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

REC'D  
NOV 13 1997  
FEDERAL COMMUNICATIONS  
COMMISSION

In Re Applications of	)	WT Docket No. 97-199
	)	
<b>Westel Samoa, Inc.</b>	)	File No. 00560-CW-L-96
	)	
For Broadband Block C Personal	)	
Communications Systems Facilities	)	
	)	
and	)	
	)	
<b>Westel, L.P.</b>	)	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 COMMENTS  
ON PETITION TO ENLARGE THE ISSUES**

On October 30, 1997, Westel Samoa, Inc., Westel, L.P., and Quentin L. Breen (collectively Westel) filed a Petition to Enlarge the Issues in the captioned proceeding. The Chief, Wireless Telecommunications Bureau (Bureau) hereby submits comments on the foregoing petition.

1. Westel requests that an issue be added to determine Mr. Breen's qualifications to hold any license. Although the Bureau generally supports in principle Westel's request to inquire into the basic qualifications of Mr. Breen, the Bureau believes that the addition of the requested issue is not necessary. Currently, Issue 2 of the *Memorandum Opinion and Order, Hearing Designation Order, Notice of Opportunity for Hearing, and Order to Show Cause* in this proceeding reads as follows:

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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.

*Westel Samoa, Inc.*, FCC 97-322 at ¶ 53 (released September 9, 1997) (*HDO*) Following Issue

2, the Commission also designated Issue 3, which reads:

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.

*Id.*

2. Westel requests that an issue be added to specifically rule, based on the evidence adduced in Issue 2, whether Mr. Breen possesses the requisite character qualifications to hold a Commission license. The Bureau believes that the issue Westel requests is already implicitly included within Issues 2 and 3. Issue 2 involves making a determination whether Mr. Breen (Westel's controlling principal) misrepresented facts and/or lacked candor before the Commission; and Issue 3 involves making a determination whether Westel's applications can be granted based on Mr. Breen's conduct. Therefore, in order resolve Issue 3, the Presiding Judge must first make a determination as to Mr. Breen's conduct and qualifications. Accordingly, the issue sought to be added by Westel already is implicitly included with the designated issues.

3. Westel states that it desires the addition of the issue because it believes that Mr. Breen's individual qualifications should be resolved, not just Westel's qualifications.<sup>1</sup> The Bureau has no objection in principle to the addition of such an issue. However, the Bureau believes if Westel seeks to have the Commission pass on Mr. Breen's individual qualifications, the addition of the issue should not change the scope of this proceeding. The *HDO* set clear parameters of what is to be examined. The Bureau does not believe that this proceeding should expand into a proceeding about Mr. Breen's other license holdings which are not at issue here.<sup>2</sup>

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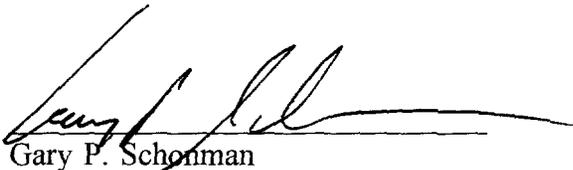
<sup>1</sup> Petition at 3-4.

<sup>2</sup> None of Mr. Breen's other license holdings are at stake here. The Bureau also notes that the addition of the issue would not necessarily conserve resources as Westel claims it would. Should findings be made against Mr. Breen and Westel, the Commission would still have the option of initiating a separate proceeding involving Mr. Breen's other licenses. Moreover, the doctrine of *res judicata* as to Mr. Breen's basic character qualifications would not be applicable to the extent there are different issues or parties.

For the foregoing reasons, the Chief, Wireless Telecommunications Bureau generally, in the interest of clarity, does not oppose the enlargement of the issues, but believes that the issue proposed by Westel should not be used as a mechanism to expand this proceeding into matters not directly relevant to the captioned applications.

Respectfully Submitted,

Daniel B. Phythyon  
Chief, Wireless Telecommunications Bureau



Gary P. Schonman  
Chief, Compliance and Litigation Branch  
Enforcement and Consumer Information Division

By: 

Joseph Paul Weber  
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Trial Attorneys

November 13, 1997

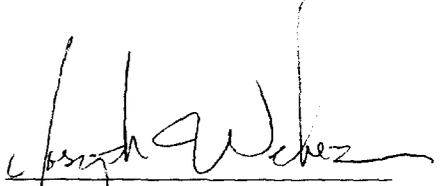
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CERTIFICATE OF SERVICE

I, Joseph Weber, so hereby certify that I have on this 13th day of November, 1997, have had copies of the foregoing COMMENTS OF PETITION TO ENLARGE delivered to the following:

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