

NOV 24 1997

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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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  
IN SUPPORT OF PETITION TO INTERVENE**

On November 13, 1997, ClearComm, L.P. (ClearComm), formerly known as PCS 2000, L.P., filed a Petition to Intervene (Petition) in the above-captioned proceeding. For the reasons set forth below, the Chief, Wireless Telecommunications Bureau supports ClearComm's Petition.

1. Section 309(e) of the Communications Act of 1934, as amended, provides that:

When the Commission . . . designates an application for hearing, the parties-in-interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest not more than thirty days after publication of the hearing issues . . . in the Federal Register.

47 U.S.C. § 309(e). Section 1.223(a) of the Commission's Rules, which implements this statutory provision, provides that:

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Where, in cases involving applications for construction permits and station licenses . . . the Commission has failed to notify and name as a party to the hearing any person who qualifies as a party in interest, such person may acquire the status of a party by filing . . . a petition for intervention showing the basis of its interest. . . . Where the person's status as a party in interest is established, the petition to intervene will be granted.

47 C.F.R. § 1.223(a). Based on these provisions, the Bureau believes that ClearComm may intervene as a matter of right.

2. ClearComm has established that its interests may be affected by the instant proceeding. The factual scenario which led to the instant proceeding arose from a bidding error by ClearComm's predecessor, PCS 2000, in the Commission's C Block PCS auction. Quentin L. Breen, a party to this proceeding, is a former director of Unicom Corporation, the general partner of PCS 2000 at the time the bidding error took place. Issue 2(A) in this proceeding is to determine the facts and circumstances surrounding the conduct of Mr. Breen in connection with PCS 2000's January 23, 1996, overbid. Therefore, evidence could be adduced which could affect ClearComm's interests.

3. In *PCS 2000, L.P.*, Memorandum Opinion and Order, 12 FCC Rcd 1681 (1997) (MO&O), *recon. pending*, the Commission granted PCS 2000 several broadband C Block Personal Communications Systems licenses. The grant of those licenses is not yet final because a petition for reconsideration of that action is pending. Although the Bureau does not intend to use the instant proceeding to investigate ClearComm's qualifications -- the Bureau is satisfied that the Commission fully resolved that issue in the MO&O -- because this proceeding involves the conduct of officers of PCS 2000, ClearComm plainly has an identifiable interest in this proceeding. While the Bureau does not believe that ClearComm's pending litigation against Romulus Telecommunications, Inc. gives ClearComm a cognizable interest in this proceeding,

the fact that this proceeding will necessarily make findings concerning PCS 2000 qualifies ClearComm as a party in interest entitled to intervention as of right.

4. If the Presiding Judge believes that ClearComm has failed to justify intervention as of right, ClearComm should be allowed discretionary intervention pursuant to Section 1.223(b) of the Commission's Rules. Section 1.223(b) of the Rules provides that:

Any other person desiring to participate as a party in any hearing may file a petition for leave to intervene . . . [and] must set forth the interest of petitioner in the proceedings, [and] must show how such petitioner's participation will assist the Commission in the determination of the issues in question.

47 C.F.R. § 1.223(b). As shown above, ClearComm has established that it has an interest in the proceeding. Moreover, ClearComm has also demonstrated that it will be able to assist in the adduction of evidence in this proceeding. The conduct in question surrounds former officers of PCS 2000 who were acting as agents of PCS 2000 at the time the misconduct took place. Accordingly, ClearComm is well able to assist in the discovery of evidence of the events relevant to the designated issues. Furthermore, current employees of ClearComm may be valuable witnesses in this proceeding. The Bureau notes that ClearComm's president, Javier Lamoso, has been noticed to give deposition testimony.

5. Accordingly, the Bureau supports the grant of ClearComm's "Petition to Intervene."

Respectfully Submitted,

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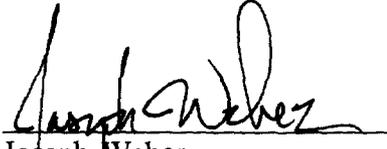
CERTIFICATE OF SERVICE

I, Joseph Weber, so hereby certify that I have on this 24th day of November, 1997, have had copies of the foregoing COMMENTS ON PETITION TO INTERVENE delivered to the following:

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