

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 97-199; FCC 98-31]

Westel Samoa, Inc.

AGENCY: Federal Communications Commission.

ACTION: Modification of Hearing Designation Order.

SUMMARY: The Commission modifies the hearing designation order in the *Westel Samoa, Inc.*, proceeding to clarify that Anthony T. Easton is entitled to a full evidentiary hearing regarding allegations that he made misrepresentations and lacked candor in connection with a Commission auction. The Commission action also reaffirms that an issue is properly designated against Easton in this proceeding despite the fact that he has no application pending before the Commission.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418-1760.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WT Docket No. 97-199, adopted March 4, 1998, and released March 10, 1998. The full text of the report and order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street NW., Washington, D.C. 20036, telephone (202) 857-3800.

Summary of Memorandum Opinion and Order

1. This Memorandum Opinion and Order grants in part a Petition for Reconsideration, filed October 6, 1997, by Anthony T. Easton, and modifies the hearing designation order in this proceeding. *Westel Samoa, Inc.*, 12 FCC Rcd 14057 (1997), 62 FR 53628 (October 15, 1997).

2. This proceeding arose from facts and circumstances surrounding a bid placed by PCS 2000 L.P. (PCS 2000) in the Commission's broadband Personal Communications Services (PCS) C Block auction on January 23, 1996. The Commission found evidence that Anthony T. Easton, a principal of PCS 2000, made misrepresentations and lacked candor before the Commission and that Quentin L. Breen, a second principal, may have been aware of Easton's misconduct and did not disclose it.

3. The Commission initiated the instant proceeding because Breen is the controlling principal of Westel Samoa, Inc. and Westel, L.P., which are the high bidders for seven PCS C Block and F block licenses in American Samoa. The Commission designated issues to determine whether Breen made misrepresentations or lacked candor before the Commission in connection with Easton's conduct concerning the PCS 2000 bid.

4. Although he did not have a pending application, the Commission also designated an issue against Easton:

To determine, based on Anthony T. Easton's misrepresentations before and lack of candor exhibited towards the Commission, whether Mr. Easton should be barred from holding Commission authorizations and participating in future Commission auctions.

5. In this Memorandum Opinion and Order, the Commission rejects an argument by Easton that the Commission has no subject matter jurisdiction to designate an issue against him because he has no pending application and finds that he is properly the subject of the hearing. The Commission also finds that the scope of the issue against Easton should be modified to make clear that whether he engaged in misrepresentation or lack of candor is itself a subject of the hearing, with no weight being given to the Commission's findings in prior Commission orders.

6. The Commission finds that it has authority under the Communications Act to designate an issue against Easton under 47 CFR 1.2109(d). The Communications Act gives the Commission the flexibility to adopt special or additional forms of relief where the public interest so requires. In the area of auctions, the Commission finds it appropriate to institute exceptional safeguards to protect the integrity of the competitive bidding process. Thus, while in most circumstances the Commission does not adjudicate a persons's qualifications in advance of their filing an application, in the auctions context the Commission has done so where an individual has been implicated in especially egregious misconduct.

7. The Commission finds that it is appropriate to clarify the scope of the hearing designated in this proceeding as regards Easton. The pleadings before the Commission evidence some confusion over the intended scope of the hearing with respect to the issue of the alleged misrepresentations. The Commission clarifies that, as Easton argues, any findings made in prior Commission orders are not binding on him. Easton is

entitled to a full hearing on the question of misrepresentation and lack of candor before any findings on this matter can be used as a binding determination as to his disqualification to hold a license or to participate in future auctions. The Commission modifies the wording of the issue to remove the ambiguity and clarify that Easton is entitled to a full evidentiary hearing on this issue and gives Easton an additional ten days after the release of this Memorandum Opinion and Order to file a notice of appearance for the purpose of participating in this evidentiary hearing.

8. Accordingly, it is ordered, that, good cause having been shown, the Consent Motion for Extension of Time, filed October 23, 1997, by Anthony T. Easton is granted.

9. It is further ordered, that the Motion to Strike [ClearComm, L.P.'s]¹ Comments or for Leave to File Response, filed December 4, 1997, by Anthony T. Easton is granted in part and is denied in part and his responsive comments are accepted.

10. It is further ordered, that the Petition for Reconsideration, filed October 6, 1997, by Anthony T. Easton, is granted to the extent indicated herein and otherwise is denied.

11. It is further ordered, that the jurisdictional statement in paragraph 53 of the hearing designation order is amended to read:

53. It is further ordered that, pursuant to sections 4(i), 303(r), 309(e), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(e), 403 * * *,

and Issue 1 is amended to read:

1. 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;

11. It is further ordered, that Anthony T. Easton may within ten (10) days of the release date of this order submit a notice of appearance to avoid a finding that he forfeited his hearing rights in this proceeding.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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¹ Formerly known as PCS 2000.