

direct, suggest or encourage any Liberty employee to activate service before the Commission granted authorization (Ceccarelli 93:14 - 94:20; Walden 76:12 - 76:15).

92. Later, due to structural changes within the company, Behrooz Nourain, Liberty's Director of Engineering, proceeded to establish microwave systems in an unsupervised environment. Neither Peter Price nor Anthony Ontiveros supervised Nourain's handling of the critical licensing function, nor did anyone else in Liberty's management adequately supervise Nourain. Liberty's initial management failure was in assuming that Mr. Nourain was insuring compliance with the licensing requirements (Price I 234:22 - 235:16, 265:2 - 266:2; H. Milstein 49:15 - 49:22; McKinnon 22:22 - 23:6).

93. Also, Nourain did not fully understand the scope of his responsibilities for assuring compliance with Commission licensing requirements. One of Nourain's job responsibilities upon being hired was to inherit the licensing responsibilities of Joseph Stern, the consulting engineer (Price I 234:22 - 235:9; Stern 40:11 - 41:4; Nourain 19:12 - 20:2). However, Stern did not give Nourain a memorandum detailing his licensing duties, and when Nourain took over the engineering functions at Liberty, Nourain short-circuited a conversation with Stern in which Stern began to explain the Commission's licensing procedure (Stern 73:18 - 73:19, 70:14 - 71:4). Thus, Nourain was neither told in writing, nor orally, of the procedure to follow for licensing.

94. Price believed that Nourain would be responsible for licensing, among a number of other responsibilities, when he hired Nourain with Stern's recommendations (Price I 265:2 - 265:4, 265:8 - 265:10; Stern 41:20 - 43:7). However, based upon previous job experience, Nourain assumed that his responsibilities in licensing extended only to securing the frequency

coordination (Nourain 13:18 - 14:11, 25:1 - 25:13, 52:5 - 54:3). Consistent with that understanding, Nourain performed site surveys, forwarded them to Comsearch and reviewed Comsearch's frequency coordinates for errors. Once Comsearch had completed its coordination, Nourain felt that he had no further responsibility. The licensing responsibility, he felt, resided with the law firm of Pepper & Corazzini, who would receive the final coordinations directly from Comsearch (Nourain 48:16 - 48:18, 51:9 - 52:4, 57:11 - 59:3). Nourain further assumed that Pepper & Corazzini would regularly apply for STAs and that such authority would be received in sufficient time to activate a building to receive Liberty service. Indeed, Nourain took such little interest in what transpired after Comsearch had passed the final frequency coordinations to Pepper & Corazzini that he even signed the applications in blank (Lehmkuhl 72:4 - 72:8). After the hand-off of the frequency coordinates to Pepper & Corazzini, Nourain did not monitor the status or progress of the pending license applications (Nourain 57:15 - 57:21, 58:13 - 59:3).

95. Liberty's second management failure was in not instructing Nourain properly about the scope of his duties with respect to obtaining licenses. Moreover, before mid-1995, management failed to insure that there was an individual with overall responsibility for monitoring the licensing process (Berkman 24:18 - 24:21). The facts further reveal that Liberty discovered the premature activations of buildings in the course of responding to Time Warner's petitions to deny or condition grant of Liberty's license applications (JX 4 at ¶ 3; Price I 93:15 - 96:6; Nourain 76:18 - 77:6; E. Milstein 41:10 - 42:16, 44:10 - 45:13; H. Milstein 28:1 - 29:4). Starting around May 1995, Liberty acted quickly to investigate the

extent of the problem (H. Milstein 29:15 - 29:21; F. Milstein 42:13 - 42:16; Price I 97:9 - 99:7).

96. On May 5, 1995 Time Warner reported two buildings being activated without Commission license. Within the time set forth in 47 C.F.R. § 1.65, Liberty conceded it had activated service to these two buildings and came forward on May 17, 1995 with a disclosure that thirteen more buildings received service prematurely (JX 6). Liberty, in a submission to the Chief of the Bureau's Microwave Branch on June 16, 1995, admitted responsibility for the premature activations and attributed the problem to internal administrative foul-ups (JX 27). Liberty further reported that an internal investigation was underway by outside counsel to determine the full scope and cause of the premature activations. *Id.*

97. Liberty began to monitor licensing application status and procedures even while the internal investigation was ongoing (Price I 111:1 - 112:19; JX 7). Liberty also suspended billing to the buildings involved (Price I 173:3 - 173:20; Ceccarelli 76:7 - 76:17; Foy 186:17 - 187:1). Liberty further disclosed that four other buildings had received service prematurely (JX 9). Liberty has instituted a compliance program to insure that no buildings are activated without first obtaining authorization from the Commission (Berkman 13:10 - 13:15, 18:5 - 19:10), and Liberty hereby agrees to retain and continue its compliance program for all future applications. Liberty's applications, starting around July 1995, also disclosed the fact of premature activations.

98. The foregoing uncontroverted facts reveal, in essence, that

- nobody in Liberty's management encouraged or directed anyone at Liberty to activate a building before receiving Commission authorization;

- nobody in Liberty's management knew about Nourain's licensing application practices and faulty assumptions;
- Nourain performed his job without adequate supervision or control and without a full understanding of the scope of his responsibilities;
- Liberty moved swiftly to investigate the extent of the premature activations;
- Liberty openly and fully disclosed the premature activations of nineteen buildings to the Commission; and
- Liberty has instituted a compliance program to prevent the recurrence of future violations of applicable law, rules and regulations.

99. On the basis of the foregoing facts as developed in the record, with the exception of the applications for six paths which were activated by Liberty prior to the filing of any applications for authorization, Liberty should not be found to be in violation of Section § 1.65, because Liberty disclosed the existence of numerous prematurely activated buildings soon after it began investigating the scope of the problem. Liberty made these disclosures publicly in Commission pleadings within the thirty days provided by 47 C.F.R. § 1.65(a). Also, Liberty disclosed the premature activations in its applications and requests to the Commission. Under these circumstances, no violation of 47 C.F.R. § 1.65(a) is established. *See, e.g., Arkansas Educational Television Comm'n*, 6 FCC Rcd 478, 479 (1991) (licensee did not violate 47 C.F.R. § 1.65(a) by not immediately notifying Commission when facts showed that licensee was taking corrective action and attempted to inform Commission within thirty-day time frame). It is true, however, that as to the receiver locations at 441 E. 92nd Street/1775 York Avenue, 1295 Madison Avenue, 35 E. 85th Street, 430/440 E. 56th Street, 433 E. 56th Street, and 380 Rector Place, Liberty applied for authorization from the

Commission after service had already commenced to these buildings, and Liberty failed to indicate this information in its license applications. Therefore, Section 1.65 was technically violated. However, Liberty did fully disclose the circumstances surrounding these premature operations in other contexts to the Commission.

100. Based on the foregoing uncontroverted facts, Liberty should not be disqualified as an OFS licensee and its license applications captioned in the HDO should be granted. Consistent with the Commission's *Character Policy Statement*, the facts show that Liberty has been truthful in disclosing the instances of premature activations listed in Appendix A of the HDO. Furthermore, Liberty can be relied upon to obey the law because of the compliance program that was instituted within months of Liberty's discovering the problem. Accordingly, the concerns of the *Character Policy Statement* about truthfulness and future reliability are adequately addressed, and the facts do not support Liberty's disqualification.

101. Pursuant to the *Character Policy Statement*, the Commission also looks to the following factors in evaluating a license applicant's misconduct as it affects that applicant's character qualifications to be granted Commission license: whether the misconduct was willful, whether it was frequent and whether it is still occurring. *David A. Bayer*, 7 FCC Rcd 5054, 5059 n.20 (1992); *Character Policy Statement*, 102 FCC 2d at 1227-28. The Commission also considers these additional factors: degree of harm inflicted on the public; knowledge of and involvement in the misconduct by management; efforts to cure the effects of the misconduct; seriousness of the misconduct; and record of compliance with Commission rules and policies. *Id.* Consideration of these factors in light of the evidence in the record further confirms that Liberty should not be disqualified

102. First, the facts do not show that Liberty's premature activation was willful. The prior written record has established that the nineteen buildings were prematurely activated due to lack of proper internal control and absence of proper supervision (JX 6, JX 27). The evidence developed through discovery confirms that Liberty's own carelessness and negligence caused the problem (Price I 100:16 - 101:12; 227:6 - 227:15; E. Milstein 49:18 - 49:20; H. Milstein 39:18 - 40:21). Thus, Liberty's misconduct was inadvertent and not willful, as demonstrated by Liberty's rapid efforts to cure the problem.

103. The Commission's decision in *David A. Bayer*, 7 FCC Rcd 5054 (1992), supports a forfeiture over disqualification in this case. In *David A. Bayer*, CyberTel, a cellular telephone service provider, admitted to violating the Commission's Rules by improperly installing metal reflectors and antennas. There, the Commission stated:

While CyberTel improperly installed antennas and operated at unlawful power levels, the record does not show that there was an intent by CyberTel's senior managers or owners to violate the rules or to further any unlawful scheme. For inadvertent technical violations of the type involved here, we believe that CyberTel's qualifications to be a Commission licensee are not called into question and that a forfeiture rather than revocation is the appropriate sanction.

7 FCC Rcd at 5055. Furthermore, CyberTel's owners and senior managers took immediate corrective steps, including an internal investigation, disclosure to the Commission and institution of procedures to avoid similar problems in the future. "All of these corrective and remedial actions constitute mitigating factors that we believe warrant invoking substantial forfeiture rather than revocation." *Id.* at 5056.

104. As to the factors of frequency and seriousness of misconduct, Liberty concedes that the violations were frequent and Liberty recognized the seriousness of the misconduct

(Price I 193:13 - 17; Ceccarelli 92:10 - 92:18). However, the record shows that Liberty took immediate steps to rectify the problem, providing full cooperation and disclosure to the Commission (H. Milstein 29:5 - 31:15; Price I 200 2 - 201:3; 201:15 - 202:19). Liberty also accepted responsibility for its actions (JX 27). The facts further show that Liberty's record of compliance was good when STC was overseeing the licensing process, since Liberty made sure that it did not commence service at any buildings before getting proper Commission authorization (Stern 71:11 - 71:17; McKinnon 30:5 - 31:5). Liberty also adopted a rigorous and comprehensive compliance program to monitor each step of the license application process (Berkman 13:9 - 15:3; H. Milstein 43:9 - 43:20). The key element of the compliance program is that Liberty's in-house counsel, Andrew Berkman, must now certify that Liberty has received proper Commission authorization before service to a building can be activated (Berkman 19:5 - 19:20; JX 12).<sup>23</sup> Moreover, there are no allegations that Liberty has activated any buildings prematurely since April 1995.

105. The facts also show that Liberty's management did not know of the problem and did not participate in the premature activation (E. Milstein 41:10 - 41:19, 44:10 - 45:13; H. Milstein 28:19 - 29:4, 39:5 - 39:11; Price I 93:15 - 94:9, 95:18 - 96:6, 208:12 - 209:7; Ceccarelli 93:14 - 94:20; Walden 76:12 - 76:15). Lack of knowledge and involvement by owners and managers in the misconduct of the company's employees is an important mitigating factor. *David A. Bayer* again provides authoritative guidance on this point. In that

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<sup>23</sup> An additional reason makes premature activation unlikely in the future. The recent amendment to Part 94, which will be effective on August 1, allows applicants to commence operation of OFS facilities upon filing of an application with the Commission. HDO at ¶ 14 n.9. This simplified procedure will diminish further the possibility of premature activation.

case, “Shelton, Rudd and Bayer [management] all confirm that they did not know about the plastic reflectors, and that they never suggested, encouraged or instructed the engineers to use such reflectors or to construct cells in any other unauthorized or unlawful manner. . . . There is nothing in the record that convincingly demonstrates the owners or senior managers of CyberTel were responsible for installation of the fake reflectors.” 7 FCC Rcd at 5056. Here, as in *David A. Bayer*, there is no evidence whatsoever that anyone in Liberty’s senior management knew about Nourain’s licensing activities and practices. By contrast, there is testimony that no one in Liberty’s senior management encouraged, suggested or instructed anyone at Liberty to activate buildings prematurely (Ceccarelli 93:14 - 94:20; Walden 76:12 - 76:15). Given these facts, disqualification would not be appropriate.

106. As for the remaining factors mentioned in the *Character Policy Statement*, 102 FCC 2d at 1227-28, Liberty has shown that the public has not been harmed. Due to proper frequency coordination, clearance and engineering performed by Nourain and Comsearch (Nourain 57:15 - 57:17), none of Liberty’s signals transmitted to the buildings listed in Appendix A of the HDO are alleged to have interfered with any other signals. In addition, Liberty suspended billing to the nineteen buildings until the Commission issued authorization, so Liberty’s subscribers received free service (Price 173:3 - 173:20, 200:8 - 200:22; Ceccarelli 76:7 - 76:17; Foy 186:17 - 187:1). Greater harm would be imposed upon the public by disqualifying Liberty, since the thousands of current recipients of Liberty’s services in the New York City area would be deprived of a competitive alternative to franchised monopoly cable operators like Time Warner and Cablevision.

107. Commission precedent confirms that a lesser sanction than disqualification would be appropriate under the facts and circumstances of this case. The Commission has imposed lesser sanctions, such as forfeiture, where the evidence showed either that the principals of the company did not intend the misconduct to occur or that the principals were negligent in their supervision and control of the company. *Oil Shale Broadcasting Co. (KWSR)*, 68 FCC 2d 517, 528-29 (1978). See also *Abacus Broadcasting Corp.*, 7 FCC Rcd 6004, 6009 (I.D. 1992), *aff'd*, 8 FCC Rcd 5110 (Rev. Bd. 1993) (Commission imposed sanction of two year renewal and forfeiture rather than disqualification even though applicant was found to have engaged in lack of candor before the Commission). Here, forfeiture is the appropriate remedy since there has been no proof in this record of anything other than misconduct caused by inadvertence or lack of adequate supervision and control by management. In addition, Liberty's open and full disclosure to the Commission of seventeen premature activations after Time Warner disclosed only two undermines any finding of lack of candor and suggests just the opposite.

108. *In the Matter of MCI Telecommunications Corp.*, 3 FCC Rcd 509 (1988), *as supplemented*, 4 FCC Rcd 7299 (1988), *appeal dismissed sub nom., TeleSTAR, Inc. v. FCC*, 901 F.2d 1131 (D.C. Cir. 1990), provides dispositive authority for imposing forfeiture rather than disqualification in this case. In *MCI*, the Commission found numerous instances of premature construction and unauthorized operation of point-to-point microwave radio service. *MCI*, 3 FCC Rcd at 511. However, since there was no evidence of lack of candor or intent to deceive, the Commission admonished MCI and imposed a forfeiture. *Id.* at 514.

109. In addition, the Commission looked favorably upon MCI's voluntary disclosure of its own additional violations, after its competitor reported premature constructions to the Commission. *Id.* at 513. Here, as in *MCI*, Liberty came forward with information about seventeen other premature activations of buildings after Time Warner reported two premature activations to the Commission. Here, as in *MCI*, there is no evidence that Liberty lacked candor before the Commission in disclosing the prematurely activated buildings or that Liberty acted with any intent to deceive in relation to its premature activations. Therefore, the lesser sanction of forfeiture, rather than disqualification, is warranted in this case.

110. Liberty acknowledges that it committed serious violations. The Bureau and Liberty agree that for each of the six instances of violation where Liberty commenced operations prior to filing an application, a forfeiture in the amount of \$75,000 each is appropriate. Additionally, the Bureau and Liberty agree that a forfeiture of \$20,000 for each of the thirteen remaining instances of unauthorized operation is the appropriate sanction. Thus, the Bureau and Liberty propose a total forfeiture in the amount of \$710,000 for its nineteen separate unauthorized OFS violations.

#### **IV. LIBERTY DID NOT ENGAGE IN MISREPRESENTATION, LACK OF CANDOR OR ANY ATTEMPT TO MISLEAD THE COMMISSION**

111. The third issue in the HDO concerns whether Liberty misrepresented facts, lacked candor or attempted to mislead the Commission in connection with the hardwire interconnections and premature activations of buildings, in violation of Section 1.17 of the Commission's Rules, 47 C.F.R. § 1.17. In light of the findings, this issue seeks to determine whether Liberty is qualified to be granted its applications for the OFS licenses.

112. Section 1.17 requires that applicants and licensees be truthful in written statements to the Commission. This duty to be truthful may be breached by misrepresentation (making false statements of fact) or lack of candor (concealment, failure to disclose, failure to be fully informative). *Swan Creek Communications, Inc. v. F.C.C.*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). Both offenses involve deceit, and to impose liability, an intent to deceive must be present when the representation is made. *MCI*, 3 FCC Red at 512; *Fox River Broadcasting, Inc.*, 93 FCC 2d at 129. Failure to provide information, without the requisite intent to deceive, does not constitute lack of candor. *See Fox River Broadcasting*, 93 FCC 2d at 129 (“We therefore disavow the Review Board’s suggestion that lack of candor may involve failures to provide information in the absence of any deceptive intent.”). Submission of incorrect information to the Commission, if done through carelessness, inadvertence or even gross negligence, does not constitute misrepresentation. *Pinelands, Inc.*, 7 FCC Red 6058, 6065 (1992).

113. The facts show that, with respect to the hardwire interconnections, Liberty did not make any misrepresentations and failed to immediately disclose to the Commission because of Liberty’s good faith belief in the lawfulness of its conduct. When Liberty disclosed the hardwire interconnections to the Commission, it was in response to Time Warner’s initial petition to deny filed in January 1995 (JX 31). Around July 1995, Liberty disclosed the existence of hardwire interconnections in applications and requests before the Commission (JX 30). While there may be evidence of failure to disclose immediately, there is no proof of any concealment or any intent to deceive because the company did not believe such disclosure was necessary. Thus, Liberty did not engage in misrepresentation, lack of

candor or any attempt to mislead the Commission relating to the hardwire interconnections. *See Pinelands*, 7 FCC Rcd at 6065-66 (although licensee's diligence in reporting fell short of Commission expectations, no disqualification is warranted for reporting failures absent "suitable evidence of an intent to conceal pertinent information from the Commission"); *David A. Bayer*, 7 FCC Rcd at 5055 (no misrepresentation found where company's initial failure to report was due to misunderstanding regarding technical information and matter was subsequently disclosed voluntarily in pleading to Commission).

114. As for the premature activations, the facts show that until late April 1995, no one at Liberty knew that buildings were receiving service before the Commission granted Liberty permission to do so (E. Milstein 41:10 - 41:19, 44:10 - 45:2; H. Milstein 28:19 - 29:4; Price I 95:18 - 96:6, 208:12 - 209:7). The facts also show that Liberty moved quickly to rectify this problem through cooperative and voluntary disclosure of information to the Commission, and the implementation of a compliance program to safeguard against future violations (E. Milstein 41:10 - 42:16, 44:10 - 45:13; H. Milstein 28:1 - 31:16, 43:9 - 43:18; Price I 97:9 - 99:7, 106:9 - 107:10, 200:2 - 201:3, 201:15 - 202:19; Berkman 13:9 - 13:15). In the absence of any proof of intent to deceive, Liberty did not engage in misrepresentation, lack of candor or any attempt to mislead the Commission relating to the premature activations. *See MCI*, 3 FCC Rcd at 513 (MCI's voluntary disclosure of its own additional violations bolstered conclusion that MCI did not engage in intentional deceit relating to unauthorized operations).

115. Liberty, in attempting to explain the cause of the premature activations, submitted a declaration of Behrooz Nourain in support of Liberty's May 17, 1995 Surreply

which first disclosed fifteen prematurely activated buildings. This declaration contained the statement that Nourain was unaware of Time Warner's petitions until April 1995 when, in fact, Nourain submitted an affidavit in February stating that he was aware of Time Warner's petitions. This apparent inconsistency forms the only remaining question regarding Liberty's truthfulness before the Commission. However, as stated in Nourain's further declaration on June 12, 1995, when considered in context, these statements are not inconsistent. Moreover, the uncontroverted facts as developed in discovery are consistent with Nourain's explanation in his June 12, 1995 declaration.

116. As stated previously and as Nourain testified (Nourain 169:14 - 171:8), Nourain's February 21, 1995 affidavit in *Liberty v. City of New York* addressed only hardwire interconnections. The affidavit responded to and could only relate to Time Warner's January 9, 1995 petition against Liberty's November 7, 1994 applications for OFS licenses as back-up for certain hardwire buildings. Indeed, Time Warner's petition listed those hardwire buildings specifically: 239 East 79th Street, 44 West 96th Street and 60 Sutton Place. By April 1995, when Time Warner had petitioned against additional Liberty licenses to include not just hardwire locations but also microwave sites, Nourain addressed this fact in his declaration in support of the May 17 Surreply.

117. No misrepresentation, lack of candor or attempt to mislead grounded in deceptive intent can be even inferred from these facts. At most, the evidence indicates that the declarations could have been more clearly drafted. When the statements are placed in the proper context of their making, no inconsistency remains.

118. Liberty therefore has not violated 47 C.F.R. § 1.17. Accordingly, it should not be disqualified or otherwise sanctioned on this basis.

**V. LIBERTY POSSESSES THE REQUISITE CHARACTER QUALIFICATIONS TO BE A COMMISSION LICENSEE**

119. The last issue seeks to determine whether Liberty possesses the requisite character qualifications to be an OFS licensee in light of the findings with respect to the first three issues. In addition, the last issue also concerns whether grant of Liberty's OFS applications would serve the public interest, convenience and necessity.

120. As stated above, in assessing an applicant's character eligibility, the Commission's inquiry is focused on two essential elements: truthfulness and reliability. *Character Policy Statement*, 102 FCC 2d 1179, 1189-90, 1209, 1228. The facts as developed in this proceeding have shown that Liberty can be relied upon to be truthful in its dealings with the Commission and to comply with the Communications Act of 1934, as amended, and the Commission's Rules and policies going forward. While Liberty has violated the law, the facts and circumstances show that Liberty has not done so intentionally nor has Liberty sought to conceal these violations from the Commission. Moreover, Liberty's ability to disclose expeditiously and fully its violations to the Commission was demonstrated with respect to Liberty's premature activations. Furthermore, Liberty's failure to disclose was not with any intent to deceive the Commission.

121. Accordingly, disqualification is not warranted and Liberty has agreed to imposition of substantial forfeiture penalties for its violations. This punishment should serve to deter any prospect of future violations of the law or the Commission's Rules and policies.

*See Character Policy Statement*, 102 FCC 2d at 1228 (“Sanctions imposed may deter future misconduct of the applicant in question.”) Moreover Liberty’s compliance program and recent changes in the law provide further assurance that Liberty will not likely run afoul of legal requirements again.

122. The public interest, convenience and necessity also argue against denial of Liberty’s OFS applications on grounds of character qualifications. Nowhere is this public interest more clearly articulated than in the Commission’s 18 GHz Order. As observed in that Order, “The Commission recently conducted a review of marketplace developments in the video distribution industry in which we concluded that cable systems possess a disproportionate share of market power and, therefore, are capable of engaging in anticompetitive conduct. In these circumstances, competition provides the most effective safeguard against market power abuse.” 18 GHz Order, 16 FCC Rcd 1270, 1271. In this context, the Commission noted:

This action [opening access to the 18 GHz band for video entertainment] represents a significant step in furtherance of our effort to encourage more robust competition in the multichannel video delivery marketplace. . . . [B]y having access to point-to-point frequencies at 18 GHz, alternative multichannel video providers eligible in the OFS will be able to expand their operations and increase their market presence. . . . In turn, the emergence of OFS eligibles as viable competitors will serve the public interest by contributing to the development of a diversified and flexible industry.

*Id.* at 1270. Thus, the Commission concluded:

In conclusion, cable systems increasingly dominate the multichannel video delivery services, resulting in criticism of the industry and complaints of anticompetitive conduct. Although rival multichannel providers are emerging in the marketplace, we recognize the need for action designed to encourage these operators to enter the market and to increase their competitive viability. To improve the competitive potential of alternative multichannel providers

eligible to hold licenses in the Operational-Fixed Microwave Service, we take action in this proceeding permitting the use of the 6 MHz wide, point-to-point channels in the 18 GHz band for distribution of video entertainment material. . . . This action serves the public interest by providing consumers with a diverse range of video distribution services

*Id.* at 1273. Despite the policy goals set forth in the 18 GHz Order, cable systems like Time Warner and Cablevision maintain their market dominance. *See 1994 Report on Competition*, 9 FCC Rcd at 7449 (“Cable systems continue to have substantial market power at the local distribution level.”).

123. Liberty, as an 18 GHz OFS licensee and applicant in the New York metropolitan area, serves as an alternative MVPD in competition with two cable operators in the same area, Time Warner and Cablevision. The public interest would be disserved if Liberty is disqualified, thus eliminating the only competition that Time Warner and Cablevision have in their respective franchised territories. Furthermore, at least 50 total authorizations are at stake in this proceeding, affecting at least five thousand subscribers. In the face of the public harm that might result from denying Liberty’s applications, the disqualification of Liberty would be against the public interest, convenience and necessity. To disqualify Liberty on character grounds upon a record that does not seriously impugn Liberty’s truthfulness or future compliance with applicable law runs counter to the Commission’s policies.

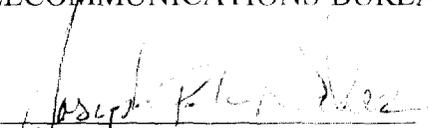
124. Therefore, based on the evidence adduced in the first three issues designated in the HDO at paragraph 30, Liberty possesses the requisite character qualifications to be granted its applications for OFS licenses, and to do so would serve the public interest, convenience and necessity.

## CONCLUSION

Based on the foregoing, the Bureau and Liberty respectfully urge the Presiding Judge to grant the Joint Motion for Summary Decision in its entirety, grant the license applications subject to this proceeding, and adopt the Bureau's and Liberty's proposal that Liberty be assessed a forfeiture penalty in the amount of \$790,000 in accordance with Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b).

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**CERTIFICATE OF SERVICE**

I, Mark Keam, in the Enforcement Division, Wireless Telecommunications Bureau, certify that I have, on this 15th day of July, 1996, caused to be served by hand delivery, copies of the foregoing "**Joint Motion by Bartholdi Cable Co., Inc., and the Wireless Telecommunications Bureau for Summary Decision**" to:

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