

FCC MAIL SECTION

Before the  
FEDERAL COMMUNICATIONS COMMISSION

FCC 97M-10

JAN 29 3 16 PM '97 Washington, D.C. 20554

In re Applications of	)	WT DOCKET NO. 96-41	
	)		70653
LIBERTY CABLE CO., INC.	)		
	)		
For Private Operational Fixed	)	File Nos:	
Microwave Service Authorization	)	708777	WNTT370
and Modifications	)	708778, 713296	WNTM210
	)	708779	WNTM385
New York, New York	)	708780	WNTT555
	)	708781, 709426, 711937	WNTM212
	)	709332	(NEW)
	)	712203	WNTW782
	)	712218	WNTY584
	)	712219	WNTY605
	)	713295	WNTX889
	)	713300	(NEW)
	)	717325	(NEW)

**ORDER**

Issued: January 24, 1997 ; Released: January 28, 1997

Pursuant to the direction of the Presiding Judge (FCC 97M-9) on January 23, 1997, at approximately 2:15 p.m., Liberty submitted to the Presiding Judge for in camera review, a certified true copy of a Memorandum consisting of one and one-half pages of text dated January 11, 1995, from Howard J. Barr to Peter Price re "Time Warner Petition" (the "Memorandum").

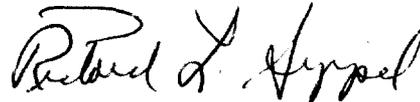
On January 11, 1995, Mr. Barr was associated with the law firm of Pepper & Corazzini, an outside FCC counsel for Liberty Cable Co., Inc. ("Liberty"). Mr. Price was Liberty's corporate president. The Memorandum was written for the purpose of giving legal advice concerning a pleading that Time Warner had filed with the Commission which opposed relief that Liberty was seeking. The subject of the advice pertains exclusively to Time Warner's assertion that Liberty was acting in violation of the Commission's Cable Rule by failing to obtain local franchises for its hardwire cable interconnections. Those substantive portions of the Memorandum are not relevant to the lack of candor/misrepresentation hearing that is being conducted concerning Liberty's premature microwave activations. Therefore, the substance of the Memorandum will be afforded protection from disclosure and will not be received in evidence or otherwise used at the hearing without Liberty's consent.<sup>1</sup>

<sup>1</sup> Liberty may at any time elect to disclose the entire Memorandum if Liberty considers disclosure to be in its interest. Any such disclosure would be a limited waiver and would not be a waiver of the attorney-client privilege or work product exemption which applies or which is asserted as to any other document.

However, the date of the Memorandum, the first paragraph which describes the subject matter, and the last paragraph which asks Mr. Price for further instruction on how to proceed are matters which do not reflect facts on which advice was sought by the client or legal advice of counsel. In view of Mr. Barr's testimony that is scheduled during the week of January 27, 1997, those unprotected portions of the Memorandum may assist in his examination.<sup>2</sup> C.f. Memorandum Opinion and Order, FCC 96M-164, released June 27, 1996, citing WWOR-TV 5 F.C.C. Rcd 6261 (1990) (transmittal information not protected by attorney-client privilege).

Accordingly, IT IS ORDERED that copies of the Memorandum, which are appropriately redacted to exclude each of the unnumbered paragraphs two through four (beginning with the phrase "In my opinion" and ending with the word "tomorrow."), SHALL BE FURNISHED to counsel at the next hearing session at 9:30 a.m. on January 27, 1997.<sup>3</sup>

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge

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<sup>2</sup> For example, the witness may be asked whether the Memorandum illustrates how Barr and Price communicated. Or the Memorandum's date and subject matter may prompt Mr. Barr's recollection of discussion of subjects which are relevant. There also remains for consideration the question of Liberty's compliance with document requests which is the subject of a pending motion.

<sup>3</sup> Copies of this Order were faxed or e-mailed in the a.m. of the date of issuance.