

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

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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
) 00865-CW-L-97

To: The Honorable Arthur I. Steinberg
Administrative Law Judge

**WIRELESS TELECOMMUNICATIONS BUREAU'S OPPOSITION
TO MOTION FOR PROTECTIVE ORDER**

On November 6, 1997, Anthony T. Easton, by his counsel, filed a Motion for Protective Order (Motion) accompanied by a Contingent Motion for Acceptance of Late-Filed Pleading. The Chief, Wireless Telecommunications Bureau (Bureau), for the reasons set forth below, respectively requests that the Motion for Protective Order be dismissed or denied¹ and that the

¹ Mr. Easton also appears to argue against the taking of the depositions of Scott Merberger, Lorri Collins, Michael Gavette, and William Pezzaglia. Easton Motion at p. 4. Because Mr. Easton is not a party to this proceeding, nor, to the Bureau's knowledge, does his counsel represent any of those named individuals, Mr. Easton has no standing to oppose the taking of those depositions. Therefore, the superfluous arguments regarding the taking of those depositions should be disregarded.

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subpoena compelling Mr. Easton's appearance at a deposition be signed.²

1. The Motion filed by Mr. Easton should be dismissed on procedural grounds as it was filed untimely. Section 1.315(b) of the Commission's Rules requires that responsive pleading (such as a Motion for a Protective Order) must be filed with seven days after service of the Notice of Deposition. The Bureau filed its Notice of Deposition for Mr. Easton on October 29, 1997. Therefore, any responsive pleading would have been due on November 5, 1997. In his Contingent Motion for Acceptance of Late-Filed Pleading, Mr. Easton argues that Federal Express was late in delivering a copy to him.³ Mr. Easton fails to acknowledge, however, that his counsel was sent a copy of the Notice of Deposition by facsimile on October 29, 1997. The service upon his counsel provided Easton with notice of the Bureau's intent to depose Mr. Easton. Section 1.12 of the Commission's Rules provides for service of pleadings upon counsel.

2. Moreover, Mr. Easton has failed to demonstrate good cause for allowing a late-filed pleading. Mr. Easton argues that his counsel contacted Bureau counsel for information regarding possible stipulations pertaining to Mr. Easton's deposition and regarding how the notice was served upon Mr. Easton, and that his counsel did not receive immediate responses from the Bureau. However, Mr. Easton's counsel did not contact Bureau counsel until November 5, 1997, the date the opposition to the Notice of Deposition was due. Bureau counsel needed an opportunity to contact others within the Bureau in order to obtain answers to all of the

² Mr. Easton has agreed, should his deposition be compelled, that his deposition take place in Washington, D.C., on December 8, 1997, as opposed to the initially requested date of November 19, 1997.

³ According to Federal Express' electronic tracking records, it appears as though Federal Express attempted delivery earlier, however, no one was at Mr. Easton's place of residence to sign for the package. Federal Express was unable to accomplish delivery until October 3, 1997, when Mr. Easton's wife, Susan Easton, signed for the delivery.

information sought by Mr. Easton. Mr. Easton has not shown any basis for waiting until the day his filing was due to make inquiries upon the Bureau. Accordingly, because Mr. Easton's counsel received timely notice of the Bureau's intent to depose Mr. Easton, and because Mr. Easton has failed to show good cause for acceptance of a late-filed pleading, his Motion should be dismissed.

3. Furthermore, Mr. Easton's Motion is substantively lacking. Mr. Easton's Motion is a poorly disguised Petition for Reconsideration of the Order to Show Cause issued against him. Mr. Easton argues throughout the Motion his belief that the Commission's investigation of the January 23, 1996, bidding error by PCS 2000, L.P. (PCS 2000) was unfairly biased against him. Because the Presiding Judge has no jurisdiction to make such a determination, Mr. Easton's Motion should be summarily denied.⁴

4. It is undeniable that Mr. Easton may possess relevant information to this proceeding. Discovery, including the taking of a deposition, is generally allowed where it likely will lead to the adduction of evidence relevant to the specified hearing issues.⁵ This entire proceeding is premised on actions taken by Mr. Easton. Additionally, Mr. Easton was Mr. Breen's business partner at the time of the bidding error. Mr. Easton and Mr. Breen have a long history together before this Commission which dates back to at least the cellular lotteries. Therefore, it is manifest that a deposition of Mr. Easton will likely lead to the adduction of relevant evidence.

5. Mr. Easton clearly possesses information which could lead to the discovery of relevant evidence in this proceeding. Issue 2 in this proceeding seeks:

2 (A) To determine the facts and circumstances surrounding the conduct of

⁴ See *Atlantic Broadcasting Co.*, 4 FCC 2d 943 (Rev. Bd. 1966).

⁵ See 47 C.F.R. § 1.313; *Mid-Ohio/Capitol Communications Limited Partnership*, 4 FCC Rcd 8125 (Rev. Bd. 1989); *Discovery Procedures*, 11 FCC 2d 185, 187 (1968).

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.

The facts and circumstances surrounding PCS 2000's overbid are clearly relevant to this issue. Moreover, considering the fact that Mr. Easton and Mr. Breen were partners at the time of the overbid and taking their long history into account, it appears extremely likely that they had communications regarding the overbid. It is therefore clear that Mr. Easton's deposition would lead to relevant evidence under the designated issues. Mr. Easton argues that if his deposition is allowed, "[t]he Bureau should not be allowed to inquire into matters pertaining solely to Mr. Easton's representations to the Commission concerning the overbid." Easton Motion at p. 13. The argument ignores the broad language of the designated issues, the purpose of discovery, and the close relationship between Mr. Easton's conduct and Mr. Breen's knowledge of that conduct. In order to ascertain Mr. Breen's conduct in connection with the overbid, any evidence of what happened in connection with the overbid, and what communications Mr. Breen may have had concerning the overbid are certainly relevant. In other words, in order to determine what Mr. Breen knew about Mr. Easton's actions, the Bureau must be allowed to inquire what actions Mr. Easton undertook, as well as what he told Mr. Breen about those actions.

6. Mr. Easton speculates that the actual purpose his deposition is to try "to put together a misrepresentation/lack of candor case against him" instead of seeking evidence concerning Mr. Breen's conduct. Easton Motion at p. 4. In that regard, Mr. Easton cites the provision of Section 1.313 of the Commission's Rules authorizing the Presiding Judge to protect a deponent from "annoyance, expense, embarrassment, or oppression." Easton Motion at p. 3. Mr. Easton's

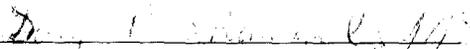
speculation is unfounded. The Bureau wishes to depose Mr. Easton to obtain evidence relevant to the designated issue. The Bureau need not make a case of misrepresentation/lack of candor against Mr. Easton, as the Commission has already made such a case.

7. Furthermore, Mr. Easton fails to cite any support for the proposition that the Bureau should not be allowed to depose Mr. Easton because he was not deposed during the pre-designation investigation. *See* Easton Motion at p. 3. The Commission's Rules contemplate that Bureau counsel will have an opportunity to depose an individual whose testimony could lead to the discovery of relevant evidence. Mr. Easton is such a person. Consequently, the Bureau should have a full and fair opportunity to depose Mr. Easton. If Mr. Easton believes any particular question or line of examination is improper, he will have an opportunity to make appropriate objections during the deposition.

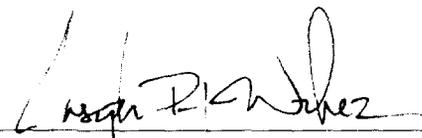
Respectfully Submitted,

November 12, 1997

Daniel Phythyon
Chief, Wireless Telecommunications Bureau



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Chief, Compliance and Litigation Branch
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By: 

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Trial Attorneys

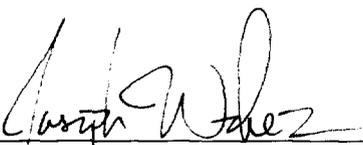
CERTIFICATE OF SERVICE

I, Joseph Weber, so hereby certify that I have on this 12th day of November, 1997, have had copies of the foregoing NOTICE OF DEPOSITION delivered to the following:

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