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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC MAIL ROOM 218
SECTION
62151

SEP 17 9 57 AM '96

In re Applications of	)	WT DOCKET NO. 96-41	
)		
LIBERTY CABLE CO., INC.)		
)		
For Private Operational Fixed	)	File Nos:	
Microwave Service Authorization	)	708777	WNIT370
and Modifications	)	708778, 713296	WNIM210
	)	708779	WNIM385
New York, New York	)	708780	WNIT555
	)	708781, 709426, 711937	WNIM212
	)	709332	(NEW)
	)	712203	WNTW782
	)	712218	WNTY584
	)	712219	WNTY605
	)	713295	WNTX889
	)	713300	(NEW)
	)	717325	(NEW)

ORDER

Issued: September 12, 1996 ; Released: September 16, 1996

On August 23, 1996, Joint Motion For Order To Take Deposition And Request for Subpoena was filed by Time Warner Cable of New York and Paragon Cable Manhattan (collectively "Time Warner") and Cablevision of New York City-Phase I ("Cablevision"). Wireless Telecommunications Bureau's Comments On Time Warner's And Cablevision's Joint Motion For Order To Take Deposition And Request For Subpoena was filed on September 10, 1996. An Opposition By Bartholdi Cable Co., Inc. To Joint Motion for Order To Take Deposition And Request For Subpoena was filed on September 10, 1996. (Bartholdi Cable Co., Inc. formerly Liberty Cable Co., Inc. referred to as "Liberty").

The Joint Motion will be granted and service of the Notice To Depose is authorized. In the course of the second deposition of Michael Lehmkuhl on August 7, 1996, the deponent identified Mr. Steven Coran as an attorney in Washington, D.C. who had undertaken a due diligence search of Liberty's FCC licenses in March 1995 in connection with a possible acquisition of Liberty by a client of Mr. Coran. The inability of Mr. Lehmkuhl to recollect dates as reflected in his deposition testimony (e.g. Tr. 114) is not sufficiently reliable testimony to determine accurately the date on which Liberty first learned that it was operating microwave paths without Commission licenses or authorizations. That date is an issue of fact which is directly relevant to the designated issues. There is shown by the Joint Motion and allied papers a reasonable probability that Mr. Coran's inventory could provide a more accurate determination of the universe of Liberty's licenses/authorizations at a date prior to and more certain than "late April 1995."¹ It is also a reasonable

¹ See Constantine Affidavit at Joint Motion Tab 7. Compare Price Exh. 16 (Lehmkuhl Memorandum to Barr dated April 5, 1995, regarding Liberty Paths; Inconsistencies With Steve Coran's Inventory).

inquiry to ask whether Mr. Coran communicated the findings of his due diligence search to Liberty in connection with his client's decision not to pursue the transaction.

The Commission's rules authorize the examination of persons "if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence." See 47 C.F.R. §1.311(b). Mr. Coran is a disinterested witness to a decisionally significant event. His identity was just recently discovered. And the proposed scope of his examination in Washington, D.C. is limited to his knowledge of relevant information that may have been communicated to Liberty pursuant to a due diligence search. Such disinterested testimony should be reliable and is clearly relevant.

Accordingly, IT IS ORDERED that the Joint Motion For Order To Take Deposition And Request For Subpoena that was filed on August 23, 1996, IS GRANTED.²

FEDERAL COMMUNICATIONS COMMISSION³



Richard L. Sippel
Administrative Law Judge

² The Notice Of Deposition to Mr. Coran provides for 21 days' notice as provided under the Rules. See 47 C.F.R. §1.315(a). The parties are urged to coordinate the earliest possible date for Mr. Coran's deposition. A subpoena may not be issued until the pleading cycle for oppositions is completed [47 C.F.R. §1.315(b)] or until the Presiding Judge is advised in writing that there will be no opposition to the deposition and that the witness will accept service of the Subpoena before the pleading cycle is completed. See 47 C.F.R. §1.333(e).

³ Copies of this Order were faxed/e-mailed to counsel in the a.m. of the date of issuance.