

1 to get into making this process more complex than it already
2 is. Let me -- so I'm going to overrule the objection.

3 Is there any other objection from Time Warner or
4 Cablevision?

5 MR. BECKNER: Well, I would join Cablevision's
6 objection. And I'd like the opportunity at least at the
7 hearing to renew the objection depending on what the use of
8 it -- of the document is. And there's -- I assume that
9 Liberty is not now going to contend that it actually had a
10 license for these paths that we've all assumed were
11 operating without a license. And I don't see aside from
12 that what probative value this document has.

13 I mean, it establishes that they had a license for
14 certain paths. That's not a matter in dispute. You know,
15 if they're going to try to suggest that Mr. Nourain doesn't
16 know how to read this document or it's confusing or
17 something like that, then -- then, as Mr. Holt says, that is
18 illustrative and I'd like just to hear how it's used and
19 have a chance to make an objection at that time if I want
20 to.

21 JUDGE SIPPPEL: Well, look at it on the other side
22 though. I mean, look, you might wake up at 3:00 in the
23 morning next week and say that's what I've been trying to
24 get at just before -- you know, when you're preparing your
25 cross examination. Who knows.

1 MR. BEGLEITER: Should I withdraw the document,
2 Your Honor?

3 JUDGE SIPPEL: I don't mean to make light of it,
4 but I really don't think that this is going to be a -- that
5 this is going to control the -- how the drift of this
6 testimony is going to go next week. If there's a surprise
7 use of it, you certainly will be prepared to object to it at
8 that time. And I can -- you can move to strike it.

9 MR. BECKNER: That's all I'm asking for, sir.

10 JUDGE SIPPEL: Sure.

11 MR. BECKNER: That's fine.

12 JUDGE SIPPEL: But I just don't see that being the
13 situation at all. And I -- let me -- I'm sorry, Mr.
14 Begleiter, I'm going to let you speak on this. But just,
15 first of all, as I said earlier, Liberty's got the burden of
16 proceeding with the burden of proof. As long as they're
17 doing it in a reasonable fashion, I'm going let them proceed
18 with the case. And, secondly, it doesn't hurt -- it doesn't
19 hurt me to see something like this in its entirety as an
20 illustrative -- an illustrative microwave license. And I
21 might have a couple of questions myself. Go on, Mr.
22 Begleiter.

23 MR. BEGLEITER: Okay. I really have nothing more
24 to say on 13, Your Honor.

25 JUDGE SIPPEL: All right. Let me ask you about 13

1 a little bit.

2 MR. BEGLEITER: Okay.

3 JUDGE SIPPEL: It's got -- okay, I'll just get to
4 the last page now. But it's got -- on the first column on
5 the left, it's got 292 path numbers.

6 MR. BEGLEITER: Right, right.

7 JUDGE SIPPEL: But running consecutive to --

8 MR. BEGLEITER: Right.

9 JUDGE SIPPEL: All right. Now, I've seen the
10 term, "path", and -- you know, I've kind of formed some
11 general ideas of what I think a path is. Why don't you
12 explain to me what a path is in light of this?

13 MR. BEGLEITER: All right. Let's hope I can do it
14 adequately. If I can't, one of the witnesses or two of the
15 witnesses can.

16 JUDGE SIPPEL: All right. Well, let's --

17 MR. BEGLEITER: But I'll --

18 JUDGE SIPPEL: Why don't we do that then. Why
19 don't we wait until you get a witness here.

20 MR. BEGLEITER: Okay. I was going to do it. I
21 was concerned with my knowledge, Your Honor. But I will
22 wait.

23 JUDGE SIPPEL: All right. What is it -- why don't
24 you make a proffer then?

25 MR. BEGLEITER: Okay. Well, the way it works as I

1 understand it, Your Honor, is that there are 292 listed
2 separate paths. A path is -- is a microwave transmission
3 from a transmitter to a receiver. There are actually really
4 only four paths here. But each path has got 73 frequencies.
5 So the way the FCC does it as I understand it -- I had a
6 lecture on it this week -- is they call then each -- each
7 path frequency becomes a separate path. So four times 73,
8 voila, 292.

9 JUDGE SIPPEL: All right. Does that sound all
10 right to the Bureau?

11 MR. WEBER: Yes, Your Honor.

12 JUDGE SIPPEL: Okay.

13 MR. BEGLEITER: We're not claiming there are 292
14 paths that were a first.

15 JUDGE SIPPEL: Well --

16 MR. BEGLEITER: Well, there were, but there
17 weren't -- they're really to four separate locations.

18 JUDGE SIPPEL: You're saying four separate
19 locations, but the location -- well, okay. The location is
20 transmitting it as 205 East Sixty-fourth Street.

21 MR. BEGLEITER: Right.

22 JUDGE SIPPEL: And for the licensee -- oh, I'm
23 sorry -- yes, that's got nothing to do with the licensee.
24 That's the course.

25 MR. BEGLEITER: Right.

1 JUDGE SIPPEL: All right. The transmitting has --
2 at Bristol Plaza.

3 MR. BEGLEITER: Yes.

4 JUDGE SIPPEL: And you said that it's got -- that
5 obviously the transmitter -- the transmitting antenna will
6 be sending out to the receiving sources -- the receivers.

7 MR. BEGLEITER: Right.

8 JUDGE SIPPEL: All right. Now, it's going to go -
9 - but it's going to go along four paths --

10 MR. BEGLEITER: To four different sites.

11 JUDGE SIPPEL: Four different sites.

12 MR. BEGLEITER: Right.

13 JUDGE SIPPEL: So a path is a site.

14 MR. BEGLEITER: No, a path goes to a site and
15 there are 73 frequencies within a path.

16 JUDGE SIPPEL: All right. Yes, a path goes to a
17 site.

18 MR. SPITZER: From a receiver -- from the
19 transmitter to the receiver, four beams.

20 JUDGE SIPPEL: Okay. I'm just making a note here
21 for myself. Okay. You said four beams, Mr. Spitzer.
22 That's not a term of art, is it?

23 MR. SPITZER: No, I'm just trying to -- visually
24 it's just sort of beams emanated from the transmit site.

25 JUDGE SIPPEL: Okay.

1 MR. HOLT: Your Honor, it may also helpful to know
2 that I believe the receive sites are listed in -- I'm not
3 sure with respect to this particular license, but the
4 receive sites are identified in Appendix A to the HDO.
5 Those are the locations where the paths are received.
6 Correct?

7 MR. BEGLEITER: No. These are from '94, Mr. Holt.
8 These are not the ---

9 MR. HOLT: Right, but typically when you're saying
10 a receive site, you're referring to -- in the context of
11 this case, receive sites are listed in Exhibit A --

12 MR. BEGLEITER: Only some of them.

13 MR. HOLT: -- Appendix A.

14 MR. BEGLEITER: Only a very small number of them
15 are in A, thank God.

16 MR. HOLT: The receive sites where you were
17 operating facilities without authorization.

18 MR. BEGLEITER: That's right.

19 MR. SPITZER: No. No, no. Receive sites that
20 Liberty was operating total.

21 MR. BEGLEITER: No. The HDO, Your Honor, contains
22 some receive sites. They do not contain -- I do not believe
23 they contain the receive sites that are -- that are involved
24 with this license.

25 JUDGE SIPPEL: This license being the Bristol

1 license, or Exhibit 13.

2 MR. BEGLEITER: Exactly.

3 JUDGE SIPPEL: Is this -- is this license for
4 Exhibit 13 have anything to do with this case at all other
5 than to illustrate?

6 MR. BEGLEITER: It has to do -- one of the things
7 we'll point out to Your Honor is that one of -- one of the
8 confusions, as Mr. Beckner put it, of Mr. -- Mr. Nourain is
9 that when he received the licenses, they didn't have receive
10 sites on them as this one does not. So instead of him just
11 testifying as to it, he'll -- we can now point to the
12 license, as well.

13 MR. SPITZER: Your Honor, looking at Appendix A, I
14 thought -- for some reason I had the number 13 in my mind.
15 I think there's more than 13.

16 MR. BEGLEITER: There's 19, Your Honor.

17 MR. BECKNER: Your Honor, can I just ask a
18 question of counsel? Is he intending to offer a witness as
19 an expert in this?

20 MR. BEGLEITER: No.

21 JUDGE SIPPEL: I think he's trying to avoid it.

22 MR. BEGLEITER: No, I don't -- I don't want to do
23 that. It's Mr. -- it's the subjective state of mind of
24 these people, not their expertise. I may -- if Mr. Beckner
25 agrees with myself, but -- no, but I --

1 JUDGE SIPPEL: We'll swear you in.

2 MR. BEGLEITER: No, we do not intend to offer an
3 expert.

4 MR. BECKNER: Okay. That's fine. That's all I
5 wanted to know.

6 JUDGE SIPPEL: But there's nobody here that
7 disagrees with Mr. Begleiter's explanation? All right.

8 MR. HOLT: As to what this constitutes?

9 JUDGE SIPPEL: Well, the description he gives --
10 yes, what Mr. Begleiter described to me, nobody sees that to
11 be inaccurate or misleading or incomplete in some way, shape
12 or form; I mean materially incomplete. All right, fine.

13 MR. BEGLEITER: Can we go on to Number 14, Your
14 Honor?

15 JUDGE SIPPEL: Let me be sure that the record's
16 clear.

17 MR. BEGLEITER: Okay.

18 JUDGE SIPPEL: Exhibit 13 is how many pages? How
19 many pages is this document? Thirty pages.

20 MR. BEGLEITER: Thirty pages.

21 JUDGE SIPPEL: It's a 30 page document. It's
22 entitled, "Federal Communications Commission Microwave Radio
23 Station License". And it's a 30 page document that pertains
24 to the location at 205 East Sixty-fourth Street; Bristol
25 Plaza; New York City. And for the limited purposes that

1 we've discussed on the record here, it's identified and
2 received into evidence at this time over I guess it would be
3 the precautionary limitations from Time Warner and
4 Cablevision. It's received in evidence at this time as
5 Liberty/Bureau Exhibit 13.

6 (The document referred to,
7 previously marked for
8 identification as
9 Liberty/Bureau Exhibit Number
10 13, was received in evidence.)

11 Okay, your next exhibit.

12 MR. BEGLEITER: Your Honor, the next exhibit is a
13 public record document with a public notice issued by the
14 FCC. It is 65 pages long. There's going to be some
15 reference to it -- to some of the -- this is offered as an
16 exemplar -- just simply as an exemplar of -- we're not going
17 to be saying that Mr. -- that anyone in our company received
18 any particular part of this. Maybe they did; maybe they
19 didn't.

20 But the point of it is there will be some
21 reference to the public notice. And we thought it was just
22 be clear for Your Honor if you saw what a public notice
23 looked like. It's actually two public notices: a public
24 notice of acceptance and a public notice of grant. But they
25 -- my understanding is they come out at the same time and

1 they are sequentially numbered.

2 JUDGE SIPPEL: Where are the -- are there numbers
3 in here that pertain --

4 MR. BEGLEITER: Yes, if you go to page 3, the --
5 for some reason, the first number begins on page 3. And the
6 last number is page 63. And then we have a blank page at
7 the end. I guess it's a 64 page document, Your Honor. I'm
8 sorry. The back may have been two-sided. I don't know.

9 MR. HOLT: I've got, Your Honor, a document that
10 has 74 pages.

11 MR. BEGLEITER: No, it begins at 11, Mr. Holt.

12 MR. HOLT: Okay.

13 MR. SPITZER: The Bates number goes up to 74, but
14 that's the production document.

15 MR. BEGLEITER: We Bates stamped it, it begins at
16 011.

17 MR. HOLT: Okay.

18 JUDGE SIPPEL: Okay. I see. I see. But I mean
19 are there any references in here to Liberty licenses --

20 MR. BEGLEITER: Yes, there are, Your Honor.

21 JUDGE SIPPEL: What pages would they be on?

22 MR. BEGLEITER: Gee, Your Honor, I did not make a
23 notice of that. I did not make a note of that. But they
24 are here.

25 MR. BECKNER: Page 42.

1 JUDGE SIPPEL: 042.

2 MR. BEGLEITER: There may be others, Your Honor.
3 We'll certainly by Monday have them all tabbed if Your Honor
4 wishes.

5 JUDGE SIPPEL: Well, you know, there should be a -
6 - is that the only place you see it here is on page 042?

7 MR. BEGLEITER: Your Honor, I don't know.

8 MR. HOLT: I believe that's correct, Your Honor.

9 MR. BECKNER: Yes, I looked through this yesterday
10 and I don't recall seeing more than one page.

11 MR. HOLT: And I'm also not certain whether these
12 refer to any of the licenses or paths at issue here.

13 MR. BEGLEITER: Well, there's one on page --
14 there's also a reference to -- on page 39 to a Liberty Cable
15 Company Incorporated. So there may be others, Your Honor.
16 You know, our purpose here was not to -- was really to use
17 this as to -- so Your Honor will see what the form of this
18 looks like. There will be some testimony about it.

19 JUDGE SIPPEL: Who's going to testify to this?

20 MR. BEGLEITER: Mr. -- Mr. Lehmkuhl.

21 JUDGE SIPPEL: And what is this going -- what is
22 this going to do for the record or --

23 MR. BEGLEITER: Well, what the testimony is is
24 that these were -- these were -- this was testified to at
25 the -- at the deposition, that Mr. Lehmkuhl would send pages

1 of this up to -- up to Mr. -- Mr. Nourain. Mr. Nourain will
2 testify that basically he did not pay any attention to it.
3 But he -- but there was testimony about what these --
4 about -- about these being sent to Mr. Nourain.

5 JUDGE SIPPEL: So there's --

6 MR. BEGLEITER: Not the whole document. Like an
7 occasional page here and there.

8 JUDGE SIPPEL: So, all right, this would be --
9 this would be -- this would go to the -- the procedures, the
10 general course of conduct that Mr. Lehmkuhl exercised with
11 respect to this?

12 MR. BEGLEITER: It really also goes to Mr. -- yes,
13 it goes to that. But it really also goes to the fact that
14 this document, again, does not have any receive site on it.
15 So that even if Mr. -- Mr. -- you know, it isn't a simple
16 case of looking at this document and figuring out what the -
17 - even it doesn't have a transmitter site on it. It's just
18 additional evidence to show what the -- why there was
19 confusion at Liberty.

20 MR. BECKNER: Your Honor, I -- I mean, unless the
21 witness is going to testify that this document itself was
22 sent up to New York, I don't see the relevance of this. I
23 mean, I understand the point Mr. Begleiter is trying to
24 make. But I think we have the -- well, I can't speak for
25 Mr. Holt, but I would have the same objection to this

1 document as the previous one which is -- is that it doesn't
2 relate to the licenses or the paths that are at issue. It
3 is, of course, a copy of a public notice. But I -- I just
4 don't see that it tends to prove anything or disprove
5 anything.

6 MR. HOLT: I would agree with that, Your Honor.
7 Again, this -- this document -- if this document were
8 actually a document that was received by Mr. Nourain, like
9 the earlier document, 13 -- if that was received by Mr.
10 Nourain and then he provided testimony about what he did
11 upon receiving the document, that would be relevant. But
12 there's no link here. I mean, this is -- has no probative
13 value at all.

14 MR. SPITZER: Your Honor, may I interject just for
15 a moment? The probative value is that I think all the
16 parties would agree and nobody would object to the fact that
17 this is a fair representation of what this public notice,
18 which is a regularly published document, includes in terms
19 of the information that is disseminated to the public.

20 And, therefore, the testimony both from Mr.
21 Lehmkuhl and from Mr. Nourain with respect to their
22 knowledge, with respect -- information that they garner from
23 this document will be clearly supported and made more
24 relevant to the Court by virtue of your being able to see
25 this document, your being able to examine the nature of the

1 information that is disseminated by the FCC in its public
2 notice with respect to particular applications as the
3 application process proceeds.

4 And that is why having this available to the Court
5 would clearly in our view clarify the record and make it
6 clear to the Court as the application process proceeds what
7 information is disseminated both to the public and to the
8 individuals involved in the precise application process.

9 MR. HOLT: Your Honor, I think there's a
10 misstatement there. What counsel testified to earlier is
11 that this document in its entirety is not disseminated to
12 the applicant. This may be what's sent out to the public,
13 but selected pages were sent to Mr. Nourain. It doesn't
14 fairly reflect what Mr. Nourain was given or what he
15 considered. And I don't believe it has any value. What I
16 do think would have value is if Liberty were to produce
17 documents which -- which actually were received by Mr.
18 Nourain, showed when he received those documents and then we
19 could ask him questions about what he knew and when he knew
20 it.

21 MR. BEGLEITER: Your Honor, I -- I'm not even sure
22 I'm going to use this document to be honest with you. I
23 just wanted it here because I don't want to be accused of
24 putting -- of using surprise. It may not be that essential
25 an issue. But I wanted it presented in case -- just in

1 case.

2 JUDGE SIPPEL: All right. Then I'm not going --
3 I'm going to sustain the objection. It's rejected as of
4 this time. In fact, I would doubt that it's worth the
5 effort to try and bring it back in again. I agree that
6 the -- unless it's done in precisely the way that Mr. Holt -
7 - I mean, certainly if Mr. Lehmkuhl has copies in his file
8 of the excerpted pages of public notices that he had shipped
9 up to Mr. Nourain, you know, that would be highly relevant
10 and we would receive it assuming that it was able to be
11 identified that way by Mr. Nourain.

12 But this is -- this is one of those Federal Rules
13 of Evidence 403 kinds of documents that it has a tendency I
14 think -- it would -- in my estimation, it would tend more to
15 confuse than clarify. So we don't need to spend any more
16 time with it.

17 (The document referred to,
18 previously marked for
19 identification as
20 Liberty/Bureau Exhibit Number
21 14, was rejected.)

22 MR. BEGLEITER: Okay.

23 JUDGE SIPPEL: And then last is your Document
24 Number 15.

25 MR. BEGLEITER: Right.

1 JUDGE SIPPEL: And that is what? That's a --

2 MR. BEGLEITER: That's an exemplar of an STA that
3 was actually received by Liberty.

4 JUDGE SIPPEL: This is a two page document.

5 MR. BEGLEITER: Right.

6 JUDGE SIPPEL: And an STA is a special temporary
7 authority.

8 MR. BEGLEITER: Correct.

9 JUDGE SIPPEL: And this was signed on September
10 the 21st, 1994 by Mr. Nourain. Is that right? That's his
11 signature, isn't it?

12 MR. BEGLEITER: Well, whether it was signed that
13 day or not I don't know. But it's his signature. And I'm
14 not being flippant, Your Honor. I don't know what day he
15 signed it. But I do know that that's -- I believe that's
16 his signature.

17 JUDGE SIPPEL: And there's a stamp on it that says
18 it was granted by the microwave branch, that would be of the
19 Commission, on it looks like October the 12th of '94. Am I
20 reading that right?

21 MR. BEGLEITER: Yes.

22 JUDGE SIPPEL: All right. It's identified for the
23 record then as your Exhibit 15 for identification. Are
24 there any objections?

25 MR. BECKNER: I think we have the same objection

1 to this as we have -- that we had with 13 and that is it
2 doesn't deal with the particular matter in issue in the
3 case. I assume it's not -- well, from the date, it's --
4 does not cover one of the receive sites that's identified in
5 the appendices to the HDO. You know, I don't -- I don't see
6 the relevance of this document in terms of tending to prove
7 anything.

8 Again, if Mr. Begleiter has an idea that he wants
9 to suggest that all the -- that it's the Government's fault
10 because all their forms are confusing and that no one can
11 figure out what they mean, you know, I suppose he could make
12 that argument. But he can do that without offering this in
13 evidence.

14 JUDGE SIPPEL: Any response to that, Mr.
15 Begleiter?

16 MR. BEGLEITER: Well, I'm not arguing that the
17 Government has done anything wrong, nor am I arguing that no
18 one can figure out what these documents mean. I'm not
19 saying that, Your Honor. This is -- Mr. Nourain will
20 testify that in the period that we are most concerned with
21 here, he was receiving STAs -- he was receiving STAs in his
22 office. This STA does not apply toward any of the buildings
23 in the HDO.

24 But he will testify that, you know, he got them
25 and that -- he thought they were coming routinely and there

1 was -- and he did not -- there was -- the receiver site is,
2 again, not on the STA. You would have to do extra work to
3 figure out what -- what receiver -- what the receiver site
4 is. And we were offering this just to show, again, as an
5 exemplar the kind of thing he received.

6 MR. BECKNER: And, Your Honor, I'd have a --

7 MR. BEGLEITER: He did receive this and he'll
8 testify to that.

9 MR. BECKNER: I'd have a further objection.
10 Again, as Mr. Begleiter just said, this is something that
11 Mr. Nourain received. But the problem is that this document
12 here has the Pepper & Corazzini file number on it, 1808,
13 which means that it came from Pepper & Corazzini's files,
14 not from Liberty's files. I'm not saying that Pepper &
15 Corazzini didn't send it to them or that they didn't have a
16 copy. But, you know, I -- even if it was used as an
17 exemplar, I'd like to have evidence that they got it.

18 MR. HOLT: I agree, Your Honor, and that's a
19 concern that I have with almost all the documents that we
20 received during discovery. They're not from the Liberty
21 files. Many of the key documents. are not from the Liberty
22 files. That may be --

23 JUDGE SIPPEL: From an agent's file though.

24 MR. HOLT: From counsel's files.

25 JUDGE SIPPEL: Who is an agent for the party.

1 MR. HOLT: But with respect to the testimony that
2 Mr. Begleiter suggested Mr. Nourain will provide, this
3 document doesn't support that testimony.

4 MR. BEGLEITER: He will testify that he got these
5 and he did not check to see what the receiver sites are.
6 Again, this is just illustrative. If there's a problem with
7 it, we will just simply -- you know, Your Honor can just
8 deny its admission.

9 JUDGE SIPPEL: Well, I'll tell you, I'll be -- you
10 know, I'll be very, very frank about this. In light of what
11 the position that Liberty has taken from the beginning of
12 this whole process, Mr. Nourain is -- is -- is not being
13 pointed to as being a reliable source of doing things right
14 as -- at least in terms of the application process. So to
15 draw any conclusions that he got it right in 1994 with
16 respect to a site that isn't even an issue in the case,
17 again, I go back to that -- to the Federal Rules of Evidence
18 403. I think it's -- it would have a tendency more to
19 confuse than to clarify.

20 MR. BEGLEITER: Just to clarify what you just
21 said, we're not -- we're not -- we're not -- we were not
22 using it to show that Mr. Nourain got anything right. This
23 was just simply to -- to show Your Honor what an STA looked
24 like and the fact that it doesn't contain a receiver site.
25 But --

1 JUDGE SIPPPEL: As being -- you know, as -- again,
2 it's one of these -- as any document in litigation, ends up
3 being a double-edged sword. I don't what Mr. Beckner and
4 Mr. Holt would do with this on cross examination with Mr.
5 Nourain. But I don't see the relevance of it. It's not a
6 focused document with respect to what's at issue in this
7 case. So I'm going to reject it. That's -- again, that's
8 Liberty's Exhibit Number 15 for identification. It would go
9 up with the record as an rejected exhibit.

10 (The document referred to,
11 previously marked for
12 identification as
13 Liberty/Bureau Exhibit Number
14 15, was rejected.)

15 And I also will comment, I mean, just to let
16 everybody know that I'm aware of the fact that these -- this
17 type of document -- that is, STA type documents and
18 applications -- well, I should say the applications that I
19 have seen in the motion for summary decision papers, I'm not
20 so sure that I've ever seen one of these in the motion
21 papers.

22 MR. BEGLEITER: No. What you might see, Your
23 Honor, is that part of the application -- the STA document
24 that I gave you is actually part of the application, the
25 difference being that there's a stamp --

1 JUDGE SIPPEL: Granted. I see that. That's how
2 the -- apparently that's how the procedure works. Right?
3 They -- instead of issuing another form, they just simply,
4 bang, stamp it and sign it and send it back to them.

5 MR. BEGLEITER: And so I can get the testimony out
6 just simply by having someone testify to that.

7 JUDGE SIPPEL: Well, I can follow that. You know,
8 but I'm going to stay with my ruling. This is -- this is
9 rejected as evidence in this case. Does this then conclude
10 your document documentary?

11 MR. BEGLEITER: No further documents, Your Honor.

12 JUDGE SIPPEL: All right. Let me tell you where
13 I'm coming out now on this situation with respect to next
14 week and what has transpired on this newly discovered
15 evidence. Before Mr. Lehmkuhl takes the stand, if I have
16 him -- have your schedule --

17 MR. BEGLEITER: He'll take the stand Tuesday, Your
18 Honor.

19 JUDGE SIPPEL: Well, he's the third one down.

20 MR. BEGLEITER: We anticipate Tuesday.

21 JUDGE SIPPEL: Yes, I would hope that, too. But
22 anyway, he's the third witness down. So by the -- by 4:00
23 on Monday, okay, I want to receive and have delivered to
24 counsel for Time Warner and Cablevision affidavits or
25 declarations both from Mr. Barr and Mr. Lehmkuhl which

1 describe -- now, whoever did -- was responsible for this
2 search can do the -- the main declaration. But I want Mr.
3 Barr to say that he looked at it and that he knows nothing
4 otherwise.

5 How the searches for discovery documents were
6 conducted by that law firm; under whose supervision the
7 searches were made; certainly what role Mr. Lehmkuhl played;
8 what instructions were received; and an explanation as to
9 why it wasn't until January 6th that a responsive document
10 which he will identify, one that you sent me that --
11 yesterday -- that -- an explanation as to why it was not
12 until January 6th that that responsive document was turned
13 over.

14 And this goes to the -- your -- your -- the reason
15 I'm requiring this at this time in this context is because
16 this has nothing to do now with -- with the motion that's
17 pending for the inquiry. This has to do with the
18 credibility of Mr. Lehmkuhl who Liberty is sponsoring as its
19 witness. And that's to be then delivered by 4:00 which will
20 then give counsel and myself an opportunity to see this
21 before -- several hours at least before Mr. Lehmkuhl takes
22 the stand.

23 And I'm going to ask you the question, Mr.
24 Begleiter or anybody who wants to answer on behalf of
25 Liberty, what has been bothering Mr. Holt particularly, is

1 why hasn't Liberty produced any of these documents? I
2 shouldn't say any of these documents. Why hasn't Liberty
3 produced this series of documents that go to the -- that
4 really I think all are conceding -- I certainly have -- have
5 determined is a highly relevant piece of information as far
6 as a document goes.

7 Whether or not anybody read this stuff is
8 something else again. That's what we're here to decide.
9 But the point is is that nobody's going to argue that this
10 is not very significant information that, had it been used
11 properly, perhaps we could have avoided a lot of what we're
12 doing. And I'm asking the question, is why is this all
13 coming out of Pepper & Corazzini's records and not coming
14 out of Liberty's records.

15 MR. BEGLEITER: Your Honor, I'm not sure that
16 that's -- we're talking about the document of this week.
17 I'll give what I believe to be the explanation. We sent
18 someone from our firm to Mr. Nourain's office. And we had
19 someone from our firm go through the documents, a very
20 capable paralegal, and determine what was relevant. She got
21 those documents; she took them back us to us. And we -- and
22 then we -- and we -- we produced those documents as -- to
23 the extent that they were relevant or to the extent that
24 they weren't privileged. And whatever it is, we did it as -
25 - as I think is appropriate.

1 Whether this document -- I cannot -- the -- I
2 mean, the paralegal went up there. For whatever reason, she
3 did not find that document. She wasn't looking for that
4 document particularly. But she took all the documents back
5 with her that she believed were relevant to this -- in good
6 faith, were relevant to this proceeding. Why it's not
7 there, the explanation could be that Mr. Nourain is a lousy
8 file-keeper. As a matter of fact, he had no files.
9 Essentially, the papers would go into a file cabinet in no
10 particular order. He'll testify to that. He didn't view
11 his job as being a -- as being someone who was involved with
12 paper.

13 I'm speculating, Your Honor, in a way. I can't --
14 you know, other than going back and starting from square one
15 again which I don't think anybody wants us to do, I can't
16 tell you why a specific document does not show up in our
17 production. I can tell you that we made a good faith
18 attempt to get every document that was -- that was in the
19 broad -- in the broad scope of relevance produced.

20 JUDGE SIPPEL: Well, let's take it one step at a
21 time. I'm not sure that that -- that apparently doesn't
22 totally answer the question. I -- we're just going to have
23 to wait until we -- we find out a little bit more from the
24 witnesses. And you'll have an opportunity, Mr. Holt and Mr.
25 Beckner, to ask them all kinds of questions. Because that

1 document is -- now, you're not offering that -- Liberty is
2 not going to sponsor the latest Lehmkuhl --

3 MR. BEGLEITER: No.

4 JUDGE SIPPEL: No, okay.

5 MR. BEGLEITER: Your Honor, we thought that if we
6 did that, we would be -- we would be essentially trying to
7 take advantage of what was an oversight on the part of one
8 of our client's agents. We didn't think that was fair. Mr.
9 Beckner is offering that as an exhibit.

10 JUDGE SIPPEL: Is that true, Mr. Beckner?

11 MR. BECKNER: Yes, that's true.

12 JUDGE SIPPEL: Mr. Holt, you have some to note?

13 MR. HOLT: Yes.

14 MR. BEGLEITER: And by the way -- I'm sorry.

15 MR. HOLT: I did wish to interject here, Your
16 Honor. One of the things that particularly is troubling me
17 is that I requested counsel to conduct a re-search of the
18 files at Liberty with respect to the February -- I mean the
19 April 28th memo to determine whether any nonidentical copy
20 exists in the Liberty files. That was a specific targeted
21 request. The same thing could have been done for the
22 February 24th memo which all parties concede to be relevant.
23 And that request was refused.

24 And what I think would be extremely helpful would
25 be to -- if you would direct Liberty to search the files.