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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 23, 1998

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~~CORRESPONDENCE~~
FILE

BY HAND DELIVERY

Ms. Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: WT Docket No. 97-199
In re Applications of Westel Samoa, Inc. et al.

Dear Madam Secretary:

Pursuant to Section 1.318(f) of the Commission's Rules, 47 C.F.R. § 1.318(f), please accept for filing an original and two copies of deposition transcripts for Michael Gavette, William Pezzaglia, Frederick Gross, Martin Blinder, and Cynthia Hamilton.

Thank you for your assistance.

Sincerely,

Bryan Tramont /DAM
Bryan N. Tramont

Enclosures

cc: Hon. Arthur I. Steinberg
David Solomon, Esq.
Katherine Power, Esq.
Russell D. Lukas, Esq.
A. Thomas Carroccio, Esq.

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BEFORE THE

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SEP 23 1998

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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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 |) | File |
| Personal Communications |) | Nos. 00129-CW-L-97 |
| Systems Facilities |) | Nos. 00862-CW-L-97 |
| |) | Nos. 00863-CW-L-97 |
| and |) | Nos. 00864-CW-L-97 |
| |) | Nos. 00865-CW-L-97 |
| WESTEL, L.P. |) | |
| |) | |
| For Broadband Block F |) | |
| Personal Communications |) | |
| Systems Facilities |) | |
| |) | |

ORIGINAL

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DEPOSITION OF FREDERICK GROSS

San Francisco, California

Friday, June 5, 1998

Reported by:
JILL J. BARHAM
CSR No. 7914
Job No. 2401

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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) File
Personal Communications) Nos. 00129-CW-L-97
Systems Facilities) Nos. 00862-CW-L-97
and) Nos. 00863-CW-L-97
WESTEL, L.P.) Nos. 00864-CW-L-97
) Nos. 00865-CW-L-97
For Broadband Block F)
Personal Communications)
Systems Facilities)

Deposition of FREDERICK GROSS, taken on
behalf of Defendants, at 505 Montgomery Street,
Suite 1900, San Francisco, California, beginning at
9:45 a.m. and ending at 2:54 p.m., before Jill J.
Barham, Certified Shorthand Reporter No. 7914.

1 APPEARANCES:

2

3 For the Witness:

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17 For Terry Easton:

18 LUKAS, NACE, GUTIERREZ & SACHS
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21 Washington, D.C. 20036
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22

23 Also present:

24 TERRY EASTON
25 BOB ROSS
JAMES WHEATON

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EXHIBITS

DEFENDANTS'

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1 San Francisco, California, Friday, June 5, 1998

2 9:47 a.m. - 2:54 p.m.

3

4 FREDERICK GROSS,

5 having been first duly sworn, was examined and

6 testified as follows:

7

8 MR. LYON: Let me raise a preliminary

9 matter.

10 Can we get an agreement of counsel for

11 the witnesses for a rule on witnesses limited to

12 not discussing Mr. Gross's testimony with

13 Ms. Hamilton?

14 (Telephone interruption.)

15 THE WITNESS: May we go off the record?

16 MR. LYON: Off the record.

17 MR. WHEATON: Yes, definitely.

18 (Brief discussion off the record.)

19 MR. LYON: Let's go back on the record.

20 Well, Counsel?

21 MR. WHEATON: And what's your question?

22 MR. LYON: Can we have a rule with

23 respect to this witness that the witness's

24 testimony will not be discussed with Ms. Hamilton

25 or Shantour (phonetic)?

1 MR. WHEATON: If I can ask for a
2 clarification.

3 You are saying that no witness's
4 testimony should be discussed with any other
5 witness at all?

6 MS. POWER: Sequestration?

7 MR. LYON: No. I'm asking for
8 sequestration with respect to this witness until
9 Ms. Hamilton testifies in her deposition.

10 MR. WHEATON: Since I represent
11 Ms. Hamilton, can I ask why?

12 MR. LYON: Sure. I don't want her to
13 know what Mr. Gross says so that she can conform
14 her story to his testimony.

15 MR. GORDIN: Yet your client's sitting
16 here for all the major depositions.

17 MR. LYON: My client has a right to.

18 MR. WHEATON: Well, it seems to me
19 attorneys have a right to discuss things with their
20 clients.

21 MR. LYON: They can discuss it. I
22 don't want Mr. Gross's testimony being revealed to
23 her.

24 If the answer is no, then we'll get it
25 over with, then tell me no. I've stated my

1 reasons.

2 MR. GORDIN: Since Ms. Hamilton's
3 represented by counsel, I wouldn't be communicating
4 with her in any event except for through counsel.

5 MR. LYON: So you're willing to agree
6 to it, Mr. Gordin?

7 MR. GORDIN: No, I'm not. I'm not. I
8 don't see a --

9 MR. LYON: Counsel?

10 MR. ALTSHULER: I don't see any basis
11 for legal inquiry here.

12 MR. LYON: Counsel?

13 MR. WHEATON: Well, other than, of
14 course, parties of counsel will go through her
15 counsel, I see no reason for it at all.

16 MR. LYON: Okay. That's the first
17 matter.

18 Second, I object to Mr. Wheaton's being
19 in the room.

20 MR. WHEATON: Is that because you are
21 concerned that I will intimidate or in any way
22 interfere with the deposition?

23 MR. LYON: I am concerned that your
24 presence may intimidate Mr. Gross. It's no
25 reflection on you, just the fact of your presence.

1 And, second, I don't want to -- again,
2 I'm concerned about tainting Ms. Hamilton's
3 testimony.

4 MR. WHEATON: I appreciate that.

5 As to the latter, I think we'll deal
6 with that the same way we did the first.

7 And the first objection, I think, is
8 probably Mr. Altshuler's.

9 MR. ALTSHULER: I'm sorry?

10 MR. WHEATON: If there's a concern
11 about my presence intimidating or interfering with
12 the witness in any way, I think that calls for your
13 response.

14 MR. ALTSHULER: I have no concern
15 whatever about that.

16 MR. WHEATON: I actually reviewed the
17 rules last night, and the real rule is that
18 depositions are not closed proceedings unless a
19 party seeks a protective order and can show that
20 there is going to be some intimidation or
21 interference with the proceedings.

22 MR. LYON: I take it your answer is
23 that you will not voluntarily depart?

24 MR. WHEATON: That's correct.

25 MR. GORDIN: Have you previously spoken

1 with the judge about this issue?

2 MR. LYON: No. No. I understand the
3 judge refused to allow ClearComm's presence at the
4 other depositions; is that correct?

5 MR. GORDIN: Yes, that's correct, but I
6 think, actually, as I think of that there was
7 another issue that was related; but we can go over
8 that with the judge. I'll try and remember what it
9 was.

10 The idea was that we could -- I cannot
11 remember.

12 MR. LYON: Okay. Again, I mean no
13 disrespect to you or to anyone here.

14 Why don't we go off the record.

15 THE REPORTER: Counsel, do you agree?

16 MS. POWER: Yes. Off the record.

17 (Teleconference off the record among
18 Judge Steinberg and Counsel.)

19 MR. LYON: While we were off the
20 record, a call was placed to the judge relating to
21 the two issues that were raised on the record
22 previously.

23 To summarize the judge's rulings, he
24 has held that Mr. Wheaton does not have a right to
25 attend this deposition.

1 He has also ordered sequestrations for
2 all nonparty witnesses, which would include
3 prohibition on showing witnesses the depositions of
4 other witnesses.

5 Have I adequately stated?

6 MR. GORDIN: No, I don't believe so.

7 MR. LYON: Okay. Correct me.

8 MR. GORDIN: I think he is, first, I
9 want to be clear, based on with regard of
10 Mr. Wheaton on his interpretation that this portion
11 of the proceeding, that is, the taking of
12 depositions are not public proceedings.

13 The order on sequestration prevents an
14 attorney here from communicating, directing the
15 facts directly to a nonparty witness.

16 It would not, for example, stop an
17 attorney for that nonparty witness from consulting
18 with his client as he or she sees fit.

19 MR. LYON: I agree with you.

20 Any other counsel have anything to add
21 to this?

22 Then let's get the show on the road.

23 MR. WHEATON: You all have fun.

24 Pleasure to meet you all.

25 MR. LYON: Again, it's nothing

1 personal.

2 (Mr. Wheaton exits.)

3

4

EXAMINATION

5 BY MR. LYON:

6 Q. Mr. Gross, my name is George Lyon. I
7 represent Mr. Easton in this proceeding, whom you
8 know, I assume; is that correct?

9 A. Yes.

10 Q. Do you understand the nature of the
11 oath that you took?

12 A. Yes, I do.

13 Q. And that oath is to tell the truth?

14 A. Yes.

15 Q. Do you have any intent in coming here
16 today not to tell the truth?

17 A. No, sir, not at all.

18 Q. Do you have any intent to withhold
19 relevant information?

20 A. No.

21 Q. Do you have any intent to -- strike
22 that.

23 Would you state your current place of
24 employment?

25 A. Action Systems Incorporated in Belmont,

1 California.

2 Q. And what is your position there?

3 A. I am the vice president of operations.

4 Q. And in that position what are your
5 duties?

6 A. Currently to write the company policy
7 manual, to write our year 2-K plan, do public
8 relations, interviews, things of that nature; just
9 monitor the operations of the corporation.

10 Q. Would you state your formal educational
11 background.

12 A. I am currently a senior at the
13 University of Phoenix about ten units away from a
14 bachelor's degree in business. That's it.

15 Q. University of Phoenix in?

16 A. Northern California.

17 Q. Northern California.

18 Prior to being employed by Action Inc.,
19 were you employed by anyone else?

20 A. Yes.

21 Q. Who?

22 A. I worked for the federal government.

23 Q. What was your position with the federal
24 government?

25 A. I was a network manager.

1 Q. And during what period of time did you
2 work for the federal government?

3 A. From, I believe, it was early 1994
4 until mid-1995.

5 Q. When did you become employed by Action
6 Inc.?

7 A. About a week after I left the
8 government.

9 Q. Do you remember the month?

10 A. April of '95.

11 Q. What was your position when you were
12 employed by Action Inc.?

13 A. Systems engineer.

14 Q. Have you had any other positions
15 besides systems engineer and vice president for
16 operations Action Inc.?

17 A. No.

18 Q. Prior to your employment with the
19 federal government, were you employed by anyone?

20 A. Yes.

21 Q. Who?

22 A. I work for Savin Corporation prior to
23 that.

24 Q. Do you recall the date of that
25 employment?

1 A. No, I don't.

2 Q. How old are you?

3 A. I am 36.

4 Q. Prior to the job with Savin, were you
5 employed?

6 A. Yes.

7 Q. By whom?

8 A. By Canon Corporation; Taylor Made
9 Office Systems is the company name.

10 Q. What federal agency did you work for?

11 A. A federal emergency management agency.

12 Q. Do you have any formal training in
13 computer systems?

14 A. "Formal" meaning classroom?

15 Q. Let me clarify the question.

16 Do you have any training in computer
17 systems?

18 A. Yes.

19 Q. Would you state that for the record.

20 A. I've been through Novell training.
21 I've been through Microsoft training, numerous
22 systems training courses for netframe servers;
23 different computer systems.

24 Q. With respect to your training on Novell
25 systems, do you hold any certificates?

1 A. Yes.

2 Q. Which ones?

3 A. I'm a certified Novell administrator.

4 Q. Any other Novell certificates?

5 A. No.

6 Q. Microsoft? Any Microsoft certificates?

7 A. No, not currently.

8 Q. Any other certificates or documentation
9 of your training exist -- that's a bad question.

10 Let me try again.

11 Any other certificates in the nature of
12 the certified network certificate from Novell?

13 A. Certified WinFrame administrator,
14 Certified NetFrame administrator; certified -- the
15 list goes on. I've been to numerous courses and
16 for different systems that I'm certified on;
17 program administrator certified. The list goes on.
18 I've been to numerous seminars for numerous systems
19 themselves.

20 Q. Forgive my ignorance, and I may be
21 assuming things, and if so, please correct me.

22 By the way, if at any point during the
23 questioning you don't understand one of my
24 questions, or many of them, please meet me know;
25 and I'll try to clarify it for you.

1 A. All right.

2 Q. Would it be fair to say that your
3 training is more on the hardware side of computers,
4 or on the software side?

5 A. It's right down the middle. It's both.

6 Q. So you're qualified to -- with respect
7 to your software qualifications, would that include
8 network software?

9 A. Yes.

10 Q. Application software?

11 A. Yes, various operations.

12 Q. Would you give us some examples of the
13 applications software that you're qualified on?

14 A. I've taught courses for Microsoft
15 Office. I've taught courses for Lotus. I've
16 taught courses for numerous programs, Microsoft
17 Project, numerous programs.

18 Q. Did there ever come a time when you had
19 a relationship with the San Mateo Group?

20 A. Yes.

21 Q. Would you tell us -- would you describe
22 the nature of that relationship?

23 A. I was a consultant, I was a network
24 consultant for their bidding process.

25 Q. When did you begin those duties of

1 network consulting for San Mateo Group?

2 A. I forget the exact dates, but I believe
3 it was approximately January of '96.

4 Q. Prior to January of '96, you did not do
5 work for the San Mateo group?

6 A. No.

7 Q. Okay. How about for Romulus
8 Telecommunications, Inc.?

9 A. No.

10 Q. Did you ever do any work for Romulus
11 Telecommunications, Inc.?

12 A. No.

13 Q. How about for PCS 2000?

14 A. No.

15 Q. How about for ClearComm L.P.?

16 A. No.

17 Q. UniComm?

18 A. No.

19 Q. Supertel?

20 A. No.

21 Q. Are you familiar with the names Unicomm
22 and Supertel?

23 A. No.

24 Q. Okay. Could you outline in more detail
25 your duties with San Mateo Group?

1 A. I was a -- I was systems engineer. It
2 was my responsibility to make sure the network
3 worked from a higher end standpoint, make sure the
4 file server worked, make sure that the connectivity
5 to the work stations was adequate; just the
6 different components of the network to make sure
7 they were operational.

8 Q. Did that keep you busy?

9 A. Not particularly.

10 Q. Did you spend time on the premises of
11 San Mateo Group?

12 A. Yes.

13 Q. Did you have an office?

14 A. No.

15 Q. Did you have a primary area in the
16 offices where you performed your duties?

17 MR. ALTSHULER: Do you understand the
18 question?

19 THE WITNESS: No, I don't.

20 MR. LYON: Q. I'm going to show you a
21 diagram and ask if the diagram -- if you recognize
22 that diagram as a depiction of the office complex
23 for San Mateo Group?

24 A. Yes.

25 Q. Okay. By placing an "x" with a circle

1 around it, I'd like you to indicate areas where you
2 performed responsibilities, or where you performed
3 your duties as a consultant, placing the "x" at the
4 spot which best describes where you would perform
5 your duties.

6 MR. ALTSHULER: Do you understand the
7 question?

8 THE WITNESS: I do, but I would put an
9 "x" all over the page.

10 MR. LYON: Q. Okay. Do you know where
11 the computers were located in the -- I'm sorry.

12 Do you know where the servers were
13 located?

14 A. Yes.

15 Q. Is there a room that you see indicated?

16 MR. GORDIN: Counsel, I'm going to
17 object to further questions unless you want to mark
18 that exhibit for the record.

19 MR. LYON: Let's mark that as
20 Exhibit 1.

21 And unfortunately I don't have
22 additional copies; and I apologize for that.

23 I will represent it as exhibits that
24 were handed to the parties yesterday.

25 MR. GORDIN: Well, if you want to stop

1 the deposition, I will see if -- I think counsel
2 would like a copy.

3 MR. ALTSHULER: I would appreciate
4 having one in front of me. It's a little hard for
5 me to see.

6 MR. LYON: Maybe I can find additional
7 copies.

8 Can we go off the record?

9 THE REPORTER: Counsel, off the record?

10 MR. GORDIN: Yes, we're off the record.

11 (Conferences between Mr. Altshuler and
12 the witness.)

13 (Brief recess taken.)

14 (Exhibits 1 and 2 were marked for
15 identification by the Certified Shorthand Reporter,
16 a copy of which is attached hereto.)

17 MR. LYON: Q. Mr. Gross, during the
18 recess you conferred with counsel?

19 A. Yes.

20 Q. Would you tell us what you and counsel
21 talked about?

22 MR. ALTSHULER: Oh, come on. I object.
23 It's attorney-client privileged.

24 MR. LYON: Okay.

25 MR. ALTSHULER: I can't believe you

1 would ask a question like that.

2 MR. LYON: Excuse me?

3 MR. ALTSHULER: I can't believe you
4 would you ask a question like that.

5 MR. LYON: Believe it.

6 Q. Going back to Exhibit 1, Mr. Gross,
7 there's a handwritten word "entrance" marked on
8 Exhibit 1.

9 Does that signify where the entrance to
10 the suite was located?

11 MR. GORDIN: Object to the form of the
12 question "Does that signify?"

13 MR. LYON: Q. Would you answer?

14 MR. ALTSHULER: Do you understand the
15 question?

16 THE WITNESS: Yes. I mean. Yes.
17 That's the entrance.

18 MR. LYON: Thank you.

19 Q. Was there any location in the suite
20 where you spent the majority of your time
21 performing your duties?

22 A. Yes.

23 Q. And would you place an "x" at that
24 location?

25 A. Do you have a pen?

1 MR. ALTSHULER: (Handing pen to
2 witness.)

3 THE WITNESS: (Marking document.)

4 MS. POWER: Thank you.

5 MR. LYON: Q. Did you spend a
6 significant amount of time in the area that has a
7 "b" located or marked on Exhibit 1?

8 MR. ALTSHULER: For the record, I would
9 object to the term "significant."

10 MR. LYON: Q. Do you understand my
11 question?

12 A. Actually, no, I guess I don't.

13 Q. Okay. Do you understand the word
14 "significant"?

15 MR. GORDIN: Object to the form of the
16 question.

17 MR. ALTSHULER: I object to it as
18 argumentative.

19 MR. LYON: Q. Can you answer that?

20 A. Sure. Yes.

21 Q. As a percentage of your time performing
22 your duties, can you indicate the amount of time
23 you spent in the room with the "b" marked on it on
24 Exhibit 1?

25 MR. ALTSHULER: If you're able to.

1 THE WITNESS: I would guess about
2 30 percent.

3 MR. LYON: Q. And in the room with the
4 "x" marked on it?

5 A. Probably another 40 percent.

6 Q. Is there any other room in which you
7 believe you spent as much as 10 percent of your
8 time?

9 A. No.

10 Q. When you came to work for the San Mateo
11 Group, were you an employee -- strike that.

12 When you came to work in January of '96
13 for the San Mateo Group, were you an employee of
14 the San Mateo Group?

15 A. No.

16 Q. You were an employee of Action Inc.?

17 A. Yes.

18 Q. When you began work at the San Mateo
19 Group in January of 1996, can you describe the
20 computer system that existed there at that time?

21 MR. GORDIN: Object to the question.
22 Ambiguous.

23 MR. LYON: Q. Can you describe the
24 computer system when you began work at San Mateo
25 Group?

1 A. Yes.

2 Q. Would you do so?

3 A. It's a Novell 312 local area network
4 with a 56k Internet connection.

5 Q. Could you describe what computer
6 hardware existed there at that time?

7 A. I don't remember.

8 Q. Was there a file server?

9 A. Yes.

10 Q. Was there a fax server?

11 A. Yes.

12 Q. Was there a communications server?

13 A. I believe so. I don't really remember
14 if there was a com server or not.

15 Q. Was there a backup system?

16 A. Yes.

17 Q. When there any other systems that you
18 can think of besides the ones we've described?

19 A. There was a UNIX machine. There were
20 numerous work stations. There were -- I guess,
21 that's basically it, just the work stations and
22 UNIX box.

23 Q. Were there printers?

24 A. Yes.

25 Q. How many printers?