

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
PENDLETON C. WAUGH, CHARLES M. AUSTIN, and JAY R. BISHOP)	EB Docket No. 07-147
)	
PREFERRED COMMUNICATION SYSTEMS, INC.)	File No. EB-06-IH-2112 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
)	
Licensee of Various Economic Area Licenses in the 800 MHz Specialized Mobile Radio Service)	

MEMORANDUM OPINION AND ORDER

Adopted: April 11, 2014

Released: April 11, 2014

By the General Counsel:

I. INTRODUCTION

1. By this memorandum opinion and order, we dismiss appeals filed by the late Pendleton C. Waugh (Waugh)¹ and by a group of Preferred Communications Systems, Inc. (PCSI) shareholders led by Michael D. Judy² (Shareholders). The appeals seek review of a Memorandum Opinion and Order by Chief Administrative Law Judge Richard L. Sippel (ALJ) that approved a settlement agreement and terminated a license revocation proceeding.³ Waugh's estate and the Shareholders have withdrawn their appeals. We also deny a petition by an individual named Toshiaki Saito to intervene in this proceeding and dismiss as moot a petition to modify the protective order in this proceeding.

II. BACKGROUND AND DISCUSSION

2. The Commission initiated this proceeding⁴ to determine whether Commission

¹ See Appeal from Presiding Officer's Final Ruling, filed October 26, 2009, by Waugh (Waugh Appeal). See also Enforcement Bureau's Opposition to Pendleton Waugh's Appeal, filed November 10, 2009; Opposition to Pendleton Waugh's Appeal, filed November 10, 2009, by PCSI; and Reply to Oppositions, filed November 20, 2009, by Waugh.

² See Appeal, filed October 1, 2009, by Michael D. Judy (Shareholders Appeal). See also Enforcement Bureau's Opposition to Michael D. Judy's Appeal, filed October 14, 2009.

³ See *Pendleton C. Waugh*, Memorandum Opinion and Order, FCC 09M-57 (ALJ Sept. 25, 2009) (*Final Termination Order*).

⁴ See *Pendleton C. Waugh*, Order to Show Cause and Notice of Opportunity for Hearing, 22 FCC Rcd 13363, 13363 ¶ 1 (2007) (*Order to Show Cause*).

licensees Preferred Acquisitions Inc. (PAI) and its parent company PCSI, and three individuals that the Commission believed owned and controlled those licensees, Waugh, Jay R. Bishop (Bishop), and Charles M. Austin (Austin), were qualified to remain Commission licensees.⁵ The *Order to Show Cause* designated the Enforcement Bureau (EB) as a party to the proceeding.⁶

3. Following discovery, the parties engaged in settlement negotiations. On August 5, 2009, EB, joined by the parties other than Waugh, filed a settlement agreement with the ALJ for approval.⁷ On August 6, 2009, the ALJ released an order approving the settlement agreement and terminating the hearing.⁸ In response to objections by Waugh, the ALJ, on August 20, 2009, ordered further proceedings,⁹ and, upon conclusion of these further proceedings, the ALJ, on September, 25, 2009, issued the *Final Termination Order*, which renewed his earlier order approving the settlement agreement. Subsequently, two sets of parties filed appeals to the *Final Termination Order*. On October 1, 2009, the Shareholders filed an appeal, and, on October 26, 2009, Waugh filed an appeal, both appeals challenging the approval of the settlement agreement.

4. On September 9, 2011, Waugh's counsel informed the Commission that Waugh had died on August 27, 2011.¹⁰ Subsequently, Waugh's estate and Shareholders both filed pleadings withdrawing their appeals and asking the Commission to terminate this proceeding.¹¹ Both pleadings report that EB concurs in the dismissal of the appeals and the termination of the proceeding. Good cause having been shown, we grant the requested relief.

5. We also dispose of certain collateral matters. On August 13, 2010, a creditor of Waugh's named Toshiaki Saito (Saito) filed a letter claiming that Waugh defrauded him and owes him substantial sums of money.¹² He urges the Commission to revoke the PCSI and PAI licenses, auction them off, and transfer the proceeds to Saito for amounts owned by Waugh. Subsequently, on January 27, 2012, Saito filed a Petition to Intervene, making the same arguments.¹³

6. We will not entertain Saito's August 13 letter, which is not authorized by our

⁵ PAI and PCSI hold licenses in the Specialized Mobile Radio Service, which was established by the Commission to provide land mobile communications on a commercial basis and is governed by Part 90 of the Commission's Rules. The Commission evaluates the character qualifications of licensees pursuant to 47 U.S.C. § 308(b). *See generally Character Qualifications*, 102 FCC 2d 1179 (1986).

⁶ *See Order to Show Cause*, 26 FCC Rcd at 13386 ¶¶ 60, 63.

⁷ *See Joint Request for Approval of Settlement Agreement and Termination of Proceeding*, filed August 5, 2009, by EB, PCSI, PAI, Austin, and Bishop. The settlement agreement is reprinted as an attachment to *Pendleton C. Waugh*, Order, FCC 09M-51 (ALJ Aug. 12, 2009).

⁸ *See Pendleton C. Waugh*, Order, FCC 09M-51 (ALJ Aug. 6, 2009).

⁹ *See Pendleton C. Waugh*, Order, FCC 09M-53 (ALJ Aug. 20, 2009).

¹⁰ *See Letter from William D. Silva to Joel Kaufman, Esquire, Associate General Counsel* (Sept. 9, 2011).

¹¹ *See Notice of Withdrawal of Appeal of Estate of Pendleton C. Waugh*, filed February 12, 2014; *Notice of Withdrawal of Appeal and Request to Terminate Proceeding*, filed February 12, 2014, by Shareholders.

¹² *See Letter from Toshiaki Saito to Julius Genachowski* (Aug. 13, 2010).

¹³ *See Petition to Intervene and Revoke Licenses*, filed January 27, 2012, by Saito (*Petition to Intervene*). *See also Enforcement Bureau's Opposition to Petition to Intervene and Revoke Licenses*, filed February 13, 2012; *Petitioner's Reply to Enforcement Bureau's Opposition to Petition to Intervene and Revoke Licenses*, filed February 21, 2012, by Saito; *Enforcement Bureau's Motion to Strike [the reply]*, filed February 20, 2012; *Petitioner's Opposition to Enforcement Bureau's Motion to Strike Enforcement Bureau's Opposition*, filed March 6, 2012, by Saito.

rules inasmuch as Saito was not a party to the hearing proceeding below.¹⁴ Moreover, the Commission is not the proper forum for litigating Saito's claims against Waugh (or potentially his estate). We also deny Saito's Petition to Intervene. Saito's petition is untimely.¹⁵ The petition was filed more than four years after the *Order to Show Cause* was published in the Federal Register, and Saito has not shown why it was not possible for him to seek intervention earlier. Further, Saito has not shown that he has standing to intervene.¹⁶

7. As an additional matter, on June 23, 2010, PCSI, PAI, and Austin filed a petition seeking to release in a judicial proceeding certain documents that are subject to the protective order in this administrative proceeding.¹⁷ In their petition, PCSI, PAI and Austin explain that they are defendants in a civil lawsuit filed in the State of Delaware and that the Delaware judge has ordered them to provide the documents to the plaintiffs. The petition, however, is unnecessary, because the Protective Order does not prevent the petitioners from complying with the state court order. We therefore dismiss the petition as moot.

III. ORDERING CLAUSES

8. ACCORDINGLY, pursuant to the authority delegated by 47 C.F.R. § 0.251(c), IT IS ORDERED, That the Petition to Intervene and Revoke Licenses, filed January 27, 2012, by Saito IS DENIED.

9. IT IS FURTHER ORDERED, That the Appeal from Presiding Officer's Final Ruling, filed October 26, 2009, by Waugh; and the Appeal, filed October 1, 2009, by Michael D. Judy on behalf of the Shareholders ARE DISMISSED.

10. IT IS FURTHER ORDERED, That the Petition to Release Documents that are Subject to Protective Order," filed June 23, 2010, by PCSI, PAI and Austin IS DISMISSED as moot.

24. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Jonathan B. Sallet
Acting General Counsel

¹⁴ See 47 C.F.R. § 1.302(a) (granting only parties to a proceeding the right to appeal an administrative law judge's ruling terminating a hearing proceeding). See also *The Trustees of the University of Pennsylvania Radio Station WXP(N)FM Philadelphia, Pennsylvania*, 69 FCC Rcd 1394, 1430 n.80 (1978) (nonparty may not file exceptions to an initial decision).

¹⁵ 47 C.F.R. § 1.223(b) (petitions to intervene must be filed within 30 days after publication of the hearing designation order).

¹⁶ The provisions of 47 C.F.R. §§ 1.223(b) and (c) require petitions to intervene to show the petitioner's interest in the proceeding.

¹⁷ See Petition to Release Documents that are Subject to Protective Order, filed June 23, 2010, by PCSI, PAI and Austin. See also See Comments in Support of Petition to Release Documents that Are Subject to Protective Order, filed June 28, 2010, by Waugh; Enforcement Bureau's Response to Petition to Release Documents that are Subject to Protective Order and Supporting Comments" (July 6, 2010).