

FEDERAL COMMUNICATIONS COMMISSION

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In re Applications of)	WT Docket No. 97-199
)	
WESTEL SAMOA, INC.)	File No. 00560-CW-L-96
)	
For Broadcast 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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Room No. 201, Courtroom 1
2000 L Street
Washington, D.C.

Tuesday,
July 7, 1998

The parties met, pursuant to the notice of the
Judge, at 2:35 p.m.

BEFORE: HON. ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

On behalf of Westel Samoa, Inc., Westel, L.P. and
Quentin L. Breen:

TOM CARROCCIO, ESQ.
Bell, Boyd & Lloyd
Suite 1200, 1615 L Street, N.W.
Washington, D.C. 20036
(202) 955-6829

Heritage Reporting Corporation
(202) 628-4888

APPEARANCES: (Cont'd)

On behalf of Clear Comm, L.P.:

RICHARD GORDIN, ESQ.
MARILYN E. KERST, ESQ.
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

On behalf of Anthony T. Easton:

GEORGE L. LYON, JR., ESQ.
RUSSELL D. LUKAS, ESQ.
Lukas, Nace, Gutierrez & Sachs
Suite 1200
1111 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 828-9472

On behalf of the FCC:

KATHERINE C. POWER, ESQ.
JUDY LANCASTER, ESQ.
Wireless Telecommunications Bureau
Enforcement Division
2025 M Street, N.W.
Room 8308E
Washington, D.C. 20554
(202) 418-0919

P R O C E E D I N G S

1 THE COURT: This is a further pre-hearing
2 conference in WT Docket No. 97-199. And I basically called
3 this conference so we could catch up on the status of what
4 is going on. And I also want to change the procedural dates
5 around a little bit.

6 Okay. We have some new appearances, so let me go
7 through the appearances. For Westel Samoa, Inc., Westel,
8 L.P. and Quentin L. Breen.

9 MR. CARROCCIO: Thomas Carroccio of Bell, Boyd &
10 Lloyd.

11 THE COURT: For Anthony T. Easton?

12 MR. LUKAS: Russell Lukas and George Lyon.

13 THE COURT: For Clear Comm, L.P.?

14 MR. GORDIN: Richard Gordin and Marilyn Kerst.

15 THE COURT: For the Chief Wireless
16 Telecommunications Bureau?

17 MS. POWER: Katherine Power and Judy Lancaster.

18 THE COURT: Okay. Now, the first thing I want to
19 do is basically confirm a ruling that I made during one of
20 our many telephone conference calls where I said that we
21 would extend the discovery deadline, which was, I think,
22 June 26, but only to a very limited extent. And the extent
23 was to complete the deposition of certain individuals and
24 also to be able to extend it so that I would be able to rule

1 on outstanding motions. And then whatever was required as
2 the result of those rulings would continue. But that there
3 would be no new discovery after June 26.

4 Did anybody disagree with that statement?

5 MR. GORDIN: I believe there were -- only to the
6 extent, I believe there were a few rulings by Your Honor.
7 One, with regard to certain witnesses, and another with
8 regard to, I guess, confirming with the parties that agree
9 with regard to some of the expert discovery.

10 THE COURT: Right. I just -- you know, those
11 weren't important as this one because there were many, many
12 rulings made on the telephone, and I can't confirm all of
13 them because, frankly, I don't remember them all.

14 The status of the depositions -- we've got Dr.
15 Blinder noticed for July 13, Cynthia Hamilton for July 14
16 and Lori Collins for July 17. And all those are in San
17 Francisco. Is that correct?

18 MR. LYON: Your Honor, I understood that Lori
19 Collins would be deposed on the 13th.

20 MR. CARROCCIO: It was my understanding as well,
21 Your Honor.

22 MS. KERST: That's right. I believe the notice
23 says the 17th, but we agreed that the 13th, if possible,
24 would be the date.

25 THE COURT: If you can find her.

1 MS. KERST: We have not found her.

2 MR. LYON: I do have some information on that,
3 Your Honor. I sent her an e-mail yesterday morning and got
4 a reply after I had left the office and a telephone call
5 after I had left the office. We are scheduled to speak at
6 seven o'clock this evening. And hopefully, I'll be able to
7 informally notify the parties whether Ms. Collins will
8 voluntarily appear for her deposition on the 13th. I would
9 certainly urge any party who desires to take her deposition
10 to have her subpoenaed because I don't believe, at least at
11 this point, that I'm in a position to insure that she will
12 be there.

13 MR. GORDIN: Your Honor, in that regard, may we
14 request for Mr. Lyon to try to obtain or provide us with any
15 information he does obtain regarding ways to locate Ms.
16 Collins either by phone, e-mail address or any location.

17 THE COURT: Okay. Why don't you exchange that
18 information?

19 MR. LYON: I will do that. I would like your
20 indulgence until tomorrow to do so because I may be able to
21 smooth the way tonight for her appearance.

22 MS. KERST: I would just like to let the Court
23 know that I did find on the Internet an e-mail address for
24 Ms. Collins, and I, this afternoon, sent her an e-mail just
25 asking her if she would contact me and offering her the 13th

1 and also some possible alternative dates in hopes that we
2 could smooth the way also, since you had, to my knowledge,
3 obtained no results.

4 THE COURT: Okay.

5 MR. CARROCCIO: Might I inquire as to what the
6 alternative dates that were offered would be?

7 MS. KERST: I offered either morning or afternoon
8 of the 13th, and either morning or afternoon of the 16th.

9 MR. LYON: I will strongly try to suggest to her
10 to take the 13th because I've already made arrangements to
11 come back the evening of the 15th and would like not to
12 change this. I'll do whatever I have to do.

13 MS. LANCASTER: Your Honor, may I interject one
14 question here?

15 THE COURT: Sure.

16 MS. LANCASTER: It's my understanding that there
17 was some discussion that Dr. Blinder's deposition was going
18 to have to be taken in Marin -- it's Marin County. I don't
19 know. But it's some distance from San Francisco. And if
20 that is not worked out, I don't really see how you're going
21 to get Dr. Blinder and Ms. Collins on the same day.

22 MR. LYON: If I could speak to that, Your Honor, I
23 have spoken with Dr. Blinder and asked him to make himself
24 available on the 13th. His time is, obviously, very
25 valuable in terms of lost revenue from not seeing patients.

1 And two issues arise. One is, he believes he is entitled to
2 be compensated for his time during -- when his deposition is
3 taken. And second, he would strongly prefer to be deposed
4 in his office so as to avoid an unnecessary imposition on
5 his time.

6 MS. KERST: Your Honor, the place where Dr.
7 Blinder would like to be deposed is San Mateo, which is very
8 far out in Marin County. If the parties are --

9 MS. POWER: It's San Anselmo.

10 MS. KERST: San Anselmo. I'm sorry. It's San
11 Anselmo. You're right.

12 It's very far out in Marin County and very
13 difficult, I think, for this group to reach. At the earlier
14 time that we had scheduled Dr. Blinder's deposition, I
15 thought we had resolved this issue satisfactorily to
16 everyone that Dr. Blinder was going to come downtown to San
17 Francisco. And I suggest that we should do that the same
18 way again.

19 MR. LYON: I can only tell you what he asked of
20 me, and that was that his deposition be taken at his office.

21 THE COURT: What does the subpoena say? I don't
22 have a copy with --

23 MS. KERST: It says Latham and Watkins offices in
24 San Francisco.

25 THE COURT: Leave it that way. And he's not being

1 deposed as an expert witness, and he's not entitled to
2 expert witness fees. He's entitled to plain witness fees.
3 Don't you pay deponent's witness fees? That's what he is
4 entitled to. And if that is a problem, too bad for him.

5 MR. LYON: He will probably send my client a bill
6 for his time.

7 THE COURT: Well, too bad for your client.

8 MR. LYON: All right. I understand. I'm just
9 making that note on the record, so there won't be any
10 suggestion of untoward conduct.

11 THE COURT: No. I understand. Okay. I trust you
12 all to coordinate that. If you can't coordinate it, I'll
13 have to coordinate it. And if you like the results, fine.
14 If you don't, fine.

15 Then we get to Richard Ross and William Franklin.
16 Are they going to be deposed in D.C.?

17 MR. GORDIN: It's Robert Ross, I believe, Your
18 Honor.

19 THE COURT: Is it Robert?

20 MR. GORDIN: I believe it's Robert, Your Honor.

21 THE COURT: Okay. I think the opposition called
22 him Richard, and I didn't know any better.

23 MR. GORDIN: Maybe they were thinking of me. Your
24 Honor, right now we are trying to make arrangements to have
25 Mr. Ross flown to D.C. so we can do both depositions back to

1 back.

2 THE COURT: Because he is in Utah. Right?

3 MR. GORDIN: Yes, he is.

4 THE COURT: And I think it would be helpful for
5 the experts to be present for each other's --

6 MR. GORDIN: We agree.

7 THE COURT: I mean, maybe they can just resolve
8 the whole case between the counsel. And then you can move
9 for summary decision based upon what the experts have to
10 say.

11 MR. LYON: Your Honor, if I can address one
12 scheduling matter with respect to that. We had tentatively
13 discussed among counsel, scheduling these depositions on the
14 17th of July. I understand from Mr. Silverman of Mr.
15 Gordin's firm, that that presents a problem for Mr. Ross,
16 and had indicated my preference that the depositions for
17 Franklin and Ross be scheduled as soon thereafter as
18 possible. I understand that Mr. Gordin may not be available
19 the week of July 20, but as I understand it, he is available
20 the week of the 27th. Is that correct?

21 MR. GORDIN: I was looking to schedule around the
22 29th or 30th of that week. I would disagree a little bit
23 with how we got to that week, but putting that aside in
24 terms of whose schedule was thrown off by whom, I was trying
25 to work out a schedule sometime around -- I think -- is

1 Thursday, the 30th?

2 MR. LYON: Is it possible to do it earlier in the
3 week?

4 MS. KERST: Thursday is the 30th.

5 MR. GORDIN: It would be difficult. I could do it
6 the 31st, the 30th. I can probably do it the 29th.

7 MS. POWER: And Your Honor, I would like to add --
8 throw in my two cents worth if you don't mind, that I am, as
9 we know, out of the country from July 14 until August 1. I
10 will be available Monday morning, bright and early, for a
11 deposition, and I would appreciate being included in the
12 witness -- the expert witness testimony. It means, you
13 know, a good deal to me to be there. And if we're going to
14 go as late as July 30, I would love to see it go to August
15 3.

16 MR. GORDIN: I have no problem with that, as well.

17 MR. LYON: Your Honor, I can do August 3, but I
18 have jury duty the next day and have no guarantee that I
19 would be available either that day or any day thereafter.

20 THE COURT: Want me to write you a note?

21 MR. LYON: I may ask you if you're willing --

22 THE COURT: You write it, and I'll sign it.

23 MR. CARROCCIO: Your Honor, I indicate that I am
24 committed to taking a troop of Boy Scouts to Boy Scout camp
25 on Sunday, the second of August. And I will be in

1 Pennsylvania with these Boy Scouts through Tuesday, August
2 the 4th.

3 THE COURT: Can we take the Boy Scouts to the
4 deposition?

5 MR. CARROCCIO: Your Honor, they would be amazed
6 and deterred from ever becoming lawyers, but other than --

7 THE COURT: Well, that should be a public service.
8 You all can work it out.

9 MR. GORDIN: Your Honor --

10 MR. CARROCCIO: Your Honor, my concern is we're
11 pushing this -- we have an August 25 scheduled start of the
12 hearing. And I'm -- I am very reluctant to agree to
13 anything that's going to in any way impact upon that date.

14 THE COURT: Oh, that date's not going to be moved.
15 You have my assurance, unless somebody dies. I'm not going
16 to say I'll post -- I'm not going to postpone the hearing
17 ever, ever, ever because you never say never. A key witness
18 could have by-pass surgery. That happened in my last case
19 where we had to postpone it. I mean, short of something
20 like that, the August 25 date's not going to be moved.

21 If the first week in August later on the week is
22 convenient for everybody, it is convenient for the
23 witnesses, it is okay with me. I would just, if it's
24 possible, will accommodate everybody, then I appreciate
25 everybody being accommodated. I also think that by deposing

1 them a little later, it gives them more time to play with
2 the tapes to the extent that they need to play with them.

3 In my recent order, I said that I'd give them
4 whatever time they need to evaluate and review that stuff,
5 and I don't want to rush them if that would deter their
6 review.

7 MR. GORDIN: And there's still at least one piece
8 of material we still don't have. So, I think that that's
9 fine. I'll have to check with my expert. I'm available the
10 week of August 3, and I'm sure that the parties should be
11 able to work something out. And if not then I guess we'll
12 call Your Honor again, but it's hard to believe we couldn't
13 work out the scheduling.

14 THE COURT: Okay. Then, there's Fred Martinez or
15 Martinez -- how do you pronounce it?

16 MR. GORDIN: Martinez.

17 THE COURT: Martinez. And you all can work out a
18 date for that. And that will be in one of these courtrooms.
19 And either I'll be in here or I'll be in my office, and I'll
20 be available. Plus, I don't want a repetition of what
21 happened the last time. And if you think that it would be
22 fruitful for me to supervise the depositions of Mr. Ross and
23 Mr. Franklin, you let me know, and I'll have a courtroom
24 available for that, too. But I think that's testimony of a
25 different nature.

1 MR. LYON: I don't think that will be necessary,
2 Your Honor.

3 THE COURT: Okay. But if you think it is, I'm
4 available.

5 Okay. Let me speak a little bit about the
6 Hamilton deposition, and I, basically want you to handle her
7 with kid gloves to the extent that you can and do your job.
8 I think it's more important that we get the information out
9 of her that we can get out of her. Now, if she doesn't have
10 firsthand personal knowledge of certain things, I think
11 that's -- it's either become apparent or will become
12 apparent, I'd appreciate it if you could be as non-
13 confrontational as possible. I'd appreciate that.

14 I plan to be available at my desk during the
15 course of her deposition, which is scheduled to commence, I
16 guess, 9:00 a.m. California time, which is noon our time. I
17 may go to lunch at noon, but if I do, I'll be back by 12:30.
18 Hopefully, nothing will occur in the first half hour that
19 will necessitate a call.

20 When you all break for lunch in California, call
21 me and let me know. Of course, then I'll go home. I'll use
22 the lunch hour to go home, and then I'll be at my home phone
23 up until -- you can call me up until 9:30 Eastern time, not
24 9:30 California time. Nine thirty Eastern time.

25 Do I need to set a schedule in terms of breaks and

1 lunches and stuff like that? But I think we should be
2 pretty accommodating. If it turns out, she wants to take a
3 break every 45 minutes or 15 minutes, and the deposition
4 can't get finished, then that might be good cause to hold it
5 over for another day.

6 MS. LANCASTER: Your Honor, if I might interject,
7 that would be the only question that I would have. I don't
8 see that there's a problem of the lawyers working out when
9 you take a break or when we go to lunch. The only issue
10 that I thought might come up would be if Mr. Lyons takes
11 basically all day and didn't leave sufficient time for
12 cross-examination, if there was going to be a problem in
13 holding it over the next day to complete that.

14 THE COURT: Well, you'll just have to call and
15 tell me why the deposition that -- who is it -- that Mr.
16 Weber took a couple years ago was inadequate for your
17 purposes, and maybe I can be persuaded to let you question
18 her again. But you've had at her. Mr. Breen's counsel has
19 had at her. Clear Comm certainly would have a right to
20 examine her.

21 MR. GORDIN: Your Honor, obviously, I agree. We
22 would have a right to examine her should we choose the
23 opportunity. I would just point out for Your Honor, and I,
24 frankly, have not been back and revisited the Hamilton
25 deposition from earlier proceedings at this point recently.

1 As I do recall that earlier Your Honor did put certain
2 limits on the scope of examination before the -- when Mr.
3 Easton was not in this proceeding, and the issues were a
4 little different. I would just remind --

5 THE COURT: Well, that doesn't affect the Bureau's
6 deposition, because the Bureau's deposition was taken as
7 part of their investigation, and I wasn't even aware of any
8 of this then. Sometimes I wish I wasn't aware of them now.
9 But their deposition of Ms. Hamilton was taken during the
10 investigative stage, and it wasn't an adversarial
11 deposition.

12 But if you need more time, you can call me up and
13 persuade me that you need to continue for additional time.
14 And I would urge counsel for Easton to finish as quickly as
15 he can.

16 MR. LYON: I will do so. I've been reviewing the
17 previous depositions in order to attempt to narrow the focus
18 of my questioning to the materials.

19 THE COURT: Okay. It's my understanding that you
20 have the Hamilton deposition that the Bureau took?

21 MR. LYON: Well, that's an issue I wanted to
22 address for a second. There are portions of that deposition
23 that are redacted. I don't know what they say, obviously.
24 They probably are not material, but I don't know that. At
25 some point before she testifies or before her testimony is

1 finished, under the rules, the Bureau must hand over all
2 statements that she's made.

3 I was wondering if it was possible for the Bureau
4 to advance the process in that and perhaps turn over any
5 statements of Ms. Hamilton prior to my taking her
6 deposition.

7 THE COURT: I'll ask Ms. Power to address that.

8 MS. POWER: I'm not aware of other statements. I
9 do now remember that certain items, Your Honor, were
10 redacted that were of an extremely personal nature that were
11 not relevant to the issue that's been designated. And if it
12 means then an in camera review, perhaps that might be
13 necessary. But I'm just recalling from the top of my head.
14 I haven't gone over it recently either.

15 THE COURT: Okay. Why don't you go --

16 MR. CARROCCIO: Excuse me, Your Honor.

17 THE COURT: Yes, sir?

18 MR. CARROCCIO: If the Bureau felt it necessary to
19 ask those questions and obtain an answer, I don't think they
20 should be heard at this time to say they're irrelevant.

21 THE COURT: Why don't you review it, and then tell
22 us the nature of the stuff that was redacted? I have no
23 trouble if you want to not disclose a Social Security number
24 or -- well, everyone knows what her former address is.

25 MR. LYON: I blacked it out.

1 THE COURT: Yes.

2 MR. CARROCCIO: Your Honor, I'm more concerned not
3 about personal information such as Social Security numbers
4 and addresses, but the Bureau has made statements in the
5 hearing designation order --

6 THE COURT: Are you talking about the personal
7 sacrifices?

8 MR. CARROCCIO: Not only about the personal
9 sacrifices, but that determinations had been made on the
10 basis of that deposition that she was credible. So,
11 apparently, these questions go to credibility issues.

12 THE COURT: I'm the one that's going to have to
13 determine the credibility, and I'm going to base it on what
14 I see and what I hear and not what I read in deposition that
15 was taken a couple years ago, unless there's some kind of a
16 conflict or something. I see where you're going. There
17 might be a conflict.

18 Why don't you go over the redactions and just tell
19 everybody -- you can write a letter with a copy to me, as to
20 the nature of what was redacted, without getting into any
21 details. And I think it's necessary to take a look at it,
22 I'll ask for it.

23 How extensive were the deletions?

24 MR. CARROCCIO: Quite extensive, Your Honor.

25 MR. LYON: I'll take Mr. Carroccio's word. It's

1 been quite some time since I've looked at the deposition.

2 THE COURT: Okay.

3 MR. CARROCCIO: Your Honor, the other concern I
4 have is that it's my understanding derived from the fact
5 that when we had a Freedom of Information Act request
6 pending for this, and there was a delay in producing the
7 documents, we were told by then Bureau counsel that the
8 reason for the delay was that the redacted copy had not been
9 received back from Ms. Hamilton, and that she was being
10 allowed to do the redactions. So, this is not something
11 that the Bureau has decided should be redacted.

12 THE COURT: Oh, okay.

13 MS. POWER: I can't speak to that. That's the
14 first time I've heard that, Your Honor.

15 THE COURT: Why don't you take a fresh look at it?

16 MS. POWER: Okay.

17 THE COURT: A fresh look at the stuff that was
18 eliminated, and you make your own independent determination
19 as to whether that material still needs to be redacted.
20 Now, you have to remember --

21 MS. POWER: To do both. Look at both, the
22 redacted and the unredacted --

23 THE COURT: Well --

24 MS. POWER: -- and then you want me to make more
25 redact --

1 THE COURT: No, no, no. I don't want you making
2 more redactions.

3 MS. POWER: Or fewer redactions?

4 THE COURT: Fewer, right. If you think that
5 there's no reason -- if you think that given the current
6 state of this proceeding and this case, there's no reason
7 for the opposing parties not to have the information, then
8 I'd prefer that it be given to them.

9 MS. POWER: Okay, Your Honor.

10 THE COURT: The deposition is a prior statement of
11 the witness. And under the Jenks Rule, which is codified in
12 one of our rules, the opposing parties are entitled to get
13 it when she finishes her direct examination. I mean,
14 technically. But my own preference would be to give it to
15 them as soon as possible because if they get a deposition
16 that's a couple hundred pages long, although you heard most
17 of it.

18 I would give them additional time to read through
19 the deposition, at least, the material they haven't had
20 before. Analyze it, so that they can prepare appropriate
21 cross-examination, so by giving it to them -- they're going
22 to get it anyway. So, by giving it to them now, you're just
23 saving time -- hearing time.

24 MS. POWER: Okay.

25 THE COURT: And if the redactions were made by Ms.

1 Hamilton and not by the Bureau, I think -- well, I'm not
2 going to tell you what I think.

3 MR. LYON: Your Honor, I will note also that I do
4 believe that upon her finishing her direct testimony, I am
5 entitled to an unredacted copy of the deposition.

6 THE COURT: I would tend to agree.

7 MR. CARROCCIO: Your Honor, the reason I'm raising
8 these questions about the redactions, is this witness --
9 we're already accommodating the witness at a later than
10 usual date. And I think it's probably warranted that we do
11 so.

12 We're all concerned about her deposition carrying
13 over more than one day, and anything that could facilitate
14 that deposition being taken expeditiously, I think we ought
15 to go out of our way to do it.

16 THE COURT: I agree, too. If you can complete
17 your review as soon as possible. I know you are going out
18 there next week. So, if I --

19 MS. POWER: I'm not going out.

20 THE COURT: Oh, you're not going out?

21 MS. POWER: I'm not going, no. I won't be here.

22 MS. LANCASTER: I'm going.

23 THE COURT: Pardon me?

24 MS. LANCASTER: I'm going.

25 THE COURT: Okay. But if you can get the

1 materials to the opposing counsels before the deposition
2 that would be extremely helpful. Or if a ruling is
3 necessary, you could get it to me -- today's Tuesday. If
4 you get it to me tomorrow or Thursday, then I can read it
5 through and -- although, Mr. Carroccio made a valid point in
6 terms of getting the entirety of the deposition, at least
7 after she finishes her direct testimony. So, why not give
8 it to him now? But you all decide that.

9 MS. POWER: Okay.

10 MR. CARROCCIO: Your Honor, it wasn't me that was
11 concerned about getting her entire deposition after her
12 direct testimony. I believe that was Mr. Lyon.

13 THE COURT: No, no. But you made the point that
14 you'd be entitled to it, I think.

15 MR. LYON: It was my understanding, Your Honor,
16 and I'm certainly not attempting to hold the Wireless Bureau
17 to this standard. But it was my understanding that in
18 broadcast cases, the Broadcast Bureau has, for quite some
19 time, followed the practice of turning over the Jenks
20 material in advance of the hearing.

21 THE COURT: Well, I was with the Broadcast Bureau
22 and Mass Media Bureau for a long time. The last thing we
23 wanted was a Freedom of Information Act request, and we
24 picked -- when the case was set for hearing and we knew
25 opposing counsel, we picked up the phone and said, "Every

1 piece of paper we have on this case we'll turn over to you.
2 Don't file a Freedom of Information Act then." And we did
3 that. And we saved a lot of time, a lot of effort and a lot
4 of aggravation.

5 In most cases, the opposing party got virtually
6 nothing anyway because, when Broadcast Bureau designated a
7 case for hearing, we rarely had any evidence anyway. Let
8 the record reflect that.

9 Okay. Turning to Dr. Blinder now, is it any
10 secret that I signed a subpoena? Do you want me to keep
11 that a secret?

12 MS. POWER: It's not a secret, not now.

13 THE COURT: Okay. I signed a subpoena for his
14 deposition, and it requires him to produce documents and all
15 documents relating to facts communicated to him by Mr.
16 Easton regarding the January 23 bidding error. And that
17 language detracts the language from my order.

18 I just want to -- somebody tell Dr. Blinder to
19 redact anything not having to do with the facts that were
20 related to him by Mr. Easton. I don't want stuff in his
21 notes that might pertain to other matters.

22 MR. LYON: Such as his evaluations?

23 THE COURT: Just if his notes contain factual
24 matters about the January 23 bidding error, leave it in. If
25 it's not related to a factual matter concerning the January

1 23 bidding error, it can be masked. I just -- and I don't
2 know if Dr. Blinder would know that.

3 Okay. Now, the next thing I'd like to do is
4 revisit the dates. As I said earlier, the August 25 hearing
5 date is not going to be changed. What I'll do, I'm going to
6 cancel or the admission schedule set for -- admission
7 session. Excuse me. Admission session scheduled for August
8 6 is canceled.

9 The current exhibit exchange date is canceled.
10 And in its place, I'm going to give you a choice. My
11 preference would be to exchange exhibits on August 11, which
12 is two weeks before the hearing. And that will be the date
13 of the exchange of any written direct case exhibits.

14 If any oral testimony is to be offered, I'll also
15 include an identification of each witness and an outline of
16 the testimony they're expected to give. This is already in
17 the order that I previously issued, and it will be repeated.

18 I'd like you to make the outline sufficiently
19 detailed so that opposing counsel can prepare to cross-
20 examine. I don't want something that says, "Ms. Hamilton
21 will testify concerning the bidding error of January 23,
22 1996." I want you to outline what you expect -- the major
23 points you expect her to make. I'm not saying every point.
24 But I'm just saying I want you to give enough notice to the
25 opposing parties so that they can prepare cross-examination.

1 Now, I'm also going to require the Bureau and
2 Clean Comm -- I know you don't have any burdens in this
3 proceeding, but I presume you're going to put on a direct
4 case?

5 MR. GORDIN: Yes, Your Honor.

6 THE COURT: Okay. And the Bureau has the burden
7 in the proceeding, the burden of proof. But I want to have
8 Bureau and Clear Comm -- when they make this exchange, I
9 want them to list the order in which the witnesses are going
10 to appear. This is, again, to allow opposing counsel to
11 prepare for cross-examination.

12 I don't want them preparing Monday night for
13 somebody they expect on Tuesday, and have the Tuesday guy
14 put off until a week from Saturday. And then they sit there
15 with a witness they haven't had time to prepare for. And
16 you're going to be bound by the listing of the order of the
17 witnesses, unless the parties agree the order can be
18 changed.

19 MS. POWER: Excuse me, Your Honor, just to
20 clarify. You're expecting them to receive a list from us of
21 witnesses and a list from Clear Comm. And if we have a
22 different order --

23 THE COURT: If you want to have a joint list -- it
24 might be better to have a joint list. I don't know, because
25 I would expect Ms. Hamilton would appear and testify once.