

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

In Re Applications of)	WT Docket No. 97-199
)	
Westel Samoa, Inc.)	File No. 00560-CW-L-96
)	
For Broadband Block C Personal)	
Communications Systems Facilities)	
)	
and)	
)	
Westel, L.P.)	File Nos. 00129-CW-L-97
)	00862-CW-L-97
For Broadband Block F Personal)	00863-CW-L-97
Communications Systems Facilities)	00864-CW-L-97
)	00865-CW-L-97
)	00866-CW-L-97
and)	
)	
Anthony T. Easton)	
)	

**MEMORANDUM OPINION AND ORDER,
HEARING DESIGNATION ORDER, NOTICE OF OPPORTUNITY
FOR HEARING, AND ORDER TO SHOW CAUSE**

Adopted: September 8, 1997

Released: September 9, 1997

By the Commission:

I. INTRODUCTION & EXECUTIVE SUMMARY

1. Before the Commission are the above-captioned applications filed by Westel Samoa, Inc. (Westel Samoa) and Westel, L.P. (collectively Westel) as the high bidder for licenses in the broadband Personal Communications Services (PCS) C Block and F Block auctions. As discussed below, there are substantial and material questions of fact concerning the basic qualifications of Quentin L. Breen, Westel's controlling principal, to be a Commission licensee. Based on the investigation conducted by the Wireless Telecommunications Bureau (Bureau) of PCS 2000, L.P. (PCS 2000), an applicant for broadband PCS C Block licenses, we believe Mr. Breen may have been involved in misrepresentations and lack of candor before the Commission. Accordingly, we are designating Westel's above-captioned applications for hearing. In the context of this proceeding, we also address the Petition to Deny filed on August 20, 1996, by National Telecom PCS, Inc. (NatTel) against Westel Samoa's broadband PCS C Block application.

2. By this action, we are additionally ordering Anthony T. Easton, a former officer and director of PCS 2000, to show cause why he should not be barred from holding any Commission authorizations. Mr. Easton played a primary role in the above-referenced misrepresentations and lack of candor. Because the issues concerning Mr. Breen and Mr. Easton arise from common facts and circumstances, we are consolidating the proceedings.

II. PRELIMINARY MATTERS: DISPOSITION OF NATTEL'S PETITION TO DENY

3. On August 20, 1996, NatTel filed a Petition to Deny against Westel Samoa claiming that "NatTel is the rightful owner of [the C Block PCS] license [for American Samoa]."¹ NatTel was the initial successful bidder for the American Samoa broadband PCS C Block license with a net bid totaling \$411,001. During the course of the auction, however, NatTel withdrew two bids after the withdrawal period for the relevant rounds. Accordingly, NatTel was responsible for a bid withdrawal payment of \$101,620.² Because NatTel's upfront payment of \$50,000 was not supplemented with additional monies to cover its required 10 percent down payment and bid withdrawal payments, NatTel was found in default and its application dismissed.³ NatTel argues in its Petition to Deny that the Bureau's action in denying its waiver request for the bid withdrawal payment requirement was arbitrary and capricious⁴ and that the Commission should deny Westel Samoa's application because NatTel itself expects to get back the broadband PCS C Block license for American Samoa.

4. On September 13, 1996, NatTel filed a Supplement to its Petition to Deny arguing that "[t]he Commission cannot grant a license to Westel [Samoa] until any and all outstanding issues surrounding Mr. Breen's character are resolved."⁵ NatTel does not raise any specific allegations concerning Mr. Breen's fitness to be a licensee other than raising the fact that it is aware that Mr. Breen was removed from PCS 2000 and that the Commission is investigating Mr. Breen. On March 26, 1997, NatTel filed a motion requesting that its Supplement be dismissed. NatTel states in its Withdrawal Request that it did not intend to challenge Westel's qualifications, but instead only wished to continue to demonstrate that NatTel is the rightful holder of the American Samoa C Block PCS license.⁶

¹ Petition to Deny at 1 (emphasis omitted).

² See Public Notice, *Entrepreneurs' C Block Auction Closes*, DA 96-716 (released May 8, 1996), Att. B. On May 30, 1996, the Bureau denied waiver requests filed by NatTel regarding the bid withdrawal payments. See *National Telecom PCS, Inc.*, 11 FCC Rcd 12158 (1996). On June 19, 1997, the Commission denied NatTel's Application for Review of the Bureau's Order. *National Telecom PCS, Inc.* FCC 97-192 (released June 19, 1997).

³ See Public Notice, *18 Defaulted PCS Licenses to be Reauctioned; Reauction to Begin July 3rd*, DA 96-872 (released May 30, 1996).

⁴ Petition to Deny at 2-3.

⁵ Supplement to Petition to Deny at 2.

⁶ NatTel Withdrawal of Supplement to Petition to Deny at 2-3.

5. In its Petition to Deny, NatTel raised no issues concerning Westel Samoa's qualifications to be granted the broadband PCS C Block license for American Samoa. Instead, NatTel argued that the Bureau erred in finding NatTel in default, and that the Commission should grant the American Samoa license to NatTel and not to Westel. In other words, NatTel is not arguing that we should deny Westel's application because Westel is unqualified to hold the license, but instead, is using the petition to deny process to challenge the Commission's Rules which resulted in the dismissal of NatTel's application. As we have previously stated, "[t]he purpose of the petition to deny process is to assess challenges to applicants' qualifications to be Commission licensees. . . . [A p]etitioner's attempt to challenge the rules again through the petition to deny process is therefore untimely and procedurally improper."⁷ Therefore, we find that NatTel has provided no basis for denying the Westel application.⁸ Accordingly, the Petition to Deny is dismissed as procedurally defective.

III. PROCEDURAL BACKGROUND

6. Substantial and material questions of fact regarding Messrs. Breen's and Easton's basic qualifications arise from circumstances surrounding a bid placed by PCS 2000 in the Commission's broadband PCS C Block auction. Messrs. Breen and Easton were once principals of Unicom Corporation (Unicom), a former sole general partner of PCS 2000.⁹ On January 22, 1997, the Commission found PCS 2000 apparently liable for a forfeiture in the amount of \$1,000,000 for intentional misrepresentations made to the Commission by Mr. Easton.¹⁰ The Commission determined that Mr. Easton had made material and intentional misrepresentations in the context of an overbid made by PCS 2000 on January 23, 1996.

7. Also on January 22, 1997, the Commission granted PCS 2000's fifteen broadband PCS C Block applications.¹¹ Despite the material misrepresentations made to the Commission, we granted PCS 2000's applications because PCS 2000 took "measures to remove the wrongdoers

⁷ *Applications for A and B Block Broadband PCS Licenses*, 11 FCC Rcd 3229, 3234, *aff'd*, 1996 WL 146219 (1996).

⁸ The Supplement filed by NatTel, although withdrawn, does not change this conclusion. The Supplement fails to make any specific allegations of fact from which we can make a finding that Westel is unqualified. *See* 47 U.S.C. § 309(d)(1).

⁹ Initially, PCS 2000, a limited partnership, was comprised of Unicom, as a 25 percent equity holder and sole general partner and 1,641 limited partners. PCS 2000's FCC Form 175. Mr. Easton was Unicom's Chief Executive Officer and a Director, and Mr. Breen was also a Unicom Director at the time PCS 2000 filed its FCC Form 175 with the Commission. On April 26, 1996, Mr. Breen resigned from his position on the Board of Directors of Unicom.

¹⁰ *PCS 2000, L.P.*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 1703 (1997) (*PCS 2000 NAL*). PCS 2000 paid the forfeiture, therefore, it is now a final Order.

¹¹ *PCS 2000, L.P.*, Memorandum Opinion and Order, 12 FCC Rcd 1681 (1997), *recon. pending (PCS 2000 MO&O)*.

from ownership and control of PCS 2000."¹² As discussed below, PCS 2000 amended its applications so that neither Mr. Breen nor Mr. Easton would have any ownership interest or position of control in the company.¹³ Based on PCS 2000's remedial actions, we did not find the misrepresentations to be disqualifying as to PCS 2000.¹⁴ Although the *PCS 2000 NAL* specifically concluded that Mr. Easton had made material misrepresentations, we declined at that time to make any specific conclusions as to Mr. Breen's role in the deception.¹⁵ As demonstrated below, however, material and substantial questions of fact exist as to Mr. Breen's complicity in the misrepresentations made to the Commission.

IV. FACTUAL BACKGROUND

A. PCS 2000's C Block Bidding Procedures

8. PCS 2000 retained Romulus Telecommunications, Inc. (RTI) to provide bidding support services to PCS 2000 for the Commission's broadband PCS C Block auction.¹⁶ At the end of any given round of the C Block broadband PCS auction, RTI retrieved the files of the round results and the minimum bids for the next round from the Commission's FTP server.¹⁷ That computer would generate "Flash Reports" which would indicate the results of the auction round.¹⁸ RTI downloaded the information from the Commission into two separate directories: "Access" and "from mike." The "Access" directory was used by RTI to determine how to proceed in the next bidding round. The "from mike" directory was transferred into the BTA Selection Program, which provided the bidding agent with information and allowed the entry of bids.¹⁹ Mr. Easton, Mr. Breen, and Javier Lamoso, former President of Unicom,²⁰ were the initial

¹² *PCS 2000 NAL*, 12 FCC Rcd at 1717; see also *PCS 2000 MO&O*, 12 FCC Rcd at 1697-99.

¹³ As to Mr. Breen's interest in SuperTel Communications Corporation (SuperTel), the entity which replaced Unicom as sole general partner of PCS 2000, it was decided by SuperTel that his interest would not be issued as stock, but instead, would be held as a warrant. Mr. Breen would only be able to receive these shares pursuant to the warrant upon (1) the award of licenses to PCS 2000, and (2) a favorable determination by the Commission that Mr. Breen meets the relevant character qualifications to hold a Commission license. Mr. Breen holds no positions with SuperTel. Likewise, Mr. Easton holds no ownership interest or position with SuperTel.

¹⁴ *PCS 2000 NAL*, 12 FCC Rcd at 1717.

¹⁵ *PCS 2000 NAL*, 12 FCC Rcd at 1717-18.

¹⁶ At the time RTI was retained by PCS 2000, Mr. Breen was the President and a Director of RTI.

¹⁷ The Commission operated a file transfer protocol (FTP) server which received the bids uploaded from the computers operated by the bidders.

¹⁸ Statement of Javier Lamoso in Response to the Commission's Inquiry of February 7, 1996 at 2.

¹⁹ *Id.* at 2-3.

bidding agents authorized for PCS 2000. Typically, Mr. Easton and Mr. Breen would confer regarding the bids to be placed, and either Mr. Easton or Mr. Breen would prepare and submit the bids.²¹

9. The BTA Selection Program used by RTI allowed the bidding agent to choose the minimum established bid for any given market with a single keystroke.²² Otherwise, if the bidding agent wished to enter a bid other than the minimum established bid, the bidding agent was required to manually key in either the actual total bid in dollars, or the bid expressed in dollars per the number of people covered in a particular market (POPs). In either case, the software displayed the amount selected and asked the bidding agent to confirm the bid amount twice.²³ After the bidding agent had completed the BTA selection procedure, the bid information was transferred to a database file referred to by PCS 2000 as a "DBF file" stored on the network server. Three reports were generated at this time: an "Upload to FCC Report," which identified the markets selected for submission of bids; a "Control P Report," which listed all of the markets in the C Block auction, highlighting those markets for which PCS 2000 was currently the high bidder; and a "Control A Report," which listed all of the markets for which PCS 2000 intended to bid in the next round. The Control P Report would be initialed by the bidding agent with the time and date.²⁴ Cynthia Hamilton, an administrative assistant and research analyst for the San Mateo Group (SMG), a subsidiary of RTI, testified²⁵ that it was at her insistence the bidding agent initialed and dated the Control P Reports before she would upload the bids to the Commission.²⁶

10. After the data was stored in a DBF file, the DBF file could be uploaded to the Commission's Uplink Computer via the network. After the bidding information was transferred to the Commission's bidding program, a printed copy of what appeared on the FCC screen ("Screen Preview") would be generated.²⁷ The Control P Report, which had been initialed by the bidding agent, was then compared with a copy of the Screen Preview Report. If the reports were identical, the bidding agent would then give instructions for the bids to be submitted to the

²⁰ While Mr. Lamoso was an authorized bidding agent, he did not play an active role in PCS 2000's bidding process until after January 23, 1996. Prior to that date, Messrs. Breen and Easton were the representatives primarily responsible for PCS 2000's bidding. Lamoso Deposition Tr. at 6-7.

²¹ Statement of Lamoso at 6-7.

²² *Id.* at 4.

²³ *Id.*

²⁴ *Id.* at 4-5.

²⁵ As a part of its further investigation, the Bureau took depositions of Cynthia Hamilton, Ronit Milstein, Rosalyn Makris, and Javier Lamoso.

²⁶ Hamilton Deposition Tr. at 6-7.

²⁷ Statement of Mr. Lamoso at 5.

Commission.²⁸ After submission, the Screen Preview, the initialed Control P Report, the Control A Report, and the Upload to FCC Report were placed in the auction bid binder under the appropriate round number.²⁹

B. PCS 2000's C Block Round 11 Bid and Withdrawal

11. On January 23, 1996, PCS 2000 submitted a bid of \$180,060,000 (\$180 million bid) for Basic Trading Area (BTA) market B324 for Norfolk, Virginia (License B324) in Round 11 of the C Block auction. Ms. Hamilton testified that PCS 2000 was late in preparing the bids on January 23, 1996.³⁰ Although the bids for each round were typically prepared the night before they were to be submitted, for some reason, the Round 11 bids were not.³¹ For Round 11, bids had to be submitted to the Commission by 10:00 a.m. PST (1:00 p.m. EST). According to Ms. Hamilton, at about 9:30 a.m. PST, Mr. Easton told her that PCS 2000's bids were ready to be uploaded to the Commission's computer bidding system. She stated that, at her request, Mr. Easton printed and initialed the Control P Report (Control P Report 1).³² Ms. Hamilton said she then reviewed the uploaded information against the signed printout, and she found it to be identical to the Screen Preview. Ms. Hamilton then printed the Screen Preview (Screen Preview 1).³³

12. Later that morning, according to Ms. Hamilton, Mr. Easton decided to remove four markets from PCS 2000's bid in order to bring the POPs closer to the minimum eligibility requirement for the Round 11 bid before submitting it to the Commission.³⁴ One market was then added back in.³⁵ She stated that pursuant to Mr. Easton's instructions, she deleted bids for three markets and printed a new copy of the Control P Report (Control P Report 2) and Screen Preview (Screen Preview 2). She further stated that Mr. Easton also initialed the new copies and discarded the old copies in a trash can.³⁶ Ms. Hamilton also stated that she then downloaded the results and created a Flash Report (Flash Report 1).³⁷

²⁸ *Id.* at 6.

²⁹ *Id.*

³⁰ Hamilton Declaration at 2; Hamilton Deposition Tr. at 9-10. In her deposition, Ms. Milstein corroborated that PCS 2000 was running late on January 23, 1996. Milstein Deposition Tr. at 6-7, 9.

³¹ Lamoso Deposition Tr. at 6-7.

³² Hamilton Declaration at 2.

³³ *Id.*

³⁴ Hamilton Deposition Tr. at 13, 47-48.

³⁵ *Id.*

³⁶ Hamilton Declaration at 2.

³⁷ *Id.* at 2-3.

13. According to Ms. Hamilton, after PCS 2000's bids had been submitted to the Commission and after the close of the bid withdrawal period for Round 11,³⁸ RTI's vice president, Ronit Milstein, reviewed the Flash Report 1 and noticed that there was a bid for \$110 per POP for License B324.³⁹ Ms. Hamilton stated that she and Ms. Milstein then went back to Ms. Hamilton's books to verify the bid for License B324 that had been entered.⁴⁰ Ms. Hamilton stated that she and Ms. Milstein called Mr. Easton to discuss the \$180 million bid.⁴¹ Ms. Milstein stated that she additionally checked the Control P Report posted on a notice board in the SMG offices and it showed a \$110 per POP bid for License B324.⁴²

14. Ms. Hamilton claimed that Mr. Easton then directed her to dial a telephone number for the Commission and that she overheard him say that the Commission's computer had caused an erroneous bid for the Norfolk market to be entered.⁴³ The telephone call, which was received on the Commission's telephonic bidding line, was recorded.⁴⁴ The recording reveals that Mr. Easton told Louis Sigalos, an FCC Auctions Division employee, that PCS 2000 "made [a bid] of \$18 million for B324 [which] is \$11.00 a POP . . . [A] bid price got recorded somehow at the Commission's computer as \$180 million." Mr. Easton added that: "We uploaded our files by our computer system here and I just checked our file, the file we uploaded is correct . . . I can fax you the files that we upload."⁴⁵ To back up his claim, Easton then transmitted to the Commission, by facsimile, computer-generated bidding sheets which he had initialed and given a date and time, purporting to demonstrate that PCS 2000 had actually bid \$18,006,000 for License B324.

³⁸ For Round 11, bids could have been withdrawn after submission up until 11:30 a.m. PST (2:30 p.m. EST).

³⁹ Hamilton Declaration at 3. In her deposition, Ms. Milstein confirmed she discovered the bidding error. Milstein Deposition Tr. at 16.

⁴⁰ Hamilton Declaration at 3.

⁴¹ *Id.*

⁴² Milstein Deposition Tr. at 21.

⁴³ Hamilton Declaration at 3. Hamilton Deposition Tr. at 18-20.

⁴⁴ Ms. Hamilton has testified that Mr. Easton spoke with two people during his phone call to the Commission. Hamilton Deposition Tr. at 19-20. Richard Hirsch, counsel to Mr. Easton, submitted a report prepared by Thomas Gutierrez, Mr. Easton's communications counsel, to analyze the Independent Counsel Report prepared for PCS 2000 as to the issues surrounding the January 23, 1996, bid (Gutierrez Report). In the Gutierrez Report, Mr. Easton himself admits that he spoke with two people during the call. Gutierrez Report at Att. E, para. 2. (June 26, 1996, Declaration of Anthony T. Easton). Apparently, the line Mr. Easton's call came in on was not being recorded and because of the nature of his call, he was transferred to a recorded line being manned by Louis Sigalos. To date, the Bureau's efforts to locate the individual who spoke with Mr. Easton on the telephone before his call was transferred to Mr. Sigalos have been unsuccessful. Therefore, there is no recorded record of what Mr. Easton said during the beginning of the call. Ms. Hamilton has testified, however, that she heard Mr. Easton yelling at the person receiving the call from the Commission. Hamilton Deposition Tr. at 20.

⁴⁵ Tr. of telephone conversation at 1.

15. Ms. Hamilton stated that she saw a temporary employee in her office sending, by facsimile, signed Flash Reports which no longer showed a \$110 per POP bid for License B324.⁴⁶ According to Ms. Hamilton, the temporary employee told her that Mr. Easton had instructed him to send the new Flash Reports to the Commission.⁴⁷ Ms. Hamilton also testified that immediately prior to the time she saw the new reports being sent out, Mr. Easton had been at his computer.⁴⁸ Ms. Hamilton said that she attempted to locate the Screen Preview 2 and Control P Report 2 and discovered that the binder in which they were ordinarily kept was missing.⁴⁹ Ms. Hamilton testified she never saw the binder again after that point.⁵⁰ Ms. Hamilton then recalled that Mr. Easton had thrown away a copy of the Control P Report 1 and Screen Preview 1 that he had initialed earlier, and she retrieved those documents from the trash can.⁵¹ Mr. Easton asked Ms. Hamilton if she had taken the sheets from her trash can, to which she instead inquired whether he looked for the reports in his own office. Thereafter, Mr. Easton searched through every sheet of paper on Ms. Hamilton's desk and through the other trash cans in the office.⁵²

16. Mr. Lamoso testified that Mr. Easton telephoned him in Puerto Rico after speaking with the Commission.⁵³ Mr. Lamoso further testified that Mr. Easton had told him specifically that the mistake was caused by the Commission's computer.⁵⁴ Mr. Lamoso has stated that Mr. Easton then sent to him by facsimile bidding sheets purporting to show that PCS 2000 had submitted a bid of \$18 million for License B324, and not \$180 million.⁵⁵

17. That same evening, Ms. Hamilton telephoned a Commission staff attorney in Washington, D.C., and informed the attorney that Mr. Easton had conveyed false information to

⁴⁶ *Id.*

⁴⁷ Hamilton Deposition Tr. at 22.

⁴⁸ *Id.* at 21.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Hamilton Declaration at 3-4. Hamilton Deposition Tr. at 27.

⁵² Independent Counsel's Report at 13.

⁵³ Lamoso Deposition Tr. at 8, 10-11.

⁵⁴ *Id.* at 10-11, 12.

⁵⁵ *Id.* at 14.

the Commission about the Round 11 bid for License B324.⁵⁶ Ms. Hamilton also told the staff attorney that Mr. Easton was destroying documents relating to the Round 11 bid.⁵⁷

18. The following day, January 24, 1996, the Commission's General Counsel and the Commission staff attorney with whom Ms. Hamilton had previously spoken, called her at home to discuss the matter further. Ms. Hamilton conveyed the same information as in the original telephone call about Mr. Easton's actions, but was asked additional questions to provide further details. Thereafter, Ms. Hamilton offered to put the information conveyed in their telephone conversation in writing in the form of a sworn declaration, which she sent to the Commission later that day. Thereafter, she resigned from SMG.⁵⁸

19. Also on January 24, 1996, during Round 12 of the C Block auction, PCS 2000 withdrew its high bid for License B324, subjecting itself to a bid withdrawal payment equal to the difference between the withdrawn bid and the price that the license was ultimately sold for by the Commission.⁵⁹ Ms. Milstein has stated that on January 24, 1996, she informed Mr. Breen that Ms. Hamilton had told her that Mr. Easton was attempting to conceal his mistake in the bid for License B324.⁶⁰ Ms. Milstein additionally testified that when she told Mr. Breen that Ms. Hamilton has stated that Mr. Easton made the error and had been covering it up, it was obvious to her that she was not "telling him anything that he didn't already realize."⁶¹

⁵⁶ The Gutierrez Report makes the inaccurate claim that the staff attorney with whom Ms. Hamilton claims she spoke is not an employee of the Commission. Gutierrez Report at 18. That claim is wrong; the staff attorney is a senior attorney with the Wireless Telecommunications Bureau's Enforcement Division.

⁵⁷ It does not appear as though Ms. Hamilton actually witnessed Mr. Easton destroying documents. There exists, however, credible evidence that Mr. Easton did destroy relevant documents. No originals of the Screen Preview 2 or Control P Report 2 have been located. Additionally, RTI's computer hard drive should have a copy of the Round 11 bids. However, as the independent counsel discovered, the data for Round 11 was not on the computer's hard drive. The data for all other bidding rounds, with one exception, was archived on the drive as RTI's procedure dictated. No explanation has been given by Mr. Easton for the missing Round 11 documents or data. Independent Counsel Report at 16.

⁵⁸ *Id.* at 24. Hamilton Deposition Ex. 7.

⁵⁹ For bidding Round 13, the round after which PCS 2000 withdrew its \$180 million bid, the net bid for License B324 was \$14,475,000. Therefore, had the auction ended that round, pursuant to Section 24.704(a)(1) of the Commission's Rules, PCS 2000 was facing a potential withdrawal payment of \$120,570,000. When the C Block auction closed after Round 184, the high bid for the License B324 was \$65,676,750. Therefore, under the Commission's Rules, PCS 2000 potentially faced a bid withdrawal payment of \$69,368,250. On December 20, 1996, the Bureau released an Order addressing PCS 2000's bid withdrawal payment for License B324. After consideration of PCS 2000's Request for Expedited Waiver or Reduction of Withdrawal Penalty (filed January 25, 1996), the Bureau determined that the penalty should be set at two times the minimum bid increment for that license for Round 11 of the broadband C Block auction, or \$3,273,374. *PCS 2000, L.P.*, Order, DA 96-2156 (December 20, 1996), *application for review pending*.

⁶⁰ Independent Counsel's Report at 20.

⁶¹ Milstein Deposition Tr. at 31-32.

20. Also on January 24, 1996, at the request of Fred Martinez, Chairman of Unicom,⁶² Mr. Easton submitted a statement to the Board of Directors as to what caused the bidding error. Mr. Easton stated that "[t]o the best of [his] knowledge, [SMG's] computers were operating properly, and the bid, as made, per [his] computer screen and [the] paper records, was \$11.01 per POP."⁶³

C. PCS 2000's Meeting with Commission Staff and Bid Withdrawal Payment Waiver Request

21. On January 26, 1996, PCS 2000, apparently unaware of Ms. Hamilton's contact with the Commission, submitted a Request for Expedited Waiver or Reduction of Withdrawal Penalty for its Round 11 bid for Norfolk.⁶⁴ While the waiver request stated that the precise cause of the erroneous bid was unknown to PCS 2000, the waiver request concluded that the Commission was not at fault. The waiver request did concede, however, that press reports stated that PCS 2000 attributed the error to the Commission, but claimed that those reports were mistaken in stating that PCS 2000 had blamed the Commission for the error.⁶⁵ The waiver request contained an affidavit by Mr. Easton, who declared that the precise manner in which the bidding error occurred could not be ascertained.⁶⁶ Mr. Easton, however, made several assumptions regarding how it *could have happened*. He stated that the bidding error could have been caused by human error, by an error introduced in the course of manually changing bids on-line in real time, or by an error introduced in transferring the data file between PCS 2000's computers or in transmitting the file over the bidding network to the Commission.⁶⁷ Mr. Easton also claimed that PCS 2000's printers were not working adequately, and as such, "PCS 2000 did not receive any confirmation that would have timely alerted the company to the error."⁶⁸ Attached to the Gutierrez Report was a letter submitted by an electrical contractor which asserts there were power problems at the SMG offices.⁶⁹ The electrical contractor, however, never named any specific dates on which such problems purportedly occurred. Ms. Hamilton testified that there were no electrical problems on that day.⁷⁰ Although Mr. Breen did not submit any affidavit with the Waiver Request, he has

⁶² See Independent Counsel's Report, Att. O: *see also* Lamoso Deposition Tr. at 15.

⁶³ Independent Counsel's Report, Att. P, at 3. (Statement from Anthony T. Easton concerning bidding on January 23, 1996, by PCS 2000).

⁶⁴ The issues raised in PCS 2000's waiver request are being addressed in a separate Order.

⁶⁵ PCS 2000's Request for Expedited Waiver or Reduction of Withdrawal Penalty at 2.

⁶⁶ Easton Declaration at 1.

⁶⁷ *Id.*

⁶⁸ PCS 2000 January 26, 1996, Waiver Request, Att. 2, at 2.

⁶⁹ Gutierrez Report, Att. C.

⁷⁰ Hamilton Deposition Tr. at 72-73.

since stated that he reviewed the Waiver Request before it was filed and "found nothing that was inconsistent with the facts as [he] understood them at that time."⁷¹

22. Also, on January 26, 1996, Ms. Hamilton spoke with Mr. Breen about Mr. Easton's actions. Mr. Breen left a meeting of Unicom officials in the SMG offices to speak with Ms. Hamilton.⁷² Ms. Hamilton's friend, Rosalyn Makris, was present during this conversation. Ms. Hamilton has stated that she informed Mr. Breen that Mr. Easton had made the mistake in preparing the bid and that Mr. Easton had lied to the Commission on the telephone about the bidding error. She stated that she additionally told Mr. Breen that Mr. Easton changed the bids on the database and then sent those altered reports to the Commission.⁷³ Moreover, Ms. Hamilton testified that Mr. Breen admitted that Ms. Milstein had already informed him of Mr. Easton's actions.⁷⁴ Mr. Breen has acknowledged that Ms. Hamilton spoke to him about Mr. Easton.⁷⁵ Furthermore, Mr. Breen admits that he responded to Ms. Hamilton's accusations regarding Mr. Easton's deceptions, stating "That's just Terry [Mr. Easton] being Terry."⁷⁶

23. Ms. Makris confirmed that Ms. Hamilton informed Mr. Breen about Mr. Easton's actions. Ms. Makris stated that her view of the discussion was that Ms. Hamilton told Mr. Breen that Mr. Easton had made the bidding error and was "doing whatever was necessary to cover-up his [mistake]."⁷⁷ Ms. Makris stated that Ms. Hamilton's comments to Mr. Breen were not ambiguous and that Mr. Breen did not appear surprised.⁷⁸ Ms. Hamilton testified that Mr. Breen returned to the meeting after speaking with her.⁷⁹ Mr. Lamoso testified that upon coming back into the meeting of the Unicom officials, Mr. Breen did not make any comments about the cause of the overbid.⁸⁰

24. On January 27, 1996, at an emergency Unicom Board of Directors meeting called to discuss the January 23 overbid, Mr. Easton made a presentation concerning how the bidding error

⁷¹ May 28, 1997, Declaration of Quentin L. Breen at 2. On June 4, 1997, counsel to Westel submitted an *ex parte* letter to the Chief, Enforcement Division, Wireless Telecommunications Bureau. Attached to this letter were an May 28, 1997, declaration of Mr. Breen and a May 24, 1997, declaration of Ms. Hamilton. The Bureau has instructed Mr. Breen's counsel to forward a copy of the letter to NatTel.

⁷² Hamilton Deposition Tr. at 38; Lamoso Deposition Tr. at 18-19.

⁷³ Independent Counsel's Report at 20.

⁷⁴ Hamilton Deposition Tr. at 45.

⁷⁵ Breen May 28, 1997, Declaration at 2.

⁷⁶ *Id.*

⁷⁷ Independent Counsel's Report at 20.

⁷⁸ *Id.*

⁷⁹ Hamilton Deposition Tr. at 46.

⁸⁰ Lamoso Deposition Tr. at 20.

occurred. According to Mr. Lamoso, Mr. Easton conceded he was responsible, but claimed that Ms. Hamilton was actually the one who committed the mistake.⁸¹

25. On January 29, 1996, apparently still unaware of Ms. Hamilton's contact with the Commission, PCS 2000 officials and their counsel met with Commission staff to discuss the bidding error. Mr. Lamoso, President of Unicom, and Fred Martinez, Chairman of Unicom, along with their counsel, explained that ordinarily Mr. Breen and Mr. Easton submitted the bids together. On that day, however, Mr. Breen was driving from Oregon to the RTI offices in San Mateo, California, and was not present to cross-check the bids. Moreover, the PCS 2000 participants at this meeting explained that PCS 2000's facsimile machine was overloaded and that PCS 2000 was not able to get any bid confirmations that day. They stated that PCS 2000 did not know how the error was made, but they did not attempt to blame the Commission for the error.

D. Ms. Hamilton's Contact with Mr. Lamoso and the Commission's Inquiry

26. On February 5, 1996, Ms. Hamilton contacted Mr. Lamoso to inform him of Mr. Easton's actions.⁸² Ms. Hamilton stated that she told Mr. Lamoso that Mr. Easton had lied to and submitted falsified documents to the Commission. According to Mr. Lamoso, Ms. Hamilton also told him that Mr. Easton was erasing files.⁸³ Mr. Lamoso also testified that Ms. Hamilton told him that she recovered the Control P Report 1 from the trash because she knew that Mr. Easton would likely try to blame her for the bidding error.⁸⁴ Ms. Hamilton then sent Mr. Lamoso a copy of her declaration, after telling him that she supplied the Commission with a copy.⁸⁵

27. In addition, Mr. Lamoso testified that, after he received a copy of Ms. Hamilton's declaration, a conference call was arranged between himself, Mr. Martinez, Messrs. Larry Odell and Richard Reiss, both directors of Unicom, PCS 2000's communications counsel, and Messrs. Breen and Easton.⁸⁶ Mr. Lamoso stated that Mr. Easton attempted to find inconsistencies in Ms. Hamilton's declaration, but that he was unconvincing.⁸⁷ Furthermore, Mr. Lamoso testified that Mr. Easton failed to give any explanation for the existence of two versions of the Control P

⁸¹ *Id.* at 21.

⁸² Independent Counsel's Report at 27-28.

⁸³ Lamoso Deposition Tr. at 25.

⁸⁴ *Id.* at 26.

⁸⁵ *Id.* at 26; Independent Counsel's Report at 27.

⁸⁶ Lamoso Deposition Tr. at 30-31.

⁸⁷ *Id.*

Report -- one showing a \$180 million bid for License B324, and one showing an \$18 million bid.⁸⁸ Mr. Lamoso also testified that he did not recall Mr. Breen speaking during the conference call⁸⁹ other than to comment that for too long the company had been looking the other way at the things Mr. Easton had been doing.⁹⁰ To the investigators that prepared the Independent Counsel's Report, Mr. Breen acknowledged that in prior instances, Mr. Easton "regularly and repeatedly made deliberate misstatements to third parties including government employees," and referred to such conduct as "Terry (Mr. Easton) being Terry."⁹¹

28. On February 6, 1996, Mr. Easton voluntarily took a leave of absence from his positions as Chief Executive Officer of Unicom and as Director of Engineering of RTI. Mr. Easton additionally resigned as a bidding agent for PCS 2000.⁹²

29. On February 7, 1996, the Bureau sent Mr. Lamoso a letter seeking additional information pursuant to Section 308(b) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 308(b). The letter requested, among other things, detailed information about how PCS 2000 routinely prepared and submitted its bids, how PCS 2000 prepared, submitted, and later withdrew its Round 11 bid, and how PCS 2000 took steps to inform the Commission of the erroneous bid.

E. PCS 2000's Response to the Commission's Inquiry

30. PCS 2000 retained the law firm of Young, Vogl, Harlick, Wilson & Simpson, LLP (Young, Vogl), on February 8, 1996, to conduct an investigation into the circumstances surrounding the erroneous bid. On February 20, 1996, PCS 2000 submitted the Independent Counsel Report to the Commission and requested that it be treated confidentially.⁹³ That report is considered herein as part of the record.

31. On February 21, 1996, Mr. Lamoso, through his counsel, responded, with a declaration, to the Commission's February 7, 1996, letter of inquiry. In his declaration, Mr. Lamoso described the manner in which PCS 2000 submitted bids. Mr. Lamoso also stated that PCS 2000's computer system would allow the bid selector to enter a bid of the minimum established bid for that round by a single key stroke or to enter a different bid manually. Mr. Lamoso, who was in Puerto Rico at the time of the Round 11 bid, also explained the company's data retention procedures. Mr. Lamoso stated that Michael Gavette, the bidding program

⁸⁸ *Id.* at 44-45.

⁸⁹ *Id.* at 31.

⁹⁰ *Id.* at 39.

⁹¹ Independent Counsel's Report at 23.

⁹² Mr. Easton was replaced as a registered bidding agent with Daniel J. Parks, a Director of Unicom.

⁹³ On May 15, 1996, PCS 2000 submitted a redacted version of the Independent Counsel's Report which it acknowledged could be disclosed to parties filing Freedom of Information Act requests with the Commission. PCS 2000 has subsequently withdrawn its confidentiality request for the report in its entirety.

consultant, would move a copy of the network data file to a subdirectory called "archive" where it would be maintained at all times.⁹⁴

32. Mr. Lamoso also stated that Ms. Hamilton contacted him on February 5, 1996, and supplied him with her declaration and the copies of the Control P Report 1 and Screen Preview 1. According to Mr. Lamoso, Mr. Easton acknowledged that these reports appeared genuine.⁹⁵ Mr. Lamoso, however, stated that the Control P Report 2 and Screen Preview 2, which were created after the three markets were withdrawn from the initial bid, were not located.⁹⁶ As for the report which was sent by facsimile to the Commission (Control P Report 3), Mr. Lamoso stated that it appeared that it was prepared sometime after 11:15 a.m. PST, and not at 9:35 a.m., as indicated on its face.⁹⁷ Mr. Lamoso also stated that PCS 2000's relevant computer files containing its Round 11 bids have not been located. Although the files would have normally been moved to the archive directory, no copy of the questioned Round 11 bid was found.⁹⁸ The Round 11 bid was also missing from Mr. Easton's computer files. Mr. Lamoso claimed that it was his understanding that Mr. Easton deleted the files, along with others, when he resigned as the bidding agent on February 7, 1996.⁹⁹ According to Mr. Lamoso, the files were deleted and purged in a manner which has prevented the reconstruction of their contents.¹⁰⁰

33. Additionally, on February 21, 1996, PCS 2000 amended its request for a waiver of the bid withdrawal payment because, according to its counsel, the original submission made statements that "were not entirely accurate."¹⁰¹ Most significantly, the amended request omitted a statement from Mr. Easton as to his version of the events of bidding Round 11. It also no longer claimed that PCS 2000 did not receive confirmation of the bid because of a printer malfunction. Furthermore, the amended waiver request no longer represented that the press reports erroneously claimed that PCS 2000 charged the error to the Commission. Finally, it no longer stated that Mr. Easton supplied the Commission with copies of spreadsheet printouts indicating the bids that PCS 2000 believed it had downloaded to the Commission.

34. On February 19, 1996, Mr. Easton resigned as a Director and Chief Executive Officer of Unicom and agreed not to participate in the affairs of the Board of Directors. Mr. Easton also resigned as a registered bidding agent for PCS 2000, and was replaced by Daniel Parks.

⁹⁴ Statement of Javier Lamoso in Response to the Commission's Inquiry of February 7, 1996, at 5.

⁹⁵ *Id.* at 13.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 13-14.

⁹⁹ *Id.* at 14.

¹⁰⁰ *Id.* at 15.

¹⁰¹ Letter to Michele C. Farquhar from Michael Deuel Sullivan dated February 21, 1996.

Thereafter, on April 26, 1996, Mr. Breen resigned from his position on the Board of Directors of Unicom.

F. Additional Easton Declaration

35. On June 28, 1996, Mr. Easton submitted an additional sworn declaration to "supplement the record in this proceeding."¹⁰² In this declaration, sworn to on June 26, 1996, Mr. Easton admits that the bidding error was the fault of PCS 2000. However, Mr. Easton states that the mistake was made in one computer, transferred to a second computer, corrected in the first computer, but transmitted to the Commission via the second computer.¹⁰³ He states that the materials he sent to the Commission by facsimile the day of the overbid were printouts from the computer which had the corrected information on it.

G. Westel's Auction Wins

36. On July 3, 1996, the Commission commenced a reauction for certain broadband PCS C Block authorizations.¹⁰⁴ Westel was the high bidder for the broadband C Block PCS authorization for American Samoa.¹⁰⁵ On August 26, 1996, the Commission commenced an auction for the broadband PCS D, E, and F Block authorizations.¹⁰⁶ Westel was the successful bidder for six F Block authorizations.¹⁰⁷

V. DISCUSSION

37. The Commission must have full confidence in the truthfulness of representations of its applicants and licensees.¹⁰⁸ "[T]he Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to

¹⁰² See Letter to Chairman Reed Hundt from Thomas Gutierrez, dated June 28, 1996.

¹⁰³ Easton June 26, 1996, Declaration at 1.

¹⁰⁴ See Public Notice, 18 Defaulted PCS Licenses to be Reauctioned, Reauction to begin July 3rd, DA 96-872 (released May 30, 1996).

¹⁰⁵ See Public Notice, Entrepreneurs' C Block Reauction Closes, DA 96-1153 (released July 17, 1996).

¹⁰⁶ See Public Notice, Auction of Broadband Personal Communications Service (D, E, and F Blocks), DA 96-1026 (released June 26, 1996).

¹⁰⁷ Westel was the high bidder in broadband F Block BTAs 38, 231, 353, 451, 491, and 492. See Public Notice, D, E, and F Block Auction Closes; Winning Bidders in the Auction of 1,479 licenses to Provide Broadband PCS in Basic Trading Areas, DA 97-81 (released January 15, 1997).

¹⁰⁸ Although NatTel withdrew its Supplement to its Petition to Deny which raised character issues against Westel, we nonetheless must address our own concerns of Westel's fitness. See *Quincy D. Jones*, 11 FCC Rcd 2481 (1995); *Booth American Company*, 58 FCC 2d 553, 554 (1976).

inform the Commission of the facts it needs in order to fulfill its statutory mandate."¹⁰⁹ Indeed, the entire "scheme of regulation rests on the assumption that applicants will supply the Commission with accurate information."¹¹⁰

38. Generally, breach of the duty to be truthful to the Commission takes two basic forms: (1) misrepresentation, and (2) lack of candor (failure to disclose). The former involves false statements of fact; the latter involves concealment, evasion, or other failure to be fully informative. Thus, an applicant's duty can be breached by affirmative misrepresentations and/or by a failure to come forward with a candid statement of relevant facts, whether or not such information is particularly elicited by the Commission.¹¹¹

39. As the Commission found in the *PCS 2000 NAL*, and the facts above amply support, Mr. Easton was responsible for PCS 2000's January 23, 1996, Round 11 bid of \$180 million for the Norfolk BTA.¹¹² Furthermore, Mr. Easton, while an officer and registered bidding agent of PCS 2000, intentionally misrepresented facts to the Commission and otherwise lacked candor in his dealings with the Commission.¹¹³ The evidence supports that Mr. Easton attempted to mislead the Commission into believing that PCS 2000 had bid only \$18 million for the Norfolk BTA in Round 11, and the Commission was responsible for the posting of the erroneous \$180 million bid. Mr. Easton compounded this misrepresentation by sending to the Commission forged documents purporting to be the original bidding data sheets, deleting and destroying other relevant files, and failing to reveal all of the facts as he knew them in his January 26, 1996, affidavit submitted with PCS 2000's Request for Expedited Waiver or Reduction of Withdrawal Penalty, and his later June 26, 1996, declaration.

40. These intentional deceptions by Mr. Easton must be considered breaches of the public trust. Acts of willful misrepresentation to the Commission go to the core concern of truthfulness.¹¹⁴ First, we determine that the misrepresentations were intentional. Intent to deceive is an essential element of misrepresentation or lack of candor showing.¹¹⁵ Ms. Hamilton's uncontroverted statement, which is fully supported by the Independent Counsel's Report, demonstrates that Mr. Easton knew when he called the Commission that PCS 2000, and PCS

¹⁰⁹ *RKO General, Inc. v. FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 and 457 U.S. 1119 (1982).

¹¹⁰ *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1210 (1985), *recon. denied*, 1 FCC Rcd 421 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991) (*Character Policy Statement*).

¹¹¹ *See Fox Television Stations, Inc.*, 10 FCC Rcd 8452, 8491-92 (1995) (citations omitted).

¹¹² *PCS 2000 NAL*, 12 FCC Rcd at 1715.

¹¹³ *Id.*

¹¹⁴ *See, e.g., Character Policy Statement*, 102 FCC 2d at 1210-11.

¹¹⁵ *See Weyburn Broadcasting Limited Partnership v. FCC*, 984 F.2d 1220, 1232 (D.C. Cir. 1993)

2000 alone, was responsible for the bidding error. Ms. Milstein stated in her deposition that she did not believe Ms. Hamilton to be the type of person to lie in a situation like this.¹¹⁶ Despite his knowing that he was responsible for the bidding error, Mr. Easton proceeded to attempt to place the blame for the \$180 million bid on the Commission's bidding computer. He then sent to the Commission, via facsimile transmission, falsified documents. Mr. Easton wrote a false time on the bidding sheets he submitted to the Commission in an obvious attempt to mislead the Commission into believing that the documents were created earlier. As the Commission concluded, the creation of false documents is undeniably an intentional act of deception.¹¹⁷

41. The Gutierrez Report goes to some lengths in an attempt to discredit Ms. Hamilton.¹¹⁸ For the purposes of the Bureau's investigation, Ms. Hamilton successfully answered all notable allegations raised by the Gutierrez Report.¹¹⁹ Moreover, the Bureau found Ms. Hamilton to be a highly credible witness who made personal sacrifices in order for the truth to be disclosed to the Commission. Moreover, it does not appear that Ms. Hamilton had any reason to misrepresent facts before this Commission, as she had nothing to gain. Mr. Easton, on the other hand, had ample reason to dissemble, considering the potential bid withdrawal payment facing PCS 2000. Under these circumstances, we believe that it is appropriate to issue this Order and proceed to a hearing where a decision regarding the credibility of all the witnesses will be made by an Administrative Law Judge.

42. The June 26, 1996, declaration submitted by Mr. Easton also was lacking in candor in several respects. First, although Mr. Easton knew that he attempted to mislead the Commission's auction personnel into believing that the bidding error was the fault of the Commission, his declaration disclaims that. Second, Mr. Easton offers no explanation why the materials faxed to the Commission on January 23, 1996, which purport to show that PCS 2000 had bid \$18,006,000 and not \$180,060,000, bore Mr. Easton's initials and a handwritten time *before* the mistaken bid was placed. Mr. Easton's second declaration states that what he sent to the Commission was the report he printed out from his computer, which had the correct bidding information on it, after he had learned the Commission had received an erroneous bid.¹²⁰ The declaration does not explain how the materials sent by Mr. Easton bore the earlier time *if*, as the statement would lead one to believe, Mr. Easton printed the materials from his computer *after* he had spoken with the Commission's auction personnel.

43. Moreover, evidence in the record supports the conclusion that Mr. Easton destroyed relevant documents to conceal his misrepresentations. The fact that the permanent records for

¹¹⁶ Milstein Deposition Tr. at 47.

¹¹⁷ PCS 2000 NAL, 12 FCC Rcd at 1716.

¹¹⁸ See, e.g., Gutierrez Report at 12-18.

¹¹⁹ See, e.g., Hamilton Deposition Tr. at 49-58.

¹²⁰ Easton June 26, 1996, Declaration at 1.

bidding Round 11, the round in which the mistaken bid was made, cannot be found, is telling.

44. We believe that the misrepresentations were serious. As stated above, the Commission must rely on the accuracy of information conveyed to it by its licensees and applicants. Mr. Easton made his misrepresentations directly to Commission auction personnel and then to the Commission as a whole in his submitted declaration. As we noted in the *Character Policy Statement*, we are authorized to treat even the most insignificant misrepresentations as serious.¹²¹ Notably, the misrepresentations made here were significant. They bore directly on whether or not PCS 2000 should be charged with a bid withdrawal payment.¹²² Mr. Easton attempted to absolve PCS 2000 of its responsibility of making a withdrawal payment by making it appear as though PCS 2000 was not at fault for the \$180 million bid, but instead, that the Commission was at fault.

45. Based on the facts, we have grave concerns regarding Mr. Easton's basic character qualifications to be a Commission licensee and his fitness to participate in future Commission proceedings. Although Mr. Easton has no applications currently pending before the Commission, we believe that it is both more efficient and more fair to consider his fitness to be a Commission licensee at this time since we must decide whether we can grant the Westel applications for C and F Block authorizations controlled by Mr. Breen, and for all practical purposes, we cannot examine Mr. Breen's role in this controversy without examining Mr. Easton's. Consequently, we are ordering Mr. Easton to show cause why he should not be banned from future Commission proceedings.

46. Likewise, we have serious concerns regarding Mr. Breen's fitness to be a Commission licensee. The facts reveal that Ms. Hamilton and Ms. Milstein both spoke to Mr. Breen about Mr. Easton's actions and misrepresentations to the Commission within two days of the incident. Moreover, it appears that Mr. Breen understood that Mr. Easton possessed the acumen to misrepresent facts. In spite of this knowledge, however, the facts establish that although Mr. Breen was alerted to Mr. Easton's actions early on, and he was aware that Mr. Easton was capable of such misdeeds, Mr. Breen did not report them to the Commission or to the Unicom Board of Directors (of which he was a member), or take any other action to correct Mr. Easton's deception. Mr. Breen's explanation that Ms. Hamilton did not inform him that she had in her possession the original bidding sheets¹²³ does not impact our conclusion. Because Mr. Breen knew that Mr. Easton was capable of making misrepresentations to the Commission, he should have taken corrective action after two of his employees came to him with information that Mr. Easton was making such misrepresentations, and it should not matter whether either Ms. Milstein or Ms. Hamilton told Mr. Breen about the existence of any supporting documentation.

¹²¹ See *Character Policy Statement*, 102 FCC 2d at 1209-11.

¹²² Section 24.704(a)(1) of the Commission's Rules subjects a bidder who withdraws a high bid during the course of an auction to a payment equal to the difference between the amount bid and the amount of the ultimate winning bid for that market. 47 C.F.R. § 24.704(a)(1).

¹²³ Breen May 28, 1997, Declaration at 3. Ms. Hamilton confirms that she did not inform Mr. Breen that she had retrieved the original bidding sheets from the trash. Hamilton May 24, 1997, Declaration at 1.

Additionally, it is irrelevant that Ms. Hamilton spoke to Mr. Breen *after* PCS 2000 had already filed its Waiver Request. Although it was too late for Mr. Breen to prevent the filing of the Waiver Request after he spoke to Ms. Hamilton, Mr. Breen took no apparent steps to correct any misinformation contained in the earlier filing.

47. Mr. Breen's failure to timely inform the Commission about material facts of which he was aware constitutes a breach of duty to the Commission and raises a substantial and material question of fact as to whether Mr. Breen lacked candor before the Commission. As the majority shareholder in Westel, Mr. Breen's misconduct calls into question whether Westel is qualified to be a Commission licensee. Accordingly, Westel's applications will be designated for a hearing in this consolidated proceeding.

VI. CONCLUSION AND ORDERING CLAUSES

48. Mr. Easton has engaged in serious misconduct which calls into question his basic qualifications to be a Commission applicant or licensee. We believe that his misconduct should prohibit him from participating in any future Commission auctions and from being a Commission licensee. Accordingly, pursuant to Section 312 of the Act, Mr. Easton will be ordered to show cause why he should not be so barred.

49. We have examined the evidence against Westel in light of the standards for designating a hearing issue. See *Astroline Communications Limited Partnership v. FCC*, 857 F.2d 1556, 1561-62 (D.C. Cir. 1988); 47 U.S.C. §§ 309(d), 309(e). When we examine the record, we find that there are substantial and material questions of fact as to whether the public interest would be served by permitting Westel to hold a Commission license. Specifically, substantial and material questions of fact concerning whether Westel's controlling partner, Mr. Breen, has the requisite character necessary to control a Commission licensee in light of the fact that he failed to disclose to the Commission that misrepresentations were made concerning the January 23, 1996, mistaken bid.

50. Although the misrepresentations concerned only License B324, a market which was not available at the reauction, and therefore, a market for which Westel placed no bids, we believe that because character is a basic qualifying criterion for an applicant, the scope of the inquiry must extend to whether Westel is qualified to hold the captioned licenses. See *Character Policy Statement*¹²⁴; 47 U.S.C. § 308.

51. Moreover, we believe the presiding administrative law judge should be given authority to impose a forfeiture against Mr. Breen should it be appropriate.¹²⁵ Therefore, an issue will be added to determine whether Mr. Breen made, or caused to have made, material

¹²⁴ See Note 105, *supra*.

¹²⁵ On June 4, 1997, a letter with supporting declarations was submitted on behalf of Mr. Breen. Accordingly, if any misrepresentations of fact or lack of candor is shown in this submission, the Commission is within its one year statute of limitations for the imposition of forfeitures. 47 U.S.C. § 503(b)(6).

misrepresentations, or lacked candor, in his May 28, 1997, Declaration and June 4, 1997, letter, and if so, whether Mr. Breen should be subject to a forfeiture. The trier of fact is authorized to impose forfeitures up to the statutory maximum.

52. Accordingly, IT IS ORDERED that the Petition to Deny filed by National Telecom PCS, Inc., against Westel Samoa, Inc., is hereby DISMISSED.

53. IT IS FURTHER ORDERED that, pursuant to Sections 309(e), 312(a), and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 309(e), 312(a), 312(c), the pending applications of Westel Samoa, Inc. and Westel, L.P. are DESIGNATED FOR HEARING; and Anthony T. Easton is ORDERED TO SHOW CAUSE why he should not be barred from holding an attributable interest in a Commission authorization, in a consolidated proceeding on the following issues:

1. To determine, based on Anthony T. Easton's misrepresentations before and lack of candor exhibited towards the Commission, whether Mr. Easton should be barred from holding Commission authorizations and participating in future Commission auctions.
2. (A) To determine the facts and circumstances surrounding the conduct of Quentin L. Breen in connection with PCS 2000's bids placed on January 23, 1996, in the Commission's Broadband PCS C Block auction;

(B) To determine, based on the evidence adduced above, whether Quentin L. Breen engaged in misrepresentations before and/or exhibited a lack of candor towards the Commission.
3. To determine, based on the evidence adduced in Issue 2, whether Westel Samoa, Inc., and Westel, L.P., possess the requisite character qualifications to be granted the captioned C Block and F Block Broadband Personal Communications Services applications, and accordingly, whether grant of their applications would serve the public interest, convenience, and necessity.

54. IT IS FURTHER ORDERED that it shall be determined, pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(3), and Section 1.80(g) of the Commission's Rules, 47 C.F.R. § 1.80(g), whether an ORDER OF FORFEITURE shall be issued against Quentin L. Breen in an amount not exceeding the statutory maximum for any single act or failure to act for having willfully violated the Communications Act of 1934 or the Commission's Rules.

55. IT IS FURTHER ORDERED that, in connection with the possible forfeiture liability noted above, this document constitutes notice, pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(3).

56. IT IS FURTHER ORDERED that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

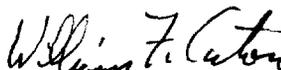
57. IT IS FURTHER ORDERED that the Wireless Telecommunications Bureau is made a party to this proceeding. The parties may avail themselves of an opportunity to be heard by filing written notices of appearance under Section 1.221 of the Commission's Rules, 47 C.F.R. § 1.221, within 20 days of the mailing of this Order by the Secretary of the Commission.

58. IT IS FURTHER ORDERED, pursuant to Sections 309(e) and 312(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 309(e), 312(d), that the burden of proceeding with the introduction of evidence and the burden of proof with respect to Issue 1 shall be upon the Wireless Telecommunications Bureau; and the burden of proceeding with the introduction of evidence and the burden of proof with respect to Issues 2 and 3 shall be on Westel Samoa, Inc., and Westel, L.P.

59. IT IS FURTHER ORDERED that the Secretary of the Commission shall send a copy of this Order via Certified Mail - Return Receipt Requested to Westel's, Mr. Breen's, and Mr. Easton's counsel.

60. IT IS FURTHER ORDERED that the Secretary shall cause a summary of this Order to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary