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Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 98I-21
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 C Block Personal Communications Services Facilities	)	
	)	
and	)	
	)	
WESTEL, L.P.	)	File Nos. 00129-CW-L-97
	)	00862-CW-L-97
For Broadband C Block Personal Communications Services Facilities	)	00863-CW-L-97
	)	00864-CW-L-97
	)	00865-CW-L-97
	)	00866-CW-L-97

ORDER

Adopted: April 24, 1998 ; Released: April 27, 1998

By the Assistant General Counsel, Administrative Law Division:

1. This order dismisses in part and denies in part: (1) a Motion to Consolidate, filed February 11, 1998, by Anthony T. Easton (Easton), (2) an Application for Review, filed January 26, 1998, by ClearComm L.P. (ClearComm, formerly PCS 2000, L.P.), and (3) a Petition for Stay, filed January 26, 1998, by ClearComm.

2. Easton's motion asks the Commission to consolidate its consideration of three then-pending matters. The first is a petition for reconsideration, filed by Easton, asking the Commission to reconsider the designation of an issue against him in this proceeding relating to misconduct he allegedly committed while he was associated with ClearComm. The second is a petition for reconsideration, filed by M. Eloise Rosenblatt, Trustee of the SDE Trust (Trust), concerning an order granting ClearComm's applications despite the alleged misconduct, and a companion notice of apparent liability issued against ClearComm based on the same misconduct. The third is ClearComm's application seeking review of the Presiding Judge's refusal to permit ClearComm to intervene as a party to this proceeding (the petition for stay is related to the application for review).

3. Easton contends that it would be beneficial if the Commission "consolidates for decision all pending matters presenting issues going to the scope of the Westel Samoa hearing." More specifically, Easton explains that all three pending pleadings raise issues

relating to the "preclusive or collateral effects" of prior Commission actions that (1) proposed a $1 million forfeiture against ClearComm based, inter alia, on Easton's alleged misconduct (PCS 2000, L.P., 12 FCC Rcd 1703 (1997)), and (2) designated this proceeding for hearing (Westel Samoa, Inc. 12 FCC Rcd 14057 (1997)). According to Easton, the Commission erred in seemingly indicating in its prior actions that no evidentiary hearing is required to establish that Easton committed misconduct, and he suggests that any further inquiry into whether misconduct occurred warrants a full reexamination of the Commission's treatment of the interests of Easton, the Trust, and ClearComm.

4. Since Easton filed his motion to consolidate, significant actions have occurred. On March 10, 1998, the Commission granted in part Easton's Petition for Reconsideration. Westel Samoa, Inc., FCC 98-31 (Mar. 10, 1998). Consistent with Easton's argument, the Commission held that he is entitled to a full evidentiary hearing as to whether he committed misconduct. Thus, the first matter as to which Easton seeks consolidated consideration is no longer pending before the Commission. Subsequently, on March 26 1998, Administrative Law Judge Arthur I. Steinberg reconsidered his earlier ruling on his own motion and granted ClearComm's request to intervene in this proceeding. Westel Samoa, Inc., FCC 98M-36 (Mar. 26, 1998). The ALJ's ruling moots ClearComm's Application for Review and the associated Petition for Stay. These will now be dismissed and, for the purpose of Easton's motion to consolidate, are also not pending before the Commission.

5. The Rosenblatt petition for reconsideration can not now be consolidated with the two other matters that Easton referenced in his motion, since the latter matters are no longer pending before the Commission. Furthermore, Rosenblatt's petition for reconsideration raises questions, which are distinct from those involved in the hearing and which do not involve the allegations against Easton. The Commission can thus deal with the merits of the Rosenblatt petition in due course without being affected by, or affecting, the outcome of the hearing proceeding. Consistent with these circumstances, counsel for the Trust has notified the Presiding Judge that it will not seek to intervene in the hearing proceeding. Letter from Tony J. Tanke to the Honorable Arthur I. Steinberg (April 9, 1998).

10. ACCORDINGLY, IT IS ORDERED, That, pursuant to the authority delegated under 47 C.F.R. § 0.251(c), the Application for Review and the Petition for Stay, filed January 26, 1998, by ClearComm L.P. ARE DISMISSED as moot.

11. IT IS FURTHER ORDERED, That, pursuant to the authority delegated under 47 C.F.R. § 0.251(c), the Motion to Consolidate, filed February 11, 1998, by Anthony T. Easton, IS DISMISSED as moot in part and IS DENIED in part.

John I. Riffer
Assistant General Counsel
Administrative Law Division