

FCC MAIL SECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 98M-72

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In re Applications of)	DISPATCHED BY	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: June 5, 1998 ; Released: June 8, 1998

1. Under consideration are a Notice of Deposition of Romulus Telecommunications, Inc. ("Romulus"), filed on May 13, 1998, by ClearComm, L.P. ("ClearComm"); and a Motion Opposing Taking of Deposition of Romulus Telecommunications, Inc., filed on May 20, 1998, by Anthony T. Easton ("Easton").¹

2. ClearComm has filed a Notice of Deposition of Romulus Telecommunications, Inc. Citing Rule 30(b)(6) of the Federal Rules of Civil Procedure, ClearComm directed that Romulus "designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf on the topics set forth [in the Notice of Deposition]." Notice at 2.

3. Easton opposes the Notice of Deposition on the grounds that only "persons," and not non-person entities, may be deposed under Section 1.315(a) of the Commission's Rules. Therefore, Easton argues, the noticed deposition of Romulus "is unauthorized . . . and cannot proceed." Motion at 1. Further, Easton contends that, since ClearComm has noticed for deposition the three persons who together constitute the entire Board of Directors of Romulus,

¹ In a May 27, 1998, letter to the Secretary of the Commission from counsel for ClearComm, ClearComm stated that it was unable to serve Romulus with a copy of its May 13, 1998, Notice of Deposition, and requested the withdrawal of that Notice. On May 28, 1998, ClearComm filed an amended Notice of Deposition of Romulus Telecommunications, Inc. The May 13 and May 28 Notices appear to be identical with the exception of the date set for the deposition. Since the substance of Easton's Motion would apply equally to the May 28 Notice, a ruling on those matters would be appropriate.

"any specific information relevant and material to this proceeding . . . may be elicited pursuant to authorized discovery procedures [directed to them]." Id. at 2.

3. The Motion Opposing Taking of Deposition will be denied. Easton has read the word "person" in Section 1.315(a) of the Rules too narrowly. As defined in Section 153(32) of the Communications Act, the word "person" would include corporations such as Romulus. Further, under Section 1.315 of the Rules, ClearComm would have been entitled to serve notices of deposition on every "officer[], director[], managing agent[], or other person[]" associated with Romulus who might possess knowledge of the topics listed in the Notice of Deposition.² Viewed in this light, ClearComm's Notice of Deposition of Romulus was not an unreasonable way in which to proceed,³ appears to be a much more direct, efficient, and expeditious manner in which to obtain the desired information, and has not prejudiced Easton in any manner whatsoever. In this connection, it is noted that no objection has been made to the "Topics for Examination" listed in the Notice of Deposition.⁴

Accordingly, IT IS ORDERED that the Motion Opposing Taking of Deposition of Romulus Telecommunications, Inc., filed by Easton on May 20, 1998, IS DENIED and the deposition of Romulus Telecommunications, Inc., SHALL BE TAKEN.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

² Alternatively, ClearComm could have sought permission to serve interrogatories on Easton (*cf.* Tr. 73), a party to this proceeding and a member of the Board of Directors of Romulus, seeking the identity of persons associated with Romulus who have knowledge relating to the topics listed in the Notice of Deposition. ClearComm could then have noticed for deposition the specific individuals identified in Easton's answers.

³ See Fed. R. Civ. P. 30(b)(6).

⁴ Easton also objects to ClearComm's reservation in the Notice of Deposition of the right to seek approval to take the deposition of Romulus by sound-and-visual means. Since there has not been any such request, there is no need to rule on that matter.