

Salomone, Janine M.

From: Smith, Bernadette L.
Sent: Monday, June 29, 2009 3:20 PM
To: 'precomsys@aol.com'
Cc: Walsh, Jr. Peter J.; Salomone, Janine M.
Subject: Michael D. Judy v. Preferred Communications Systems, Inc., C.A. No. 4662-CC
Attachments: Digital_.pdf

THIS EMAIL IS BEING SENT ON BEHALF OF PETER J. WALSH, JR.

Dear Mr. Austin:

Please see the attached.

	Bernadette L. Smith Secretary to Peter J. Walsh, Jr. Eve H. Ormerod
	1313 North Market Street P.O. Box 951 Wilmington, DE 19899-0951 302 984 6212 Direct Dial 302 658 1192 Fax bsmith@potteranderson.com www.potteranderson.com

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June 29, 2009

**By Email: precomsys@aol.com
and U.S. First Class Mail**

Charles M. Austin, President
Preferred Communication Systems, Inc.
P.O. Box 153164
Irving, Texas 75015-3164

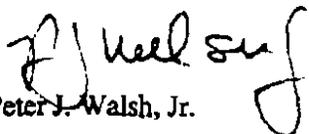
Re: *Michael D. Judy v. Preferred Communication Systems, Inc.,
C.A. No. 4662-CC*

Dear Mr. Austin,

As you know, a complaint for books and records of Preferred Communications Systems, Inc. was filed on June 12, 2009 pursuant to section 220 of the Delaware General Corporation Law. At that time, you were notified of the filing and we requested that you advise us promptly of who your Delaware counsel was. To date, we have not heard from anyone on your behalf. Please be advised that proceedings of this nature can proceed very quickly in the Court of Chancery and that your failure to appear could jeopardize your and the Company's rights. On behalf of plaintiff, we intend to approach the Court later this week and ask for a hearing date in August at which this matter will be finally decided, whether by way of argument or a trial. We do not wish to proceed *ex parte*, but will have no choice but to do so unless you retain counsel.

I can be reached at the address and number set forth above and, in my absence, my partner, Janine Salomone, is available.

Sincerely yours,


Peter J. Walsh, Jr.

PJW/bls

922857/34360

EXHIBIT B

available to the Plaintiff for inspection and copying certain information and records of the Company as demanded by Plaintiff in a letter dated May 29, 2009. The Plaintiff's "demand letter" is included as Exhibit A to the Complaint; the Company's reply (which was a denial) is included as Exhibit B to the Complaint.

GENERAL DENIAL and DEFENSE(S)

(3) The Company denies and contests the Plaintiff's request, demand and complaint and will use as its defense(s) the following: (a) the Plaintiff has not complied with the Section 220 of the General Corporation Law of the State of Delaware regarding the form and manner of making inspection of such documents, (b) the request is overly broad and unreasonably burdensome, (c) Mr. Judy does not have a "proper purpose" pursuant to Section 220, (d) Mr. Judy's request/purpose is adverse to that of the Company, (e) there is no credible basis to support the inference of wrongdoing or mismanagement, and (f) the Company has reason to believe that Mr. Judy is associated with another company (or companies) and other individuals (including a convicted a felon or felons) who are involved in a venture that has a highly questionable business premise and that might include elements of fraud. The Company has reason to believe that Mr. Judy may be intending to exploit the shareholders of Preferred and/or use other information obtained via his request in a manner that is detrimental to Preferred and its shareholders.

SPECIFIC DENIALS TO PLAINTIFF'S ALLEGED FACTUAL ALLEGATIONS

(4) Regarding Defendant's "Factual Allegation" in paragraph # 4 of the Complaint, the Plaintiff does not contest the general description of the Company's history.

(5) Regarding Defendant's "Factual Allegation" in paragraph # 5 of the Complaint, the Plaintiff denies that any of its actions (or inactions) have had any material impact on, or otherwise jeopardized the Company's overall FCC License position.

(6) Regarding Defendant's "Factual Allegation" in paragraph # 6 of the Complaint, the Plaintiff denies that "Austin" (Charles M. Austin, Chairman of the Board, President, and sole director of the Company) has been "derelict in his duties." Additionally, the Plaintiff denies that any of Austin's actions (or inactions) regarding FCC License filings have "caused irreparable injury" and "threatened the viability of the Company." The Defendant believes the Plaintiff's statements in this allegation are so extreme, and without any possible support, that they are "**false and misleading.**"

(7) Regarding Defendant's "Factual Allegation" in paragraph # 7 of the Complaint, the Plaintiff does not contest the general description of the "FCC Hearing," except as for the following points. The Plaintiff states –" ... *the outcome of the FCC Hearing may affect the ownership rights of certain stockholders of the Company... ..*" This is a "**false and misleading statement,**" since the only stockholder ownership rights that could have

been affected were those of Mr. Austin. The ownership rights of no other stockholder were ever at issue to be affected. Additionally, the Company denies the Plaintiff's allegation that it"*has not responded to inquiries by its stockholders regarding any developments in the FCC Hearing.*" To the contrary, the Company made all appropriate disclosures. At times, the disclosures were necessarily limited due to the fact that the FCC Hearing was a legal proceeding and the Company's attorneys and the FCC both advised the Company that it could not openly discuss the case.

(8) Additionally regarding Defendant's "Factual Allegation" in paragraph # 7 of the Complaint, the Plaintiff accurately notes that the *FCC Hearing* was suspended (on March 11, 2009) while the parties seek to reach a negotiated settlement. The Defendant and others (including Mr. Pendleton C. Waugh) were named as parties in this proceeding. Procedurally, it is preferred that all parties sign on to the settlement agreement. All parties, except Waugh, are prepared to settle. The terms for the Defendant are exceedingly favorable, in general: (1) there is no finding of any wrongdoing and (2) impediments affecting licenses will be removed. Thus, the Company will get its long awaited construction waivers and license reinstatements; enabling it to proceed forward. Waugh's failure to reach a settlement with the FCC, and its procedural complications, could result in the dissolution of the Defendant's ability to settle with the FCC.

(9) Regarding Defendant's "Factual Allegations" in paragraph # 8 and # 9 of the Complaint, the Plaintiff denies that its stockholders have been uninformed. The limited

number of shareholders, combined with its having no operations to report on, has enabled the Company to provide all necessary information to shareholders using a combination of formal and informal modes of communication.

(10) Regarding Defendant's "Factual Allegations" in paragraph # 10 of the Complaint, the Plaintiff denies that the Company's reorganization of its capital structure was in anyway flawed.

(11) Regarding Defendant's "Factual Allegations" in paragraph # 11 of the Complaint, the Plaintiff acknowledges that the Defendant's "Demand" letter dated May 29, 2009, is attached to the Defendant's Complaint as Exhibit A. However, the Defendant contests that the "Demand" letter was "*pursuant to 8 Del. Sec. 220*" because it failed to comply with the requisite provisions of that section, for reasons stated in paragraph 3 above and elsewhere stated in this Answer.

(12) Regarding Defendant's "Factual Allegations" in paragraph # 12 of the Complaint, the Plaintiff acknowledges that categories of Preferred's books and records (items "a" through "k" on pages 4 to 6) appear to be the same as those included the Defendant's "Demand" letter, attached to the Defendant's Complaint as Exhibit A. However, the Defendant contests that the Plaintiff is entitled to an inspection of these books and records for reasons stated in paragraph 3 above and elsewhere stated in this Answer.

(13) Regarding Defendant's "Factual Allegations" in paragraph # 13 of the Complaint, the Plaintiff acknowledges that said paragraph (describing the Defendant's purported purposes for the requested inspection) appears to be the same as those included the Defendant's "Demand" letter, attached to the Defendant's Complaint as Exhibit A. However, the Plaintiff (in its reply letter, attached to the Defendant's Complaint as Exhibit B) hereby, contends that the Defendant has not stated, and does not have a "proper purpose" pursuant to Sec. 220 to inspect the extensive list of requested items. Merely "communicating with other stockholders" does not qualify. Furthermore, there has been no mismanagement, thus no "credible basis" exists, nor can the Defendant show any "credible basis". Additionally, on information and belief, the Defendant contends the Plaintiff is acting in consort with other individuals (including but not limited to, Pendleton Waugh and Carole Downs) to surreptitiously gain control of the Company and thereafter manipulate circumstances, to their personal benefit, which will be to the detriment of the Company and its other shareholders.

CORPORATE CIRCUMSTANCES/ DEFENSES RE: DEFENDANT PREFERRED

(14) A full discussion of the Companies history is beyond the scope of this filing; however, a brief summation is applicable. As the Plaintiff himself describes in paragraph #3 of the Complaint – "*Preferred is in the early stages of development to become a full service wireless telecommunications provider....*" As a result of the FCC's nationwide "800 MHz Rebanding Proceeding" (WT 02-55), which began in 2002, the Company has

been effectively precluded from developing (i.e. constructing and launching commercial operations) its licenses. The “rebanding proceeding” remains active and is still affecting the Company’s ability to construct any operating wireless systems. Specifically, the FCC’s “ rebanding proceeding” has generated new rules and orders, which mandate the relocation of all licensees (including those of the Company) in the 800 MHz band pursuant to a “Rebanding Plan” adopted by the FCC in 2004. The “Rebanding Plan” was to have been completed in June 2008; the FCC has extended it into 2010. To date, the Company has not received its new channel (frequency) assignments from the FCC and most likely won’t for the foreseeable future. Additionally, the FCC Hearing (discussed in Plaintiff’s Complaint, see paragraph #7 and 8) commenced in 2007 and still ongoing, has been a further impediment. **In summation, the Company, through no fault of its own, has been in a holding pattern unable to predict when it can begin to construct any commercial operating facilities. Consequently, there has been limited information to disseminate to its shareholders and creditors.**

(15) As is quite common for a small company, such as the Defendant, it has a **single individual who was the “founder” of the company and who individually holds the vast majority of the stock.** Prior to 2005, the Company had only a handful of common stock shareholders; thereafter the number of shareholders has increased by a limited number. The Defendant’s “founder” is an individual – Charles M. Austin (“Austin”). Austin holds approximately of seventy-five percent (75%) of the voting stock of the Company. Another individual holds approximately twenty percent (20%). Thus, two

individuals hold approximately ninety-five (95%) of the Company's voting stock. In contrast, Judy's (Plaintiff) **claimed holdings are less than one percent (<1%)**. Consequently, the Plaintiff (Judy) and all other minority shareholders are well aware of their limited position with the Company, thus (by law) their involvement in the Company is exceedingly limited. Notwithstanding these irrefutable facts, Mr. Judy (in consort with his co-conspirators, **Pendleton Waugh** and **Carole Downs**) is on a mission to subversively gain control of the Company and thereafter manipulate circumstances, to their personal benefit, which will be to the detriment of the Company and its other shareholders.

"WAUGH-JUDY" CONSPIRACY / DEFENSES RE: DEFENDANT PREFERRED

(16) The Plaintiff's pursuit of the requested records inspection is not for the stated reasons. Instead, the Plaintiff is part of a **multifaceted conspiracy** to subversively obtain control the Company. A comprehensive discussion of this conspiracy, supplemented by documentation, is beyond the scope of this filing. A thorough and complete presentation will be presented to this Court (via briefs and evidence at trial) after the discovery process is complete, which will include but not be limited to depositions of all relevant parties.

(17) **On information and belief, the Defendant believes that upon gaining control, the Conspirators intend to enter into a series of self-serving actions and**

transactions that will be detrimental to the Company and its creditors and shareholders. One of these actions will be to approve or otherwise effectuate an **exorbitant compensation package to Pendleton Waugh,** which has previously been **rejected by the Company and is at issue with the FCC.** Another will be to obtain a substantial equity position in the Company by creating a sweetheart deal using the guise of a “loan” to obtain heavily discounted “bargain” stock warrants.

(18) The Plaintiff (Judy) is part of a **multifaceted conspiracy** focused on executing a master plan that is intended to exploit the circumstances of the Defendant, which will cause damage to the Defendant and its shareholders and creditors. Furthermore, Judy and his co-conspirators have, and will, endeavor to manipulate this Court and the FCC into mandating and/or facilitating an outcome (regarding the Defendant) to which they would not otherwise be entitled.

(19) The Plaintiff (Judy) is in the middle of the conspiracy and is executing “his” part of the plan; however, the Defendant has reason to believe the “mastermind” of the conspiracy is a individual named – Pendleton C. Waugh (“Waugh”). **The following will describe Waugh’s involvement with the Defendant (and Plaintiff) that has evolved into a conspiracy.**

(20) Waugh was a consultant to the Company (Defendant), with his compensation premised on a value-added basis. Waugh represented himself as an expert in matters

related to business, FCC regulations, FCC licensing, etc. Furthermore, he convinced the Company that, with his involvement, and by following his “expert” advice, the Company would realize enhanced value of such a magnitude as to justify his receiving a substantial stock position in the Defendant. Unfortunately, reality was quite the opposite. In hindsight, his involvement and advice has been exceedingly costly. The Company’s position is that amount of compensation Waugh claims is due in the form of cash and stock, is simply unjustifiable.

(21) The matter of the amount (and form) of further compensation, if any, to Waugh for his services as a consultant is an exceedingly contentious matter. Waugh summarized his current relationship with the Defendant (Preferred) quite clearly in his deposition, dated January 26, 2009, in the FCC Enforcement Bureau (EB) action against Preferred, et al. In his deposition Waugh described the “possibility of litigation” (with Preferred) regarding his compensation as “.....a highly likely probability of litigation.” and further stated that litigation was a “virtual certainty.”

(22) Separate from the dispute between the Defendant and Waugh regarding him ever being a shareholder in Preferred, the Federal Communications Commission (FCC) has a serious problem with Waugh being an FCC licensee. This extends to his participating in the management of an FCC licensee or owning stock in any FCC licensee.

(23) As the Plaintiff notes in his Complaint, Preferred (aka PCSI) and Waugh and others were named in an Enforcement Bureau Action, E.B. Docket No. 07-147 (“EB Action” or “FCC Hearing”). The Plaintiff conveniently ignores the circumstances that precipitated the EB Action. Furthermore, many who have followed the proceeding are of the opinion that if wasn’t for Waugh, the Company wouldn’t have been drawn into the proceeding. This conclusion is abundantly clear by simply looking at the FCC’s “Order to Show Cause...” filing (document # 07-125 released on July 20, 2007) that launched the FCC Hearing (Docket # 07-147). The following is a direct quote from the FCC’s description of their actions: ... the Commission’s Enforcement Bureau (“Bureau”) received information suggesting that PCSI may have transferred control of all of its licenses to Waugh without prior Commission authorization. The Bureau immediately commenced an investigation...(see paragraph 16 of said document).

(24) The FCC’s “Order to Show Cause...” filing (document # 07-125 released on July 20, 2007, at page 3-5) describes Waugh’s background as follows:

- a) In 1990, Waugh, an attorney who was licensed to practice law in Texas, formed Express Communications, Inc. (“Express”) and several affiliated entities, to acquire wireless licenses.¹ Waugh became president and was a majority owner of Express. In 1993, Waugh came under investigation by federal authorities for activities relating to his involvement in Express. As a result of that investigation, Waugh was indicted in 1994 in the United States District Court for the Northern District of Texas on one count of conspiracy to structure financial transactions to evade securities and banking reporting requirements and one count of money laundering, both felonies. Waugh ultimately pled guilty to the first count, and the second count was dismissed.²

¹ See *U.S. v. Waugh*, Indictment, Case No. 3:94-CR-160-T (N.D. Tex. May 11, 1994).

² See *U.S. v. Waugh*, Plea Agreement, Case No. 3:94-CR-160-T (N.D. Tex. July 13, 1994).

In 1995, as a result of the plea agreement, **Waugh was sentenced to 21 months in federal prison**, followed by three years of probation, and payment of \$20,000 in fines.³ As part of his plea agreement, Waugh agreed not to violate any federal, state, or local laws, and specifically regulations or orders issued by the United States Securities and Exchange Commission (“SEC”) or any equivalent state agency. He also agreed to divest himself, without compensation, of any ownership interests in Express and its affiliated entities.

- b) **Thereafter, in 1997**, the United States District Court for the District of Columbia granted the **SEC summary judgment against Waugh** for violations of various securities regulations stemming from his involvement in Express.⁴ **Waugh was ordered to pay the federal government nearly \$13 million of illegally acquired funds**. He also was permanently enjoined from violating various securities laws.⁵
- c) **In 1999, Waugh was convicted of securities fraud**, a felony, in a case brought by the State of Texas, arising from his failure, in 1993, to disclose to a potential investor that he was under investigation by federal authorities for activities relating to his involvement in Express.⁶ **Waugh was sentenced to four years in state prison**, all of which were suspended pending successful completion of probation.⁷ He also was ordered to pay \$72,000 in restitution and to complete 500 hours of community service.⁸
- d) **Later in 1999**, Waugh was determined to have **violated the terms of his parole** from federal prison and his probation on his state conviction by traveling to Puerto Rico to engage in activities relating to cellular telephone securities.⁹ As a result, **Waugh was sentenced to six additional months in federal prison and four years in state prison**.¹⁰

³ See *U.S. v. Waugh*, Judgment, Case No. 3:94-CR-160-T (N.D. Tex. Jan. 25, 1995).

⁴ See *Securities and Exchange Commission v. Express Communications, Inc.*, Complaint by Securities and Exchange Commission, Case No. 95-CV-2268 (D.D.C. Dec. 13, 1995).

⁵ See *Securities and Exchange Commission v. Express Communications, Inc.*, Revised Final Judgment of Permanent Injunction and Other Relief Against Defendant Pendleton C. Waugh, Case No. 95-CV-2268 (D.D.C. Mar. 7, 1997).

⁶ See *Texas v. Waugh*, Judicial Confession and Consent to Stipulation of Evidence, Case No. F-9703517 (Crim. Dist. Ct. Dallas, TX Mar. 5, 1999).

⁷ See *Texas v. Waugh*, Judgment, Case No. F-9703517 (Crim. Dist. Ct. Dallas, TX May 17, 1999).

⁸ See *Texas v. Waugh*, Judgment, Case No. F-9703517 (Crim. Dist. Ct. Dallas, TX May 17, 1999).

⁹ See *U.S. v. Waugh*, Judgment in a Criminal Case (For Revocation of Probation or Supervised Release), Case No. 3:94-CR-160-T (N.D. Tex. N.D. Tex. July 9, 1999).

¹⁰ See *U.S. v. Waugh*, Order Granting in Part and Denying in Part Defendant’s Motion to for Authorization to Travel, Case No. 3:94-CR-160-T (N.D. Tex. N.D. Tex. Aug. 26, 1996). In particular, the court noted

(25) The above excerpts from the FCC's "Order to Show Cause..." filing (document # 07-125 released on July 20, 2007) can certainly be seen as an indication of the FCC's opinion of Mr. Waugh. Additionally, Waugh has been disbarred by the Securities and Exchange Commission (SEC) and by the State of Texas and the State of Georgia.

(26) At the very center of the Judy/Waugh conspiracy is Preferred's (Defendant) denial of any further compensation (in particular in the form of stock) owed to Waugh, in contrast to Waugh's claims. Instead of pursuing the matter as a contractual dispute between a "consultant" and a company (by negotiating with the company or taking it to civil court), Waugh has chosen to take a more disturbing path. Waugh is delaying and not cooperating at all in a settlement of the FCC Hearing, and is arguably using his position to hold the FCC and Preferred hostage (i.e. the FCC and Preferred have been prepared to "settle" for many weeks, see par. 8 above). At the same time Waugh is thumbing his nose at the FCC, he has convinced Judy (Plaintiff) to do his bidding in the Chancery Court. The Waugh/Judy "plan" is to somehow remove Mr. Austin as majority shareholder, CEO and director, in order to affirm Waugh's disputed compensation package. Additionally, they plan on other self-serving actions.

that "[t]he probation office has informed the Court that Waugh may be engaged in calling and sending information to potential investors to solicit their money, in violation of a previous order of this Court." *See id. See also Texas v. Waugh, Judgment Revoking Community Supervision, Case No. F-9703517 (Crim. Dist. Ct. Dallas, TX Jan. 11, 2001).*

WAUGH - JUDY "CONSPIRACY" CONNECTION

(27) In any "*good old fashioned*" conspiracy, one can usually find a fair amount of back-ally wheeling and dealing. There is no shortage of that here. After Waugh's termination from the Defendant (Preferred) in 2008, he immediately began concocting how to: (a) exploit FCC licensing to his personal benefit, and (b) get control of Preferred. It wasn't long before he hatched an interconnected scheme that would accomplish both. A comprehensive discussion of Waugh's scheme, supplemented by documentation, is beyond the scope of this filing; however, a brief overview is appropriate.

(28) The first part of Waugh's scheme involves a company called "Smartcomm LLC" (or some form of affiliate), which apparently Waugh owns and co-manages with an individual named Carole Downs. In this one, Waugh is using a scheme from the early and mid-nineties that is often referred to as an FCC license "application mill."

(29) In years past the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC) and other **governmental agencies worked cooperatively to close the so-called application mills**. The following is from an FCC filing (*Memorandum Opinion and Order*, paragraph 10, Released: July 31, 1998 as document # 98-167) that included the following description:

On January 11, 1994, the Federal Trade Commission (FTC) filed a Complaint for a permanent injunction and other relief against a number of **application preparation companies** in the United States District Court, Southern District of New York (U.S. District Court).¹¹ Prior to the FTC action, the application preparation companies used television commercials and telemarketing solicitations to promote SMR licenses as "investment opportunities" for individuals with little or no experience in the communications industry.

In a typical solicitation, the company representative would tout the potential value of SMR licenses, representing that, once obtained, the licenses could be resold for a profit. The representative would then **offer to prepare license applications for a substantial fee, usually \$7,000 per application.** Typically, the company representative did not disclose obligations and restrictions that the Commission's rules imposed on SMR licensees.

On January 14, 1994, the U.S. District Court issued a preliminary injunction freezing the assets of the application preparation companies, and appointed Goodman as the Receiver (Receiver) for four of these companies (Receivership Companies).¹²

(30) A clear understanding of the FCC's opinion of "application mills" is reflected in the following comments of Reed E. Hundt (then Chairman of the FCC, see NEWSReport No. DC 95-85, Released June 15, 1995)

As numerous newspaper articles and federal and state investigations have demonstrated, the Commission's wireless cable lotteries have done **"more to enrich con artists** than to grant ordinary citizens entree into the cable business." A. Crenshaw, "No Jackpot in This Lottery," Washington Post, Apr. 19, 1992.

The mechanism for the con is the "application mill." The Commission's MDS lotteries have led to an **"explosion in abusive application mills that seek to reel in unwary small investors with the lure of the latest in high tech and the promises of quick riches."** Investor Alert, p. 1.

¹¹ *FTC v. Metropolitan Communications Corp., et al.*, No. 93 CIV 0142 (JFK) (S.D.N.Y., filed January 11, 1994) (*FTC v. Metropolitan Communications Corp.*).

¹² Goodman was appointed Receiver for Metropolitan Communications Corp., Nationwide Digital Data Corp., Columbia Communications Services, and Stephens Sinclair, Ltd. (Receivership Companies). *FTC v. Metropolitan Communications Corp.* No. 93 CIV 0142 (JFK) (S.D.N.Y., filed January 11, 1994) at 15.

(31) Waugh's first scheme involves a company called "Smartcomm LLC" (or an affiliate – Smartcomm License Services, LLC), which is charging between sixteen thousand dollars (\$16,000) and thirty thousand dollars (\$30,000) to prepare FCC license applications that virtually anyone could fill-out and file with and FCC fee of a few hundred dollars.

(32) **The above comparison of Smartcomm's current activities to past "application mills" that were deemed fraudulent is obvious.** A full analysis of the economics and legalities of Waugh's scheme is beyond the scope of this filing; however, a few brief further comments are appropriate.

(33) The "applications" are for a tiny amount of spectrum in the 800 MHz band. These are for a group of 4 or 5 channels with significant operating restrictions. Each application is for approximately one-quarter of a megahertz of spectrum. By comparison, most major cell phone operations have minimum of 25 MHz in all markets with an overall average of 60 MHz. Thus Waugh's "applications" are in the range of one-half of one percent to one percent of the spectrum used in cell phone operations. Any other application has very limited revenue generating potential or value.

(34) The second part of Waugh's plans is much more complicated and somewhat diabolical as its focus is on how he gains control of a company (the Defendant) that fired him for incompetence. Because of his problems with the FCC and other reasons, he

could not pursue his goal directly. Instead, he needed to create a situation whereby someone else (person and/or entity) would carryout portions of his plan. Thus enters Michael Judy (the Plaintiff) as a co-conspirator.

(35) Waugh needed to have co-conspirators in order to effectuate his plan; but they also serve a second purpose. Additionally, Waugh is attempting to insulate himself from certain legal risks (civil and criminal) by having Judy be the front man for certain components of Waugh's master plan. Waugh's plan puts Judy (and others) front and center for certain legal risks (civil and criminal).

(36) Waugh's master plan involves multiple steps and multiple persons and/or entities. **Step One of the Master Plan** was to generate discretionary funds. He does this by having Smartcomm LLC operating an "application mill" as described above.

(37) **Step Two of the Master Plan** was to conceptually devise a structure/entity that would serve as a vehicle raise funds and participate in the takeover of Preferred (Defendant). To that end, Waugh "created" (conceptually) an entity known as "Preferred Spectrum Investments, LLC" (hereinafter referred to as "PSI LLC"). Despite the use of a name similar to that of the Defendant (Preferred Communication Systems, Inc.) there is no connection between the two. It appears the name was selected in order to help convince investors that there was a connection, thus enabling Waugh and Judy to tie in Preferred's financial prospects into those of PSI LLC.

(38) **Step Three of the Master Plan** was to find someone that Waugh could manipulate to formally create and then serve as the Manager/Principal of PSI LLC; this person was Mr. Michael Judy (the Plaintiff).

(39) **Step Four of the Master Plan** was to have PSI LLC (i.e. Judy at the behest of Waugh) raise a limited amount (\$150,000) of funds from “friendly” investors to be used to launch an extended fund raising effort to provide the \$3 million necessary to effectuate the master plan. Of this amount, \$1,197,500 would be used to acquire certain FCC licenses at an inflated price from Smartcomm (Waugh’s company) that are a byproduct of the “application mill” described above. These would include 9 channels (less than ½ of a megahertz) in 25 markets. (*See comments below, in paragraph 40 to 42, regarding PSI LLC, Waugh, and Judy’s false and misleading statements on this element*). **Secondly**, approximately \$1.2 million will be used to obtain a substantial equity position in the Defendant (Preferred) by creating a sweetheart deal using the guise of a “loan” to obtain heavily discounted “bargain” stock warrants.

(40) The materials that are being circulated by Smartcomm, Waugh and Judy to induce investors are **lathered with false and misleading information**. **One example** is a stated **value of the licenses** to be obtained via the “application mill.” “They” (Smartcomm, Waugh and Judy) use **\$1.49 per MHz/pop** as the valuation measure. (Note: a “per MHz/pop” dollar amount is commonly used in the industry, a parallel is stating land at a value “\$ per acre”). Not only is the \$1.49 amount **unrealistically too high**, but

“they” state that the “source” of that value is the “FCC’s Appraised Value.” **This statement could not be any further from the truth.** First, the FCC doesn’t “appraise” spectrum. Second, Waugh and Judy have creatively, and improperly, latched onto the \$1.49 amount.

(41) In the FCC’s 800 MHz Rebanding Proceeding (WT 02-55), the FCC had to make a determination of the value of certain portions of Nextel’s spectrum. The \$1.49 per MHz/pop was a determination by the FCC that was unique to Nextel, it was not for spectrum in general. Furthermore, it was based on Nextel’s spectrum not only being “cellular” qualified, but also being used in Nextel’s “high-density cellular” system. In contrast, the spectrum available via Smartcomm’s “application mill” has been re-designated (i.e. downgraded) to the “non-cellular” segment of 800 MHz bandwidth. It has restricted use, and most significantly, **cannot be used in a “high-density cellular”** system (i.e. Nextel, Sprint, AT&T, Verizon, etc. can’t use it). Waugh and Judy have “cherry-picked” data from the FCC and, with willful intent, are misusing the data to induce investors. It is simply an “apples-and-oranges” abuse of information. The manner in which certain data is included in materials circulated by Judy, Waugh and Smartcomm, an innocent investor will be duped into thinking that the FCC (a governmental agency) has, not only valued the spectrum they are investing in, but at an extraordinarily high price; thus virtually guaranteeing a massive financial return. **This is unquestionably false and misleading.**

(42) The materials that are being circulated by Smartcomm, Waugh and Judy to induce investors include calculations and extrapolations using (incorrectly) the \$1.49 per MHz/pop as the valuation measure. As an example of the magnitude of its misuse, Smartcomm, Waugh and Judy claim the FCC licenses that PSI LLC is going to acquire from Smartcomm for \$1,197,500 (described above, P38) are actually worth at least forty-two million two hundred sixty five thousand dollars (\$42,265,000), which by their calculations is a Return on Investment to PSI LLC of 37.87 times, or 3,787%.

(43) Step Five of the Master Plan was for Waugh to find someone that he could manipulate into pursuing the removal of Charles M. Austin (described in P 14, above) as founder, principal shareholder, sole officer and sole director; this person was Mr. Michael Judy (the Plaintiff). **Austin's removal is a critical part of the "Waugh-Judy master plan" for two reasons. One**, Austin refuses to acquiesce to Waugh's demands (see P 19 and 20, above) of his entitlement to stock in the Defendant. Austin's position is in the best interest of the Defendant (Preferred) and its creditors and shareholders. Thus, Waugh is pushing Judy to oust Austin, to be replaced by person or persons who will retroactively approve an exorbitant compensation package (including stock ownership) for Waugh. **Second**, Austin (and the Defendant) want nothing to do with Smartcomm and/or PSI LLC (or any funds they suggest "loaning" to Preferred) due in large part to the persons involved and the manner by which they are raising funds, which may be considered as **"ill-gotten gains."** PSI LLC's business plan is predicated on interacting

with Preferred (Defendant), thus Judy as Managing Member of PSI LLC is endeavoring to oust Austin.

(44) Waugh is at the center of the conspiracy. He has problems with the FCC and has an intractable business dispute with the Defendant regarding past compensation as a consultant. Waugh is upset that the Defendant has not taken up his cause with the FCC. Waugh is upset that the Defendant has not acquiesced to his compensation demands. As a result, Waugh has enlisted the participation of Judy (and others) to pursue a manipulation of the Chancery Court to have it unwittingly injected into matters properly before the FCC, or in matters between Waugh and the Defendant.

SUMMARY RE: DENIAL OF PLAINTIFF'S REQUEST AND DEFENSES

(45) **The Plaintiff has not complied with the Section 220 of the General Corporation Law of the State of Delaware regarding the form and manner of making inspection of such documents.** The Plaintiff has failed to provide documentary evidence of beneficial ownership of the stock, and state that such documentary evidence is a true and correct copy of what it purports to be. Additionally, the Plaintiff intends to have the inspection of books and records be done by his attorney(s) or other agent(s). However, the Plaintiff fails to provide the requisite power of attorney or such other writing, which authorizes the attorney or other agent to so act on behalf of the stockholder.