UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1851/September 26, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16033

In the Matter of AIRTOUCH COMMUNICATIONS, INC., HIDEYUKI KANAKUBO, and JEROME KAISER, CPA	ORDER SETTING PREHEARING SCHEDULE AND GENERAL PREHEARING ORDER

On August 22, 2014, the Securities and Exchange Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP), pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission's Rules of Practice against AirTouch Communications, Inc., Hideyuki Kanakubo, and Jerome Kaiser, CPA (collectively, Respondents). A prehearing conference was held on September 23, 2014, attended by counsel for the Division of Enforcement and for each Respondent. During the prehearing conference, the parties stipulated that service of the OIP was effected on August 28, 2014.

At the prehearing conference, the parties moved for leave to file motions for summary disposition, pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250. This motion is GRANTED. Following the prehearing conference, the parties agreed upon and submitted a proposed procedural schedule, which is adopted and ORDERED as follows:

December 2, 2014	Parties shall file any motions for summary disposition.
December 16, 2014	Parties shall file expert reports and witness lists and exchange exhibit lists and pre-marked exhibits; parties shall file any oppositions to motions for summary disposition.
December 23, 2014	Parties shall file motions in limine, and objections to proposed exhibits and witnesses; parties shall file any replies in support of motions for summary disposition.
January 6, 2015	Parties shall file prehearing briefs.

January 13, 2015	Parties shall file written stipulations; if necessary, a telephonic prehearing conference will be held at 1:30 p.m. EST.
January 16, 2015	Parties shall disclose any demonstrative exhibits; any objections shall be filed at the start of the hearing.
January 20, 2015[1]	The hearing will be held in Los Angeles, California, at a venue to be determined.

At the prehearing conference, the individual respondents and the Division requested that I order depositions of expert witnesses. I find that I lack the authority to take this action. In this regard, Rule of Practice 233(b) provides that before ordering the taking of a deposition, I must find that "it is likely the prospective witness . . . will be unable to attend or testify." 17 C.F.R. § 201.233(b). No party has suggested that an opponent's expert "will be unable to attend or testify." Additionally, when it originally promulgated Rules 232 and 233, the Commission considered but ultimately rejected suggestions regarding "expanding the scope of prehearing discovery to permit oral depositions." Rules of Practice, 60 Fed. Reg. 32738, 32764-65 (June 23, 1995). Given the foregoing, the request for ordering expert witness depositions is DENIED. The parties, however, are free to reach an agreement regarding taking depositions of party experts.

This order also sets forth the following general rules and guidelines I will follow during these proceedings.

1. Settlement. Pursuant to Commission Rule of Practice 240(c)(2), I am available for a settlement conference. *See* 17 C.F.R. § 201.240(c)(2). Participation in a settlement conference is entirely voluntary. By participating in a settlement conference, however, a party will waive: (1) the right to claim bias or prejudgment by me based on any views I express during the conference; (2) the right to a public proceeding; (3) the right to a proceeding on the record; and (4) any objection to my conferring with another party ex parte in the course of settlement. Absent extraordinary circumstances, requests that I participate in a settlement conference must be made no later than three weeks before the scheduled hearing date.

2. Subpoenas. My general practice is to sign subpoenas the afternoon after the day they are received, absent notice of an objection. Parties should therefore review requests for subpoenas as soon as they are received. If a party wishes to object to a subpoena, the party should immediately notify this Office, with copy to opposing counsel, so that I do not issue the subpoena. Failure to notify my office of an objection before the subpoena is

[1] Respondents proposed that the hearing begin in March 2015. In light of Rule of Practice 360, I offered the parties hearing dates of either January 20, 2015, or February 2, 2015. *See* 17 C.F.R. § 201.360. By letter dated September 25, 2014, the parties have agreed—subject to Respondents' objection to beginning the hearing before March 2015— to begin the hearing on January 20, 2015.

issued does not waive the opportunity to object. A party's motion to quash will be due within five business days of the filing of the subpoena. Any opposition to the motion to quash will be due within three business days thereafter.

3. Exhibit lists. A comprehensive exhibit list prevents other parties from being surprised in the middle of the hearing. Given this fact, exhibit lists shall be exchanged among the parties and should include all documents that a party expects to use in the hearing for any purpose. This includes documents that are relevant only for impeachment purposes or which are presumptively inadmissible. The parties should serve their opponents with any amendments to their individual exhibit lists. Because I rely on the parties' exhibit lists, the parties should provide me with a paper copy of their final exhibit lists at the beginning of the hearing. There is no need in the interim to submit exhibit lists or amendments to my office. Following the hearing, I will issue a separate order directing the parties to file a list of all exhibits, admitted and offered but not admitted, together with citations to the record indicating when each exhibit was admitted.

4. Expert reports and testimony. Expert witness disclosures must, at minimum, comply with Rule 222(b), including the provision of a "brief summary" of an expert's expected testimony. 17 C.F.R. § 201.222(a)(4), (b). I prefer to streamline the hearing process by substituting the expert's report for direct testimony. Expert reports should be as specific and detailed as those presented in federal district court pursuant to Federal Rule of Civil Procedure 26. The filing of the expert's report according to the prehearing schedule essentially constitutes the filing of the expert's direct testimony. During the hearing, the expert will not be subject to direct examination, and will simply be sworn in and proffered for cross-examination. At need, I will entertain requests for brief direct examination of a party's expert.

5. Hearing schedule. The first day of the proceeding will begin at 9:30 a.m. Unless circumstances require a different schedule, we will begin each subsequent day at 9:00 a.m. Each day of the proceeding should last until at least 5:15 p.m. I generally take one break in the morning, lasting about 15 minutes, and at least one break in afternoon. I generally break for lunch between noon and 12:30 p.m., for about one hour and 15 minutes.

6. Foundation and hearsay. Evidence that is irrelevant, immaterial, or unduly repetitious is inadmissible; all other evidence is presumptively admissible. 17 C.F.R. § 201.320. As a result, the fact that evidence constitutes hearsay goes to weight, not admissibility, and is thus a proper subject for cross-examination or post-hearing briefing. Similarly, unless genuine authentication or reliability issues exist, it is generally unnecessary for a party to lay a foundation for the admission of an exhibit or to call a document custodian as a witness. Laying a foundation, however, may enhance the probative value of a piece of evidence. A party may therefore lay a foundation if the party deems it appropriate to do so.

7. Hearing issues.

A. Examination.

1) In general, the Division of Enforcement presents its case first, because it has the burden of proof. The Respondents then presents their cases. If necessary, the parties may agree to proceed in some other order and may take witnesses out of order.

2) If the Division calls a non-party witness that a Respondent also wishes to call as a witness, the Respondent should cross-examine the witness as if he or she were calling the witness in his or her own case. This means that cross-examination may exceed the scope of direct examination. This will avoid the need to recall a witness just so the witness can testify for the Respondent's case.

3) I am flexible regarding the manner of presenting the Respondents' testimony, so long as the parties agree on it. By way of example, if the Division calls a Respondent as its last witness, the parties may agree that the Respondent's counsel will conduct the direct examination, followed by the Division's cross-examination, which may exceed the scope of direct. In the absence of any agreement, the Respondent's testimony will proceed in the usual manner, *i.e.*, the Respondent will be called as a witness and examined potentially multiple times. If the Division calls the Respondent as witness and the Respondent later testifies as part of his own case, the Division's cross-examination during the Respondent's case will be limited to the scope of the direct examination.

4) In general, cross-examination may be conducted by leading questions, even as to Division witnesses that the Respondent wishes to call in his own case. Counsel may not lead his or her client, however. Thus, if a Respondent is called as a witness in the Division's case, that Respondent's counsel may not ask leading questions on cross-examination. Similarly, if a Commission employee is called as a witness for the Respondent, the Division may not ask leading questions on cross-examination.

B. Other hearing issues.

1) Avoid leading questions on direct examination. Leading questions during direct examination of a non-hostile witness are objectionable. Repeatedly having to rephrase leading questions slows down the hearing.

2) Hit the high points on cross-examination. It is a waste of time to wade into every bit of minutiae that is related to your case. Cross-examination is more effective and less stultifying if you emphasize the strong points and address tangential points quickly, if at all.

8. Pleadings. To enhance the readability of pleadings, I urge counsel to limit the use of acronyms to those that are widely known. *See* Antonin Scalia & Bryan A. Garner, Making Your Case: The Art of Persuading Judges 120-22 (2008); *Nat'l Ass'n of Regulatory Util. Com'rs v. U.S. Dept. of Energy*, 680 F.3d 819, 820 n.1 (D.C. Cir. 2012). For the same reason, counsel should use the same font size in footnotes as that used in the body of a pleading.

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James E. Grimes
Administrative Law Judge