

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILADELPHIA WIRELESS TECHNICAL INSTITUTE, : CIVIL ACTION  
: :  
Plaintiff, : :  
: :  
v. : :  
: :  
ACCREDITING COMMISSION OF CAREER SCHOOLS : NO. 98-2843  
AND COLLEGES OF TECHNOLOGY, : :  
: :  
Defendant.

**MEMORANDUM**

R.F. KELLY, J.

OCTOBER 23, 1998

On June 2, 1998, the Philadelphia Wireless Technical Institute ("PWTI" or "The School") filed the above civil action against the Accrediting Commission of Career Schools and Colleges of Technology ("ACCSCT" or The "Commission") seeking injunctive relief as well as monetary damages.

On July 22, 1998, the School's request for a temporary restraining order was denied. Hearings were held on the School's Motion for Preliminary Injunction on August 14, 18 and August 27, 1998. Proposed finding of fact and conclusions of law were filed on September 16, 1998. From that testimony and the documents submitted at those hearings, I make the following:

**FINDINGS OF FACT**

1. The Philadelphia Wireless Technical Institute is located at 1531-33 Pine Street in Philadelphia, Pennsylvania and has been in existence since 1908. (Testimony of George Van Horn, 8/18/98, p.8).

2. PWTI is a trade technical school which trains people

in the electronic industry, heating, ventilation and air conditioning. (Testimony of George Van Horn, 8/18/98, p.8).

3. The director of PWTI is George Van Horn who has held that position since 1978. (Testimony of George Van Horn, 8/18/98, p.8).

4. PWTI employs approximately seventeen (17) faculty members. (Testimony of George Horn, 8/18/98, p.9).

5. PWTI has full-time day courses and part-time evening and Saturday courses. (Testimony of George Van Horn, 8/18/98, p.9).

6. In January, 1998, there were approximately sixty (60) full and part-time students enrolled at PWTI. (Testimony of George Van Horn, 8/18/98, p.10).

7. Of those sixty (60) students, approximately fifteen (15%) percent were full-time. (Testimony of George Van Horn, 8/18/98, p.10).

8. During the 1980's, PWTI was accredited by an organization known as the National Association of Trade and Technical Schools ("NATTS"). (Testimony of George Van Horn, 8/18/98, p.13).

9. Accreditation, although voluntary, is a prerequisite for a school such as PWTI to receive federally funded Title 1V tuition reimbursement. (Testimony of George Van Horn, 8/18/98, p.53).

10. The Commission is a private, peer review organization whose purpose is to establish and maintain high

educational standards and ethical business practices among postsecondary trade and technical schools. (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief, at p.1; Declaration of Thomas Fischetti, Exhibit 1 to Defendant's Consolidated Brief, at ¶2).

11. The Commission is composed of thirteen (13) experts, seven (7) of whom own or manage ACCSCT-accredited schools and six (6) of whom are members of the public, unaffiliated with trade and technical schools, but with expertise in education. (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief, at p.1; Fischetti Declaration, Exhibit 1 to Defendant's Consolidated Brief, at ¶2).

12. Commissioners serve for terms of four (4) years, and their terms are staggered so that each year new Commissioners begin to serve. (Testimony of Michael Perez, 8/27/98, p.23).

13. Commissioners serve on a voluntary basis, although the "public" members (those not affiliated with a trade school) are paid a stipend for their service. (Testimony of Michael Perez, 8/27/98, pp.23-24).

14. The Commission is recognized by the U.S. Secretary of Education as a reliable authority as to the quality of education and training provided by its accredited institutions. (Fischetti Declaration, Exhibit 1 to Defendant's Consolidated Brief, at ¶2).

15. The Commission has adopted Standards of Accreditation to guide it in its accrediting actions. (Fischetti Declaration, Exhibit 1 to Defendant's Consolidated Brief, at ¶2;

Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief).

16. In the Commission's accreditation process, schools submit to a peer review by owners and operators of other schools and educational experts. (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief, at p.1. Fischetti Declaration, Exhibit to Defendant's Consolidated Brief, at ¶2.

17. Accreditation is a voluntary process in which schools agree to meet or exceed the Commission's Standards of Accreditation throughout their period of accreditation; to supply complete, accurate and thorough information to the Commission when asked to do so and when required by Commission procedures and regulations; and to comply with the Commission's procedures. (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief, at p.13; Fischetti Declaration, Exhibit 1 to Defendant's Consolidated Brief, at ¶3.

18. In the accreditation process, a school is initially evaluated by a panel of three to four Commissioners, who review, among other items, materials submitted by the school, the report from a Commission team that visited the school, and the school's response, if any, to the team's report, and then make a recommendation on the school's accreditation to the full Commission. (Testimony of Michael Perez, 8/27/98, p.25; see also Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief, at p.4).

19. The full Commission of thirteen (13) members then

votes on the school's accreditation. (Testimony of Michael Perez, 8/27/98, p.25; see also Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief, at p.4).

20. In the event of an adverse accreditation decision, the school is given notice of the decision and then has the right to appeal that decision to the Commission's Appeals Panel. (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief, at pp.4-5).

21. The ACCSCT's Appeals Panel is composed of three (3) members, all of whom are either school owners, administrators or educators who are not members of the Commission. (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief, at pp.4-5; Sirbu Declaration, Exhibit 3 to Defendant's Consolidated Brief, at ¶4; see also testimony of Michael Perez, 8/27/98, p.26).

22. The Appeals Panel has the authority only to either uphold the decision of the Commission, or remand it for further consideration by the Commission. (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief, at p.5; Sirbu Declaration, Exhibit 3 to Defendant's Consolidated Brief, at ¶5).

23. In the event of a remand by the Appeals Panel of an adverse accrediting decision, the school is once again reviewed initially by a panel of Commissioners. The panel reviewing a school after an Appeals Panel remand is composed of members different than the panel that initially reviewed the school, in order to ensure the fairness of the process. (Testimony of Michael Perez, 8/27/98, pp.26-27).

24. After a remand by the Appeals Panel, the Commission can adhere to its original decision, or take other appropriate action. (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief, at p.5; August 12, 1998 decision letter, Exhibit 12 to Defendant's Consolidated Brief; same document as D-1, at p.3; sirbu Declaration, Exhibit 3 to Defendant's Consolidated Brief, at ¶5).

25. On July 27, 1994, ACCSCT sent a letter to PWTI seeking information about the School's financial condition and financial stability. (Exhibit D-5).

26. In July 1995, the Commission decided to place PWTI under a Show Cause Order because of concerns about its financial condition which, in turn, called into question its ability to deliver adequate education and training to its students. That decision was communicated to the School in an August 25, 1995 Show Cause Order. (Fischetti Declaration, Exhibit 1 to Defendant's Consolidated Brief, at ¶5; see also testimony of Michael Perez, 8/27/98, pp.45-46).

27. On February 28, 1996, the Commission issued a Continued Show Cause Order to PWTI because of its continued concern regarding the School's financial condition and its failure to submit complete responses to the Commission. (Fischetti Declaration, Exhibit 1 to Defendant's Consolidated Brief, at ¶5, Exhibit P-5).

28. On April 3, 1996, after PWTI had sent a response to a Commission request for information, Mr. Perez, in his capacity as

an employee of the Commission, sent to Mr. Van Horn a letter warning the School that the requested reports "must be submitted in the proper format and in a timely manner. The School is responsible to the Commission for demonstrating continuing compliance with accrediting standards. Failure to submit complete and accurate and timely reports may result in the School's removal from the accredited list." (Exhibit D-6; see also testimony of Michael Perez, 8/27/98, pp.51-53.)

29. On June 7, 1996, the Commission issued a Continued Show Cause Order to PWTI which again expressed concern regarding the School's financial condition and its failure to submit complete responses to the Commission. (Exhibit P-5).

30. In June 1996, a Commission visiting team went to the School to evaluate the School's compliance with accrediting standards. (July 12, 1996 ACCSCT Team Summary Report, attached as Exhibit 3 to Exhibit P-7, at p.1; see also Fischetti Declaration, Exhibit 1 to Defendant's Consolidated Brief, at ¶5).

31. As a result of that July 1996 review, the Commission issued an order on November 22, 1996, which placed PWTI on Probation because of unanswered concerns about the School's financial condition and its unwillingness to provide complete information to the Commission. (Fischetti Declaration, Exhibit 1 to Defendant's Consolidated Brief, at ¶5; see also March 5, 1997 ACCSCT Team Summary Report, attached as Exhibit 4 to Exhibit P-7, at p.2).

32. In January 1997, the Commission sent a team to the

School for a renewal of accreditation visit. (Fischetti Declaration, Exhibit 1 to Defendant's Consolidated Brief, at ¶6; March 5, 1997 ACCSCT Team Summary Report, attached as Exhibit 4 to Exhibit P-7, at p.1).

33. On March 13, 1997, the Commission sent a continued Probation letter based on the School's financial condition and its persistent unwillingness to provide the Commission with complete information. (Fischetti Declaration, Exhibit 1 to Defendant's Consolidated Brief, at ¶6; see also Exhibit 5 to Defendant's Consolidated Brief at p.1).

34. On September 4, 1997, the Commission sent PWTI a letter notifying the School that the Commission was removing it from its list of accredited schools. (Exhibit 5 to Defendant's Consolidated Brief, same document as Exhibit P-6).

35. In response to the September 4, 1997 removal letter, the School appealed the Commission's removal decision to the Commission's Appeals Panel. The School submitted its written Grounds for Appeal and appeared before the Appeals Panel for an oral presentation. (See Exhibit 6 to Defendant's Consolidated Brief, same document as Exhibit P-8; Exhibit P-7).

36. After considering PWTI's position, the Appeals Panel remanded the matter to the Commission for further consideration. (Exhibit 6 to Defendant's Consolidated Brief, same document as Exhibit P-8, at p.6).

37. At its January 1998 meeting, the Commission voted to accredit the School for an additional three (3) years subject to

the School's compliance with certain stipulations, and sent a letter to the School on February 6, 1998 notifying the School of its decision and explaining those stipulations. (Exhibit 7 to Defendant's Consolidated Brief, same document as Exhibit P.-10).

38. One of the stipulations imposed by the Commission required the School to submit "a comprehensive, detailed and in-depth three year financial strategy plan with specific timelines and dates which would clearly demonstrate to the Commission that the school's financial structure is sound, with resources sufficient for the proper operation of the school and discharge of obligations to students." (Exhibit 7 to Defendant's Consolidated Brief, same document as Exhibit P-10).

39. The February 6, 1998 letter specified that the required financial strategy plan "must include," among other items: (a) a budget for obtaining new equipment; (b) audited financial statements for the year ending December 1997; and (c) a financial budget. It also specified that the financial budget should include both pro forma balance sheets and income statements for the next three fiscal years. (Exhibit 7 to Defendant's Consolidated Brief, same document as Exhibit P-10).

40. The February 6, 1998 letter stated that all of the School's required documentation was due on or before April 6, 1998, so that the Commission could review the materials at its April 1998 meeting, and warned that "no extension of time will be provided to the school with respect to its responses to the above mentioned stipulations." (Exhibit 7 to Defendant's Consolidated Brief, same

document as Exhibit P-10).

41. The February 6, 1998 letter also stated that the School's continued accreditation was conditioned upon its submission of this and other data and warned that "[i]f the school does not provide complete and detailed responses to each of the stipulations by the dates indicated, the school's accreditation will be revoked." (Exhibit 7 to Defendant's consolidated Brief, same document as Exhibit P-10).

42. The February 6, 1998 letter also required the School to notify the Commission within ten days that it would agree to the stipulations set forth. (Exhibit 7 to Defendant's Consolidated Brief, same document as Exhibit P-10).

43. Over a month later, in a March 9, 1998 letter, the School accepted the conditions of its accreditation, and explicitly agreed to respond to each of the stipulations outlined in the February 6, 1998 letter. (Exhibit 8 to Defendant's Consolidated Brief, same document as Exhibit P-11 and Exhibit D-2).

44. On April 3, 1998, PWTI sent a binder of materials to the Commission, titled "Response to ACCSCT Stipulation Letter" (referred to hereinafter as "Response to Stipulations"). (Exhibit 9 to Defendant's Consolidated Brief, same document as Exhibit P-13).

45. The School's Response to Stipulations did not include audited financial statements for the year ending December 1997. (Exhibit 9 to Defendant's Consolidated Brief, same document as Exhibit P-13 at "Response to Stipulation 2(d);" see also

testimony of George Van Horn, 8/18/98, pp.49,83).

46. Mr. Van Horn did not request an extension of time to submit the audited financial statements, nor did the Commission ever grant an extension of time. (Testimony of George Van Horn, 8/18/98, at pp.68-69; see also Transcript of Appeals Panel Hearing, Exhibit 11 to Defendant's Consolidated Brief, at pp.66-68).

47. The School said in its Response to Stipulations that it was responding to all of the stipulations, including the financial issues, except for the audited financial statements, which the School admittedly did not provide. (Exhibit 9 to Defendant's Consolidated Brief, same document as Exhibit P-13, at "Response to Stipulation #2a, b, c" and at "Response to Stipulation 2d.').

48. The School's March 9, 1998 letter and April 3, 1998 submission raised no objection to the authority of the Commission to impose the stipulations or to the scope of the information requested. (Exhibit 8 to Defendant's Consolidated Brief, same document as Exhibit P-11 and Exhibit D-2; Exhibit 9 to Defendant's Consolidated Brief, same document as Exhibit P-13).

49. The School's response to the Stipulations described in ¶¶38-39, supra, consisted merely of two pages, stating that "[t]he school's three year financial strategy plan has and continues to be, to work closely with the companies in the industries for which we train"; listing organizations that it intended to ask for donations for capital improvements; and indicating that it planned to institute a tuition increase. (See

Exhibit 9 to Defendant's Consolidated Brief, same document as P-13, at "Response to Stipulation #2a, b, c"; May 4, 1998 decision letter, Exhibit 10 to Defendant's Consolidated Brief; same document as P-14, at p.2).

50. The Commission thus properly found that the materials provided in the School's Response to Stipulations "did not constitute a comprehensive, detailed and in-depth three year financial strategy plan" that had been required by the Commission, and, consistent with its prior warning, removed the School from the accredited list. (Exhibit 10 to Defendant's Consolidated Brief, same document as Exhibit P-14).

51. The only excuse offered by Plaintiff for the failure to provide a comprehensive and detailed response to the financial stipulations was that it would cost too much to comply. (See Transcript of Appeals Panel Hearing, Exhibit 11 to Defendant's Consolidated Brief, at p.40).

52. The School exercised its right to appeal the Commission's May 4, 1998 removal decision to the Commission's Appeals Panel by submitting its intent to appeal and its appeal expense fee. (Exhibit D-3).

53. In July 1998, PWTI did submit its audited financial statements for the year ending December 1997 - approximately two months after the deadline imposed by the Commission, and after the Commission had already met and rendered its decision. (Testimony of George Van Horn, 8/18/98, pp.43-44; Exhibit P-12).

54. The only excuse offered for Plaintiff's late

submission of its audited financial statements was the testimony of George Van Horn and of Joseph Knutte, the accountant retained by PWTI, that Joseph Knutte's schedule did not permit him to start the audit of PWTI until May. (See Testimony of George Van Horn, 8/18/98, pp.40-42, Testimony of Joseph Knutte, 8/18/98, pp.125-26).

55. On July 23, 1998, the Appeals Panel met to consider the School's appeal of the May 4, 1998 decision to remove the School from the accredited list. (See Transcript of Appeals Panel Hearing, Exhibit 11 to Defendant's Consolidated Brief).

56. At the Appeals Panel hearing, the School conceded that it had not provided all the required financial information. (Transcript of Appeals Panel Hearing, Exhibit 11 to Defendant's Consolidated Brief, at pp.30, 39, 48 and 68; Testimony of George Van Horn, 8/18/98, pp.82-83).

57. At the Appeals Panel hearing, the School admitted that it did not submit its audited financial statements to the Commission prior to the Commission's May 1998 decision to remove the School from the accredited list. (Transcript of Appeals Panel Hearing, Exhibit 11 to Defendant's Consolidated Brief, at p.68).

58. Because the financial statements were not submitted to, and could not be reviewed by, the Commission before its May 4, 1998 decision, those statements also could not be considered by the Appeals Panel, as Commission procedures prohibit the appeals Panel from considering evidence which was not presented to the Commission. (Exhibit 12 to Defendant's Consolidated Brief at pp.3-4; Standards of Accreditation, Exhibit 2 to Defendant's

Consolidated Brief, at p.5).

59. The Appeals Panel upheld the Commission's decision to remove the School from the accredited list, and on August 12, 1998, the Commission sent a letter notifying the School of that fact. (August 12, 1998 decision letter, Exhibit 12 to Defendant's Consolidated Brief; same document as D-1) at p.1.

61. The appeals panel also agreed with the Commission that the two-page financial summary submitted by PWTI "did not constitute a comprehensive, detailed and in-depth three-year financial strategy plan," as had been required by the Commission. (August 12, 1998 decision letter, Exhibit 12 to Defendant's Consolidated Brief, same document as D-1) at p.2.

62. Plaintiff has failed to prove that the Commission acted out of bias or animus toward George Van Horn and PWTI.

63. Plaintiff's evidence that the Commission's decision was arbitrary consists of (a) Michael Perez's testimony that it was "customary" for the Commission, during the time that he was employed there, to grant extensions to schools for submission of various reports, and, in his opinion, the Commission's failure to grant an extension to PWTI for submission of its audited financial statements was "arbitrary". (Testimony of Michael Perez, 8/27/98, pp.7-13); and (b) Joseph Knutte's testimony that he had clients who had submitted audits to ACCSCT after a deadline, and ACCSCT had accepted those audits. (Testimony of Joseph Knutte, 8/18/98, p.126). (See Plaintiff's Proposed Findings of Fact, ¶¶39-42).

64. The weight to be given to Mr. Perez's testimony is

greatly reduced by the fact that his employment with the Commission ended in 1996 and the relevant time-period presently before the court is 1998. (Testimony of Michael Perez, 8/27/98, pp.3, 7, 35-36).

65. As Mr. Perez left the employ of the Commission in August 1996 (testimony of Michael Perez, 8/27/98, pp.3, 7,) he is unable to testify about the Commission's practices and procedures during the time period from September 1996 to the present.

66. Mr. Perez did not leave the employ of the Commission on "good terms," in fact, he had been placed on probation shortly before his resignation. (Testimony of Michael Perez, 8/27/98, p.3, 57; Exhibit D-7).

67. The Commission's Standards warn schools that "[f]ailure to provide prompt and timely reporting...may constitute grounds for removal of a school from the accredited list." (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief, at p.4; Testimony of Michael Perez, 8/27/98, p.52; Fischetti Declaration, Exhibit 1 to Defendant's Consolidated Brief, at ¶4.

68. Mr. Perez admitted that the Commission granted PWTI sixty (60) days to respond to the stipulations contained in its February 6, 1998 letter, instead of the thirty (30) days customarily given to a school to provide information. (Testimony of Michael Perez, 8/27/98, pp.7, 47-50).

69. Mr. Knutte admitted that the extensions to which he referred were related to regular deadlines of the Commission for documents filed in the normal course of business, and not for

documents filed in response to stipulations on which accreditation was expressly conditioned. (See testimony of Joseph Knutte, 8/18/98, pp.145-46).

70. Plaintiff has thus failed to show that the Commission treated PWTI differently from other similarly situated schools.

71. The Commission did not act arbitrarily in removing PWTI from its list of accredited schools, as the Commission had given PWTI multiple chances over many years to prove its financial stability, and PWTI failed to do so. (See Paragraphs 17-58, supra; see also Exhibit D-9).

72. Less than 25% of PWTI's revenue comes from Title IV funding. (Testimony of George Van Horn, 8/18/98, P.53).

73. At most, Plaintiff has shown that loss of its accreditation will result in loss of under 25% of its revenue. (Testimony of George Van Horn, 8/18/98, p.53). The loss will likely be even less because it can be assumed that some portion of the students receiving title IV funds will be able to finance their education using funds from some other source.

74. No valid inference can be drawn that loss of under 25% of its revenue will cause the School to go out of business.

75. Plaintiff has offered no evidence that it will be harmed "immediately" if its accreditation is not restored.

76. An injunction restoring Plaintiff to the list of accredited schools would harm current and prospective students because it would mislead students into believing that the School

has provided all necessary information to the Commission to show that it meets the standards of excellence embodied in accrediting standards. If a preliminary injunction is granted, the students who decide to enroll this fall at PWTI based on the assumption that they can use their Title IV monies towards their education may suddenly be shocked by the knowledge, six or eight or twelve months after classes begin, that the school they are attending is no longer accredited, and, indeed, had been deemed unworthy of accreditation from August 1998.

77. An injunction restoring Plaintiff to the list of accredited schools would harm the public, because it undermines the Commission's statutory role as a gatekeeper of federal funds. If the plaintiff School is allowed to pretend it is an entity worthy of accreditation while this litigation continues, the entire accreditation process would be thrown into disrepute.

#### **CONCLUSIONS OF LAW**

1. The proper factors to be examined in determining whether or not to grant a preliminary injunction are "(1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest." ACLU v. BLACK HORSE PIKE REGIONAL BD. OF EDUC., 84 F.3d 1471, 1477 n.2 (3d Cir. 1996).

2. Preliminary injunctive relief is only awarded if the movant can make a showing under each of these four factors. New Jersey Hosp. Ass'n v. Waldman, 73 F.3d 509, 512 (3d Cir. 1995).

3. A court's review of an accrediting agency's decision is limited to whether such decision was arbitrary and unreasonable and whether it is supported by substantial evidence. Chicago School of Automatic Transmissions v. Accreditation Alliance of Career School and Colleges, 44 F.3d 447, 449-50 (7th Cir. 1994); Wilfred Academy of Hair and Beauty Culture v. Southern Ass'n. of Colleges and Schools, 957 F.2d 210, 214 (5th Cir. 1992); Medical Inst. of Minnesota v. National Ass'n of Trade and Technical Schools, 817 F.2d 1310, 1214 (8th Cir. 1987); Peoria School of Business, Inc. v. Accrediting Council for Continuing Education and Training, 805 F.Supp. 579, 583 (N.d.Ill, 1992).

4. The Court's review of the Commission's decision in this case is limited to examining the record compiled before the Commission, since challengers to administrative agency actions are not entitled to augment the agency's record with either discovery or testimony presented in the district court. Camp v. Pitts, 411 U.S. 138, 141-42, 93 S.Ct. 1241, 1244 (1973); Marshall County Health Care Authority v. Shalala, 988 F.2d 1221, 1226-27 (D.C. Cir. 1993).

5. PWTI's allegations of the Commission's bias and the Commission's lack of authority to impose stipulations concerning financial issues after the remand by the Appeals Panel were not part of the record upon which the Commission and Appeals Panel

acted, and the Court, therefore, cannot consider those arguments in deciding the merits of Plaintiff's motion for a preliminary injunction. (See Defendant's Proposed Findings of Fact at ¶¶43-64); Polytechnical College v. National Association of Trade and Technical Schools, No. 91-1353(PG)(D.P.R., June 24, 1991) at 14,n.1.

6. Since in this case "there are administrative findings that were made at the same time as the [Commission's] decision", Plaintiff would have to make a "strong showing of bad faith or improper behavior" in order for this Court to consider Plaintiff's proffered evidence of the Commission's bias against George Van Horn and PWTI. Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 420 91 S.Ct. 814, 825 (1971).

7. No inference of bias can properly be drawn from George Van Horn's dissemination of negative information to members of Congress and the Department of Education National Advisory Committee and the Commission's later removal of PWTI from the list of accredited schools.

8. The testimony of Mr. Van Horn and Mr. Perez constitutes mere speculation that Mr. Van Horn's dissemination of negative information about the Commission could have caused the Commission to be biased against him and his school. Such a "speculative possibility" that the Commission acts "not because [it] was persuaded by the evidence, but for some improper reason, fails to overcome the strong presumption of regularity." Hercules, Inc. v. EPA, 598 F.2d 91, 123 (D.C. Cir. 1978)(citing Overton Park,

401 U.S. at 417-19).

9. Plaintiff has thus failed to make a "strong showing of bad faith or improper behavior" that would enable this Court to consider Plaintiff's proffered evidence of the Commission's alleged bias against George Van Horn and PWTI. Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 420, 91 S.Ct. 814, 825 (1971); Commercial Drapery Contractors v. United States, 133 F.3d 1(D.C. Cir. 1998); James Madison, Ltd. v. Ludwig, 82 F.3d 1085 (D.C. Cir. 1996), amended, 1996 U.S. App. LEXIS 16394 (D.C. Cir. July 3, 1996), and cert. denied, 117 S.Ct. 737 (1997).

10. The Appeals Panel has the authority only to either uphold the Commission's decision or, if it disagrees with any of the findings of the Commission, remand the matter to the Commission for further consideration; it does not have the authority to reverse the decision of the Commission. (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief) at p.5; (Sirbu Declaration, Exhibit 3 to Defendant's Consolidated Brief) at ¶5. That is an entirely proper role for an appeals panel of an accrediting body. See Chicago School of Automatic Transmissions v. Accreditation Alliance of Career Schools and Colleges, 44 F.3d 447, 451 (7th Cir. 1994).

11. The Department of Education has reviewed the Commission's procedures and found that its appeals process, as currently interpreted and applied by the Commission, complies with federal law. (See Exhibit 14, Staff Analysis of the Petition Submitted by the Accrediting Commission of Career Schools and

Colleges of Technology for Renewal of Recognition), at 59-60.

12. The Commission has the authority to grant accreditation that is contingent upon a school providing evidence of continued compliance with accrediting standards or upon a school submitting reports. (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief) at p.4.

13. In the event of a remand by the Appeals Panel, the Commission has the authority to consider all aspects of its prior removal decision, including those findings with which the Appeals Panel may have disagreed. Chicago School of Automatic Transmissions v. Accreditation Alliance of Career Schools and Colleges, 44 F.3d 447, 451 (7th Cir. 1994); (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief) at p.5.

14. Thus, after the November 26, 1997 decision of the Appeals Panel (Exhibit 6 to Defendant's Consolidated Brief), it was proper for the Commission to grant accreditation to PWTI subject to stipulations that it submit further evidence of its financial stability.

15. As a condition of accreditation, the Commission may require that a school respond to stipulations which require the submission of additional information or reports to the Commission. A school which fails to fully or completely respond to stipulations imposed by the Commission effectively fails to meet the conditions upon which accreditation was granted and thus may be removed from the accredited list. (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief) at p.4; (Fischetti Declaration,

Exhibit 1 to Defendant's Consolidated Brief, at ¶4.

16. When PWTI failed to completely respond to the stipulations set forth by the Commission in its February 9, 1998 letter, it was proper for the Commission to remove PWTI from the accredited list without issuing a Show Cause Order, as the Commission's Standards provide that "[f]ailure to submit complete, accurate and timely reports may result in a Show Cause Order or other appropriate action, including removal from the accredited list." (Standards of Accreditation, Exhibit 2 to Defendant's Consolidated Brief), at p.29.

17. The basis for the Commission's decision to remove the School from the accredited list was the School's failure to provide the Commission with complete and timely responses to each of the stipulations upon which its accreditation was made contingent. (May 4, 1998 decision letter, Exhibit 10 to Defendant's Consolidated Brief; same document as P-14); see also 8/12/98 decision letter, Exhibit 12 to Defendant's Consolidated Brief; same document as D-1).

18. PWTI did fail to provide the Commission with complete and timely responses to each of the stipulations upon which its accreditation was made contingent, and, thus, the Commission's decision to revoke the School's accreditation was supported by substantial evidence. (See Defendant's Proposed Findings of Fact), at 39, 44-46, 53-54, 57-58.

19. The Commission did not act improperly in removing PWTI from the accredited list.

20. For the foregoing reasons, Plaintiff is unlikely to succeed on the merits of the claim found in Count I of its Complaint, which is merely titled "Request for Injunctive Relief."

21. Plaintiff has failed to show likelihood of success on the merits of its claims for breach of contract, tortious interference with existing and prospective contractual and business relationships and its other claims set forth in the Complaint.

22. To warrant preliminary injunctive relief, the moving party must also make a "clear showing of immediate irreparable harm." Campbell Soup Co. v. Conagra, Inc., 977 F.2d 86,91 (3d Cir. 1992)(Emphasis added)(quoting Hohe v. Casey, 868 F.2d 69, 72 (3d Cir.), cert. denied, 493 S.Ct. 848 (1989)).

23. PWTI has not proven that it will suffer immediate and irreparable harm in the absence of a preliminary injunction that restores its accredited status.

24. An injunction restoring Plaintiff to the list of accredited schools would harm current and prospective students because it would mislead students into believing that the School has provided all necessary information to the Commission to show that it meets the standards of excellence embodied in accrediting standards. Techno-Dent Training Center v. Accreditation alliance of Career Schools and Colleges, Civ. Action. No. 95-717-A (E.D. Va. 1995); American Micromax Systems, Inc. v. National Home Study Council, No. 87-2342 (D.D.C. Oct. 2, 1987)(1987 Westlaw 14119); Careers Unlimited v. National Ass'n of Trade and Technical Schools. CV-S-88-701-LLG, slip op. (D.Nev. Sept. 12, 1988).

25. An injunction restoring Plaintiff to the list of accredited schools would harm the public, because it undermines the Commission's statutory role as a gatekeeper of federal funds. See 20 U.S.C. § 1099(c)(1988); Techno-Dent Training Center v. Accreditation Alliance of Career Schools and Colleges, Civ. Action. No. 95-717-A (E.D. Va. 1995).

26. Plaintiff has failed to prove that the public interest favors entry of a preliminary injunction to restore PWTI to the list of accredited schools.

27. Because Plaintiff has failed to meet its burden of proof on the four factors enumerated in Paragraph 1, supra, it is not entitled to the entry of a preliminary injunction restoring it to the list of accredited schools.

For all of the above reasons, I hereby enter the following Order.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILADELPHIA WIRELESS TECHNICAL INSTITUTE,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
ACCREDITING COMMISSION OF CAREER SCHOOLS	:	NO. 98-2843
AND COLLEGES OF TECHNOLOGY,	:	
	:	
Defendant.	:	

O R D E R

AND NOW, this 23rd day of October, 1998, Plaintiff's  
Motion for Preliminary Injunction is hereby DENIED.

BY THE COURT:

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Robert F. Kelly, J.