

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of Secretary

In Re Requests Of

LIBERTY CABLE CO., INC.

For Special Temporary Authority
For Private Operational Fixed
Microwave Radio Service

New York, New York

-) WT DOCKET NO. 96-41
-)
-) File Nos./Call Signs
-)
-) 708777 (WNTT370)
-) 708778, 713298 (WNTM210)
-) 708779 (WNTM385)
-) 708780 (WNTY375)
-) 708781, 709426, 711937 (WNTM212)
-) 709332 (WNTY371)
-) 712203 (WNTW782)
-) 712218 (WNTY584)
-) 712219 (WNTY605)
-) 713295 (WNTX889)
-) 713297 (WNTL307)
-) 713300 (WNTY372)
-) New/WPJB384
-) New/WPJB388
-) New/WPJB392

To: Hon. Richard L. Sippel, Administrative Law Judge

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF
TIME WARNER CABLE OF NEW YORK CITY AND PARAGON
COMMUNICATIONS, AND CABLEVISION OF NEW YORK CITY - PHASE I**

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SUMMARY

The substantial record evidence in this proceeding shows that Liberty did indeed violate the Communications Act, and the Commission's rules and policies in the application process and the hearing proceeding, and as such, should not be granted the above-captioned applications.

The facts show that Liberty activated a total of 19 microwave facilities before it received any Commission authorization to do so. By late April 1995, Liberty knew that it was operating these facilities without licenses to do so. On April 26, 1995, Mr. Nourain drafted a memorandum listing sites for which STAs would be filed. All but two of the microwave facilities listed in the memorandum were already operational as of April 26, 1995. On April 27, 1995, Mr. Barr -- FCC counsel to Liberty -- participated in a telephone conference with Mr. Price, and learned that Liberty was operating microwave facilities without authorization. On April 28, 1995, Mr. Lehmkuhl -- also FCC counsel to Liberty -- prepared and sent a memorandum to Liberty, at Liberty's request, advising it that applications were only "pending" for the microwave facilities that Liberty was already operating.

On May 4, 1995, Liberty filed requests for STA for 14 microwave facilities that it knew were already operational, but did not disclose this information to the Commission. In a Surreply dated May 17, 1995, Liberty disclosed to the Commission that the facilities for which it had requested STA were already operational, but Liberty did not admit that it knew this fact when it filed the May 4 STA requests. To the contrary, Liberty affirmatively represented that it sought authorization to commence operations. Liberty also did not

supplement any of the pending license applications to reflect that the facilities were operational. Liberty filed one additional STA request on May 19, 1995, and again did not disclose that the facility was already operational.

On June 16, 1995, Liberty submitted a response to a Section 308(b) inquiry by the Commission regarding its unauthorized microwave operations. By June 22, 1995, Liberty had discovered an additional four unlicensed facilities. Liberty did not supplement its Section 308(b) response with this new information. Not only were these four facilities operating without licenses, Liberty had not even filed applications for licenses for these facilities. Liberty finally filed such applications on July 17, 1995. Liberty deliberately omitted the fact that it was already operating the facilities for which it was requesting licenses. On July 24, 1995, Liberty filed STA requests for these four paths, and finally acknowledged that the paths were activated before Liberty had even filed applications therefor.

In addition to Liberty's material omissions in the application process, Liberty attempted to corrupt the hearing process by giving false, misleading and inconsistent testimony during depositions and during the January 1997 credibility hearing. Liberty's witnesses have testified inconsistently on almost every material fact involved in this proceeding.

Liberty also abused the discovery process in this proceeding. Every significant document was produced out of time, and with no justification for such untimeliness. Several documents were even produced from the same file, but at substantially different times -- also with no valid explanation.

As a matter of law, Liberty is not qualified to be a Commission licensee because it lacks the requisite candor and forthrightness. The Commission relies heavily on the truthfulness and reliability of its licensees and applicants, and Liberty's actions have proven that Liberty lacked candor in dealing with the Commission, made deliberate and repeated material misrepresentations to the Commission, and violated the Commission's rules and policies. The Commission has authority to deny Liberty's applications for such behavior.

Specifically, Liberty violated the Commission's character policy by failing to inform the Commission that it knew it was operating microwave facilities without licenses to do so when it filed STA requests for those facilities. Liberty further made material misrepresentations to the Commission regarding its unauthorized operations in numerous pleadings filed in the spring and summer of 1995. Liberty also violated the Commission's character policy by giving false, misleading and inconsistent testimony in the hearing proceeding. Finally, Liberty lacked candor in its conduct of discovery by withholding significant documents, and then producing them one at a time and in an untimely manner.

Liberty also violated the Communications Act and the Commission's rules by: 1) operating microwave facilities without licenses; 2) failing to supplement its responses to the Commission's Section 308(b) requests with new, relevant information; 3) submitting false statements, or willfully omitting material information in violation of 47 C.F.R. § 1.17; and 4) failing to amend its applications with changed information, such as the fact that the facilities were made operational prior to the grant of licenses, in violation of 47 C.F.R. § 1.65(a).

Finally, in considering whether to grant or deny Liberty's applications, the Presiding Judge must consider the evidence contained in Liberty's Internal Audit Report. This Report has been kept confidential from TWCNYC and Cablevision and the Presiding Judge, but contains substantial, relevant evidence regarding Liberty's unauthorized microwave operations and Liberty's licensing procedures. The information contained in the Report directly impacts the issues to be resolved in this proceeding, and, pursuant to the Administrative Procedure Act, must be considered in a decision on the merits.

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) New/WPJB388
) New/WPJB392

To: Hon. Richard L. Sippel, Administrative Law Judge

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF
TIME WARNER CABLE OF NEW YORK CITY AND PARAGON
COMMUNICATIONS, AND CABLEVISION OF NEW YORK CITY - PHASE I**

Time Warner Cable of New York City and Paragon Communications ("TWCNYC") and Cablevision of New York City -- Phase I ("Cablevision") (collectively, "TWCV") submit these Proposed Findings of Fact ("Findings") and Conclusions of Law in accordance with the Presiding Judge's Order. Order, WT Docket No. 96-41, FCC 97M-12 (rel. Jan. 31, 1997).

PROPOSED FINDINGS OF FACT**I. Background****A. Procedural History**

1. By Hearing Designation Order and Notice of Opportunity For Hearing, 11 FCC Rcd 14133 (1996) ("HDO"), the Federal Communications Commission ("FCC" or "Commission") designated the above-captioned applications of Liberty Cable Co., Inc. ("Liberty")¹ for hearing to determine, inter alia, whether Liberty is qualified to hold the operational fixed microwave service ("OFS") licenses for which it has applied.

2. The HDO, at ¶ 30, specified the following issues:

* * *

- (2) (a) To determine the facts and circumstances surrounding Liberty Cable Co., Inc.'s admitted violations of Section 301 of the Communications Act and Section 94.23 of the Commission's Rules, 47 U.S.C. § 301, 47 C.F.R. § 94.23, by operating certain private operational fixed microwave facilities without first obtaining Commission authorization.
- (b) To determine whether Liberty Cable Co. Inc. has violated Section 1.65 of the Commission's Rules, 47 C.F.R. 31 § 1.65, by failing to notify the Commission of its premature operation of service in either its underlying applications or its requests for special temporary authority.
- (c) To determine whether, based on (2)(a) and (b) above, Liberty is qualified to be granted the above-captioned private operational fixed microwave authorizations.

¹TWCNYC and Cablevision are aware that Liberty Cable Company, Inc. is now known as "Bartholdi Cable Company, Inc." following the sale of most of the former Liberty's assets (including its name) to a subsidiary of RCN Corporation. However, for clarity, the applicant for the captioned licenses will be referred to by its former name, "Liberty."

- (3) (a) To determine whether Liberty Cable Co., Inc., in relation to its interconnection of non-commonly owned buildings and its premature operation of facilities, misrepresented facts to the Commission, lacked candor in its dealings with the commission, or attempted to mislead the Commission, and in this regard, whether Liberty Cable Co., Inc. has violated Section 1.17 of the Commission's Rules, 47 C.F.R. § 1.17.
- (4) To determine, based on the evidence adduced in issues (1) through (3) above, whether Liberty Cable Co., Inc. possessed the requisite character qualifications to be granted the above-captioned private operational fixed microwave authorizations for which it has applied and, accordingly, whether grant of its applications would service the public interest, convenience and necessity.

HDO, 11 FCC Rcd 14133, ¶ 30.²

3. The HDO, at ¶ 33, made TWCNYC, Cablevision and the Wireless Telecommunications Bureau (the "Bureau") parties to the proceeding. HDO, 11 FCC Rcd 14133, ¶ 33. The HDO, at ¶ 34, placed both the burden of proceeding with the introduction of evidence and the burden of proof on Liberty. HDO, 11 FCC Rcd at 14133, ¶ 34.

4. Additionally, the HDO, at ¶ 35, ordered the Presiding Judge to determine, irrespective of whether the hearing record warrants an order denying the above-captioned applications, whether an Order of Forfeiture should be issued against Liberty in an amount not to exceed the statutory maximum for violations of Section 301 of the Communications

²The HDO also specified issues to determine: (a) the facts and circumstances surrounding Liberty Cable Co., Inc.'s operation of hardwired interconnected, non-commonly buildings without first obtaining a franchise. See 47 U.S.C. § 541(b), 47 U.S.C. Title VI and 47 C.F.R. § 76 *et seq.*; (b) whether Liberty Cable Co., Inc. has violated Section 1.65 of the Commission's Rules, 47 C.F.R. § 1.65, by failing to notify the Commission of its provision of service to interconnected, non-commonly owned buildings; and (c) whether based on (1)(a) and (b) above, Liberty is qualified to be granted the above-captioned private operational fixed microwave authorizations. These issues are the subject of pending motions for summary decision, and are not under consideration in this phase of the proceeding.

Act, and Sections 1.17, 1.65 and 94.23 of the Commission's Rules. HDO, 11 FCC Rcd 14133, ¶ 35.

5. Discovery, including requests for production of documents and depositions, ensued. See, e.g., Bureau's Request for Production of Documents by Liberty Cable Co., Inc., April 3, 1996; see L/B Exs. 4, 5, 7, 9-12; TWCV Exs. 1, 41, 46.³

6. On July 15, 1996, Liberty and the Bureau filed with the Presiding Judge a joint motion seeking summary decision on the issues specified in the HDO. Joint Motion by Bartholdi Cable Co., Inc. and Wireless Telecommunications Bureau for Summary Decision, July 15, 1996. TWCNYC and Cablevision opposed that motion in a combined pleading filed September 13, 1996. Combined Opposition to Joint Motion for Summary Decision, September 11, 1996.

7. After submission of the summary judgment papers, the Presiding Judge authorized the taking of additional depositions following the production by Liberty of a memorandum dated February 24, 1995, that had been prepared by Michael Lehmkuhl, an attorney with the law firm of Pepper & Corazzini. Order, WT Docket No. 96-41, FCC 96M-188 (rel. July 29, 1996). The February 24 memorandum, which had been initially withheld on grounds of privilege, see Memorandum Opinion and Order, WT Docket No. 96-41, FCC 96M-164 (rel. June 27, 1996), included an Inventory of all OFS licenses held by Liberty as of February 24, 1995, as well as all applications for OFS facilities then pending for Liberty at the FCC.

³TWCNYC and Cablevision's exhibits are cited as "TWCV Ex. __," and Liberty and the Bureau's exhibits are cited as "L/B Ex. __."

8. Following the submission by all parties of supplemental memoranda concerning the pending Motion for Summary Decision, the Presiding Judge determined that it would be necessary to "make independent findings of credibility and candor with respect to the testimony of Mr. Price, Mr. Nourain, Mr. Lehmkuhl and Mr. Howard Milstein on the factual issue of the actual date(s) that knowledge was first obtained by Liberty of the premature activations." Memorandum Opinion and Order, WT Docket 96-41, FCC 96M-265 (rel. Dec. 10, 1996), ¶ 4. The Presiding Judge thus established dates for a "mini-hearing" on credibility issues surrounding the facts and circumstances of the premature microwave applications. Id. at 2, n.2.

9. Hearing sessions were held in Washington, D.C., on January 13-16, 21, 27 and 28, 1997. Proposed Findings of Fact and Conclusions of Law were filed February 28, 1997, and Replies are scheduled to be filed March 7, 1997.

B. Witnesses

10. Howard Barr - Since June 1988, Mr. Barr has been employed as an attorney at the Washington, D.C. law firm of Pepper & Corazzini. Barr, Tr. 1790. He has performed substantial work for Liberty since early 1994. Id. at 1791-92. He supervised Mr. Lehmkuhl in the preparation of Liberty's OFS microwave license applications and requests for Special Temporary Authority ("STA"). Id. at 1792-93; Lehmkuhl, Tr. 1085.

11. Michael Lehmkuhl - Mr. Lehmkuhl has been an associate at Pepper & Corazzini since June 1994. Lehmkuhl, Tr. 1025. He prepared and filed Liberty's OFS microwave license applications and STA requests. Lehmkuhl, Tr. 1026-27.

12. Edward Milstein - Mr. E. Milstein is Liberty's Co-Chairman and an owner of 33 percent of Liberty. E. Milstein, Tr. 1613; TWCV Ex. 46 (E. Milstein Deposition, 5/30/96), at 6-7. During 1994 and 1995, he conducted Liberty's marketing efforts and attended weekly meetings of senior management. Id. at 9-11.

13. Howard Milstein - Mr. H. Milstein is Liberty's Chairman, Chief Executive Officer, and an owner. L/B Ex. 4 (H. Milstein Deposition, 5/30/96), at 6. He holds a 34 percent ownership interest in Liberty. Edward Milstein, his brother, and Philip Milstein, his cousin, each have a 33 percent interest in Liberty. H. Milstein, Tr. 511-12. During 1994 and 1995, he attended weekly meetings of senior management every Thursday. L/B Ex. 4 (H. Milstein Deposition, 5/30/96), at 8.

14. Behrooz Nourain - During 1994 and 1995, Mr. Nourain was Liberty's Director of Engineering. Nourain, Tr. 608. He was responsible for engineering and licensing related to Liberty's 18 gigahertz ("GHz") system, managing distribution and construction, and providing pre-sale support and surveys for buildings. Id. at 613; Ontiveros, Tr. 1691. Messrs. Price and Ontiveros supervised Mr. Nourain from 1993 through April 1995. Nourain, Tr. 613; Price, Tr. 1351.

15. Anthony Ontiveros - Mr. Ontiveros worked at Liberty from 1986 through the spring of 1996. Ontiveros, Tr. 1685. Since 1991, he was General Manager of Operations. His responsibilities included customer service, installations, service, maintenance, billing, and construction. Id. at 1687-88. The technical operations department, including Mr. Nourain who worked in the microwave department, reported to Mr. Ontiveros. Id. at 1690-91. Mr. Ontiveros reported directly to Mr. Price. Id. at 1690; Price, Tr. 1350.

16. Peter Price - Mr. Price was the President and Co-Chief Executive Officer with Mr. H. Milstein since early 1991. Price, Tr. 1346. He was "ultimately responsible for all operations of the company, specifically to -- to organize and have report to [him] a customer service department, an operations department, a marketing department, a finance department, and to oversee various legal initiatives that were emerging." Id. Outside counsel, including Pepper & Corazzini, Constantine & Partners, and Ginsburg, Feldman and Bress, reported to Mr. Price. See id. at 1349.

C. Liberty's Unlicensed Microwave Facilities

17. Between July 11, 1994 and April 24, 1995, Liberty activated a total of nineteen OFS microwave facilities before it received any grant of authority from the Commission to do so. Liberty Cable Co., 11 FCC Rcd 14133, ¶ 7. Those facilities are listed in Appendix A of the HDO. TWCV Ex. 30, ¶ 2 & n.3.

18. The following chart indicates significant dates associated with each of the unlicensed facilities that are at issue in this proceeding:

FCC File Number	Address	Comsearch Frequency Coordination Report ⁴	License Application	STA Request	Activation Date	Days Between Comsearch Report and Activation
708778	35 W. End Ave.	11/16/94	12/22/94	5/4/95	1/3/95	48 days
	639 W. End Ave.	11/16/94	12/22/94	5/4/95	2/14/95	90 days
708779	441 E. 92nd St./1775 York Avenue	1/12/95	2/21/95	5/4/95	1/16 or 1/23/95	4 or 11 days

⁴Liberty's applications for microwave licenses referenced in the above chart contain dated Comsearch frequency coordination reports, except for 433 E. 56th Street and 114 E. 72nd Street. Frequency coordination dates for those two addresses come from TWCV Ex. 24, a document prepared by Liberty in early July 1995.

	767 Fifth Avenue	9/26/94	11/7/94	5/4/95	4/12 or 4/17/95	198 or 203 days
	1295 Madison Avenue	7/3/95	7/17/95	7/24/95	7/27 or 7/28/94	
	38 E. 85th Street	7/3/95	7/17/95	7/24/95	7/18/94	
708780	564 First Ave. (NYU)	9/26/94	11/7/94	5/4/95	1/3 or 1/11/95	99 or 107 days
	545 First Ave. (NYU)	9/26/94	11/7/94	5/4/95	1/3 or 1/23/95	99 or 119 days
	200 E. 32nd Street	2/16/95	3/23/95	5/4/95	3/27/95	39 days
708781	30 Waterside Plaza	1/12/95	2/21/95	5/4/95	3/15/95	62 days
	430/440 E. 56th Street	7/3/95	7/17/95	7/24/95	7/11/94	
	433 E. 56th Street	12/21/94	1/31/95	5/4/95	12/27/94	6 days
	114 E. 72nd Street	11/17/94	11/23/94	5/4/95	1/30/95	74 days
	524 E. 72nd Street	9/26/94	11/7/94	5/4/95	11/16/94	51 days
709332	25 W. 54th Street	10/13/94	11/23/94	5/4/95	2/6/95	116 days
712203	380 Rector Place	7/3/95	7/17/95	7/24/95	10/12/94	
712218	16 W. 16th Street	1/12/95	2/21/95	5/4/95	3/28/95	75 days
712219	6 E. 44th Street	1/12/95	2/21/95	5/4/95	4/12 or 4/19/95	90 or 97 days
713295	2727 Palisades Avenue	2/16/95	3/24/95	5/19/95	4/24/95	67 days

TWCV Ex. 30.

D. Relevant FCC Filings

19. On January 9, 1995, TWCNYC filed a petition to deny or condition grant against Liberty's OFS applications in File Nos. 709332, 709426, 708777, 708778, 708779, 708780 and 708781. These applications had gone on public notice on December 9, 1994 and on December 30, 1994. The petition was based on the allegation that Liberty was ineligible to hold OFS licenses because it was illegally providing cable television service by means of cable interconnections between buildings under different ownership without the cable television franchise required for such activity under federal and New York law. TWCNYC

charged that Liberty had lacked candor with the Commission by misrepresenting itself as an SMATV operator.

20. On January 24, 1995, Liberty filed its Opposition to TWCNYC's petition to deny.

21. On April 10, 1995, TWCNYC filed a second petition to deny, this time against Liberty's applications in File Nos. 712218 and 712219. These applications went on public notice on March 10, 1995.

22. On April 17, 1995, TWCNYC filed a third petition to deny, this time against Liberty's applications in File Nos. 712203 and 711937. These applications went on public notice on March 17, 1995.

23. On April 25, 1995, Liberty filed its Opposition to TWCNYC's April 10 Petition to Deny, and on May 3, 1995, Liberty filed its Opposition to TWCNYC's Petition.

24. On May 4, 1995, Liberty filed requests for STA for fourteen of the microwave facilities listed in Appendix A of the HDO. Although they argued that "any further delay in the consideration of the aforementioned applications . . . seriously undermines Liberty's ability to deliver service," these STA requests failed to state that Liberty had already commenced service at these addresses by means of unlicensed facilities. TWCV Ex. 17.

25. On May 5, 1995, TWCNYC filed a Reply to Opposition to Petitions to Deny ("Reply") on May 5, 1995, which identified two microwave facilities where Liberty appeared to be providing service without the required license. Both microwave facilities, 639 W. End Ave. and 1775 York Ave., are listed in Appendix A of the HDO. Reply to Opposition, May 5, 1995, at 7-8.

26. On May 11, 1995, TWCNYC filed an Opposition to Liberty's May 4 requests for STA. The Opposition did not repeat TWCNYC's tentative suggestion that Liberty was operating unlicensed OFS facilities. Rather, it reiterated TWCNYC's original argument that Liberty was disqualified from holding OFS licenses because it was violating federal and New York law by providing cable television service without the required franchise. It also pointed out that at least some of the paths for which STA was requested were to replace existing cable interconnections and therefore, as to those buildings, Liberty was not in immediate jeopardy of losing customers as a result of not having a grant of authority to operate the requested OFS facilities.

27. In a Surreply to TWCNYC's May 5, 1995 Reply, filed May 17, 1995, Liberty admitted that it had activated the two microwave facilities listed in Time Warner's Reply without proper authorization from the FCC. TWCV Ex. 18, at 1-2. Liberty further disclosed that it had activated unlicensed microwave facilities serving thirteen additional locations:

- (1) 35 W. End Ave.
- (2) 767 Fifth Ave. (Surreply lists address as 567 Fifth Ave.)
- (3) 564 First Ave. (Surreply lists address as Resident Hall, NYU Campus)
- (4) 545 First Ave. (Surreply lists address as Greenberg Hall, NYU Campus)
- (5) 200 E. 32nd St.
- (6) 30 Waterside Plaza (Surreply lists address as 30 Waterside)
- (7) 433 E. 56th St.
- (8) 114 E. 72nd St.
- (9) 524 E. 72nd St.
- (10) 25 W. 54th St.
- (11) 16 W. 16th St.
- (12) 6 E. 44th St.
- (13) 2727 Palisades Ave.

Id. at 2. These facilities are listed in Appendix A of the HDO. TWCV Ex. 30.

28. On May 19, 1995, Liberty filed a STA request for the microwave facility at 2727 Palisades Avenue, which used the same language as the May 4 STA requests but omitted to state that Liberty had already commenced service to this address by means of an unlicensed OFS facility. Moreover, unlike the applications that were the subject of the May 4 STA requests, the application for a facility to serve 2727 Palisades Avenue was not the subject of a Petition to Deny. TWCV Ex. 38.

29. Liberty's Reply to Time Warner's Opposition to STA requests was filed on May 26, 1995, and it made no mention of the fact that fifteen of the facilities for which STA was being sought were already operating. (The fifteen facilities include the fourteen facilities for which STA was requested on May 4, 1995 plus the facility at 2727 Palisades Avenue for which STA was requested on May 19, 1995.) TWCV Ex. 19.

30. On May 19, 1995, Liberty filed a request with the FCC seeking special temporary authority to commence operating an OFS receive site located at 2727 Palisades Avenue. TWCV Ex. 38. Earlier, on March 24, 1995, liberty had filed an application with the FCC for a license to provide service to 2727 Palisades Avenue from a transmitter site located at 2600 Netherlands Avenue ("Century") (the "Century Station").⁵ Lehmkuhl, Tr. 1274-77; TWCV Ex. 30; TWCV Ex. 40, at 6. Liberty's May 19 STA request, however, failed to disclose the fact that Liberty had already commenced service to 2727 Palisades

⁵The application filed by Liberty on March 24, 1995, sought to modify Liberty's license for the Century Station to add an OFS path from the Century transmitter site to the receive facility located at 2727 Palisades Avenue. See, e.g., TWCV Ex. 38, at 2.; TWCV Ex. 39, at 9 (functional system diagram). The 2727 Palisades Avenue receive site was one of several locations to which Liberty was providing service from the Century transmitter. See, e.g., TWCV Ex. 39, at 9. The application for 2727 Palisades Avenue was assigned an FCC File No. 713295. TWCV Ex. 30.

Avenue on April 24, 1995, nearly a month before its STA request and only four days after Liberty had filed its application for a license to operate that facility. TWCV Ex. 38; TWCV Ex. 30; Lehmkuhl, Tr. 1273.

31. On May 23, 1995, Liberty filed an application with the FCC seeking to amend its March 24 application for 2727 Palisades Avenue to add an additional path from the Century Station to an OFS receive site located at 4525 Henry Hudson Parkway ("4525 Henry Hudson Parkway"). TWCV Ex. 39; *id.* at 9. In a functional system diagram attached to that application, Liberty indicated that the application for 2727 Palisades Avenue was currently pending. TWCV Ex. 39, at 9. Liberty did not disclose, however, that the path to 2727 Palisades Avenue was already in operation, without FCC authority.⁶

32. On May 24, 1995, Liberty filed an amendment to its May 19 STA request for 2727 Palisades Avenue in order to include the OFS path for 4525 Henry Hudson Parkway. Lehmkuhl, Tr. 1271-72; TWCV Ex. 39. In that filing, Liberty asked that the May 24 STA amendment be "incorporated within and considered as part of Liberty's original [May 19] request for STA." TWCV Ex. 39, at 1. The amendment also included a copy of the May 19 STA request, without modification. Lehmkuhl, Tr. 1271-71; TWCV Ex. 39. Again, however, Liberty did not disclose in its May 24 STA amendment that service to 2727 Palisades Avenue was already being provided, without FCC authority. Lehmkuhl, Tr. 1273; TWCV Ex. 39.

⁶Liberty's STA request for authority to commence service at 2727 Palisades Avenue was not granted until September 7, 1995. Lehmkuhl, Tr. 1282; *see* TWCV Ex. 43, at 2.