

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

MEMORANDUM OPINION AND ORDER

Issued: November 17, 1997 ; Released: November 19, 1997

1. Under consideration are a Notice of Deposition, filed on October 29, 1997, by the Wireless Telecommunications Bureau ("Bureau"); a Motion for Protective Order, filed on November 6, 1997, by Anthony T. Easton ("Easton");<sup>1</sup> and an Opposition to Motion for Protective Order, filed on November 12, 1997, by the Bureau.

2. The Bureau seeks to take Easton's deposition to inquire into the following matters:

Any knowledge possessed by [Easton] concerning the events surrounding and following the January 23, 1996, bid submission by PCS 2000 in the Commission's C Block auction[, and]

Any knowledge possessed by [Easton] concerning Quentin L. Breen's ["Breen"] awareness, complicity, and/or participation in the events surrounding and following the January 23, 1996, bid submission by PCS 2000 in the Commission's PCS C Block auction.

<sup>1</sup> Good cause having been shown, Easton's Contingent Motion for Acceptance of Late-Filed Pleading, filed on November 6, 1997, will be granted and his Motion for Protective Order will be accepted.

3. Easton requests the issuance of a protective order directing that his deposition not be taken. In support, Easton argues that he is not a party to this proceeding, and that the Bureau had an ample opportunity to depose him in connection with an investigation of the PCS 2000 bid. Indeed, Easton states, he offered to make himself available for deposition at that time, but the Bureau declined to depose him. Under these circumstances, Easton contends, "it would be neither appropriate nor just" to permit the Bureau to depose him now. Further, Easton maintains that the Bureau is trying to use the discovery process in this proceeding "to put together a misrepresentation/lack of candor case against him." Alternatively, should his deposition be permitted, Easton requests that the scope of his examination be "strictly limit[ed]" to matters relevant to designated Issue 2(A).<sup>2</sup> The Bureau opposes Easton's motion.

4. Easton's request to quash the Notice of Deposition will be denied. It is clear that Easton has personal knowledge of facts which are relevant to the outstanding issues in this proceeding. Given such knowledge, Easton's deposition "appears reasonably calculated to lead to the discovery of admissible evidence." See Section 1.311(b) of the Commission's Rules. Easton's status as a non-party and his argument that the Bureau could have deposed him in connection with another matter are irrelevant, and provide no basis for quashing the Notice of Deposition. Suffice it to say, the Commission's discovery rules provide for the taking of the deposition of "any person . . . for the discovery of relevant facts" (see Section 1.311 of the Rules), and "any person" would include Easton. See also Section 1.315(a) of the Rules.

5. The scope of the examination of Easton will not be limited at this juncture. However, it is noted that there is no longer any issue in this proceeding relating to Easton's activities, and there is no misrepresentation/lack of candor issue directed towards Easton.<sup>3</sup> Therefore, the deposition of Easton should focus primarily on his relationships, communications and contacts with Breen, his cognizance of Breen's actions, inactions and conduct, his knowledge of the state of Breen's knowledge, and matters of similar import.

Accordingly, IT IS ORDERED that the Contingent Motion for Acceptance of Late-Filed Pleading, filed by Easton on November 6, 1997, IS GRANTED, and the Motion for Protective Order filed by Easton on November 6, 1997, IS ACCEPTED.

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<sup>2</sup> Issue 2 reads as follows:

(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.

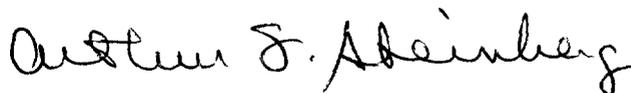
<sup>3</sup> The hearing on Issue 1, which pertained exclusively to Easton's conduct, was terminated by Order, FCC 97M-172, released October 20, 1997.

IT IS FURTHER ORDERED that the Motion for Protective Order filed by Easton on November 6, 1997, IS DENIED.

IT IS FURTHER ORDERED that the Secretary of the Commission SHALL MAIL a copy of this Memorandum Opinion and Order to Easton's counsel at the following address:

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FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script that reads "Arthur I. Steinberg".

Arthur I. Steinberg  
Administrative Law Judge