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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 SUMMARY DECISION**

Respectfully Submitted,

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Trial Attorneys

February 4, 1998

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SUMMARY

This case is not proper for summary decision because the record that exists contains many disputed issues of fact at the heart of the case, as defined by the Commission in its *HDO*. The *HDO* raised issues concerning character, candor and intent of Westel's principal, Mr. Quentin Breen. Thus, Westel bears a very high burden in showing there is no need for a hearing -- a burden that Westel's Motion for Summary Decision does not meet. Further, where candor is an issue, it is well established that summary decision is not appropriate because it deprives the presiding officer with the opportunity to observe the witness' demeanor, in order to be able to evaluate his or her credibility.

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**WIRELESS TELECOMMUNICATIONS BUREAU'S OPPOSITION
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I. INTRODUCTION

On January 21, 1998, Westel Samoa, Inc., Westel, L.P., and Quentin L. Breen (collectively Westel) filed a Motion for Summary Decision (Motion)¹ in the above-captioned proceeding. The Chief, Wireless Telecommunications Bureau (Bureau), by his attorneys, hereby submits the Bureau's Opposition to Westel's Motion.

1. In the above-captioned proceeding, the following issues remain:

¹ The Bureau notes that Westel's Motion is procedurally defective. Section 1.49 of the Commission's Rules requires that any pleading filed with the Commission which exceeds 10 pages in length to include a summary and a table of contents. Westel's Motion is 34 pages in length, but failed to include the required summary and table of contents.

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.²

Although Westel never specifically claims that, based on the arguments in its Motion, these two issues could be resolved in its favor, presumably this is the crux of Westel's argument. Notwithstanding Westel's discussion of the factual background, as will be shown below, there remain genuine questions of fact regarding these issues. Accordingly, summary decision in Westel's favor is not appropriate.

2. Westel argues in its Motion that the proper focus is Mr. Breen's perception of the facts.³ Westel argues that Mr. Breen never perceived anything in information concerning the bidding error conveyed to him which was not consistent with the information conveyed to the Commission.⁴ Westel concludes that because Mr. Breen did not perceive any information of

² *Memorandum Opinion and Order, Hearing Designation Order, Notice of Opportunity for Hearing, and Order to Show Cause*, 12 FCC Rcd 14057, 14076 (1997) (HDO).

³ Motion at pp. 6-7.

⁴ Motion at p. 33.

decisional significance, he could not have developed any intent to mislead or deceive the Commission.⁵

3. Westel's Motion consists of a lengthy, skewed narration of the facts in this case as Westel believes them to be. Indeed, in numerous instances, Westel makes factual assertions without any supporting citation.⁶ In any event, Westel has not satisfied the test for a motion for summary judgment and its Motion should, therefore, be denied.

II. DISCUSSION

A. The Burden of Persuasion Lies With the Movant

4. Westel, as the moving party, carries the burden of persuasion on summary decision.

The Commission's rules are clear:

The party filing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination at the hearing.⁷

5. Summary decision is an "extraordinary procedure" which should only be granted when there exists no genuine issue as to any material fact, and also when the moving party is entitled to a judgment as a matter of law."⁸ Westel has utterly failed to meet its burden. Inexplicitly,

⁵ Motion at pp. 33-34.

⁶ For instance, page 25 of Westel's Motion consists of two full paragraphs of "facts." However, Westel makes only one reference at the end of the second paragraph for all of the information contained within the paragraphs. The remainder is unsupported.

⁷ 47 C.F.R. § 1.251(a)(1).

⁸ Fed. R. Civ. P. 56(c); *Taylor v. FDIC*, ___ F.3d __ Case No. 96-5267 (D.C. Cir. Dec. 30, 1997); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, (1986). Section 1.251 of the Commission's Rules provides for summary decision only when there is no genuine issue of material fact for determination at hearing. *New Broadcasting Corp.*, 44 FCC 2d 386 (1973).

Westel never directly argues in its Motion that no genuine issues remain. Furthermore, all inferences must be viewed in a light most favorable to the nonmoving party and if material facts are at issue, or are susceptible to divergent inferences, summary judgment is not appropriate.⁹ Consequently, as the moving party, Westel carries the burden of showing that there is no genuine issue of material fact as to any issue set forth in the HDO, including lack of candor and misrepresentation issues. As detailed below, Westel's Motion must be denied both because genuine issues of material facts exist and because Westel is not entitled to judgment as a matter of law.

B. Facts Remain in Dispute

6. Westel argues that summary judgment is proper because Mr. Breen did not misrepresent facts to the Commission or withhold information of decisional significance. Westel's argument must be rejected. Substantial and material questions of fact on this point still exist. Contrary to Westel's argument, the evidence of record shows that Mr. Breen knew two very different versions of what occurred on January 23, 1996, concerning PCS 2000's bidding error, and chose not to disclose this conflicting information to the Unicom Board or to the Commission. On January 23, in a cellular telephone conversation, Mr. Easton told Mr. Breen that the Commission was at fault for the bidding error, and may have said that he had documentation to support that claim.¹⁰ Mr. Easton had conversations with Mr. Lamoso and Mr. Sullivan in that

⁹ *DeGraff v. District of Columbia*, 120 F.3d 298, 301 (D.C. Cir. 1997); *Tao v. Freeh*, 27 F.3d 635, 638 (D.C. Cir. 1994).

¹⁰ Breen Deposition at p. 29. Mr. Breen claims he does not remember whether Mr. Easton telling him that he [Mr. Easton] had documentation to prove that the error was the Commission's fault.

same time frame and Mr. Easton had told them that he had documents which purportedly supported that the Commission was at error.¹¹ Mr. Easton also told Ms. Milstein to tell the PCS 2000 limited partners and Mr. Lamoso to tell the press that the error was the Commission's fault.¹² Clearly, there is sufficient evidence in the record for the trier of fact to conclude that Mr. Easton would have said the same thing to Mr. Breen.¹³

7. However, on January 24, Ms. Milstein told Mr. Breen a conflicting version of events. Ms. Milstein reported to Mr. Breen that, according to Ms. Hamilton, Mr. Easton had been lying and doctoring evidence.¹⁴ On January 26, 1996, Ms. Hamilton herself told Mr. Breen the Mr. Easton had lied to the Commission, that Mr. Easton had doctored the database papers, and that Mr. Easton had taken the bidding sheet binder from her desk.¹⁵ Because the information conveyed by Ms. Milstein and Ms. Hamilton was so contradictory to the information conveyed

¹¹ Sullivan Deposition at p. 12, Lamoso Deposition I at pp. 10-12. Mr. Lamoso was deposed twice -- once a part of the Commission's investigation on February 20, 1997 (Lamoso Deposition I), and again after the proceeding was designated for hearing on December 10, 1997 (Lamoso Deposition II).

¹² Milstein Deposition II at pp. 30-31. Ms. Milstein was deposed twice -- once as a part of the Commission's investigation on February 6, 1997 (Milstein Deposition I) and again after the proceeding had been designated for hearing on November 20, 1997 (Milstein Deposition II). Lamoso Deposition II at pp. 9-11.

¹³ It is significant to note that by this time, Mr. Breen and Mr. Easton had been in business together for more than 20 years. Easton Deposition at p. 5. Mr. Easton testified that he believes he told Mr. Breen about sending the bidding sheet documents to the Commission. Easton Deposition at pp. 26-29.

¹⁴ Milstein Deposition I at p. 31; Milstein Deposition II at p. 48.

¹⁵ Hamilton Deposition I at p. 39. Ms. Hamilton was deposed twice -- once as a part of the Commission's investigation on February 6, 1997 (Hamilton Deposition I), and again after the proceeding had been designated for hearing on November 21, 1997 (Hamilton Deposition II); Makris Deposition at pp. 9-10.

by Mr. Easton, a question is raised as to why Mr. Breen did not personally take any action or make additional inquiries to pursue the truth.

8. Mr. Breen confirmed that he was not surprised to hear Mr. Easton blame the Commission, because "[i]t was not inconsistent with what I was beginning to understand about the sense of the problem and the mistake."¹⁶ Mr. Breen was well aware of Mr. Easton's propensity to blame others for his mistakes, and to fail to take responsibility for his own actions.¹⁷ Nonetheless, despite his own suspicions, Mr. Breen did not raise the issue with anyone else. An issue certainly remains, therefore, regarding Issue 2 of the *HDO* because if Mr. Breen did withhold relevant facts from the Commission, such a failure to disclose weighs on his qualifications to be a licensee.

9. Mr. Breen's self-serving claim that he believed that he already knew more about the bidding error than Ms. Hamilton¹⁸ does not support a motion for summary judgment. Indeed, the facts of record demonstrate that the Presiding Judge could reach a contrary conclusion. Mr. Breen was not present in the office on the day of the bidding error;¹⁹ however, Ms. Hamilton was not only present, she was directly involved with the transmission of bids to the Commission.²⁰ Therefore, Ms. Hamilton was obviously in the position to be a valuable witness to the events surrounding the bidding error. Mr. Breen had said that he trusted Ms. Hamilton, and found her

¹⁶ Breen Deposition at p. 41.

¹⁷ Breen Deposition at pp. 40-41, 62-63.

¹⁸ Breen Deposition at pp. 48-52.

¹⁹ Hamilton Deposition II at pp. 35-36.

²⁰ Hamilton Deposition I at p. 5; Hamilton Deposition II at p. 5.

highly competent.²¹ Nonetheless, Mr. Breen took absolutely no steps to inquire about what information she possessed. Accordingly, a genuine issue exists whether, because by failing to come forward with Ms. Milstein's and Ms. Hamilton's version of the events, Mr. Breen participated in misrepresenting facts or, at a minimum, acquiesced in Mr. Easton's deception. Therefore, Issue 2 of the *HDO* cannot be summarily resolved in Westel's favor.

10. Documentary evidence further demonstrates Mr. Breen's knowledge of the misrepresentation to the Commission. Mr. Breen was aware that the bidding sheets for the Round 11 bid, (which were in the bidding records binder when he was preparing the Round 12 bid on January 24), reflected a bid of \$18 million, not the \$180 million bid recorded by the FCC.²² Yet, incredulously, Breen submits in his Motion that "[he] had no reason to doubt that the bidding spreadsheet in the binder for Round 11 was anything other than a legitimately created record of PCS 2000's Round 11 bidding activity."²³ This is not consistent with record evidence. Certainly an issue remains regarding Mr. Breen's lack of taking any action to understand the discrepancy between the bidding sheets in the binder and the information that PCS 2000 was conveying to the Commission regarding the bidding error. Ms. Hamilton had told Mr. Breen that Mr. Easton had taken the binders which held the bidding sheets.²⁴

11. Westel states in its Motion that Mr. Breen's concern regarding Ms. Hamilton's discussion with him about Mr. Easton's actions was that she would not get blamed for the

²¹ Breen Deposition at pp. 31-32, Breen Declaration (May 28, 1997) at p. 3.

²² Breen Deposition at pp. 67-68.

²³ Motion at 15.

²⁴ Hamilton Deposition I at p. 39.

bidding error.²⁵ However, Mr. Breen's actions belie this claim. For instance, on January 24 or 25, 1996, Mr. Easton conveyed to Mr. Breen his belief that Mr. Hamilton had looked guilty on the day of the bidding error and that Mr. Easton was not, therefore, surprised that she had resigned.²⁶ Moreover, in a Unicom Board of Directors meeting on January 27, 1996, Mr. Easton made a presentation concerning how the bidding error could have occurred, and suggested, as one of the possibilities, that Ms. Hamilton had caused the error.²⁷ Despite the fact that attempts were being made to blame Ms. Hamilton, Mr. Breen did not say anything in her defense.²⁸ Therefore, an issue still exists as to why Mr. Breen took no actions to defend Ms. Hamilton despite the fact he knew of her concerns about being blamed.

12. As stated above, a motion for summary judgment lies only when there is no dispute as to the facts. As the Bureau has indicated, however, substantial disputes remain as to the facts in this proceeding. Because a genuine dispute remains regarding whether Mr. Breen was aware of Mr. Easton's deception and failed to take any action to rectify such deceit, Issue 2 of the *HDO*, which relates to Mr. Breen's qualifications, cannot be resolved in Westel's favor. Issue 3 of the *HDO* relates to Westel's qualifications based upon whether Mr. Breen is qualified. Because the issue regarding Mr. Breen's qualifications cannot be resolved summarily, Issue 3, relating to Westel's qualifications, also cannot be so resolved. Accordingly, for the reasons stated above, because genuine disputes remain, Westel's Motion must be denied.

²⁵ Motion at pp. 24, 29-30.

²⁶ Easton Deposition at pp. 55-56.

²⁷ Lamoso Deposition I at p. 21, 24; Lamoso Deposition II at pp. 30-31.

²⁸ Lamoso Deposition I at p. 24; Movshin Deposition at pp. 20-21.

C. Westel Is Not Entitled to Summary Decision as a Matter of Law

1. When Credibility Is an Issue To Be Resolved, Demeanor Findings Are Necessary

13. Westel argues that the appropriate focus of this proceeding is Mr. Breen's perception of the information conveyed to him.²⁹ Obviously, summary judgment cannot be based on perception alone. However, assuming *arguendo* that Westel has correctly stated the appropriate focus, such an argument necessitates a denial of its Motion. It is well established that summary decision is not appropriate where an issue of material fact cannot be resolved without observation of the demeanor or a witness in order to evaluate his credibility.³⁰ A witness' state of mind is inherently a question of fact which turns on credibility.³¹ The Commission has also recognized that factual questions regarding character are best resolved after credibility and demeanor of a witness are fully tested.³² Accordingly, Westel's Motion, as a matter of law, should be denied

²⁹ Motion at pp. 6-7.

³⁰ *Goldman v. Bequai*, 19 F.3d 666, 672 (D.C. Cir. 1994) (credibility determinations are not proper before a judge on summary decision); *Spreen v. Brey*, 961 F.2d 109, 111 (7th Cir. 1992) (summary decision is properly denied where issue of material fact can be resolved only after a determination of the credibility of witnesses); *International Shortstop, Inc. v. Rally's Inc.*, 939 F.2d 1257, 1265-66 (5th Cir. 1991), *cert. denied*, 502 U.S. 1059 (1992) (it is less fashionable to grant summary decision because a party's state of mind is inherently a question of fact which turns on credibility); *Washington Post Company v. U.S. Dept. of Health and Human Services*, 865 F.2d 320, 326 n.8 (D.C. Cir. 1989) (the need to assess the credibility of witnesses places disputes outside the proper realm of summary decision); *Hackley v. Roudebush*, 520 F.2d 108, 159 (D.C. Cir. 1975) (summary decision is inappropriate when issues of material fact cannot be resolved with observation of the demeanor or witnesses in order to evaluate credibility).

³¹ *International Shortstop, supra*, 939 F.2d at 1265.

³² *Thomas W. Lawhorne*, 7 FCC Rcd 13 (Rev. Bd. 1992), *aff'd*, 7 FCC Rcd 4341 (1992) (factual questions regarding character are best resolved after the credibility and demeanor are fully tested); *Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases*, 5 FCC Rcd 157 (1990) (for some types of issues it is necessary for the judge to observe the demeanor of the witnesses to assess their credibility).

because, based upon Westel's argument, and the fact that it offers no other witnesses to support its case, the Motion rests on the credibility of a single witness whose demeanor has not been observed by the trier of fact. To rule on Mr. Breen's perception at this stage, the Presiding Judge would be required to rely on Mr. Breen's deposition testimony without the ability to assess Mr. Breen's demeanor and credibility. Therefore, Westel's Motion must fail because it is based on an argument that compels credibility and demeanor findings established only in a hearing.

2. Westel's Legal Argument Is Legally Deficient

14. Westel argues that in order for it to be found to have lacked candor before or made misrepresentations to the Commission, Mr. Breen must have done the following: 1) withheld information he perceived to be of decisional significance from the Commission; and 2) withheld this particular information with an intent to deceive.³³ Westel claims that the information Ms. Hamilton told Mr. Breen, which he did not pass on to the Commission or to the Unicom Board of Directors, was information he did not perceive to be of decisional significance. Therefore, according to Westel, because the information was not of decisional significance to Mr. Breen, he could not have had an intent to deceive the Commission when he failed to disclose it.³⁴ Westel's argument should be rejected because it is self-serving, circular, and legally deficient.

15. It is quite clear that Ms. Hamilton's first hand account of Mr. Easton's lying to the Commission about how the bidding error occurred, and then his attempts to conceal it, is information of decisional significance. Mr. Breen tries to avoid blame for his failure to pass on the information to anyone else by saying he did not perceive the information to be anything new,

³³ Motion at p. 31.

³⁴ Motion at p. 34.

or that he did not already know. The Bureau disputes this self-serving comment, *supra*, at ¶ 10. The Bureau submits that Ms. Hamilton was so knowledgeable, and this information was so significant, that he should have inquired further than simply what Mr. Easton told him.

16. Next, Westel argues that because intent to deceive is an essential element of both misrepresentation and lack of candor,³⁵ and Mr. Breen lacked knowledge of decisional information, he could not have had an intent to deceive the Commission. Therefore, without that intent, there was no misrepresentation or lack of candor on his part. The Bureau submits that this argument is deficient because it is a circular argument that fails to recognize that intent to deceive can be established in more ways than just failure to convey information of decisional significance. Intent or state of mind can be found from evidence affording a reasonable inference.³⁶ For instance, the Commission has held that intent can be found from a misstatement coupled with a motive to lie.³⁷ Intent to deceive can also be established through evidence demonstrating knowledge of the misstatement's falsity.³⁸ There is ample evidence in the record of Mr. Breen's knowledge of Mr. Easton's misstatements and both Mr. Easton's and Mr. Breen's motive to lie to conceal the mistake to avoid a severe monetary penalty.

17. Additionally, as has been explained, *supra* at ¶ 9, Mr. Breen was well aware of Mr. Easton's propensity to blame others, and his failure to take responsibility for his (Mr. Easton's) own mistakes. Given this awareness of Easton's character failings, and Mr. Breen's own

³⁵ Motion at pp. 30-31.

³⁶ *California Public Broadcasting Forum v. FCC*, 752 F.2d 670, 679 (D.C.Cir. 1985).

³⁷ *Joseph Bahr*, 10 FCC Rcd 32, ¶ 6 (1994).

³⁸ *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991).

suspicious of what had occurred concerning the bidding error,³⁹ in addition to the gravity of the situation, the Bureau submits that from this evidence, the trier of fact could infer that Breen's silence was an intent to deceive the Commission.

18. Finally, the Bureau submits that Westel's argument that Mr. Breen did not engage in misrepresentation, or lack of candor, is also incomplete because it does not recognize Breen's duty, as an applicant to the Commission, to come forward with material relevant to Commission matters, according to the Commission's Rules:

Rule 1.17 provides, in relevant part:

No applicant, permittee or licensee shall in any response to Commission correspondence or inquiry *or in any application*, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or *willful material omission bearing on any matter within the jurisdiction of the Commission*.⁴⁰

19. The Commission has recognized that:

In view of the fundamental importance of licensee truthfulness, the fact of a concealment or misstatement may have more significance than the actual fact concealed, *FCC v. WOKO*, 329 U.S. 223, 227 (1946), and we have explicitly refused to renounce our authority to consider even the most insignificant misrepresentation as disqualifying.⁴¹

Stated otherwise, the Commission views an applicant's misrepresentation and lack of candor as a serious breach of trust.⁴² An applicant has a duty "to be forthcoming as to all facts and

³⁹ Breen Deposition at p. 41.

⁴⁰ 47 C.F.R. § 1.17 (emphasis added).

⁴¹ *San Joaquin Television Improvement Corp.*, 2 FCC Rcd 7004, 7005 (1987).

⁴² *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1221-22 (D.C. Cir. 1994).

information relevant to a matter before the FCC, whether or not such information is particularly elicited."⁴³

20. The Bureau submits that Mr. Breen, as an applicant to the Commission, has a duty to be forthcoming with all relevant information concerning Commission matters. The information he had was highly relevant, and therefore, it can be argued that he had a duty to come forward with that information to the Commission. He, however, did not come forward, and while he would point out that the company, PCS 2000, came forward with information in the waiver request and its subsequent amendment, the Bureau submits that should not absolve Mr. Breen of his personal duty as prescribed in Rule 1.17 of the Commission's Rules.

⁴³ *Swan Creek*, 39 F. 3rd at 1222 (quoting *Silver Star Communications, -- Albany, Inc.*, 3 FCC Rcd 6342, 6349 (Rev. Bd. 1988)).

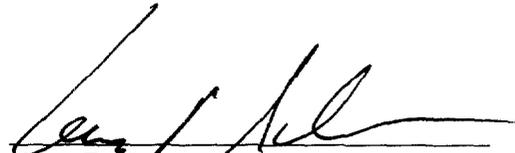
III. CONCLUSION

21. For the reasons given above, the Bureau concludes that there is evidence sufficient to justify a hearing, and therefore, Westel's Motion for Summary Decision should be denied, and the Bureau's Opposition to the Motion should be granted.

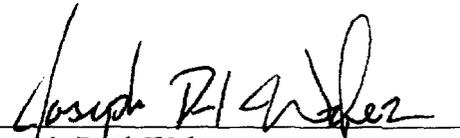
Respectfully Submitted,

February 4, 1998

Daniel Phythyon
Chief, Wireless Telecommunications Bureau



Gary P. Schonman
Chief, Compliance and Litigation Branch
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By: 

Joseph Paul Weber
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Trial Attorneys

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In re Applications of:)
)
WESTEL SAMOA, INC.)
FOR BROADBAND BLOCK C)
PERSONAL COMMUNICATIONS)
FACILITIES)

Suite 1200, Conference Room
Bell, Boyd & Lloyd
1615 L Street, N.W.
Washington, D.C.

Friday,
December 12, 1997

Deposition of:

QUENTIN L. BREEN

a witness of lawful age, taken on behalf of the FCC,
pursuant to notice, in the offices of the Boyd & Lloyd; 1615
L Street, N.W.; Washington, D.C., on Friday, December 12,
1997, at 9:45 a.m., before Peter K. Shoner, Notary Public
in and for the District of Columbia, when were present:

APPEARANCES:

On Behalf of the Witness:

A. THOMAS CARROCCIO, ESQ.
ROSS A. BUNTROCK, ESQ.
Bell, Boyd & Lloyd
1615 L Street, N.W.
Suite 12000
Washington, D.C. 20036
(202) 466-6300

1 the bid for 180 million dollars happened; how it occurred?

2 A On the telephone, he was of the view that it had
3 to have been an FCC mistake.

4 Q And he said that in so many words?

5 A In so many words.

6 Q Can you -- I know it's been quite a while, but can
7 you remember exactly what he did say?

8 A At this point, no.

9 Q Okay. Did he tell you that he had sent any
10 documents to the FCC during any of those conversations that
11 day?

12 A I don't have a clear recollection on that. This
13 is one of those areas where I have difficulty separating my
14 memory from all of the other input that's come in in the
15 course of this case. It's like that childhood vacation:
16 How much did you experience and how much do you know of
17 because you've been told about it. And I -- I could have,
18 but I don't have a clear memory of it.

19 Q Okay. Thank you. When did you arrive at the San
20 Mateo Group that day, what time as best you can remember?

21 A Oh, 6:00, maybe as late as 6:30 --

22 Q Okay.

23 A -- that time frame.

1 (Whereupon, a brief recess was taken.)

2 BY MS. POWER:

3 Q Mr. Breen, when did you first meet Cynthia
4 Hamilton?

5 A Oh, some time in 1996 I guess, whenever she came
6 on board at San Mateo Group.

7 Q And when did she leave the San Mateo Group?

8 A She sent a fax on January 24 tendering her
9 resignation.

10 Q 1996?

11 A 1996. Then I first met her in 1995 because the
12 auction started in December of 1995.

13 Q Okay. So during the period of time when she began
14 at San Mateo Group and until she left, did you have the
15 opportunity to get to know her work?

16 A Yes.

17 Q And what did you think of her quality of her work?

18 A She was diligent, professional, competent,
19 capable, did her job, good employee.

20 Q Did you trust her work?

21 A Yes.

22 Q Was she organized?

23 A Very.

1 Q Okay. Did her work at San Mateo Group increase in
2 responsibility during the time that she was there?

3 A It seems to me that when she first came, she was
4 doing general clerical work. And when the auction started,
5 she had the skills set most appropriate to handling the
6 record-keeping for the auction. That kind of slot, I like
7 to see someone who has what I call fanatical attention to
8 detail. And she had fanatical attention to detail. And,
9 boy, that's the person that you want to put in the slot that
10 requires that skills set. So she was perfect for that job.

11 Q Did she know that you approved of her work?

12 A I think so.

13 Q Do you know if Mr. Easton held her in the same
14 regard?

15 A He joined in the decision to put her in that slot.
16 So I presume that he did.

17 Q And that would have been roughly December of '95
18 or would it have been earlier to prepare her for the
19 auctions?

20 A I don't have a present recollection of the
21 starting date of the auction. But if it was on or about the
22 18th or 20th of December -- there was an interim. I think
23 that was the year that the federal government didn't get

1 surprised at all. That's human nature: I didn't do it.
2 Right?

3 BY MS. POWER:

4 Q What was the third --

5 A The third one, that Mr. Easton was being less than
6 truthful in a telephone conversation with the FCC. Well,
7 all right, what's that referring to? That's referring to
8 it's the FCC's fault. This is more not me. So what I got
9 out of that was Mr. Easton was saying I didn't do it;
10 Cynthia Hamilton, she did it. Oh, Cynthia Hamilton didn't
11 do it? The FCC's computers must be wrong.

12 Well, now, we subsequently figured out that the
13 FCC had gotten the information correctly. Sullivan had
14 verified that. As a matter of fact, that was that morning
15 telephone conversation. He had gotten to whoever it is, the
16 Auction Bureau and keystrokes and whatever all that was.
17 That was -- so he came back and said, hey, the FCC got it
18 correctly.

19 But what I heard Ms. Milstein telling me that Ms.
20 Hamilton had told her was that Ms. Hamilton thought that Mr.
21 Easton was being less than truthful in talking to the FCC on
22 the telephone and saying the FCC's computers are wrong.
23 Well, my view of it was that, I mean, now that I had had the

1 conversation with Mike Sullivan, that at the time Easton was
2 agitated -- I talked to him on the phone -- upset. Easton
3 did not take criticism well.

4 He was not really -- some people when they make a
5 mistake, oh, I did it damn it. And some people say as long
6 as they can I didn't do it. But there is one of those whose
7 initial response was I didn't do it. So I read it as Easton
8 saying to the Commission, I think you did it.

9 Well, was that a true statement, a false
10 statement, an opinion? But it came after I was beginning to
11 understand how things were shaking out. So was it a
12 surprise? No. It was not inconsistent with what I was
13 beginning to understand about the sense of the problem and
14 the mistake.

15 Q Did it seem to -- did you ask Ronit if Cynthia had
16 anything to substantiate her belief or her claim that Mr.
17 Easton had committed the error?

18 A No. Hey, this is a conversation in passing as we
19 were crossing paths in kind of a central area. This was
20 really quite -- a relatively casual conversation.

21 Q Were you curious to know how the mistake had
22 happened?

23 A Sure.

1 Q Did you think that as one of the key people
2 involved in printing the -- sending the bid to the FCC, that
3 Ms. Hamilton would have important information to share?

4 A An important thing at that moment was to fix the
5 problem at the FCC. We got a 180 million dollar bid sitting
6 there with all the potential ramifications of penalty and
7 everything else. That's what was important. Who had the
8 fat finger, a lot of time to think of that.

9 Q Did you say anything to Mr. Easton about what
10 Ronit Milstein had told you about Ms. Hamilton and her --
11 Ms. Hamilton's beliefs?

12 A I don't believe so, no.

13 Q You didn't say to Terry that day, Cynthia thinks
14 you had something to do with it; Cynthia thinks that it was
15 your fault?

16 A This wasn't the time to be trying to fix blame.
17 This was the time to -- hey, the press already had articles
18 out there that PCS 2000 was blaming the FCC. It was damage
19 control time. That's what was important. So who did it
20 internally? In a crisis situation, you have to do your
21 hierarchy of what's important. Fix it at the FCC first.
22 Get a waiver request in.

23 Q Did you participate in that waiver -- the