

FCC MAIL SECTION

APR 23 08 17 '98

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

FCC 98M-40

80677

DISPATCH

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.)	

ORDER

Issued: March 31, 1998

;

Released: April 2, 1998

Hearing Schedule¹

- | | | |
|---------------|---|--|
| May 18, 1998 | - | Discovery Ends. |
| June 12, 1998 | - | Exchange of Bureau's Direct Case (Exhibits with Witness Summaries). ² |
| June 22, 1998 | - | Exchange of Kay's Direct Case (Exhibits with Witness Summaries). |

¹ Dates are intended to accommodate the schedules of all counsel for both parties. These dates were submitted by the licensee James A. Kay, Jr. ("Kay") and the Wireless Telecommunications Bureau ("Bureau"). See James A. Kay, Jr.'s March 1998 Status Report filed on March 12, 1998. See also letter dated March 5, 1998, from Bureau counsel to Kay's counsel.

² Since a summary of the experts' testimony will be included in the Trial Briefs, the experts need only be identified as to name, experience/education, subject matter of the expert testimony, and ultimate conclusion of the opinion(s). An estimate will be made of the time expected to complete the direct examination of each witness, including experts.

- July 29, 1998 - Trial Briefs³ Exchanged and Hearing Subpoenas Submitted.
- August 4 - 5, 1998 - Admissions Session, Washington, D.C.
- September 2 - 11, 1998 - D.C. Phase (to include experts and Kay).⁴
- September 15 - 24, 1998 - L.A. Phase.⁵
- October 1 - 7, 1998 - Courtroom Reserved in D.C. (if needed to complete testimony/receipt of evidence).⁶

Hearing Exhibits

Hearing exhibits must be serially numbered, separately paginated, and assembled in a binder with a tab preceding each document. A prefix will be used to identify the party or witness sponsoring the exhibit. An index shall be included that contains a descriptive title of each exhibit and an identification of the sponsor of each exhibit. Since documentary evidence will be admitted in an admission session, each exhibit (or series of exhibits of a common sponsor) must be accompanied by the declaration under penalty of perjury of the sponsoring witness. If official notice is to be requested of materials in the Commission's files, the materials shall be separately assembled, tabbed, identified by source, assigned an exhibit number, and exchanged on the exchange date.

³ Trial Briefs are to include: (a) summary of the case (e.g. opening argument); (b) summary of testimony and description of the category (categories) of documents to prove or rebut each issue of the HDO; (c) identity of witnesses who will sponsor and explain the meaning of technical documents; (d) sanctions sought by the Bureau including appropriate forfeiture; (e) stipulations that can be agreed to or that either side wishes to have considered; (f) glossary of technical terms that will appear in testimony, documentary evidence and/or argument; and (g) statement of legal points and authorities limited to cases primarily relied on for substantive or procedural points. Trial Briefs shall also include complete summaries of expert witness testimony and any objections that a party expects to raise or anticipates will be raised with respect to expert testimony. See Order FCC 98M-21, released February 24, 1998. Trial Briefs also shall state whether the parties will stipulate at the admissions session to the qualifications of the respective experts which would save hearing time during voir dire.

⁴ The mid-week starting date of September 2 is set to accommodate the schedule of Kay's counsel. Counsel acknowledge that September 7 is a federal holiday. No hearing will be conducted on Labor Day.

⁵ September 14 and 25 are expected to be used for travel. It appears after a review of witness lists of both parties that with the cooperation of counsel and the parties, the L.A. testimony can be completed in 8 working days.

⁶ The location of the L.A. courtroom will be announced as soon as an appropriate courtroom is obtained.

Courtroom Hours

So long as hearing sessions proceed at a reasonable pace and without any inordinate delays, the court day will begin at 9:00 a.m. and will conclude at 5:00 p.m.

Time Outs

There are expected to be 10 minute a.m/p.m. breaks. Lunch will be taken from 12 noon to 1:00 p.m. (meaning back in the courtroom with witness in witness chair at 1:00 p.m.).

Experts Session - Washington, D.C.

For continuity of subject matter, it would be best to hear all expert testimony during the same session in Washington, D.C, September 2 - 11, 1998. One of Kay's experts is located in L.A. Another of Kay's experts is located in Minnesota. There will be travel and living expenses for the Minnesota based witness regardless of where he testifies. But Kay would need to bear the added expense of travel and lodging of the L.A expert witness who would testify in D.C. If Kay and the Bureau will agree, the deposition testimony of Kay's west coast expert could be received or read into evidence. Objections that are preserved at the deposition would be ruled on in open court during the D.C. hearing session.

Kay And Sobel Testimony

It would be beneficial for Kay and Marc Sobel to testify in the D.C. session of September 2 - 11, 1998.⁷ Sobel is represented to be familiar with Kay's business practices, the SMRS industry in the L.A. area, and several of the issues of the HDO. It appears that Sobel will be called as a witness. But he has objected to giving testimony in Washington, D.C. because he is not willing to bear the expenses. It is not clear whether Kay would be willing to pay or share the expenses for Sobel to testify in D.C. The Bureau should consider advancing travel expenses if Sobel is subpoenaed

⁷ There is a pending Petition For Leave To Appeal a ruling on setting Sobel's testimony in D.C. that was filed by Kay on March 25, 1998. That pleading raises what is essentially a scheduling issue that counsel may resolve without the need for further pleadings or intervention by the Presiding Judge.

by the Bureau as a hearing witness. If Kay also intends to call Sobel as a witness, then Kay should consider sharing in those expenses. A report on the resolution of Sobel's testimony will be filed and submitted **by April 9, 1998**.

SO ORDERED.⁸

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Richard L. Sippel". The signature is written in a cursive, flowing style.

Richard L. Sippel
Administrative Law Judge

⁸ Courtesy copies of this Order were sent to counsel by fax or e-mail on the date of issuance.