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ADMITTED IN THE  
DISTRICT OF COLUMBIA

PRACTICE BEFORE THE  
FEDERAL COMMUNICATIONS  
COMMISSION

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September 16, 2009

Hon. Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
Washington, D.C. 20554  
Via e-mail: richard.sippel@fcc.gov

Re: EB Docket No. 07-147

Dear Judge Sippel:

I am writing on behalf of Pendleton C. Waugh ("Waugh") a party to the above-referenced proceeding, in response to your Order (FCC 09M-56) released September 10, 2009, directing the parties to file a Status Report advising whether the parties have agreed to a modification of the Settlement Agreement which your honor granted by Order (FCC 09M-51, released August 6, 2009). Your September 10 Order followed a Conference which you convened:

[T]o discuss procedures to terminate their case as to all  
Parties without a hearing .....

As a result of the discussion held at the conference, the parties agreed to consult their respective clients to determine whether a proviso to be added to paragraph 21 of the Settlement Agreement would result in a universal settlement of the case. The purpose of the proviso, as we understood it, was to address Waugh's complaint that he had been effectively excluded from the settlement by the Bureau's requirement that it would not settle unless Waugh was prohibited from ever owning stock, even a beneficial interest, in Preferred Communications Systems, Inc ("PCSI").<sup>1</sup>

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<sup>1</sup> As you are aware, in paragraph 21 of the Settlement Agreement Mr. Austin also agreed on behalf of PCSI and Preferred Acquisitions, Inc. ("PAI") that Mr. Waugh never would "work for, contract for, consult for, ... PCSI, PAI, any Affiliate of PCSI, and/or any Affiliate of PAI." Given the FCC Enforcement Bureau's apparent admission that Mr. Waugh has not violated any statute or Commission rule or policy for the past ten years, Waugh opposes such a restriction or penalty. He therefore would require, as a condition to entering into any settlement agreement, that such language be removed. Moreover, given the serious legal questions raised by Michael Judy in his Motion for Limited Intervention and Renewed Motion for Limited Intervention with respect to Mr. Austin's lack of authority under applicable Delaware law to negotiate a binding settlement agreement on PCSI's and PAI's behalf, he would maintain that the Presiding Administrative Law Judge and FCC Enforcement Bureau should leave Mr. Waugh's future involvement, if

Initially, we would like to thank your honor for attempting to remove one impediment to a universal settlement in the case, the effective exclusion of Waugh from a universal settlement unless he agreed to forego a promised beneficial interest in PCSI. However, there are several other impediments to a universal settlement which also need to be addressed, to wit:

1. First, a question exists as to your honor's jurisdiction over the case. The Enforcement Bureau, in filing a Motion to Strike Waugh's Motion for Partial Summary Decision on August 7, 2009, first raised the issue. Thus, it argued that having terminated the case, your honor no longer had jurisdiction over it.
2. The second issue is whether the so-called "settlement agreement" is, in fact, a consent decree which was negotiated and granted in derogation of Section 1.93(b) of the Commission's Rules. Waugh has raised this in its Appeal from Presiding Officer's Final Ruling filed on September 8, 2009, arguing that pursuant to the *La Star* case,<sup>2</sup> summary decision was the proper way to resolve the case without hearing.
3. And three, a question has been raised as to Mr. Austin's authority to enter into the settlement agreement on behalf of PCSI and PAI.<sup>3</sup> As you know, Michael Judy has filed suit in the Delaware Court of Chancery raising this issue for the benefit of all stockholders of PCSI and has unsuccessfully sought to intervene in this proceeding for the limited purpose of preserving its rights in the event it is successful in the Delaware Court. It is our understanding that the Delaware matter has been fully briefed and that a hearing has been scheduled before the Chancellor for September 29, 2009, to consider the matter.

Although issues one and two, above, are subject to debate and have not been fully briefed by all of the parties, the third issue may be resolved shortly and will have a clear impact on the validity of the settlement of this case. Consequently, we respectfully

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any, with PCSI and PAI to the new Board of Directors to be elected at PCSI's first annual shareholders' meeting (with the date of such meeting to be determined by the Delaware Court of Chancery) and its new executive management. Finally, Mr. Waugh would require, as a condition to entering into a settlement agreement, that the FCC Enforcement Bureau agree that he has been fully "rehabilitated" and is no longer under any legal disability to serve as a director or executive officer of a FCC licensee or directly hold ten percent (10%) or more of the equity ownership of such licensee.

<sup>2</sup> *La Star Cellular Telephone Company*, 11 FCC Rcd 1059, 1060-61(1996).

<sup>3</sup> Questions also exist as to Mr. Guskey's representation of PCSI and of Mr. Bishop. Although these were not raised at the conference convened on September 9, 2009, because of its limited scope, they nonetheless exist. Mr. Guskey's attempt to intervene as an individual stockholder was denied earlier in the proceeding. Now, it appears that he has been appointed a Vice President and is representing the corporation without filing a Notice of Appearance for either the company or the individual, Bishop. See Sections 1.21(d) and 1.221.

request the Presiding Judge to withhold a final resolution of these issues until the Delaware Court of Chancery rules.

Very truly yours,

A handwritten signature in black ink that reads "William D. Silva". The signature is written in a cursive, flowing style.

William D. Silva  
Attorney for Pendleton C. Waugh

cc: Gary Oshinsky, Esquire (gary.oshinsky@fcc.gov)  
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