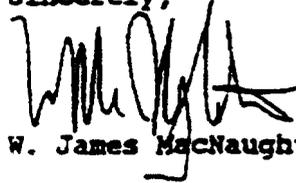


Ms. Donna R. Searcy
April 7, 1992
Page 15

Amendment grounds. It will not be cured by a declaration that the Cable Definition Rule is invalid under the Equal Protection Clause.

The Commission should also present to the D.C. Circuit the option of curing the alleged Equal Protection defect in the Cable Definition Rule by striking only that part of the rule which has been drawn into question—the distinction between cables installed on common and non-commonly owned multifamily properties. In truth, this distinction is compelled by the statutory SMATV Exemption and thus the proper remedy would be to strike the words "under common ownership, control or management" from 47 U.S.C. § 522(6)(B). The Commission should present that option to the Court along with proper notice to the Department of Justice. See Federal Rule of Appellate Procedure 44, cf. Chada v. Immigration and Naturalization Service, 634 F.2d 408 (1981) aff'd 462 U.S. 919, 103 S.Ct. 2764 (1983).*

Sincerely,



W. James MacNaughton

WJM:lw

cc: Hon. Alfred C. Sikes
Hon. James H. Quello
Hon. Sherrie P. Marshall
Hon. Andrew C. Barrett
Hon. Ervin S. Duggan
Robert L. Pettit, General Counsel
William H. Johnson, Mass Media Bureau
(all by Fed. Exp.)

* As set forth in Chada, the Court has jurisdiction to review all matters upon which an administrative order depends for legitimacy, including the constitutionality of the underlying

Before the
FEDERAL COMMUNICATIONS COMMISSION
Gettysburg, PA

In Re Applications of)		
)		
LIBERTY CABLE CO., INC.	)	709332	(New)
	)	709426	WNTT582
For Authorizations in the	)	708777	WNTT370
Private Operational Fixed	)	708778	WNTT489
Microwave Service	)	708779	WNTT378
	)	708780	WNTT406
	)	708781	WNTT698

To: Chief, Wireless Telecommunications Bureau

OPPOSITION TO PETITION TO DENY OR CONDITION GRANT

Liberty Cable Co., Inc. ("Liberty"), by counsel and pursuant to Sections 1.962(g) and 94.33 of the Commission's Rules, hereby submits its Opposition to Time Warner Cable's ("Time Warner") January 9, 1995 Petition to Deny or Condition Grant (the "Petition") Liberty's above captioned applications.^{1/} The following is shown in support thereof:

I. LIBERTY IS ELIGIBLE TO HOLD THE APPLIED FOR AUTHORIZATIONS

Time Warner's allegation that Liberty is unqualified to hold or obtain the requested authorizations because it does not possess a local cable franchise is frivolous and without merit.

^{1/} Liberty's Opposition is timely filed within ten days of the Petition's filing. See Section 1.4(h) of the Commission's Rules.

The Petition is based upon a plainly contrived reading of the Commission's report and order in Operational Fixed Microwave Service (Video Distribution Systems - 18 GHz), 6 FCC Rcd 1270 (1991). The Petition should be dismissed forthwith. Additionally, Time Warner should be ordered to pay Liberty's costs for having to defend this plainly abusive use of the Commission's processes.

To reach its desired conclusion, Time Warner has turned on its head the Commission's discussion in Video Distribution Systems on franchise requirements. In short, Time Warner questions Liberty's eligibility, relying upon the following statement to support its proposition:

entities seeking to construct video distribution systems using OFS transmission are not required under 47 U.S.C. §541(b)(1) to obtain a franchise unless they also connect properties via some type of physically closed transmission path such as wire, coaxial cable or fiber optics and do not fall within the common ownership/no public right-of-way exception.

Time Warner's reliance is misplaced.

Nowhere, has the Commission held that obtainment of a franchise is a prerequisite to licensing under Part 94. In Video Distribution Systems, the Commission noted that use of frequencies in the 18GHz band "will not render entities eligible for this spectrum 'cable systems' within the meaning of 47 U.S.C. §522(6)". Video Distribution Systems, 6 FCC Rcd at 1272. This was not a new holding nor did it apply franchise requirements to OFS applicants such as Liberty. Rather, the Commission merely reiterated prior rulings as to when a franchise is required under the Cable Act, not whether a franchise is a prerequisite to licensing in the OFS. No such prerequisite exists.

Id.

Indeed, Video Distribution Systems was not about eligibility, but rather, service permissibility. The rule making petitioner "requested that the Commission permit OFS eligibles to use the 6 MHz wide channels in the 18 GHz band for the distribution of video entertainment material without limiting the number of channels that may be assigned for this purpose." Video Distribution Systems - 18 GHz, 6 FCC Rcd at 1270 (emphasis added). The Commission's notice proposed to grant the petition for rule making in both respects and it ultimately did so. Id; see also Notice of Proposed Rule Making, PR Docket No. 90-5, 5 FCC Rcd 461 (1990).

The petitioner did not seek to create a new class of eligibles or eligibility requirements. In keeping with the petitioner's limited request, the Commission neither proposed to nor made any changes to its OFS eligibility requirements. Supra. Nothing in Video Distribution Systems, rendered any entity eligible for licensing in the OFS that was not previously eligible; nor did it render any entity ineligible for licensing in the OFS. Compare Fixed and Mobile Services (947 MHz - 40 GHz), 2 FCC Rcd 1050 (1987) (Commission amends its rules to expand eligibility for licensing in the 1.8 and 6.5 GHz bands) (subsequent history omitted). The Commission simply amended Section 94.9 of its Rules -- governing permissible service; Section 94.15 -- eliminating the four channel limitation; and Section 94.61 -- applicability.

The most cogent enunciation of the Commission's OFS eligibility requirements lies within Part 94 of its rules. Time Warner either failed to read these or, after having done so, determined they did not suit its purpose; never citing to them once. Prior and subse-

quent to the Commission's decision in Video Distribution Systems, the following entities were/are eligible for licensing in the OFS:

Any person, or any governmental entity or agency eligible for licensing in a radio service under Parts 80, 87, or 90 for private operational fixed communications related to activities for which licensing is available in such service or any person proposing to provide communications service to such persons, governmental entities or agencies is eligible to hold a license under this part.

Section 94.5 of the Commission's Rules. Liberty is eligible for licensing under Part 90's Business Radio Service. To be eligible in that service, an applicant must be engaged primarily in the operation of commercial activity.^{2/} Liberty is so engaged; a fact Time Warner does not and cannot dispute. Liberty is therefore eligible to hold a license under Part 94.

Liberty would still be eligible for the applied for licenses even if the Commission's eligibility rules more specifically required the applicant to be engaged primarily in the operation of a private cable or SMATV system; notwithstanding that Liberty may also be engaged in the operation of a cable television system. Liberty's private cable or SMATV operations constitute a "regular and integral part" of its business. Panhandle Eastern Pipe Line Company, 4 FCC Rcd 8087, 8088 (PRB 1989) (the public policy purpose of the primarily engaged requirement "... is to differentiate between a de minimis or marginal business activity, engaged in merely to secure eligibility, and an activity that constitutes a regular or integral part of the applicant's business"), review denied, FCC 90-

^{2/} Section 90.75(a)(1) of the Commission's Rules

284, released September 5, 1990. Liberty's cable operations are an incidental aspect of its business and, under any standard, do not detract from its status as a private cable/SMATV operator or its eligibility for the Part 94 authorizations at issue.

Liberty's status as a cable operator over a small part of its network is irrelevant to its eligibility. More to the point, the holding, or failure to hold, a local franchise is unconnected to licensing in Part 94; it neither establishes nor dissipates eligibility. Indeed no Commission rule prevents a cable operator from obtaining a Part 94 license to provide the same type of service Liberty primarily provides, i.e., private cable or SMATV service.^{3/} Of course, cable operators have little or no need for such authorizations since (1) they are possessed of local franchises and (2) they are eligible for CARS authorizations. Section 78.13 of the Commission's Rules.

Liberty does not have a franchise and is not eligible for a CARS authorization. Liberty brought the New York State Court action, upon which Time Warner so heavily relies, because of the finding that it requires a franchise (for certain of its operations) and because of the city's failure to create a process for franchising. If anything, this dispute serves to verify the wisdom behind the Commission's decision in Video Distribution Systems.

Video Distribution Systems, was designed to enhance the competitiveness of "alternative multichannel delivery systems", including "(SMATV) operators and similar

^{3/} The Commission's cross-ownership rules would not appear to pose a bar since cable operators may construct or acquire SMATV systems within their service areas, subject only to the condition that the SMATV service not be offered separate and apart from the franchised cable service. That is, the SMATV service must be offered under the same terms and conditions as the franchised cable service.

multichannel distributors eligible to hold OFS licenses ..." Video Distribution Systems, 6 FCC Rcd at 1270. Liberty, as Time Warner does not, and cannot dispute, is an "alternative multichannel delivery system" and falls within the class of intended beneficiaries.

II. LIBERTY HAS PROSECUTED ITS APPLICATIONS CANDIDLY AND IN GOOD FAITH

Time Warner's lack of candor allegations should similarly be rejected. Not only has Liberty prosecuted its applications candidly and in good faith, but it has no reason to proceed in any other fashion. First, the majority of Liberty's service is private cable/SMATV service and the applied for licenses are used in the provision of that service. Thus, Liberty appropriately considers itself to be a private cable/SMATV operator and appropriately held itself out as such to the Commission. Second, given that Liberty is eligible for a Part 94 license and given that cable operators are not ineligible for licensing in Part 94, Liberty had no reason to misrepresent itself.

III. LIBERTY IS STATUTORILY QUALIFIED AND PROPOSES TO USE THE STATIONS IN A LAWFUL FASHION

While Time Warner correctly recites Section 94.33(b)'s provisions, it fails to explain how or why Liberty is either statutorily disqualified or how the proposed use of the facility would be unlawful. Again, Liberty is engaged primarily in the operation of a commercial activity and is thus eligible for licensing in Part 94. Furthermore Liberty utilizes its stations, for the distribution of video entertainment material in the manner contemplated in Video Distribution Systems, 6 FCC Rcd at 1270, and Section 94.15 of the Commission's Rules.

Thus, neither use of Liberty's existing facilities nor use of the applied for facilities is or will be unlawful. That extensions of the service via hard wire connections may be subject to local franchise requirements does not render Liberty statutorily unqualified or render use of the facility unlawful. That is, first and last, a local issue outside of the Commission's jurisdiction.

Time Warner's reliance on the Commission's CARS eligibility rules, and decisions thereunder, as support for its proposition is demonstrative only of Time Warner's desperation.^{4/} Liberty is not seeking a Part 78 authorization, thus, its eligibility for licensing in that service is immaterial. Whether Liberty is eligible for a CARS license is unconnected to its qualifications for a Part 94 authorization. The Mass Media Bureau's holding in C&S Trenching Company, Inc., 2 FCC Rcd 116 (MMB 1987) has no application outside of the CARS service and is not germane to, much less dispositive of, eligibility in the OFS.

As demonstrated above, Liberty is qualified and eligible to hold a Part 94 authorization. Time Warner has not cited to any relevant authority calling that into question. Furthermore, the Commission specifically authorized use of the applied for frequencies for the distribution of video entertainment material; precisely the fashion in which Liberty has used its licensed stations and intends to use the applied for facilities.

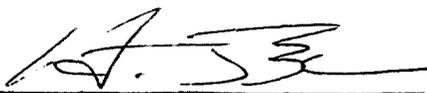
^{4/} As established above, the OFS eligibility rules do not add an additional requirement that cable operators must also have a franchise in order to be eligible for licensing.

CONCLUSION

Liberty is eligible for the applied for authorizations. Each of Time Warner's allegations is unsupported and without merit. Time Warner's petition should be denied and it should be assessed Liberty's costs in this matter.

Respectfully submitted,

LIBERTY CABLE CO., INC.

By 

Howard J. Barr
Its Attorney

Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

January 24, 1995

HJB/de
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CERTIFICATE OF SERVICE

I, Dina Etemadi, a secretary in the law firm of Pepper & Corazzini, L.L.P., do hereby certify that on this 24th day of January, 1995, copies of the foregoing "Opposition to Petition to Deny or Condition Grant" was sent by U.S. mail, First Class postage-prepaid, to each of the following:

Arthur H. Harding, Esquire
Fleischman and Walsh
1400 16th Street, N.W.
Washington, D.C. 20036



Dina Etemadi

ALL STATE 14524 866-227-2610 EDINBURG RECYCLED



PEPPER & CORAZZINI

L. L. P.

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L. CHARLES KELLER •
MICHAEL J. LEHMKUHL •
SUZANNE C. SPINK •

• NOT ADMITTED IN D.C.

July 12, 1995

Federal Communications Commission
Feeable Correspondence
P.O. Box 358305
Pittsburgh, PA 15251-5305



Re: Liberty Cable Co., Inc.;
Request for Special Temporary Authority
FCC File No. 716187,
12 West 96th Street, NYC

Dear Sir or Madam:

Transmitted herewith, on behalf of Liberty Cable Co., Inc. ("Liberty"), is an original and one (1) copy of a request for special temporary authority ("STA") for the above referenced facility.

Enclosed is a check made payable to the Federal Communications Commission in the amount of \$45.00 to cover the necessary filing fees.

Questions with respect to this matter should be referred to the undersigned.

Sincerely,

Michael J. Lehmkuhl
Attorney for
Liberty Cable Co., Inc.

Enclosures

bcc: Larry S. Soloman, Esq.
Lloyd Constantine, Esq.
William Kellett, Esq. (FCC)

MJL/kaw
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Special Temporary Authority
New OFS Station
12 West 96th Street, NYC

Liberty Cable Co., Inc. ("Liberty") respectfully requests special temporary authority ("STA") pursuant to Section 94.43 of the Commission's Rules to operate an 18 Ghz operational-fixed microwave service ("OFS") station at 12 West 96th Street in the manner described below. Given the extraordinary circumstances regarding the need for service, any delay in the institution of temporary operation would seriously prejudice the public interest.

Pursuant to Section 94.43(c) of the Commission's Rules, the following is submitted:

1. Name, Address and Citizenship of Applicant

Liberty Cable Co., Inc.
215 E. 95th Street
New York, NY 10128
ATTN: Behrooz Nourain

New York Corporation

2. Need for Special Action

Liberty is an alternative multichannel video programming distributor serving approximately 30,000 subscribers who live mainly in buildings in the New York metropolitan area. In the vast majority of cases, Liberty provides service pursuant to the Commission's action in Operational Fixed Microwave Service (Video Distribution System), 6 FCC Rcd. 1270 (1991) ("the 18 GHz Order") through microwave channels in the 18,142 - 18,580 band ("the 18 GHz band").

On June 22, 1995, Liberty filed the underlying application to establish 12 West 96th Street as a new transmit site. The receive path proposed therein would provide service to 44 West 96th Street. This path was connected by hardwire between the two non-commonly owned, managed or controlled buildings. Grant of this STA request would permit Liberty to convert the connection to microwave and discontinue the hardwire connection as soon as possible without disrupting service to the public.

Accordingly, grant of this STA request will make it possible for Liberty to honor its obligations to its customers and establish effective competition in the Manhattan market. When the 18 GHz Order granted private cable operators access to the 18 Ghz band, the Commission voiced its conviction that the public interest was well served by allowing competition in the video

services marketplace through wireless cable operators. The Commission said:

After carefully reviewing the record, we conclude that adoption of this proposal, . . . , will promote the public interest by encouraging competition in the video distribution marketplace. The need for such action is well documented. This 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 anti-competitive conduct. In these circumstances, competition provides the most effective safeguard against the specter of market power abuse. As competition from alternative multichannel providers such as second competitive cable operators, wireless cable multi-point distribution services, SMATV systems, and direct broadcast satellite ("DBS") emerges, we find that it would serve the public interest to enhance their competitive potential. 6 FCC Rcd. at 1271, para. 9.

The Commission also said:

In conclusion, cable systems increasingly dominate the multichannel video delivery services, resulting in criticism of the industry and complaints of anti-competitive 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 market viability. To improve the competitive potential of alternative multichannel providers eligible to hold licenses in the Operation-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 the distribution of video entertainment material. We also amend our rules to eliminate the restriction on the number of channels that may be assigned for this purpose. This action serves the public interest by encouraging the growth of competitive alternatives to cable systems and by providing consumers with a diverse range of video distribution service. In addition, the action taken herein furthers the best interests of the public by promoting spectrum efficiency and increasing the flexibility of licenses. 6 FCC Rcd. at 1272, para. 16.

Furthermore, in its 1994 report to Congress on the status of competition in this marketplace, the Commission makes clear that little has changed in the way of competition; cable is still

king. In sum, the public interest is well served by the promotion of competition by wireless cable operators in the video services marketplace.

The Commission action in opening the 18 GHz band to wireless cable operators has achieved its goal in that it has stimulated competition to incumbent cable monopolists. To compete effectively with the incumbant cable system, Liberty must convert buildings from that service to Liberty's service after subscribers in those buildings have elected to switch to Liberty. If Liberty cannot meet its potential customers' demand for its service, those potential customers will cancel their contracts with Liberty and remain with the incumbant system. It is hard to blame them.

Time is, therefore, of the essence. Any further delay in the consideration of the aforementioned applications is a disservice to the public interest because it seriously undermines Liberty's ability to deliver service, to compete and to be economically viable. Delay gravely threatens Liberty's ability to remain in business.

3. Type of Operation

Fixed transmission of video and audio signals in the 18 GHz band.

4. Purpose of Operation

The equipment will be used to distribute applicant's own products or services, including video entertainment programming, to private cable buildings on frequencies in the 18,142-18,580 MHz band.

5. Time and Date of Operation Desired

Liberty requests authority for twenty-four (24) hour operation pending action on the application for license and requests that such authority begin on the tenth day following the filing of this request for special temporary authority.

6-12. Technical Information

Liberty will operate the station in conformance with the technical specifications outlined in the referenced application(s).

Liberty certifies that no party to the application is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, codified at 21 U.S.C. Section 862.

PEPPER & CORAZZINI

L. L. P.

ATTORNEYS AT LAW

200 MONTGOMERY BUILDING

1776 K STREET, NORTHWEST

WASHINGTON, D. C. 20006

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L. CHARLES KELLER *
MICHAEL J. LEHMKUHL *
SUZANNE C. SPINK *
* NOT ADMITTED IN D.C.

July 12, 1995

VIA FEDERAL EXPRESS

Federal Communications Commission
Wireless Telecommunications Bureau
Private Microwave Branch
1270 Fairfield Road
Gettysburg, PA 17325-7245



Re: Liberty Cable Co., Inc.;
Amendment of Modification Application,
FCC File No. 708779, FCC Call Sign WNTM385;
1692 Third Avenue, NYC (Normandie Court)

Dear Sir or Madam:

Submitted herewith, on behalf of Liberty Cable Co., Inc., is an original and one copy of an amended Statement of Eligibility and Use, which is intended to replace the existing Statement, included as Exhibit 2 in the above referenced application.

Kindly refer any questions regarding this matter to the undersigned.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael J. Lehmkuhl".

Michael J. Lehmkuhl
Attorney for
Liberty Cable Co., Inc.

Enclosure

cc: Arthur H. Harding, Esq.
(Counsel for Time Warner)

bcc: Larry S. Soloman, Esq.
Lloyd Constantine, Esq.
William Kellett, Esq. (FCC)

MJL/kaw
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STATEMENT OF ELIGIBILITY AND USE

Liberty Cable Co., Inc. ("Liberty") is engaged in the operation of a commercial activity as a provider of video entertainment programming to customers and is eligible for operational fixed microwave frequencies under Section 90.75(a)(1) of the Commission's Rules. Pursuant to Section 94.31(j) of the Rules, the nature of the products and services to be distributed are described below.

Liberty proposes to distribute its own products and services to customers using operational-fixed frequencies in the 18,142-18,580 MHz band. Liberty owns and operates an alternative multichannel video delivery system in the New York metropolitan area. It proposes the point-to-point distribution of video entertainment material as authorized in Video Distribution Systems - 18 GHz, 6 FCC Rcd 1270 (1991). Although Section 94.9(a)(1) prohibits the distribution of video entertainment material to customers on frequencies below 21,200 MHz, it allows exceptions as provided by Section 94.61(b) and Section 94.9(a)(2). Section 94.9(a)(2) authorizes a licensee to transmit any of its own products or services, including video entertainment programming, to any receiving location on frequencies in the 18,142-18,580 MHz band.

Liberty Cable Co., Inc.
New York, New York

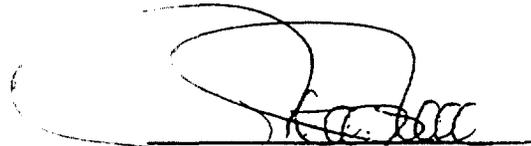
Exhibit 2
FCC Form 402
File No. 708779
Page 2 of 2

Accordingly, Liberty's proposed use of the 18,142-18,580 MHz band frequencies is consistent with the Commission's Rules.

The facilities requested in this application contemplate only the distribution of multichannel video entertainment material via point-to-point microwave. The transmit site is not fed via a hardwire connection from a location that is non-commonly owned, managed or controlled.

Although the receive sites located at 44 West 96th St., 120 East End, and 525 East 86th Street are presently fed via a hardwire connection from a non-commonly owned, managed or controlled building located at 12 West 96th Street, 510 East 86th Street, and 535 East 86th Street, grant of the pending application will permit Liberty to convert the connection to microwave and discontinue the hardwire connection. The facilities will not be extended by a hardwire connection unless and until Liberty is authorized to make such a connection or unless such a connection is otherwise authorized by law.

7/6/95
Date



Peter O. Price
President
Liberty Cable Co., Inc.

PEPPER & CORAZZINI

L. L. P.

ATTORNEYS AT LAW

200 MONTGOMERY BUILDING

1776 K STREET, NORTHWEST

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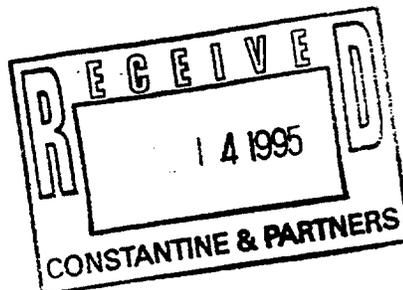
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* NOT ADMITTED IN D.C.

July 12, 1995

VIA FEDERAL EXPRESS

Federal Communications Commission
Wireless Telecommunications Bureau
Private Microwave Branch
1270 Fairfield Road
Gettysburg, PA 17325-7245



Re: Liberty Cable Co., Inc.;
Amendment of Modification Application,
FCC File No. 708777, FCC Call Sign WNTF569;
420 East 45th Street, NYC (River Tower)

Dear Sir or Madam:

Submitted herewith, on behalf of Liberty Cable Co., Inc., is an original and one copy of an amended Statement of Eligibility and Use, which is intended to replace the existing Statement, included as Exhibit 2 in the above-referenced application.

Kindly refer any questions regarding this matter to the undersigned.

Sincerely,


Michael J. Lehmkuhl
Attorney for
Liberty Cable Co., Inc.

Enclosure

cc: Arthur H. Harding, Esq.
(Counsel for Time Warner)

bcc: Larry S. Soloman, Esq.
Lloyd Constantine, Esq.
William Kellett, Esq. (FCC)

MJL/kaw
c:\wp\1808\xamend.4

Liberty Cable Co., Inc.
New York, New York

Exhibit 2
FCC Form 402
File No. 708777
Page 1 of 2

STATEMENT OF ELIGIBILITY AND USE

Liberty Cable Co., Inc. ("Liberty") is engaged in the operation of a commercial activity as a provider of video entertainment programming to customers and is eligible for operational fixed microwave frequencies under Section 90.75(a)(1) of the Commission's Rules. Pursuant to Section 94.31(j) of the Rules, the nature of the products and services to be distributed are described below.

Liberty proposes to distribute its own products and services to customers using operational-fixed frequencies in the 18,142-18,580 MHz band. Liberty owns and operates an alternative multichannel video delivery system in the New York metropolitan area. It proposes the point-to-point distribution of video entertainment material as authorized in Video Distribution Systems - 18 GHz, 6 FCC Rcd 1270 (1991). Although Section 94.9(a)(1) prohibits the distribution of video entertainment material to customers on frequencies below 21,200 MHz, it allows exceptions as provided by Section 94.61(b) and Section 94.9(a)(2). Section 94.9(a)(2) authorizes a licensee to transmit any of its own products or services, including video entertainment programming, to any receiving location on frequencies in the 18,142-18,580 MHz band.

Liberty Cable Co., Inc.
New York, New York

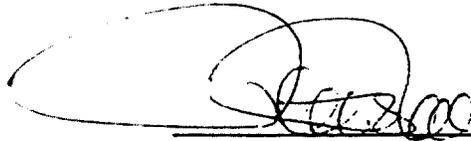
Exhibit 2
FCC Form 402
File No. 708777
Page 2 of 2

Accordingly, Liberty's proposed use of the 18,142-18,580 MHz band frequencies is consistent with the Commission's Rules.

The facilities requested in this application contemplate only the distribution of multichannel video entertainment material via point-to-point microwave. The transmit site is not fed via a hardwire connection from a location that is non-commonly owned, managed or controlled.

Although the receive site located at 220 East 52nd Street is presently fed via a hardwire connection from a non-commonly owned, managed or controlled building located at 211 East 51st Street, grant of the pending application will permit Liberty to convert the connection to microwave and discontinue the hardwire connection. The facility will not be extended by a hardwire connection unless and until Liberty is authorized to make such a connection or unless such a connection is otherwise authorized by law.

7/6/95
Date



Peter O. Price
President
Liberty Cable Co., Inc.

PEPPER & CORAZZINI

L. L. P.

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SUZANNE C. SPINK *

* NOT ADMITTED IN D.C.

July 12, 1995

VIA FEDERAL EXPRESS

Federal Communications Commission
Wireless Telecommunications Bureau
Private Microwave Branch
1270 Fairfield Road
Gettysburg, PA 17325-7245



Re: Liberty Cable Co., Inc.;
Amendment of Modification Application,
FCC File No. 708778, FCC Call Sign WNTM210;
20 West 64th Street, NYC (One Lincoln Plaza)

Dear Sir or Madam:

Submitted herewith, on behalf of Liberty Cable Co., Inc., is an original and one copy of an amended Statement of Eligibility and Use, which is intended to replace the existing Statement, included as Exhibit 2 in the above referenced application.

Kindly refer any questions regarding this matter to the undersigned.

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Michael J. Lehmkuhl
Attorney for
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bcc: Larry S. Soloman, Esq.
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William Kellett, Esq. (FCC)

MJL/kaw
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