

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

FCC 98M-77
81006

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: June 12, 1998 ; Released: June 15, 1998

1. Under consideration are: (a) a Motion to Compel Answers to Interrogatories, filed on May 27, 1998, by Anthony T. Easton ("Easton"); (b) an Opposition to (a), filed on June 8, 1998, by the Wireless Telecommunications Bureau ("Bureau"); (c) Comments in Support of (b), filed on June 5, 1998, by ClearComm, L.P. ("ClearComm"); and (d) a Motion to Dismiss (b) and (c), filed on June 10, 1998.

Motion to Dismiss¹

2. Easton requests the dismissal of the Bureau's Opposition and ClearComm's Comments in Support thereof. Easton's request will be granted to the extent that ClearComm's Comments will be dismissed. Section 1.323(c) of the Rules, which governs the procedures to be used with respect to interrogatories, provides that a response to a motion to compel answers to interrogatories may be filed by "[t]he party upon whom the interrogatories were served[, and that a]dditional pleadings should not be submitted and will not be considered." Since the "party upon whom the interrogatories were served" was the Bureau, only the Bureau was authorized to file a response. Consequently, ClearComm's Comments will be dismissed without consideration.

¹ Since time is of the essence, it would be in the public interest to rule on the Motion to Dismiss without awaiting responsive pleadings. Section 1.298(a) of the Rules.

3. Easton also maintains that the Bureau's Opposition was late filed and that it should be dismissed for that reason. Easton's contention is without merit. Easton's Motion to Compel was filed on May 27, 1998. Pursuant to Sections 1.323(c) and 1.4(h) of the Rules, the Bureau's opposition was due to be filed on June 8, 1998, and it was, in fact, timely filed on that date. In this connection, Easton states that its Motion to Compel "was served on the Bureau by hand," and implies that the three additional days afforded by Section 1.4(h) would not therefore be applicable. Motion to Dismiss at 1. However, under Section 1.4(h), if a document required to be served upon other parties is in fact served by mail on any party, "an additional 3 days (excluding holidays) will be allowed *to all parties* in the proceeding for filing a response." (Emphasis added.) Since Easton served its Motion to Compel by mail on ClearComm and Quentin L. Breen, the other parties to this proceeding, the Bureau was allowed the additional three days within which to file its opposition.

Motion to Compel

4. Easton seeks the issuance of an order compelling the Bureau to respond fully and completely to Anthony T. Easton's Interrogatories to the Federal Communications Commission, filed on May 6, 1998. For the reasons which follow, Easton's Motion to Compel will be granted in part and denied in part.

5. Instruction 3. The Bureau need not comply with this instruction. As discussed in the Bureau's Opposition, such compliance would be unduly burdensome. Opposition at 5-6. Further, the Bureau did provide to Easton the names of the individuals "who prepared and assisted in the preparation of each answer," and its answers have been verified "under penalty of perjury." Wireless Telecommunications Bureau's Responses to the Interrogatories by Anthony Easton, dated May 20, 1998 ("Responses"), at 4, 22. No more will be required.

6. Instruction 4. Easton requested the Bureau to identify each document which formed a basis for an answer to an interrogatory. Easton claims that the Bureau did not do so and requests that the Bureau be compelled to provide this information. Motion to Compel at 8. The Bureau does not address this matter in its Opposition. Easton's request will be granted. Instruction 4 appears reasonably calculated to lead to the discovery of admissible evidence, Section 1.311(b) of the Rules, and the Bureau will be required to supplement its answers.

7. Instruction 5. Easton's assertion that the Bureau failed to comply with this instruction will be considered below in connection with specific interrogatories.

8. Interrogatories 1, 4(C), 13, 23, 40, 41 & 42. The Bureau need not answer these interrogatories. Issue 1 in this proceeding, the only issue which pertains to Easton, reads as follows:²

² *Westel Samoa, Inc.*, 13 FCC Rcd 6342, 6348 (1998).

To determine whether Anthony T. Easton made misrepresentations and/or lacked candor before the Commission regarding the bid submitted by PCS 2000 for Basic Trading Area 324 for Norfolk, Virginia, in Round 11 of the Commission's Broadband C Block auction of January 23, 1996, and in view of the findings made, whether he should be barred from holding Commission authorizations and participating in future Commission auctions.

This is a very specific, detailed, and narrow issue pertaining solely to the conduct of Easton with regard to a specific incident. *See also Westel Samoa, Inc.*, 12 FCC Rcd 14057 (1997) ("*HDO*"). The interrogatories in question go far beyond the scope of Issue 1 and do not appear reasonably calculated to lead to the discovery of admissible evidence. Section 1.311(b) of the Rules.

9. With respect to Interrogatories 4(C), 13, and 40, Easton asserts that the requested answers are aimed at the motivation and potential bias of potential witnesses. Motion to Compel at 14, 22, 29. However, the motivation and bias of such witnesses are not matters within the "direct personal knowledge" of Commission personnel and are not appropriate areas for inquiries directed to the Commission. Section 1.311(b)(4) of the Rules.

10. Interrogatories 2, 3, 4(A), 4(B), 5 & 6 (final portion). The Bureau need not answer these interrogatories. As discussed in the Bureau's Opposition, these interrogatories are overly broad and/or unduly burdensome. Opposition at 8-11. In any event, in response to Easton's Interrogatories 6 and 8, the Bureau has provided Easton with a detailed listing of all documents in its possession concerning Issue 1, and has identified the individuals it believes possess personal knowledge of relevant facts concerning the issues in this proceeding. Responses at 6-7 and Exhibit 1.

11. Interrogatory 8. Easton's request will be granted. The Bureau shall provide the addresses and telephone numbers (if known) of the persons named in its Responses to this interrogatory. In addition, the Bureau's objection to this interrogatory on the basis that there is no time frame given, Responses at 7, is overruled. The requested information clearly appears reasonably calculated to lead to the discovery of admissible evidence. Section 1.311(b) of the Rules. *See also* Section 1.311(b)(4) (Commission personnel may be questioned "regarding the identity *and location* of persons having knowledge of relevant facts"; emphasis added).

12. Interrogatories 9 & 10. Easton's request will be granted in part and denied in part. The Bureau need not respond to these interrogatories to the extent they request the identification of oral communications. Discovery directed to the Commission may not be used to determine "what [an individual] has related to the Commission's investigator." *Discovery Procedures*, 11 FCC 2d 185, 189 (1968). Further, Commission personnel would not have "direct personal knowledge" of any facts related in an oral communication from another individual. Section 1.311(b)(4) of the Rules. However, as correctly noted by Easton, the Bureau does not state the basis for its privilege claims on a document-by-document basis. The Bureau will be required to do so.

13. Interrogatories 11, 12, 24 through 32 & 46 through 49. The Bureau need not answer these interrogatories. The factual basis for the specification of Issue 1, the only issue which relates to Easton, is contained in detail in the *HDO* in this proceeding, as well as in a related *Notice of Apparent Liability for Forfeiture, PCS 2000, L.P.*, 12 FCC Rcd 1703 (1997). Easton is not entitled to what, in effect, would be the Bureau's interpretation, analysis, and characterization of those documents. *Faith Center, Inc.*, 82 FCC 2d 1, 12-14 (1980). Easton's implicit argument that he does not know "with some degree of precision" what the factual basis for Issue 1 is, Motion to Compel at 21, is rejected as completely disingenuous. With respect to Interrogatory 12, an identification of such persons is already contained in the Bureau's answer to Interrogatory 8. Responses at 7. No further answer will be required.³

14. Interrogatories 14, 18, 19, 20, 38, 39, 43 & 44. The Bureau need not answer these interrogatories. Discovery directed to the Commission "concerning the information furnished by [Cynthia Hamilton] during [the Commission's] investigation" is not permissible. In addition, discovery directed to the Commission may not be used to determine "what [an individual] has related to the Commission's investigator." Easton "should seek such information from [Hamilton,] the person with direct knowledge of the facts." *Discovery Procedures*, 11 FCC 2d at 189.

15. Interrogatory 33. Easton's request will be granted to the extent that the Bureau will be required to obtain a definitive answer to this interrogatory from John Guili. In addition, the Bureau represents that it will supplement its answer if additional information is discovered. Opposition at 16. It is hereby directed to do so.

16. Interrogatories 36 & 37. These requests will be denied. The Bureau represents that it has supplied Easton with a tape recording of the telephone conversation in question. Opposition at 16. Easton should be able to determine from the recording itself and from his own recollection what his "apparent emotional state" was and whether he "was yelling." The Bureau is not required to characterize the evidence for Easton. *Faith Center*, 82 FCC 2d at 13-14.

17. Interrogatory 45. The Bureau need not respond to this interrogatory. Easton is not entitled to what, in effect, would be the Bureau's interpretation, analysis, and characterization of the deposition testimony in question. *Faith Center*, 82 FCC 2d at 13-14. Nor is Easton entitled to the explanation requested in part (D) of this interrogatory. The Commission's "investigative competence" is not in issue here. *Id.* at 12.

Accordingly, IT IS ORDERED that the Motion to Dismiss filed by Easton on June 10, 1998, IS GRANTED to the extent indicated above and IS DENIED in all other respects.

³ See, however, the ruling with respect to Interrogatory 8, above.

IT IS FURTHER ORDERED that ClearComm's Comments in Support of the Wireless Telecommunications Bureau's Opposition to Mr. Easton's Motion to Compel Answers to Interrogatories, filed on June 5, 1998, IS DISMISSED.

IT IS FURTHER ORDERED that the Motion to Compel Answers to Interrogatories, filed by Easton on May 27, 1998, IS GRANTED to the extent indicated above and IS DENIED in all other respects.

IT IS FURTHER ORDERED that the Bureau SHALL SUPPLEMENT its answers to Easton's interrogatories within seven (7) days of the release of this order, or at such other time as may be mutually agreeable to counsel.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Arthur I. Steinberg". The signature is written in a cursive style with a large, prominent initial "A".

Arthur I. Steinberg
Administrative Law Judge