

Kay's interrogatories ask for information that far exceed the Rule's restrictions.² Kay seeks to discover virtually every item of evidence that the Bureau has obtained and/or will offer at hearing on each issue. Kay also asks for an explanation of how that evidence relates to each issue. To require that kind of discovery would be an unparalleled incursion on trial preparation and work product.

4. In making this ruling, the Presiding Judge has reviewed anew the Petition For Leave To Appeal that was filed by Kay on March 16, 1998, on the refusal to permit a bill of particulars. See Memorandum, Opinion and Order FCC 98M-34, released March 23, 1998. The Presiding Judge has given careful consideration to the points made by Kay and has reviewed the interrogatories and answers that were authorized in 1995. Id. Kay's concerns about the lack of specificity of the HDO are being taken seriously. Id. But Kay's concerns cannot be addressed further until the Presiding Judge can be assured that the Bureau has received full and complete document discovery from Kay. Therefore, Kay's arguments on the need for better notice of the violations cannot be further assessed or addressed until Kay provides the documents sought by the Bureau.³

5. The Commission has delegated to presiding judges substantial latitude and discretion in regulating the course of hearings. Van Buren Community Service, 87 F.C.C. 2d 1018, 1020 (Review Bd 1981). In the exercise of that discretion, this Presiding Judge, at an early stage of the case and over the objection of Bureau counsel, authorized Kay to propound ten interrogatories on each issue. See Order FCC 95M-102, released April 7, 1995. As a result, Kay was able to obtain substantial discovery of Bureau's evidence at an early stage. Recently, Kay was reminded of the limitations of discovering the Bureau's evidence before the exchange date. See Order FCC 98M-27, released March 10, 1998. Kay has been sufficiently informed of the Commission's limitations on discovery. In view of the discretionary discovery of Bureau evidence which has been authorized for Kay in addition to the depositions of Commission employees which have been taken and further depositions which will be taken, there is insufficient cause shown by Kay to require at this time supplemental answers to the interrogatories that were propounded to the Bureau in 1995.

6. Also, Kay will not be indefinitely denied information. Substantial disclosures of the Bureau's case will be available to Kay in a different but sufficient form through the exchange of the Bureau's documents and witnesses on June 12, 1998, and through the Trial Briefs to be exchanged on July 29, 1998. See Order FCC 98M-40, released April 2, 1998.

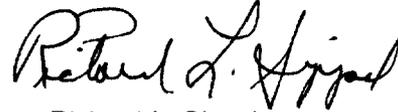
² The Bureau argues that Kay does not need additional information to prepare his defense. There is no support offered for that broad assertion. But Kay is not entitled to discover the Bureau's work product or trial preparation. And Kay did receive substantial discovery from the Bureau through the interrogatories authorized in 1995.

³ Kay has accurately quoted occasions when the Presiding Judge stated his concerns about notice. Those concerns still exist. But there cannot be a reasonable exercise of authority to require the Bureau to disclose its discovery until there is a reasonable assurance that Kay has met his duty to cooperate fully in producing documents that are still being sought by the Bureau. The Bureau has been instructed to review the HDO's allegations and supplement its answers to Kay's interrogatories of 1995 after Kay produces the documents requested. See Memorandum, Opinion and Order, FCC 98M-34 at 4 and n. 5.

Ruling

Accordingly, IT IS ORDERED that the Motion To Compel Answers To Interrogatories that was filed by James A. Kay, Jr. on March 16, 1998, IS DENIED.⁴

FEDERAL COMMUNICATIONS COMMISSION

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

Richard L. Sippel
Administrative Law Judge

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