

FCC MAIL SECTION

DOCKET FILE COPY ORIGINAL

APR 14 1 43 PM '98 Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 98M-44

80713

DIS

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: April 8, 1998

Released: April 10, 1998

A telephone conference call was held on April 7, 1998, to make rulings on the Bureau's Limited Oppositions to the Notices of Depositions of William (Tom) Gerrard ("Gerrard"), a Bureau expert witness, and Roy Jensen ("Jensen"), a fact witness for the Bureau. The Limited Oppositions were filed by the Bureau on April 1, 1998. Kay filed a Consolidated Reply on April 7, 1998.

Kay also submitted on April 7, 1998 a Request for Issuance of Subpoena and a proposed Subpoena for the Jensen deposition which is scheduled for April 17, 1998 in Encino, CA. Gerrard is to be deposed on April 9, 1998 in Washington, D.C.¹

After considering the pleadings and the arguments of counsel, the Presiding Judge ruled as follows:

Gerrard

Gerrard and all other expert witnesses should be questioned on the documents that were considered or consulted in connection with deposition preparation and in formulating opinions. In order to expedite the deposition, copies of those documents should be in the examination room for reference and identification. These are documents that for the most part were obtained in discovery² and therefore the parties - not the witnesses - are responsible for making them available at the deposition.

¹ Counsel have agreed not to use subpoenas for the experts and have served only notices of depositions.

² In the case of Kay's experts, most of the documents considered will be Kay's business documents although some of the documents may have been obtained by Kay in discovery.

The expert witness also may have been given work copies for study which may have been marked with comments. If any such work copies exist, those must be produced at the deposition. The witness can readily bring those documents with him to the deposition.

Kay is also entitled to receive all publications of Gerrard since 1988, and representative documents that are descriptive of Gerrard's business interests and activities since January 1993.

Jensen

The Presiding Judge has limited the production of documents through the service of a signed subpoena to a second category described by Kay on a Schedule A to the notice of deposition:

All documents concerning communications to or from the federal Communications Commission (FCC) or agents of the FCC regarding Kay, Kay's business or any agents thereof.

The limitation on Jensen's document production was based on earlier rulings with respect to two other witnesses. See Order FCC 98M-14, released January 23, 1998. Kay's counsel noted in argument that the Presiding Judge did not so narrowly limit the document production of all witnesses that have been deposed by Kay. The Presiding Judge acknowledged that fact and responded that in his discretion, after reflecting on earlier rulings, the above documents were the relevant ones to use and the document production of Jensen would be so limited.³

The above rulings are memorialized by this Order. 47 C.F.R. §1.319(c)(3) and §1.335.

SO ORDERED.⁴

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

³ The Presiding Judge offered to modify the subpoena in accordance with the ruling to avoid the need for Kay's counsel to resubmit a subpoena.

⁴ Courtesy copies of this Order were sent to counsel by fax or e-mail on the date of issuance.