

**FCC MAIL SECTION**

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

FCC 98M-83

81080

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 23, 1998 ; Released: June 24, 1998

1. Under consideration are: (a) a Notice of Deposition, filed on May 7, 1998, by Anthony T. Easton ("Easton"), seeking to take the deposition of Cynthia Hamilton ("Hamilton"); (b) a Subpoena signed by the Presiding Judge on May 29, 1998, ordering Hamilton to appear for a deposition at a specified time and place; (c) a Motion of Cynthia Hamilton Opposing the Notice of Deposition; to Quash Deposition Subpoena; and for Protective Orders, filed on June 11, 1998, by Hamilton; (d) a Declaration of James Wheaton in Support of Motions by Cynthia Hamilton, filed on June 11, 1998, by James Wheaton, Esq., Hamilton's attorney; (e) an Opposition to Motions of Cynthia Hamilton, filed on June 16, 1998, by Easton; and (f) a Response to Motion for Protective Order, filed on June 16, 1998, by the Wireless Telecommunications Bureau ("Bureau").

2. Hamilton seeks a ruling setting aside the Notice of Deposition on the grounds that it has expired by its own terms and was never served on her. Hamilton also seeks to quash the Subpoena issued against her because it was issued without adherence to the Commission's procedures, it has expired by its own terms, and was never served on her. Hamilton's requests are granted and the Notice of Deposition and Subpoena are dismissed.

3. Claiming fears of "interfere[nce] with her affairs, harassment or intimidation," (Motion at v), and "to protect [her] from undue burden, harassment, annoyance, and intrusion into her private affairs, through repetitious discovery and inquiry into irrelevant matters" (*id.* at 2), Hamilton also seeks the issuance of a protective order governing the time, place, and scope of inquiry of her deposition. Hamilton further objects to a number of the document requests appended to the Subpoena. Each of her requests will be considered below.

4. Time. Hamilton requests that her deposition by Easton be limited to a single day and that any party who wishes to continue the matter beyond a single day be required to show that good cause exists for such continuation. Easton and the Bureau generally agree to accommodate Hamilton in this regard, but cannot make any firm promises.

5. Hamilton's request is granted with the condition that her deposition start at 9:00 a.m. or earlier and that the witness and her counsel stay at least until 6:30 p.m. if necessary to complete the deposition. If the deposition is not completed in one day, and the witness objects to its continuation, the Presiding Judge should be contacted for a ruling.

6. Place. Hamilton requests that her deposition be taken in either San Francisco or Oakland, California, and "preferably in the office of her counsel." Motion at 9, 15. The Bureau has no objection to Hamilton's deposition being taken in the office of her counsel. Easton does object and suggests that Hamilton's deposition be taken in the offices of Easton's local counsel.

7. Hamilton's deposition shall be taken at offices of her counsel in Oakland. It is generally the Commission's practice that, when there is a dispute as to the location of a deposition, it be taken at the location preferred by the deponent. *Cf. Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases*, 6 FCC Rcd 157, 161 (¶ 29) (1990), *clarified*, 6 FCC Rcd 3403, 3404 (¶ 11) (1991). However, to alleviate the valid concerns of Easton's counsel, counsel for Hamilton is expected to arrange his schedule so that the deposition will not be subject to interruption, and to ensure that suitable copying and other facilities are available for the use of other counsel.

8. Scope of Inquiry. Hamilton requests that her deposition be strictly limited to those matters specifically designated for hearing, and that a party which has previously taken her deposition in *any* proceeding not be permitted to examine her again with respect to any matter on which that party has already deposed her. The Bureau states that it will reasonably and diligently try to limit its examination of Hamilton as requested, but notes that some repetition of her previous testimony may be required as foundation questions. Easton "largely objects to an advance limitation" on the scope of Hamilton's examination, but represents that Easton "has no intent to conduct a wholesale reexamination of Ms. Hamilton in areas which have been previously covered in sufficient depth." Opposition at 13-14.

9. Hamilton's request is granted to the extent that counsel for the parties are admonished in the strongest possible terms to limit the questioning of Hamilton to matters which are relevant to the specific issues designated for hearing in this proceeding. The parties are also directed to avoid, to the greatest extent possible, the examination of Hamilton on matters about which she has already been deposed. In making this ruling, however, the Presiding Judge recognizes that some review of her previous testimony may be necessary for background purposes, and that there were questions and answers in the November 11-12, 1997, deposition of Hamilton in *Easton v. Hamilton* which were unclear, confusing, or ambiguous. If, during the deposition of Hamilton, questions arise as to the scope of examination, the Presiding Judge should be contacted for a ruling.

10. Hamilton requests a ruling that no inquiry be made by anyone into "personal matters, such as [her] finances, medical history, or personal, familial or romantic relationships." Motion at 10, 17-19. The Bureau states that it has no desire to harass or embarrass Hamilton, but objects to a ban on inquiries into subject areas which may legitimately be relevant to the designated issues. Easton contends that a blanket ruling at this juncture would be inappropriate and that individual rulings should be made at the time such inquiry is attempted.

11. Hamilton's request is granted to the extent that inquiry into her "medical history" will not be permitted. Suffice it to say, no showing has been made that there is any matter relating to Hamilton's "medical history" that appears reasonably calculated to lead to the discovery of admissible evidence. Section 1.311(b) of the Commission's Rules.<sup>1</sup> In all other respects, Hamilton's request is denied.

12. It is well established that, if Hamilton testifies in this proceeding, her credibility will be evaluated. *See, e.g., Westel Samoa, Inc.*, 12 FCC Rcd 14057, 14073 (¶ 41). In making such an evaluation the interest Hamilton has in the outcome of this proceeding (if any), as well as her motives and biases (if any), may be considered. *The Prattville Broadcasting Co.*, 5 FCC 2d 601, 602 (1966). Consequently, *appropriate* inquiry into the interpersonal relationships between Hamilton and other potential witnesses, and any financial stake she may have in this proceeding, are matters which appear reasonably calculated to lead to the discovery of admissible evidence and will be permitted. Section 1.311(b) of the Rules.

13. Nevertheless, Easton represents that he intends to inquire into "Hamilton's relationships with various percipient witnesses . . . [only] to the extent another witness supports Ms. Hamilton's factual assertions of alleged wrongdoing" (Opposition at 9-10), and that "there will be no inquiry as to acts of conduct, only (if necessary) an examination as to any relationship among Ms. Hamilton and witnesses who might support her allegations against Mr. Easton" (*id.* at 11). Easton will be bound by these representations which, the Presiding Judge believes, should alleviate most of Hamilton's concerns. Once again, should disagreements arise with respect to specific questioning, the Presiding Judge should be contacted for a ruling.

14. Hamilton requests a ruling that no inquiry be made by anyone into her "physical whereabouts (including her home address, home telephone number, or current work place)." Motion at 10, 19-20. The Bureau has no objection provided that Hamilton agree to certain conditions. Easton does object.

15. Hamilton's request is granted in part. Thus, Hamilton need not reveal her home telephone number, current work place, or personal identifying information, but will be required to disclose her current residence address. *Smith v. Illinois*, 390 U.S. 129, 131 (1968). However, to protect her privacy and allay her fears (whether legitimate or not), all persons present at her deposition are directed to treat this information with the utmost confidentiality.

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<sup>1</sup> As noted by Hamilton, the sole exceptions to this ruling will be inquiry into whether she is suffering from any malady, or under the influence of any medications, that might affect her memory when she testifies, and inquiry into her sight or hearing. *See* Motion at 17 n.18.

That is, no one present at Hamilton's deposition (including counsel, their agents, and their clients) may reveal Hamilton's address to any individual who was not present at her deposition, or publish, publicize, or make known that address in any manner whatsoever. Further, Hamilton's address should be masked on the copies of the deposition officially filed with the Commission.<sup>2</sup>

16. As a condition for these protections, Hamilton must agree that conversations by other counsel with her counsel will be deemed to be conversations with Hamilton, and that service of documents and subpoenas on Hamilton's counsel will constitute service on Hamilton.<sup>3</sup>

17. Records to be Produced.<sup>4</sup> Hamilton requests that she not be required to search for, or produce at the deposition, letters or other personal correspondence relating to her "romantic" relationships. Motion at 10, 21-22. The Bureau has no objection to some reasonable limitation on Hamilton's production of strictly personal correspondence. Easton contends that these documents should be produced but represents that they will not be used unless other witnesses "offer corroborating first hand testimony with respect to Ms. Hamilton's allegations." Opposition at 16. In this regard, Easton states that, to date, no other witness has offered such testimony. In addition, Easton agrees to use such documents at the hearing "only for impeachment upon the denial of any such relationship by either party thereto." *Id.*

18. Hamilton's request is granted; the requested documents need not be produced. Until such time as another witness offers "first hand testimony" corroborating Hamilton's allegations, and until such time as either party to the relationship denies its existence, the documents requested do not appear reasonably calculated to lead to the discovery of admissible evidence. Section 1.311(b) of the Rules.

19. Hamilton requests that she not be required to search for or produce at the deposition "[a]ll documents evidencing or related to any contact [she has] had since January 23, 1996 to the present with [18 named individuals],"<sup>5</sup> claiming that it is "excessive and oppressive." Motion at 22. Hamilton argues that this request should "be limited to redacted phone records showing phone calls to Washington, D.C. and Puerto Rico, and for a limited period of time."

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<sup>2</sup> Unmasked copies of the relevant page(s) should be filed under seal.

<sup>3</sup> The Bureau requests that the relief afforded to Hamilton be further conditioned on Hamilton and her counsel "fully cooperat[ing] with the Bureau in preparing and presenting this case for hearing." Response at 3. This request is denied. The degree of Hamilton's cooperation with the parties in preparing and presenting their cases for hearing is entirely up to her.

<sup>4</sup> The May 29, 1998, Subpoena required Hamilton to produce at her deposition 10 categories of documents. In her Motion, Hamilton reports that the parties have resolved their differences with respect to eight of these requests, and seeks rulings with regard several remaining areas of disagreement. Motion at 10, 20-23. Although the Subpoena has been dismissed, it would greatly expedite matters to rule at this time on the matters which are still in dispute.

<sup>5</sup> See Subpoena at Attachment A, p. 2 (Request 9).

*Id.* at 10, 22-23. The Bureau supports Hamilton's position and believes that the limitation she requests is reasonable. Although Easton objects with respect to documents evidencing contacts with the 18 individuals, he accedes to the redaction of telephone records provided that the Presiding Judge review the unredacted records "to insure there is no temptation to over-redact." Opposition at 17.

20. Hamilton's request is granted in part. In her deposition in *Easton v. Hamilton*, Hamilton identified, under oath, every person to whom she has spoken about the events in question, and to whom she has relayed her observations about Easton's conduct. She will be required to produce documents (if any exist) evidencing or related to any contact with those identified individuals, but only if such documents relate or refer to the events in issue in this proceeding. Hamilton will also be required to produce her telephone records redacted as agreed to by the parties.<sup>6</sup> Such documents appear reasonably calculated to lead to the discovery of admissible evidence. Section 1.311(b) of the Rules. Further, there appears to be no legitimate reason to limit the time period contained in Easton's request. In this connection, the fact that a response to a discovery request may involve substantial effort, does not by itself make the request objectionable. *The United Telephone Co. of Pennsylvania*, 28 RR 2d 632, 634 (ALJ 1973).

21. Hamilton requests that she not be required to search for or produce at the deposition "records that Mr. Easton already possesses from this or any other proceeding." Motion at 10. The Bureau does not object to this request "provided copies of any such records are provided to the Bureau." Response at 4. Easton likewise has no objection on the condition that Hamilton prepare a written listing of the documents already exchanged and a statement "that no documents were withheld on the basis of a privilege claim or for any other reason." Opposition at 16.

22. Hamilton's request is granted; she need not produce to Easton records that she has already given to him. However, to enable the parties to identify such documents, Hamilton will be required to exchange a detailed listing of all documents she has already produced to Easton and those which were withheld on the basis of privilege.<sup>7</sup>

23. Finally, Hamilton requests that she not be required to produce at the deposition documents evidencing payments to her or her agents, representatives, or creditors by certain specified others, including ClearComm, L.P. ("ClearComm"), a party to this proceeding.<sup>8</sup> Hamilton represents that the only such documents which exist relate to her legal counsel in this matter and that they are "documents reflecting the formation of an attorney-client relationship." Motion at 23. Hamilton contends that "[u]nder California law that is absolutely privileged."

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<sup>6</sup> The Presiding Judge sees no need to review the unredacted telephone records. Nothing has been submitted which would call into question the honesty or integrity of Hamilton's counsel.

<sup>7</sup> If any other party to this proceeding wants to obtain copies of the documents Hamilton has provided to Easton, arrangements should be made directly with Hamilton's counsel.

<sup>8</sup> See Subpoena at Attachment A, p. 2 (Request 10).

*Id.* Easton submits that "the terms of a third parties [sic] retention of counsel may be discovered," and that he "should have the opportunity to inquire into [the] relationship [between ClearComm and Hamilton] to ascertain how it may affect Ms. Hamilton's testimony." Opposition at 14 n.11.

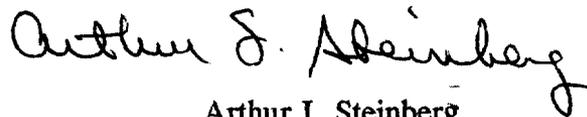
24. Hamilton's request is denied to the extent that she will be required to produce documents reflecting the arrangements under which ClearComm retained legal counsel to represent her in this proceeding. See *Western Cities Broadcasting, Inc.*, 6 FCC Rcd 3599 (Rev. Bd. 1991) (documents discussing financial arrangements by which attorney was retained ordered disclosed). Such documents may reflect on Hamilton's credibility and appear reasonably calculated to lead to the discovery of admissible evidence. Section 1.311(b) of the Commission's Rules. In this regard, ClearComm has publicly acknowledged that it "agreed to engage the First Amendment Project to represent Ms. Hamilton in this matter [and that] ClearComm has made clear that the First Amendment Project represents Ms. Hamilton, not ClearComm." Letter dated June 1, 1998, to Russell Lukas, Esq., *et al.*, from Richard Gordin, Esq. Therefore, no attorney-client relationship exists between the First Amendment Project and ClearComm, and documents reflecting their arrangements are not protected by the attorney-client privilege.

Accordingly, IT IS ORDERED that the Motion of Cynthia Hamilton Opposing the Notice of Deposition; to Quash Deposition Subpoena; and for Protective Orders, filed by Hamilton on June 11, 1998, IS GRANTED to the extent reflected above and IS DENIED in all other respects.

IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order be mailed to the following:

James Wheaton, Esquire  
First Amendment Project  
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8th Floor  
Oakland, CA 94612

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg  
Administrative Law Judge