

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 98M-66
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

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MEMORANDUM OPINION AND ORDER

Issued: May 28, 1998 ; Released: June 1, 1998

1. Under consideration are a Notice of Deposition of San Mateo Group, Inc., filed on May 13, 1998, by ClearComm, L.P. ("ClearComm"); a Motion Opposing Taking of Deposition of San Mateo Group, Inc., filed on May 20, 1998, by Anthony T. Easton ("Easton"); and a Reply to "Motion Opposing Taking of Deposition of San Mateo Group, Inc.," filed on May 27, 1998, by ClearComm.

2. On May 13, 1998, ClearComm filed a Notice of Deposition of San Mateo Group, Inc. ("SMG"). Citing Rule 30(b)(6) of the Federal Rules of Civil Procedure, ClearComm directed that SMG "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 of Deposition 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 SMG "is unauthorized . . . and cannot proceed." Motion Opposing Taking of Deposition at 1. Further, Easton contends that, since he "controls" SMG, "any specific information relevant and material to this proceeding . . . may be elicited pursuant to authorized discovery procedures directed to [him]." *Id.* at 2. ClearComm filed a reply to Easton's motion.

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 discussed in ClearComm's reply,

the word "person," as defined in Section 153(32) of the Communications Act, would include corporations such as SMG. 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 SMG who might possess knowledge of the topics listed in the Notice of Deposition.¹ Viewed in this light, ClearComm's Notice of Deposition of SMG was not an unreasonable way in which to proceed,² 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.³

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

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

¹ Alternatively, ClearComm could have sought permission to serve interrogatories on Easton (*cf.* Tr. 73), a party to this proceeding and the individual who "controls" SMG, seeking the identity of persons associated with SMG 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.

² See Fed. R. Civ. P. 30(b)(6).

³ Easton also objects to ClearComm's reservation in the Notice of Deposition of the right to seek approval to take the deposition of SMG by sound-and-visual means. Since there has not been any such request, there is no need to rule on that matter.