

Before the

FEDERAL COMMUNICATIONS COMMISSION

FCC 07-125

Washington, D.C. 20554

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

To: The Commission

MR. TOSHIAKI SAITO'S MEMORANDUM REGARDING THE ENFORCMENT BUREAU'S STATEMENT OF CLARIFICATION

Mr. Toshiaki Saito submits this Memorandum regarding the Enforcement Bureau's October 27, 2010, *Statement of Clarification*. Mr. Saito is surprised by, and respectfully disagrees with, the Bureau's allegation that his pleading "suggest[ed] that the Bureau solicited his communications."¹ Mr. Saito agrees the Bureau did not solicit his "ex parte" presentation and, at no point, did he believe a solicitation was necessary for his "ex parte" presentation to be properly received by the "decision-making personnel."

An *ex parte* presentation "is exempt from the prohibitions in restricted proceedings (§1.1208)" if it "is requested by (or made with the advance approval of) the Commission or staff for the clarification or adduction of evidence, or for resolution of issues, including possible

¹ *Enforcement Bureau's Statement of Clarification*, at 2:2.

settlement [subject to certain limitations].” 47 C.F.R. § 1.1204(a) and 47 C.F.R. § 1.1204(a)(10) (2009).² Mr. Saito’s October 26, 2010, Memorandum in Opposition to Motion to Strike specifically states the “*ex parte*” presentation was made with the “advance approval” of Commission staff, not that it was “requested” or “solicited” by the Bureau. Surely the drafters of the rules recognized a distinction between a “request” and “advance approval” or they would not have included such language in the statute.

In response to Mr. Saito’s correspondence of May 12, 2010, the Commission’s Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Anjali K. Singh, Esq., sent a July 21, 2010, letter correctly identifying Mr. Saito’s May 12th letter as an *ex parte* presentation and requested that it be served on all parties to the proceeding.³ Obviously, the Commission staff had the opportunity to review Mr. Saito’s August 13, 2010, letter and knew it was being submitted “for the clarification or adduction of evidence, or for resolution of issues, including possible settlement.” 47 C.F.R. § 1.1204(a)(10). Mr. Saito, a layperson unfamiliar with FCC procedures, appreciated the Bureau’s July 21, 2010, courtesy letter, and reasonably interpreted it as “advance approval,” not solicitation.⁴

² It is noteworthy that the current *ex parte* rules were designed “to enhance the ability of the public to communicate with the Commission in a manner that comports with fundamental fairness,” not to make communications more difficult. *In re Amendment of 47 C.F.R. 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No. 95-21, adopted March 13, 1997.

³ *Letter from Anjali K. Singh, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, to Toshiaki Saito*, dated July 21, 2010 (“Please serve a copy of your correspondence on all parties of the referenced proceeding . . .”).

⁴ It should be noted that “advance approval” of Mr. Saito’s “*ex parte*” presentation did in no way imply advance approval of the settlement appeal, to which he was not a party. Mr. Saito was not implying the Bureau approved of the settlement appeal—only that the letter constituted advance approval of an *ex parte* presentation submitted for “clarification or adduction of evidence, or for resolution of issues, including possible settlement.” 47 C.F.R. § 1.1204(a)(10).

The Bureau's July 21st letter clearly stated "no presentation may be made to decision-making personnel which, if written, is not served on the parties to the proceeding."⁵ The letter then directed Mr. Saito to serve all parties, presumably so the *ex parte* presentation could be properly reviewed by the decision-making personnel. As instructed, Mr. Saito properly served all the parties by paper as required by 47 C.F.R. § 1.47(d).⁶ Since Mr. Saito's *ex parte* presentation could then be properly considered by the "decision-making personnel" (per the Bureau's July 21st letter), whether it was sent at the request, or with the "advance approval," of the Commission staff is not important.⁷

Furthermore, Mr. Saito did, in fact, properly serve hard copies of his August 13th, "*ex parte*" presentation to FCC Chairman Julius Genachowski on all parties. Specifically, Mr. Saito mailed paper copies of said *ex parte* presentation to: Jay R. Bishop, P. Michele Ellison, David L. Hill, Joel Kaufman, Gary A. Oshinsky, Preferred Acquisitions, Inc., Preferred Communication Systems, Inc., Charles J. Ryan, III, William D. Silva, Anjali K. Singh, Hon. Richard L. Sippel, Hon. Arthur I. Steinberg, and Pendleton C. Waugh.⁸ As confirmed by the United States Postal Service's "Track & Confirm" system, most of the copies were received by the recipients at their mailing addresses on August 16, 2010, but some of the copies sent to FCC personnel arrived later.⁹ Mr. Kaufman was the first FCC representative to receive a copy on August 18, 2010, at

⁵ Letter from Anjali K. Singh, Esq., Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, to Mr. Toshiaki Saito, dated July 21, 2010

⁶ See attached *Declaration of Toshiaki Saito*, and Exhibits "A" through "G" hereto.

⁷ Also, as mentioned in his October 26th Memorandum in Opposition to Motion to Strike, Mr. Saito respectfully petitions the Commission to use its discretionary powers under § 1.47(e), § 1.41, and § 1.3 where necessary to grant his requested relief.

⁸ Letter from Mr. Toshiaki Saito to FCC Chairman Julius Genachowski, Certificate of Service at 1-3, dated August 13, 2010.

⁹ See Exhibit "A" hereto.

8:06 am,¹⁰ and P. Michele Ellison's copy was received on August 23, 2010, at 8:04 am.¹¹ "T. Sledge" signed receipts for all of the copies addressed to FCC personnel. A very short time later, a copy was posted on the ECFS system. Moreover, with regard to the Bureau's allegation that it's June 21, 2010, letter to Mr. Saito was not in the record, please note that Mr. Saito submitted a copy of said letter to the Commission (along with other documents) on September 28, 2010.

Therefore, in summary, Mr. Saito agrees the Bureau did not "request" or "solicit" his August 13th, "*ex parte*" presentation. However, it seems clear the Bureau's June 21st letter, which clearly stated "[p]lease serve a copy of your correspondence on all parties of the referenced proceeding . . .," constitutes "advance approval" of his August 13th, "*ex parte*" presentation. Further, as evidenced by the attached Declaration and Exhibits, since there can be no question that Mr. Saito properly served his "*ex parte*" presentation to all parties, it is properly before the "decision-making personnel."

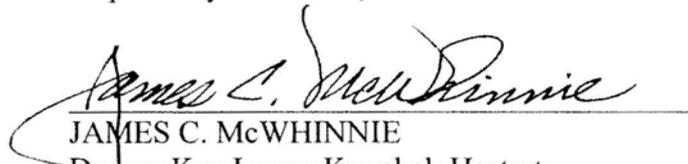
Finally, Mr. Saito continues to oppose the settlement on the grounds that it is unquestionably against the public interest for FCC licensees who have misrepresented material facts and lacked candor before the Commission to continue holding Commission licenses. Once again, Mr. Saito only requests that the Commission follow its mandate to act in the public interest by doing the fair and right thing by revoking the deceptively acquired licenses.

¹⁰ See Exhibit "B" hereto.

¹¹ See Exhibit "C" hereto.

DATED: Honolulu, Hawai'i, October 28, 2010.

Respectfully submitted,

A handwritten signature in black ink, reading "James C. McWhinnie". The signature is written in a cursive style and is positioned above a horizontal line.

JAMES C. McWHINNIE

Damon Key Leong Kupchak Hastert

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Honolulu, Hawai'i 96813

Telephone Number: (808) 531-8031

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Attorney for TOSHIAKI SAITO

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 07-125
Washington, D.C. 20554

In the Matter)	EB Docket No. 07-147
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PENDELTON C. WAUGH, CHARLES M. AUSTIN, and JAY R. BISHOP)	File No. EB-06-IH-2112
)	
PREFERRED COMMUNICATION SYSTEMS, INC.)	DECLARATION OF TOSHIAKI SAITO
)	
Licensee of Various Site-by-Site Licenses in the Specialized Mobile Radio Service)	NAL/Acct. No. 200732080025
)	
PREFERRED ACQUISITIONS, INC.)	FRN No. 0003769049
)	
License of Various Economic Area Licenses In the 800 MHz Specialized Mobile Radio Services)	FRN No. 0003786183
)	
)	
)	

DECLARATION OF TOSHIAKI SAITO

I, TOSHIAKI SAITO, declare as follows:

1. I make this declaration upon personal knowledge, unless otherwise indicated, and am competent to testify to the matters stated therein.
2. Attached hereto as Exhibit "A" is a true and correct copy of the summary I prepared of the tracking information for the copies of my August 13, 2010, letter to Chairman Julius Genachowski ("the August 13th letter"), which I mailed to the listed parties.
3. Attached hereto as Exhibit "B" is a true and correct copy of the tracking and delivery confirmation (receipt number 2308 2180 0000 3007 2994) provided by the United States Postal Service regarding the copy of the August 13th letter I sent to Joey Kaufman, Associate General Counsel for the Federal Communications Commission.

4. Attached hereto as Exhibit “C” is a true and correct copy of the tracking and delivery confirmation (receipt number 2308 2180 0000 3007 2970) provided by the United States Postal Service regarding the copy of the August 13th letter I sent to P. Michele Ellison, Chief of the Enforcement Bureau of the Federal Communications Commission.

5. Attached hereto as Exhibit “D” is a true and correct copy of the tracking and delivery confirmation (receipt number 2308 2180 0000 3007 2987) provided by the United States Postal Service regarding the copy of the August 13th letter I sent to Gary A. Oshinski, Associate General Counsel for the Federal Communications Commission.

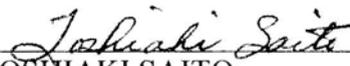
6. Attached hereto as Exhibit “E” is a true and correct copy of the tracking and delivery confirmation (receipt number 2308 2180 0000 3007 2949) provided by the United States Postal Service regarding the copy of the August 13th letter I sent to Anjali K. Singh, Associate General Counsel for the Federal Communications Commission.

7. Attached hereto as Exhibit “F” is a true and correct copy of the tracking and delivery confirmation (receipt number 2308 2180 0000 3007 2963) provided by the United States Postal Service regarding the copy of the August 13th letter I sent to the Honorable Richard L. Sippel, Associate General Counsel for the Federal Communications Commission.

8. Attached hereto as Exhibit “G” is a true and correct copy of the tracking and delivery confirmation (receipt number 2308 2180 0000 2956) provided by the United States Postal Service regarding the copy of the August 13th letter I sent to the Honorable Arthur I. Steinberg, Associate General Counsel for the Federal Communications Commission.

I declare under penalty of perjury under the laws of the State of Hawai'i the foregoing is true and correct.

Executed this 28th day of October, 2010 at Honolulu, Hawai'i.



TOSHIAKI SAITO

0309 1830 0002 4565 9016	sippel		
2308 0440 0000 2102 5708	genachowski		
7010 0290 0002 9276 2522	teddl		
7010 0290 0002 9277 3764	genachowski		
7010 0290 0002 9276 1471	genachowski		
7009 1410 0000 4829 6038	genachowski		
2308 2180 0000 3007 5117	clinton		
7010 0780 0000 3641 7976	asiana		
2308 2180 0000 3007 4653	clinton		
7007 0710 0004 0017 4990	PCW	Phoenix	1 PCW 8/19/10
2308 2180 0000 3007 2840	PCW At Scottsdale	Undeliverable	2 Returned 8/19/10
2308 2180 0000 3007 2932	Wm D Silva, Esq.	Washington, DC	3 WM SILVA
2308 2180 0000 3007 2833	Wm D Silva, Esq.	Stevensville, MD	4. WM SILVA
2308 2180 0000 3007 2819	J. Bishop c/o Michele	Delivered 9/7/10	5 M. Bishop
2308 2180 0000 3007 2857	J. Bishop, PO Box 5598	Undeliverable	6 Returned 9/10/10
2308 2180 0000 3007 2864	CMA c/o PCSI	Undeliverable	7 Returned 8/24/10
2308 2180 0000 3007 2871	David L. Hill, PAI Attys	DC	8 S. LEGRANT
2308 2180 0000 3007 2888	Bishop c/o PCSI	Undeliverable	9 Returned 8/24/10
2308 2180 0000 3007 2895	J. Bishop c/o Michelle	No info 9.12.10	10 Mesg 8/16/10
2308 2180 0000 3007 2901	Chas J. Ryan III, Esq.	Bowie, MD No info 9.12.10	11 Mesg 8/16/10
2308 2180 0000 3007 2925	Chas J. Ryan III, Esq.	Marlboro, MD	12 C. Ryan
2308 2180 0000 3007 2918	CMA c/o PCSI	No info 9.12.10	13 Mesg 8/16/10
2308 2180 0000 3007 2949	Anjall Singh, Esq.	DC	14 T. SLEDGE
2308 2180 0000 3007 2956	Hon. Arthur Steinberg	DC	15 T. SLEDGE
2308 2180 0000 3007 2963	Hon. Richard Sippel	DC	16 T. SLEDGE
2308 2180 0000 3007 2970	P. Michele Ellison	DC	17 T. SLEDGE
2308 2180 0000 3007 2987	Gary Oshinski, Esq.	DC	18 T. SLEDGE
2308 2180 0000 3007 2994	Joel Kaufman, Esq.	DC	19 T. SLEDGE
2308 2180 0000 3007 3007	PSCI	Undeliverable	20 Returned 8/24/10
2308 2180 0000 3007 3014	PAI c/o PSCI	Undeliverable	21 Returned 8/24/10
2308 2180 0000 3007 3021	Waugh c/o Joanne	No info 9.12.10	22 Mesg 8/23/10

EXHIBIT "A"



Track & Confirm

Search Results

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Class: **Priority Mail®**
Service(s): **Signature Confirmation™**
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Your item was delivered at 8:06 am on August 18, 2010 in WASHINGTON, DC 20554 to FCC 20554 PU . The item was signed for by T SLEDGE.

Detailed Results:

- **Delivered, August 18, 2010, 8:06 am, WASHINGTON, DC 20554**
- **Notice Left, August 17, 2010, 10:49 am, WASHINGTON, DC 20554**
- **Notice Left, August 17, 2010, 10:34 am, WASHINGTON, DC 20554**
- **Arrival at Unit, August 17, 2010, 10:29 am, WASHINGTON, DC 20022**
- **Processed through Sort Facility, August 13, 2010, 6:09 pm, HONOLULU, HI 96820**
- **Acceptance, August 13, 2010, 10:49 am, HONOLULU, HI 96820**

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EXHIBIT "B"



Track & Confirm

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Detailed Results:

- **Delivered, August 23, 2010, 8:04 am, WASHINGTON, DC 20554**
- **Notice Left, August 20, 2010, 10:27 am, WASHINGTON, DC 20554**
- **Arrival at Unit, August 20, 2010, 10:18 am, WASHINGTON, DC 20022**
- **Processed through Sort Facility, August 13, 2010, 6:09 pm, HONOLULU, HI 96820**
- **Acceptance, August 13, 2010, 10:48 am, HONOLULU, HI 96820**

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Class: **Priority Mail®**

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Status: **Delivered**

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- **Delivered, August 23, 2010, 8:04 am, WASHINGTON, DC 20554**
- **Notice Left, August 20, 2010, 10:27 am, WASHINGTON, DC 20554**
- **Arrival at Unit, August 20, 2010, 10:18 am, WASHINGTON, DC 20022**
- **Processed through Sort Facility, August 13, 2010, 6:09 pm, HONOLULU, HI 96820**
- **Acceptance, August 13, 2010, 10:48 am, HONOLULU, HI 96820**

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Label/Receipt Number: **2308 2180 0000 3007 2963**

Class: **Priority Mail®**

Service(s): **Signature Confirmation™**

Status: **Delivered**

Enter Label/Receipt Number:

Your item was delivered at 8:04 am on August 23, 2010 in WASHINGTON, DC 20554 to FCC 20554 PU . The item was signed for by T SLEDGE.

Detailed Results:

- **Delivered, August 23, 2010, 8:04 am, WASHINGTON, DC 20554**
- **Notice Left, August 20, 2010, 10:27 am, WASHINGTON, DC 20554**
- **Arrival at Unit, August 20, 2010, 10:18 am, WASHINGTON, DC 20022**
- **Processed through Sort Facility, August 13, 2010, 6:08 pm, HONOLULU, HI 96820**
- **Acceptance, August 13, 2010, 10:47 am, HONOLULU, HI 96820**

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Label/Receipt Number: **2308 2180 0000 3007 2956**

Class: **Priority Mail®**

Service(s): **Signature Confirmation™**

Status: **Delivered**

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Enter Label/Receipt Number:

Your item was delivered at 8:04 am on August 23, 2010 in WASHINGTON, DC 20554 to FCC 20554 PU . The item was signed for by T SLEDGE.

Detailed Results:

- **Delivered, August 23, 2010, 8:04 am, WASHINGTON, DC 20554**
- **Notice Left, August 20, 2010, 10:27 am, WASHINGTON, DC 20554**
- **Arrival at Unit, August 20, 2010, 10:18 am, WASHINGTON, DC 20022**
- **Processed through Sort Facility, August 13, 2010, 6:09 pm, HONOLULU, HI 96820**
- **Acceptance, August 13, 2010, 10:46 am, HONOLULU, HI 96820**

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EXHIBIT G

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of October, 2010, a true and correct copy of the foregoing document has been sent via First Class United States mail, postage prepaid and by electronic mail to the following:

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, S.S., Room 8-B201
Washington, D.C. 20554
E-mail: julius.genachowsky@fcc.gov

The Honorable Richard L. Sippel
Federal Communications Commission
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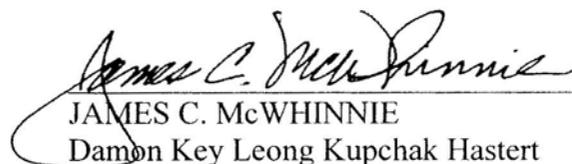
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DATED: Honolulu, Hawai'i, October 28, 2010.

Respectfully submitted,


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