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

FCC 98M-86

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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 Communications Systems Facilities)	00863-CW-L-97
)	00864-CW-L-97
)	00865-CW-L-97
)	00866-CW-L-97

MEMORANDUM OPINION AND ORDER

Issued: June 25, 1998 ; Released: June 26, 1998

1. Under consideration are: (a) a Motion to Compel, filed on June 8, 1998 ("Motion I"), by Anthony T. Easton ("Easton"); (b) an Erratum to Motion to Compel, filed on June 9, 1998, by Easton; (c) a Motion to Compel, filed on June 12, 1998 ("Motion II"), by Easton; and (d) ClearComm L.P.'s Opposition to Anthony T. Easton's Motions to Compel, filed on June 18, 1998, by ClearComm, L.P. ("ClearComm").

2. Easton seeks the issuance of an order compelling ClearComm to produce certain documents requested in Anthony T. Easton's First Requests for the Production of Documents by ClearComm, L.P., filed on May 12, 1998 ("First Requests"), and Anthony T. Easton's Second Requests for the Production of Documents by ClearComm, L.P., filed on May 26, 1998 ("Second Requests"). For the reasons which follow, Easton's Motions to Compel will be granted in part and denied in part.

Motion I -- Easton's First Requests

3. January 27, 1996, Board Minutes and Draft. Easton seeks unredacted copies of these documents. His request will be denied as cumulative. It appears that Easton already has copies of these documents in unredacted form. Indeed, they were attached as exhibits to Easton's December 9, 1997, deposition in this proceeding. Motion I at 10.

4. February 9 (19), 1996, Board Minutes and Notes. Easton seeks unredacted copies of these documents, claiming that Lawrence Movshin testified during his deposition about what was discussed at the meeting, and one of Easton's attorneys, Thomas Gutierrez, was present at

the meeting. ClearComm objects, stating that it has redacted from these documents matters which "have no bearing on whether Mr. Easton made misrepresentations and/or lacked candor before the Commission." Opposition at 8. ClearComm further represents that "[t]he portions of the Board minutes corresponding to Mr. Movshin's deposition testimony were included in the redacted copies produced to Mr. Easton." *Id.*

5. Easton's request will be granted to the extent that ClearComm will be directed to review these minutes and notes to ensure that all matters relating to Movshin's testimony, including his testimony concerning a "specific" or "voluntary" forfeiture and the possibility of an offer "to remove Mr. Easton," were, in fact, included in the portions of the documents produced. If they were, then ClearComm shall notify Easton of that fact. If they were not, then ClearComm shall supplement its production. In all other respects Easton's request will be denied. Based upon ClearComm's representations, it appears that the redacted portions of the requested documents relate to matters that are beyond the very narrow and limited scope of Issue 1,¹ and do not appear reasonably calculated to lead to the discovery of admissible evidence. Section 1.311(b) of the Rules.

6. February 21, 1996, Letter. Easton seeks an unredacted copy of this letter, claiming that it is relevant to a determination of the financial interests of potential witnesses. ClearComm represents that it has redacted from the document provided to Easton "matters [which] are peripheral to the hearing issue and non-responsive to Mr. Easton's document requests." Opposition at 9.

7. No ruling on this request will be made at this time. The unredacted letter in question should be submitted to the Presiding Judge for an *in camera* inspection. For comparison purposes, the redacted version of the letter which ClearComm provided to Easton should also be submitted.

8. Request 5. Easton requests the production of copies of media reports of the erroneous bid and related documents, claiming that they could be relevant to the credibility of Javier Lamoso. Easton's request will be denied. The requested documents relate to matters which are beyond the scope of the issues in this proceeding and do not appear reasonably calculated to lead to the discovery of admissible evidence. Section 1.311(b) of the Rules. Even assuming, *arguendo*, that media reports and contacts do come within the parameters of Issue 1, Lamoso has already been asked about his media contacts in a deposition taken by Easton's counsel. In addition, the media reports are in the public domain and it has been previously ruled in this proceeding that such documents need not be produced. *E.g.*, *Memorandum Opinion and Order*, FCC 98M-74, released June 10, 1998.

9. Request 8. Easton requests the production of documents "concerning the acquisition of SuperTel stock by potential witnesses," claiming that the documents are relevant to a determination of their financial interest in the outcome of this proceeding. Motion I at 18.

¹ See *Memorandum Opinions and Orders*, FCC 98M-67, released June 4, 1998, FCC 98M-74, released June 10, 1998, and FCC 98M-77, released June 15, 1998.

Easton's request will be granted in part. ClearComm will be required to produce documents relating to the acquisition of SuperTel stock by potential witnesses, but only to the extent that those documents reflect current and firm plans for the issuance of additional stock to those individuals. Documents reflecting the current existence of warrants or options which potential witnesses may exercise should also be produced. Such documents may reflect the financial interests in this proceeding of potential witnesses and appear reasonably calculated to lead to the discovery of admissible evidence. Section 1.311(b) of the Rules.

10. Request 9. Easton seeks documents evidencing "any stock voting arrangements between the SuperTel shareholders" in order to determine whether potential witnesses "have acquired a controlling interest in SuperTel and, ultimately, ClearComm, as a result of the squeeze out of the SDE Trust." Motion I at 18. Easton's request will be denied. With the limited exception of the financial interest of prospective witnesses in the outcome of this proceeding, evidence relating to the "SDE Trust squeeze out" is beyond the scope of Issue 1. *Memorandum Opinion and Order*, FCC 98M-67, released June 4, 1998. So, too, are inquiries into who controls, or may in the future control, SuperTel or ClearComm. The requested documents do not appear reasonably calculated to lead to the discovery of admissible evidence. Section 1.311(b) of the Rules.

11. Requests 15 and 16. As amended by Motion I, Easton seeks certain telephone records for the period from January 21, 1996, to March 31, 1996. ClearComm does not object to providing the records but believes the time period should end as of February 19, 1996. Easton's request will be granted to the extent that ClearComm will be required to produce telephone records for the period from January 21, 1996, through and including February 22, 1996. The February 22, 1996, date was selected because it is the day after ClearComm's predecessor, PCS 2000, filed letters with the Commission which contained factual assertions relevant to Issue 1.² The date selected is also subsequent to PCS 2000's filing with the Commission of what is known as the Independent Counsel's Report.³ The February 22, 1996, date should enable Easton "to pinpoint the time sequence of events surrounding the erroneous bid." Motion I at 18.

12. Request 29. Easton requests documents evidencing the current names and addresses of the limited partners of ClearComm and the percentages of their interest, claiming that this material will "assist [him] in locating persons who could provide evidence relevant to the financial stake that potential witnesses have in the outcome of this case." Motion I at 19. This request will be denied. Easton has been given ample opportunity to inquire into the financial

² See Letter to William F. Caton from Michael Deuel Sullivan, dated and filed February 21, 1996, Re: Amended Request for Expedited Waiver or Reduction of Withdrawal Penalty; Letter to William F. Caton from Michael Deuel Sullivan, dated and filed February 21, 1996, Re: Request for Expedited Waiver or Reduction of Withdrawal Penalty As amended (originally submitted January 26, 1996); and Letter to Michele C. Farquhar from Michael Deuel Sullivan, dated and filed February 21, 1996, Re: Response to the Commission's Letter dated February 7, 1996, with attached Declaration of Javier O. Lamoso, executed February 21, 1996.

³ Investigation Re: PCS Block C Auction Round 11 \$180 Million Bid Submitted on Behalf of PCS 2000, L.P., filed on February 20, 1996, by PCS 2000, L.P.

interests potential witnesses may have in the outcome of this proceeding, and he has been given very broad leeway in deposing individuals on this subject matter. The requested materials appear to be cumulative.

13. Request 32. Easton requests copies of all Securities and Exchange Commission reports filed by PCS 2000 after a certain date. The request will be denied. The documents sought are in the public domain. However, to enable Easton to identify such documents, ClearComm will be directed to prepare and exchange a detailed listing of the reports in question. Alternatively, ClearComm may produce the reports.

Motion II -- Easton's Second Requests

14. Easton seeks the production of documents requested in categories 1, 2, 3, and 4 of his Second Requests. Generally, these categories ask for the production of various documents related to the computer system utilized by PCS 2000 during the Block C PCS bidding process and auction on certain dates in January 1996. ClearComm asserts that Easton and ClearComm have now reached a "non-waiver agreement" which would render Motion II moot. However, ClearComm never expressly represents that the documents in question have been, or will be, given to Easton.

15. Easton's motion will be granted and ClearComm will be directed to produce the requested documents to the extent that they have not already been produced. The documents sought by Easton manifestly appear reasonably calculated to lead to the discovery of admissible evidence. Section 1.311(b) of the Rules. However, with respect to category 3, ClearComm cannot be expected, and will not be required, to produce documents in the possession or control of Romulus Telecommunications, Inc., or San Mateo Group, Inc., organizations over which it has no control.

Accordingly, IT IS ORDERED that the Motion to Compel filed by Easton on June 8, 1998, and the Motion to Compel filed by Easton on June 12, 1998, ARE GRANTED to the extent reflected above and ARE DENIED in all other respects.

IT IS FURTHER ORDERED that the documents requested SHALL BE PRODUCED 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



Arthur I. Steinberg
Administrative Law Judge