure to hold any annual meetings of stockholders, the Company (through Austin) has refused previous informal requests by certain stockholders for information regarding the performance of the Company and its business.

10. Plaintiff wishes to protect the Company, its assets and all of its stockholders by convening a meeting of stockholders for the purpose of conducting an election of directors and the transaction of any other business as may properly come before the meeting.

### **CLAIM FOR RELIEF**

11. Plaintiff repeats and realleges the allegations of paragraphs 1 through 10 of this Verified Complaint as if fully set forth herein.

12. The Company has never held an annual meeting of stockholders. The Company should be summarily ordered to hold an annual meeting of stockholders in accordance with Section 211.

13. Plaintiff has no adequate remedy at law.

**WHEREFORE**, under 8 *Del. C.* § 211(c), Plaintiff is entitled to an order compelling PCS promptly to hold an annual stockholders' meeting, at which the shares present in person or represented by proxy and entitled to vote will constitute a quorum, Plaintiff respectfully requests that this Court enter an Order as follows:

(a) Directing that the annual meeting of stockholders of PCS be held on a date certain within 30 days of the entry of such Order in the State of Delaware for the election of directors and for the transaction of any other business as may properly come before the meeting and such meeting shall not be adjourned, continued, or postponed prior to the election of directors absent further order of the Court;

(b) Directing that the record date for determination of stockholders entitled to vote at such annual meeting be as of the date hereof;

(c) Determining the total number of directors to be elected at the annual meeting of stockholders of PCS;

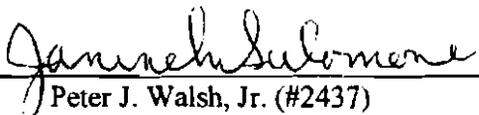
(d) Appointing a Master to oversee the annual meeting of stockholders and the election of directors with such powers as the Court deems appropriate pursuant to 8 *Del. C.* § 227(b);

(e) Providing that the shares represented at such meeting, either in person or by proxy, and entitled to vote thereof, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the certificate of incorporation or bylaws of the Company to the contrary pursuant to 8 *Del. C.* § 211(c);

(f) Awarding Plaintiff his costs and expenses, including reasonable attorneys' fees, in connection with this action; and

(g) Granting such other relief as the Court shall deem just and proper.

POTTER ANDERSON & CORROON LLP

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Attorneys for Plaintiff Michael D. Judy

Dated: July 8, 2009

917395/34360



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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

**VERIFIED COMPLAINT UNDER 8 DEL. C. § 220**

Plaintiff Michael D. Judy ("Plaintiff"), for his complaint against Defendant Preferred Communication Systems, Inc. ("Preferred" or the "Company"), alleges as follows:

**NATURE OF THE ACTION**

1. This action, brought pursuant to Section 220 of the General Corporation Law of the State of Delaware, seeks relief in the form of an order compelling the Company summarily to make available to Plaintiff for inspection and copying certain information and records of the Company as demanded by Plaintiff in a letter dated May 29, 2009.

**THE PARTIES**

2. Plaintiff is a record owner of at least 16,666 shares of Class A Common Stock, par value \$.001 per share, of the Company (the "Class A Common Stock").

3. The Company is a corporation organized under the laws of the State of Delaware. Through the ownership of telecommunications licenses, Preferred is in the early stages of development to become a full service wireless telecommunications provider in key market areas across the United States and Puerto Rico. The Company's goal is to be the leading

provider of wireless services in Puerto Rico and surrounding markets in the Caribbean and Latin America.

### **FACTUAL ALLEGATIONS**

4. In 1999, the Company and its wholly-owned subsidiary, Preferred Acquisitions, Incorporated, a company incorporated under the laws of the Commonwealth of Puerto Rico ("PAI"), acquired 86 site-based SMR licenses located in the U.S. Virgin Islands and Puerto Rico. Thereafter, in 2000, PAI filed an application to participate in an auction conducted by the Federal Communications Commission (the "FCC"), so-called Auction No. 34, during which PAI was the successful bidder of 38 SMR economic area ("EA") licenses along the eastern seaboard, the western coast of California, as well as in Puerto and the U.S. Virgin Islands (together, the "FCC Licenses"). The FCC licenses are potentially extremely valuable.

5. In order to maintain its continued ownership of the FCC Licenses, the Company is required to file, in a timely manner, license renewal applications and related documents with the FCC related to the existing FCC Licenses. It has come to the attention of Plaintiff and other stockholders of the Company that the Company has failed to make certain of the license renewal filings with the FCC, thereby jeopardizing the Company's continued interest in the FCC Licenses.

6. The current Chairman of the Board, President, and sole director of the Company is Charles M. Austin ("Austin"). Austin has been derelict in his duties as an officer and director of the Company for some time, but his recent failure to cause the Company to make the necessary filings with the FCC in order to maintain the Company's interest in the FCC Licenses has caused irreparable injury and has threatened the viability of the Company.

7. The Company is also party to certain matters currently before the FCC Enforcement Bureau, styled *In the Matter of Pendleton C. Waugh, Charles M Austin, and Jay R.*

*Bishop, Preferred Communication Systems, Inc., Preferred Acquisitions, Inc.*, E.B. Docket No. 07-147 (the "FCC Hearing"), involving, among other things, (i) whether the Company and PAI committed misrepresentations and/or lacked candor in its dealings with the FCC, (ii) alleged transfers of control of certain licenses held by the Company without FCC approval and (iii) the qualifications of the Company, PAI, and their principals, to be and remain FCC licensees. Among other things, the outcome of the FCC Hearing may affect the ownership rights of certain stockholders of the Company and may affect whether the Company and PAI may continue to hold such FCC Licenses. On March 11, 2009, the FCC Hearing was suspended while the parties seek to reach a negotiated settlement. Since commencement of the FCC Hearing in 2007, the Company has not responded to inquiries by its stockholders regarding any developments in the FCC Hearing.

8. Other than providing some basic information via the Company's website, throughout his tenure, Austin has failed to regularly provide the Company's stockholders with information, financial or otherwise, about the Company. Moreover, although the Company was incorporated in January 1998, Austin has failed to *ever* cause the holding of an annual meeting of stockholders, thereby denying the Company's stockholders the opportunity to contest Austin's management of the Company as its sole director and officer and preventing stockholders from obtaining information about the Company of the sort traditionally provided to stockholders in connection with annual meetings.

9. In addition to the failure to hold any annual meetings of stockholders, the Company (through Austin) has refused previous informal requests by certain stockholders for information regarding the performance of the Company and its business.

10. On or about March 27, 2007, Austin purported to reorganize the corporate structure of the Company by (i) implementing a forward split of the existing shares of common

stock of the Company, par value \$.001 per share (the "Common Stock"), on a two-for-one basis; (ii) reclassifying the existing shares of Common Stock into Class A Common Stock; and (iii) creating a new class of common stock designated as Class B Common Stock, par value \$.001 per share (the "Class B Common Stock"). In addition, through the plan of reorganization, the rights of the holders of the Company's existing Series A Preferred Stock, par value \$.001 per share, were purportedly modified and a new series of preferred stock, Series B Preferred Stock, par value \$.001 per share, was created. The foregoing reorganization was purportedly accomplished through an agreement between the Company and its then current stockholders, which agreement Plaintiff approved by written consent. However, the Amended and Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on March 27, 2007, failed to incorporate any language regarding the forward split of the Common Stock or the reclassification of the Common Stock into Class A Common Stock. Thus, it remains unclear to Plaintiff whether the reorganization was effective under Delaware law. Moreover, Plaintiff never received a new stock certificate evidencing his ownership of Class A Common Stock after the reorganization, thus further calling into question whether the foregoing reorganization of the Company was properly approved, documented, and effective under Delaware law.

11. By letter dated May 29, 2009, Plaintiff made a written demand, under oath, pursuant to 8 *Del. C.* § 220 (the "Demand"), to inspect certain books and records of the Company and PAI. A copy of the Demand is attached hereto as Exhibit A.

12. As set forth in the Demand, Plaintiff seeks access to the following categories of Preferred's books and records, dating from January 1, 2006, unless otherwise specified, and to make copies and extracts therefrom:

- a. The Company's stock ledger and a list of the Company's stockholders;
- b. The current Certificate of Incorporation and Bylaws of the Company and the Articles of Incorporation (or similar governing document) and Bylaws of PAI;
- c. All amendments to the Certificate of Incorporation or Bylaws of the Company and all amendments to the Articles of Incorporation (or similar governing document) or Bylaws of PAI;
- d. Any stockholder agreements, voting trusts, and/or similar agreements among stockholders and/or between the Company or PAI and any stockholders;
- e. All corporate minute books of each of the Company and PAI, including minute books relating to the boards of directors of the Company and PAI, or any committee thereof, as well as minute books relating to stockholder meetings of each of the Company and PAI;
- f. All contracts between each of the Company and PAI and their respective officers and directors, including, but not limited to, employment contracts and compensation agreements;
- g. All contracts or agreements between each of the Company and PAI and any and all consultants;
- h. All records reflecting any statement or submissions made by the Company or PAI to the FCC;
- i. Any agreement or other document that reflects, contains the terms of, or summarizes (a) compensation, benefits, or any other remuneration provided by each of the Company and PAI to any officer, director, agent, or consultant of the Company or PAI, (b) any loans made by the Company or PAI to any officer or director of the Company or PAI, and/or (c)

any investments by the Company or PAI in any outside business ventures in which any director or officer of the Company or PAI is engaged;

j. All quarterly, annual, and any other financial statements or reports of the Company and/or PAI, whether audited or not; and

k. All business plans and/or financial projections of the Company and/or PAI, including any amendments thereto.

13. The Demand stated two independent purposes for the requested inspection: (a) to assist Plaintiff in communicating with other stockholders of the Company on matters relating to their interests in the Company and (b) to assist Plaintiff in investigating possible mismanagement of the Company by the officers and directors of the Company, including, but not limited to, any mismanagement associated with a failure to protect or renew the Company's interest in the FCC Licenses.

14. Plaintiff's demand complies with the requirements of 8 *Del. C.* § 220 with respect to the form and manner of making demand for inspection of the books and records described in the Demand. Moreover, the inspection Plaintiff seeks is for proper purposes within the meaning of 8 *Del. C.* § 220, which purposes are reasonably related to Plaintiff's interests as a stockholder of Preferred. The books and records sought are narrowly tailored to serve these purposes.

15. On June 5, 2009, the Company, through Austin, responded to the Demand by letter, wherein the Company made a blanket rejection of all of Plaintiff's requests for inspection. The Company's refusal letter is attached hereto as Exhibit B. The Company's response purports to justify the rejection of the Demand on the following bases: (a) an alleged failure to comply with 8 *Del. C.* § 220 regarding the form and manner of making inspection of the requested documents; (b) the alleged overly broad and unreasonably burdensome nature of

the request; (c) Plaintiff's alleged failure to have a "proper purpose" pursuant to 8 *Del. C.* § 220; (d) the alleged fact that Plaintiff's request and purpose are adverse to the Company; (e) the alleged absence of credible basis to support the inference of wrongdoing or mismanagement; and (f) the Company's alleged beliefs that Plaintiff "is associated with another company (or companies) and other individuals (including a convicted felon or felons) who are involved in a venture that has a highly questionable business premise and that might include elements of fraud" and that Plaintiff "may be intending to exploit the shareholders of [the Company] and/or use other information obtained via his request in a manner that is detrimental to [the Company] and its shareholders."

16. The Company's refusal to provide the requested information to Plaintiff is unfounded. First, Plaintiff has fully complied in all respects with 8 *Del. C.* § 220 regarding the form and manner of making inspection of the requested documents. Second, Plaintiff has tailored his requests to serve his stated purposes for demanding inspection. Third, Plaintiff has stated a proper purpose pursuant to 8 *Del. C.* § 220. Delaware courts have long recognized that both (a) communication with other stockholders of the Company on matters relating to their interests in the Company and (b) the investigation of mismanagement constitute proper purposes for inspection of a corporation's books and records. Fourth, Plaintiff's requests and purposes are not adverse to that of the Company; Plaintiff makes his requests in his interest as a stockholder and to advance the future viability and success of the Company. Fifth, contrary to the Company's refusal letter, Plaintiff has strong evidence to support an inference of wrongdoing and mismanagement, including, but not limited to, Austin's failure to make the necessary filing with the FCC to protect the Company's interests in the FCC Licenses, the Company's failure to ever hold an annual meeting of stockholders, and the Company's numerous and repeated refusals

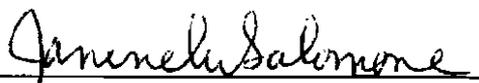
to provide stockholders the most basic information about the Company's performance and its business.

17. By reason of the foregoing, pursuant to 8 *Del. C.* § 220, Plaintiff is entitled to the inspection sought in the Demand and has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order as follows:

- (a) summarily requiring Preferred to permit Plaintiff and/or its agents to inspect and copy the materials requested in the Demand;
- (b) awarding Plaintiff its costs and expenses, including reasonable attorneys' fees, in connection with this action; and
- (c) granting such other relief as the Court shall deem appropriate.

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Dated: June 12, 2009

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EFiled: Jul 27 2009 12:40PM  
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Case No. Multi-case



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July 27, 2009

**BY E-FILE**

The Honorable William B. Chandler III  
Chancellor  
Court of Chancery  
34 The Circle  
Georgetown, Delaware 19947

**Re: *Michael D. Judy v. Preferred Communication Systems, Inc.,*  
C.A. No. 4662-CC;  
*Michael D. Judy v. Preferred Communication Systems, Inc.,*  
C. A. No. 4720-CC; and  
*Michael D. Judy v. Preferred Communication Systems, Inc. and Charles M.*  
*Austin, C.A. No. 4721-CC***

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Dear Chancellor Chandler:

I write to request a hearing date in the referenced matters, which we have moved to consolidate for purposes of such a hearing.

On behalf of Michael D. Judy, a stockholder of Preferred Communications Systems, Inc. (the "Company"), we have filed three (3) separate proceedings:

1. **The Section 220 Complaint (C.A. 4662-CC)**: On June 12, 2009, Mr. Judy filed an action pursuant to Section 220 of the General Corporation Law (the "GCL") seeking the inspection of certain books and records of the Company, as demanded by letter dated May 29, 2009. The Company and/or its wholly-owned subsidiary own telecommunication licenses that are currently the subject of proceedings before the Federal Communications Commission ("FCC"). As alleged in the Section 220 Complaint, an individual by the name of Charles M. Austin ("Austin") claims to be the sole director of the Company and purports to speak on behalf of the Company in connection with ongoing proceedings before the FCC Enforcement Bureau. (Compl. ¶ 6-7). Notably, Mr. Austin is also a participant in the FCC proceedings in his individual capacity. Mr. Austin has generally refused to provide information to the Company's stockholders about its business and affairs, including what has transpired before the FCC.

After filing the Section 220 Complaint, we attempted to impress upon Mr. Austin the need to promptly retain counsel for the Company. (See Exhibit A hereto). On July 18, 2009, Mr. Austin served (but did not file) an Answer to the Section 220 Complaint. (See Exhibit B hereto). It appears that the Company is not represented by counsel; rather, Mr. Austin signed the Answer as President of the Company and thus appears to be acting *pro se* on behalf of the Company. In the Company's Answer, Mr. Austin essentially denies that the relief sought is appropriate, and asserts various defenses. (See *id.*). As the Company has now appeared (albeit without counsel) and has joined issue, we believe it is appropriate to schedule a hearing as described further below.

2. The Section 211 Action (C.A. No. 4720-CC). On July 8, 2009, Mr. Judy filed a Complaint pursuant to Section 211 of the GCL to compel the Company to hold an annual meeting for the election of directors and to consider such other matters as properly come before the meeting. As alleged in that Complaint, since it was incorporated in 1999, the Company has never held an annual meeting of stockholders. To date, neither the Company nor Mr. Austin has responded to the Section 211 Complaint. Nevertheless, given the nature of and relief sought in the Section 211 Complaint, we believe it is appropriate to schedule a hearing on this application as well.

3. The Action for Declaratory and Injunctive Relief (C.A. No. 4721-CC).

Finally, on July 8, 2009, we caused to be filed on behalf of Mr. Judy a Complaint against the Company and Mr. Austin seeking declaratory and injunctive relief. That Complaint contains two causes of action; the first seeks declaratory relief as to Mr. Austin's authority to act on behalf of the Company, and the second alleges a claim for breach of fiduciary duty. We seek to be heard only on the first cause of action; the breach of fiduciary duty claim can await further developments.

The first cause of action is predicated upon the Company's Certificate of Incorporation, which contains a provision (Article FOURTH) that allows the holders of the Company's Series A Preferred Stock (the "Series A Preferred Stock") to appoint one director to the board at any annual meeting, so long as greater than 100,000 shares of the Series A Preferred Stock are issued and outstanding (as appears to be the case). Article FOURTH 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 4 and no more than 9 members. Currently, however, the board consists of a single member, Mr. Austin, who purports to act as the board notwithstanding the rights of the holders of the Series A Preferred Stock to appoint a director and the absence of a quorum of directors. See 8 *Del. C.* § 141(b). Since we are seeking to compel the holding of the Company's first ever annual meeting, it only makes sense that the issues surrounding the composition and authority of the board be resolved *prior* to such meeting. Accordingly, we respectfully request the opportunity to be heard on this issue as well, in connection with the multi-action hearing we are proposing herein.

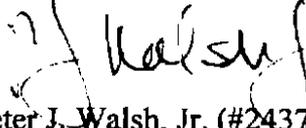
As noted, it appears that the Company and Mr. Austin are not represented by counsel, and thus we are sensitive to the consequent limitations they may be under in defending

The Honorable William B. Chandler, III  
July 27, 2009  
Page 3

these claims. Accordingly, if acceptable to the Court, I would propose that the Court provide us with 2 to 3 proposed hearing dates in mid-to-late September (if available), which we would convey to Mr. Austin and invite his input. It is our expectation that the hearing would take the form of argument on a paper record, but that of course is subject in part to the defendants' position (which we will seek to determine). To the extent we have fixed a hearing date, I would commit on behalf of Mr. Judy to submit his brief and any affidavit(s) in support of his claims no less than 20 days prior to the hearing date. To the extent Mr. Austin wishes to submit papers, he could do so at any time before and/or after our submission and up to 3 business days prior to the hearing.

If this is acceptable to the Court, we will await word from Chambers as to potential dates for a hearing. I am of course available at the Court's convenience to respond to any questions the Court may have.

Respectfully,



Peter J. Walsh, Jr. (#2437)

cc: Register in Chancery (via e-File)  
Michael Judy (via E-mail)  
Charles M. Austin (via E-mail)

PAC 926124v2/34360

EFiled: Jul 27 2009 12:40PM EDT  
Transaction ID 26293136  
Case No. Multi-case



# EXHIBIT A

**Salomone, Janine M.**

**From:** Salomone, Janine M.  
**Sent:** Friday, June 19, 2009 4:31 PM  
**To:** 'precomsys@aol.com'  
**Cc:** 'Mike Judy'; 'Carole Downs'; Walsh, Jr. Peter J.  
**Subject:** FW: Preferred Communication Systems, Inc. complaint w/supporting documents  
**Attachments:** Verification.pdf; CIS.pdf; Complaint.pdf; Exs A-B to Complaint.pdf; Issuance of Summons.pdf; Summons.pdf

Dear Mr. Austin,

Attached please find a courtesy copies of the complaint, summons and related documents which have been filed with the Court of Chancery with respect to Preferred Communication Systems, Inc. and served upon the Company's registered agent. Please be advised that we will be requesting a summary hearing with the Court with respect to the foregoing and ask that you advise us of the name of your Delaware counsel as soon as possible.

Regards,  
Janine M. Salomone, Esq.  
Potter Anderson & Corroon LLP  
Hercules Plaza  
1313 North Market Street, 6th Floor  
P.O. Box 951  
Wilmington, DE 19899  
(302) 984-6128 (phone)  
(302) 658-1192 (main office fax)  
(302) 778-6128 (direct fax)  
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<http://www.potteranderson.com>

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7/23/2009