

FCC MAIL SECTION

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

FCC 98M-21

80497

In Matter of)	WT DOCKET NO. 94-147
)	
JAMES A. KAY, JR.)	
)	
Licensee of one hundred fifty two)	
Part 90 licenses in the)	
Los Angeles, California area.)	

O R D E R

Issued: February 20, 1998 ; Released: February 24, 1998

These rulings are made sua sponte on scheduling and related procedures.¹

Dates

February 25, 1998 - Kay must file a responsive pleading to Bureau's Consolidated Opposition To Notices of Depositions and Motion For Protective Order. Kay's opposition pleading must include a statement of relevance for depositions of Commission employees (including a former Commission employee) in accordance with Commission standards set in Order FCC 97-412, released December 18, 1997.²

February 26, 1998 - Kay must disclose to the Bureau the identity of witnesses who are presently intended to be called by Kay either as defense witnesses or as rebuttal witnesses. Kay must also provide the Bureau with a realistic estimate of the total number of witnesses he expects to call in defense and in rebuttal.

March 2, 1998 - Bureau must file responsive pleading to portions of Kay's pleading that explain or argue relevance for testimony of the Commission employees that Kay has noticed for deposition.

¹ These rulings are made in light of current pleadings that are presently under consideration: Petition for Leave to Appeal filed by Kay on February 9, 1998; Notices of Depositions filed by Kay on February 12, 1998, for depositions of non-parties William Gerrard (Bureau expert) and Roy Jensen; Commission employees W. Riley Hollingsworth, Terry L. Fishel and Anne Marie Wypijewski; and former Commission employee Robert G. Andary. Mr. Andary is presently employed as Inspector General at GPO.

² Kay's views on relevance cannot be determined from the information provided in the Notices or from other pleadings. Compare Order FCC 97M-191, released November 20, 1997.

March 6, 1998 - Counsel for Bureau and Kay must file a Joint Schedule for the completion of the current round of depositions (including experts) by March 20, 1998. Counsel are to reach agreement on dates, times and places.³

March 20, 1998 - Partial extension of discovery is permitted at request of parties⁴ but only with respect to discovery by agreement which does not require compulsory process.

Instructions

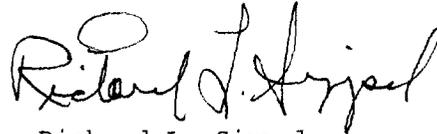
Experts - Experts should be deposed in Washington, D.C. where counsel are located and where discovery documents are archived by and accessible to litigation counsel for both parties.⁵

Trial Briefs⁶ - There will be a summary of expert testimony included in the respective Trial Briefs. Trial Briefs shall also include any objections that a party expects to raise or anticipates will be raised at the hearing with respect to expert testimony. Trial Briefs shall also state whether a witness is qualified as an expert by stipulation.

Kay's Witnesses - The Bureau must have the identity of Kay's witnesses in order to prepare for hearing. Bureau counsel have the responsibility to take affirmative steps under the Rules of Procedure to seek the timely identity of Kay's witnesses if their identities are not forthcoming from Kay's counsel.

SO ORDERED.⁷

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

³ The times and dates proposed by Kay's counsel will not work. On March 6, depositions of Mr. Fishel and Mr. Andary or Ms. Wypijewski would be taken in Washington, D.C. Mr. Fishel's deposition would go forward at 9:00 p.m. in the evening. Also, on March 6, Mr. Jensen's deposition would be taken in Encino, CA, the only West Coast deposition. Mr. Jensen is a non-party witness. Counsel are urged to take his deposition by telephone. Mr. Jensen could appear at the offices of one of Mr. Kay's local counsel in California and the questions could be asked by both parties' counsel from Washington, D.C. via telephone. This procedure for deposing Mr. Jensen by telephone was suggested by the Presiding Judge to counsel in a telephone conference that was requested by counsel on February 20, 1998.

⁴ Requests to extend discovery beyond March 6, 1998, were made or suggested by counsel in Status Reports.

⁵ The hearing testimony of experts will be taken in Washington, D.C.

⁶ See Order FCC 97M-170, released October 14, 1997.

⁷ Copies of this ruling were faxed or e-mailed to counsel on date of issuance.