

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

In re Applications of)		
	)	WT Docket No. 96-41	
Liberty Cable Co., Inc.)		
)		
For Private Operational Fixed	)	File Nos:	
Microwave Service Authorization and	)	708777	WNTT370
Modifications	)	708778, 713296	WNTM210
	)	708779	WNTM385
	)	708780	WNTT555
	)	708781, 709426, 711937	WNTM212
New York, New York	)	709332	(NEW)
	)	712203	WNTW782
	)	712218	WNTY584
	)	712219	WNTY605
	)	713295	WNTX889
	)	713300	(NEW)
	)	717325	(NEW)
)		

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

**CABLEVISION'S REPLY TO PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

CABLEVISION OF NEW YORK CITY - PHASE I

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Cablevision of New York City - Phase I ("Cablevision"), by its counsel, hereby respectfully submits this Reply to the Proposed Findings of Fact and Conclusions of Law (the "Findings") filed by Bartholdi Cable Company, Inc., f/k/a Liberty Cable Company, Inc. ("Liberty"), and the FCC's Wireless Telecommunications Bureau (the "Bureau") on February 28, 1996.

INTRODUCTION AND SUMMARY

Cablevision is filing this Reply separately to focus attention on certain key facts surrounding Liberty's unauthorized service to 2727 Palisades Avenue ("2727 Palisades"), and its lack of candor in filings with the Commission relating to that facility.^{1/} Liberty has made no effort in its Findings to explain the knowing omissions and willful misstatements made in the various STA requests and other pleadings that Liberty filed with the Commission concerning those facilities.^{2/} Thus, Liberty has failed to sustain its burden of showing that it has the character qualifications necessary to hold the requested authorization for 2727 Palisades, as amended.

In contrast to Liberty's silence on the subject, the remaining parties agree that Liberty knowingly failed to disclose material information and made willful misstatements in its May 19 STA Request for 2727 Palisades. Consistent with the showing made in the joint findings of Cablevision and Time Warner,^{3/} the Bureau concurs that "when Liberty filed ... [its May

^{1/} In addition to the points made in this pleading, Cablevision hereby adopts and incorporates by reference the Reply that is being filed concurrently herewith by Time Warner Cable of New York City and Paragon Communications (jointly, "Time Warner"). Time Warner Cable of New York City and Paragon Communications' Reply to Proposed Findings of Fact and Conclusions of Law of Bartholdi Cable Company, Inc. (March 10, 1997) ("Time Warner Findings").

^{2/} As discussed below, Liberty's application for 2727 Palisades was filed as an application to modify the license of an existing transmitter site. The modification application for 2727 Palisades was then itself amended by subsequent applications for additional OFS facilities. Similarly, Liberty's May 19 STA request for 2727 Palisades was the first in a series of STA requests for OFS facilities, all of which were filed as amendments to the original STA request for 2727 Palisades. Thus, Liberty's original lack of candor in its May 19 STA Request was carried over into its subsequent filings with the Commission.

^{3/} See Proposed Findings of Fact and Conclusion of Law of Time Warner Cable of New York City and Paragon Communications, and Cablevision of New York City - Phase I (Feb. 28, 1997) ("TWCVC Findings").

4) STA requests, all of its principals were indeed acutely aware of the fact that those paths were already activated, and Liberty's customers were already receiving service."^{4/} The Bureau also concurs that the STA requests used language that was prospective in nature, thereby suggesting that service to the paths for which the STAs were being sought had not yet commenced, but instead, would commence sometime in the future.^{5/} The Bureau thus agrees that Liberty "made willful misstatements in the STA requests and failed to give full and complete disclosures as to all the relevant facts and circumstances surrounding the paths being applied for,"^{6/} including its May 19 STA request for 2727 Palisades. Nonetheless, the Bureau concluded, without explanation, that "Liberty can be trusted in the future on a ongoing basis."^{7/} The Bureau therefore recommended that Liberty be sanctioned with a monetary forfeiture rather than the denial of its pending applications.

Cablevision respectfully submits that the Bureau's recommendation is squarely at odds with both the evidence of record and clear Commission precedent. On its own, the evidence cited in the Bureau's submission, not to mention the evidence cited in the joint findings of Cablevision and Time Warner, overwhelmingly establishes that Liberty lacks the requisite qualifications to hold the authorizations at issue.^{8/} This conclusion is further buttressed

^{4/} Bureau Findings, ¶ 107.

^{5/} Bureau Findings, ¶ 106.

^{6/} Bureau Findings, ¶ 111.

^{7/} Although the Bureau stated that the basis for its conclusion would be "discussed later herein," Bureau Findings, ¶ 111, Cablevision was unable to discern any subsequent explanation to support that recommendation.

^{8/} See also Time Warner's Reply Findings.

when consideration is given to the facts cited below relating to 2727 Palisades, which undermine the Bureau's notion that Liberty can be relied upon in the future to act truthfully in its dealings with the Commission.

Specifically, the evidence shows that Liberty not only knowingly withheld material information and made affirmative misstatements in its May 19 STA Request for 2727 Palisades, but also that Liberty took steps to conceal its unauthorized operation of 2727 Palisades in an effort to avoid attracting a petition to deny its then pending application. The evidence also shows that Liberty subsequently failed to amend its pending application to disclose that fact that service to 2727 Palisades had already commenced without FCC authorization, and knowingly failed to disclose in related STA requests and other filings with the Commission that 2727 Palisades was already in operation. Several of these filings were made at a time when Liberty knew that its OFS activities were under heightened scrutiny, and after Liberty had purportedly commenced its voluntary "compliance program." Accordingly, Cablevision respectfully submits that Liberty cannot be relied upon in the future to deal truthfully with the FCC, and that denial of the applications is the appropriate sanction.

ARGUMENT

I. Liberty Has Failed To Sustain Its Burden Of Showing That It Did Not Misrepresent Facts Or Lack Candor In Its Dealings With The FCC Concerning 2727 Palisades and Related Facilities.

The HDO, at ¶ 34, placed the burden of proceeding with the introduction of evidence and the burden of proof under the designated issues squarely on Liberty. Hearing Designation Order and Notice of Opportunity for Hearing, 11 FCC Rcd. 14133 (1996). Yet Liberty has made no effort in its Findings to explain either the knowing omissions or the willful misstatements made in its May 19 STA request and subsequent filings with the Commission relating to 2727 Palisades. Indeed, the company has said absolutely nothing on this point. Liberty does admit, however, that it knew as of May 17, 1995, that it was providing service to 2727 Palisades without FCC authorization.^{9/} Having failed to sustain its burden of proof under the specified issues, Liberty's application for 2727 Palisades, as amended, should be denied.^{10/}

II. Liberty Affirmatively Sought to Conceal Material Facts Concerning Its Operation of 2727 Palisades.

Liberty's effort to conceal its unauthorized operation of 2727 Palisades is best observed when the evidence is viewed chronologically.

^{9/} See, e.g., Liberty Findings, ¶ 58-64.

^{10/} As discussed below, Liberty's application for 2727 Palisades (FCC file No. 717325) was amended to include OFS paths to sites located at 4525 Henry Hudson Parkway, 3215 Arlington Parkway, 3001 Henry Hudson Parkway, 3875 Waldo Avenue, and 2500 Johnson Avenue, Riverdale, NY.

- On February 13, 1995, Liberty executed a contract to provide service to 2727 Palisades. TWCV Ex. 19., at 3. That contract included a commitment to install service within 120 days, i.e., on or before June 13, 1995. Id. Thereafter, on March 24, 1995, Liberty filed an application with the FCC for a license to provide service to 2727 Palisades from a transmitter located at 2600 Netherlands Avenue (Century) (the "Century Transmitter").^{11/} Lehmkuhl, Tr. 1274-77; TWCV Ex. 30; TWCV Ex. 40, p. 6. On April 14, 1995, Liberty's application for 2727 Palisades was placed on public notice as having been accepted for filing by the FCC. TWCV Ex. 34; Lehmkuhl, Tr. 1245. That application was assigned the FCC File No. 713295. TWCV Ex. 30.
- On April 24, 1995, Liberty commenced service to 2727 Palisades without FCC authorization. TWCV Ex. 30. Two days later, in a memorandum dated April 26, 1995, Nourain advised E. Milstein, Price, Tenety and Ontiveros that "in order to turn on current customers the Special Temporary Authority (STA) is

^{11/} The 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. See, e.g., TWCV Ex. 38, p. 2; TWCV Ex. 39, p. 9 (functional system diagram). The 2727 Palisades receive site was one of several locations to which Liberty was providing service from the Century transmitter. See, e.g., TWCV Ex. 39, p. 9. The application for 2727 Palisades was assigned an FCC file number 713295. TWCV Ex. 30.

being filed by our FCC Attorney" for various paths specified in that memorandum, including 2727 Palisades.^{12/} TWCV Ex. 35.

- As discussed more thoroughly in the parties' proposed findings, the issue of Liberty's authorized operations was considered during a conference call on April 27, 1995, among Price, Barr, Rivera, and Constantine. The following day, in a memorandum dated April 28, 1995, Lehmkuhl confirmed to Price and Nourain that Liberty's application for 2727 Palisades (and other facilities) was still pending. TWCV Ex. 34. As to STA requests, the memorandum reversed counsel's prior advice and recommended that STA requests should be filed "owing to the seriousness of the situation." TWCV Ex. 34.^{13/} A list appended to the memorandum indicated that no petitions to deny had been filed against several applications, including 2727 Palisades.
- On May 4, 1995, Liberty filed STA requests for 14 of the 18 OFS paths listed in Nourain's April 26 Memorandum. Although Liberty clearly knew by May 4 that it was operating 2727 Palisades without FCC authorization, that location

^{12/} Given the exceedingly close proximity between Nourain's April 26 Memo and the date that Liberty commenced service to 2727 Palisades (April 24), it would seem that Liberty may have knowingly commenced service to 2727 Palisades without FCC authority. This is especially true given Nourain's unwavering testimony that his April 26 memo was created in part from a document that he received internally at Liberty, which would suggest that Liberty had knowledge of unauthorized paths before Nourain's April 26 memo. Unsurprisingly, Liberty has disclaimed knowledge of such an internal document, and has sought to disavow Nourain's unyielding testimony on this point.

^{13/} Although the Memorandum mentions seeking STAs for "all pending applications that have been filed more than two months ago", the record shows that Liberty proceeded to file at least one STA for an application that had been filed on March 23, 1995 (200 E. 32nd St.), only one day before the application for 2727 Palisades. See TWCV Ex. 30.

was not one of the paths for which Liberty sought special temporary authorization. Instead, the evidence shows that Liberty waited to see whether a petition would be filed against that path before filing an STA request with the Commission.

- On May 17, 1995, Liberty filed its Surreply with the Commission, listing 2727 Palisades as one of the sites to which service was being provided without FCC authorization. TWCV Ex. 18. No other information was provided about that path. Although FCC file numbers were provided next to each of the other sites listed in the Surreply, no FCC file number was provided for 2727 Palisades. TWCV Ex. 18, p. 2. Yet Liberty knew at the time that an FCC file number had been assigned to the 2727 Palisades application. TWCV Ex. 34, p. 4; TWCV Ex. 42, p. 4. It is highly doubtful that this omission was a mere oversight, given the fact that the Surreply was reviewed both by Liberty personnel and by several sets of attorneys before filing. See TWCV Findings, ¶¶ 165-167, See also, TWCV Ex. 44, at 17 (billing records showing multiple telephone calls among Barr, Price, Rivera and Spasser concerning the Surreply).
- Since 2727 Palisades is located in Cablevision's service territory, it was not one of the applications against which Time Warner had earlier filed a petition to deny. See, TWCV Ex. 34, p. 4. Liberty knew this fact from Lehmkuhl's memorandum of April 28, which reported that no petition to deny had been filed against 2727 Palisades. Because the Surreply did not include an FCC file

number for 2727 Palisades, one could not tell from looking at the document whether 2727 Palisades was among the applications against which Time Warner had filed a petition to deny. Nor could one discern from the Surreply the identity of the application with which the path for 2727 Palisades was associated.

- Because the unauthorized operation of 2727 Palisades was disclosed in a "Surreply" filed in response to Time Warner's petition, one would assume that it was one of the paths against which Time Warner had filed a petition to deny. However, it was not. Thus, Commission action on the paths against which Time Warner had filed petitions would not have affected 2727 Palisades, which was part of another group of applications. Had the FCC file number been provided, one could have traced the path for 2727 Palisades to the proper application, thereby jeopardizing Liberty's ability to secure authorization for that path and associated applications. By omitting the FCC file number (and then subsequently withholding information about the path in its STA filing), Liberty apparently believed that it could avoid a petition to deny and secure authorization for the path before attracting unwanted attention.
- On May 18, 1995, Lehmkuhl confirmed in a memorandum to Nourain that STA requests were going to be filed for certain pending applications, **as they had discussed earlier**. TWCV Ex. 42.^{14/} Among the paths specified in a

^{14/} TWCV Ex. 42 was among a series of documents that were produced by Liberty at the end of the hearing, after Lehmkuhl and Nourain had already testified. Thus, no testimony was elicited from those witnesses about this document.

list attached to the memorandum was the path between the Century transmitter and 2727 Palisades. *Id.*, at 3. The memorandum advised Nourain that the list "includes four paths that we spoke of that came off of PN [Public Notice] a few days ago," and that "[t]oday we received word that two of the four were petitioned against." *Id.* The memorandum further reported that "Time Warner did not, however, petition against the other two paths -- Stonehenge and Century -- which possibly leaves these in the clear." *Id.* (emphasis added).^{15/} The list attached to the memorandum identifies 2727 Palisades as the pending application associated with the Century transmitter, and indicates that no petition had been filed against that application. *Id.*, at 4. The memorandum concludes by confirming that "I will file STA requests for five all (sic) paths as soon as possible," *id.*, notwithstanding the fact that there was no deadline for filing the STA. Thus, it is apparent that Liberty was waiting to see if it was "in the clear" before proceeding to file an STA request for 2727 Palisades.

- On May 19, 1995, Liberty filed the STA request for 2727 Palisades. TWCV Ex. 38. That request was signed by Nourain on May 18, 1995, the same day that he received Lehmkuhl's "all clear" memorandum advising that no petition had been filed against Liberty's underlying application. TWCV Exs. 38 and

^{15/} It is of no import that Lehmkuhl mistakenly identified Time Warner as the potential petitioner rather than Cablevision. The fact remains that Lehmkuhl and Nourain were waiting to see if the path was "in the clear" before seeking special temporary authority from the Commission.

42; Lehmkuhl, Tr. 1251. Like the STA requests filed on May 4, the evidence shows that Liberty's May 19 STA request for 2727 Palisades was reviewed prior to filing by a variety of persons with knowledge of Liberty's unauthorized operations, including Howard Barr.^{16/}

- Unlike the STA requests filed by Liberty on May 4, 1995, the transmittal letter that accompanied Liberty's request for 2727 Palisades does not bear any notation suggesting that a copy was sent to counsel for Time Warner, which would have alerted Time Warner to the filing of the STA. Compare TWCV Ex. 17 with TWCV Ex. 38. Thus, it is apparent that Liberty (a) knew that the application had not been opposed by Time Warner; (b) made a conscious decision not to flag the STA request by serving Time Warner's counsel; and (c) proceeded to file the request in hope that its actions would go undetected.
- Despite Liberty's admitted knowledge at the time of its May 19 STA request that it was providing service to 2727 Palisades without FCC authorization, Liberty did not disclose that fact to the Commission in its May 19 filing. TWCV Ex. 38; TWCV Ex. 30; Lehmkuhl, Tr. 1265. Nor did Liberty amend its underlying application for 2727 Palisades to report that fact. When Lehmkuhl was asked why the STA request made no mention of the fact that Liberty had already commenced service to 2727 Palisades over the path for

^{16/} See, e.g., TWCV Ex. 44, 17 (billing records for Howard Barr, which show that on May 19, 1995, Barr spent almost two hours on matters relating to "Review STA requests; Telephone Call with Peter Price re same; Revise STA.")

which authorization was being sought, he could only reply "That's a good question. I don't know." Lehmkuhl, Ex. 1265.

- Not only did Liberty's May 19 STA request fail to disclose the fact of its unauthorized operations, it affirmatively suggested that service to 2727 Palisades had not yet commenced. Specifically, the request represented that "... any delay in the institution of temporary operation would seriously prejudice the public interest." TWCV Ex. 38, at 2 (emphasis added). It also asserted that "the institution of special temporary authority requested herein is in the public interest," and that Liberty "will operate the station in conformance with the technical specifications outlines in the referenced application(s)" TWCV Ex. 38, at 3. These statements were the same as those made in Liberty's May 4 STA requests, and contrary to the actual state of facts known to Liberty at the time they were made.

The record thus firmly establishes that Liberty delayed the filing of its STA request for 2727 Palisades until it could determine whether or not that application was "in the clear," that it omitted material information from its May 17 Surreply in an effort to draw attention away from that application, and that it knowingly withheld material information and made willful misstatements in its May 19 STA filing in an effort to secure authorization for that path quickly, before drawing a petition to deny that Application. These actions hardly demonstrate the high degree of truthfulness and reliability expected of Commission licensees. To the contrary, they demonstrate a willingness to conceal material facts that belies any notion that Liberty can be trusted in the future to deal candidly with the Commission.

III. Liberty Failed To Disclose Material Information When Under Heightened FCC Scrutiny.

Liberty's efforts to conceal its unauthorized operation of 2727 Palisades did not end with its STA request on May 19. They continued in several subsequent filings made with the Commission, including filings made after Liberty had purportedly established a "compliance program" to ensure that its actions could be relied on by the Commission.

Specifically, the evidence shows that on May 23, 1995, Liberty filed an application with the FCC seeking to amend its March 24 application for 2727 Palisades to add an additional path from the Century Station to an OFS receive site located at 4525 Henry Hudson Parkway ("4525 Henry"). TWCV Ex. 39; *id.* at p. 9.^{17/} In a functional system diagram attached to that application, Liberty indicated that the application for 2727 Palisades was currently pending. TWCV Ex. 39, at 9. Liberty did not disclose, however, that the path to 2727 Palisades was already in operation without FCC authority.^{18/} Nor did Liberty modify its affirmative misstatements to the Commission about the need for special temporary authority to "institute" service to 2727 Palisades, which Liberty knew had already commenced.

On May 24, 1995, Liberty filed an amendment to its May 19 STA request for 2727 Palisades to include the OFS path for 4525 Henry. Lehmkuhl, Tr. 1271-72; TWCV Ex. 39.

^{17/} Liberty's amendment for 4525 Henry was incorporated into the application for 2727 Palisades under the FCC file number 713295.

^{18/} Liberty's STA request for authority to commence service at 2727 Palisades was not granted until September 7, 1995. Lehmkuhl, Tr. 1283; *see* TWCV Ex. 43, p. 2. That STA request was granted as part of a group, along with the other STA requests with which 2727 Palisades was associated. Lehmkuhl, Tr. 1283.

That amendment was signed by Nourain. Lehmkuhl, Tr. 1272-1273. In that filing, Liberty asked the Commission to incorporate and consider the May 24 STA amendment "as part of Liberty's original [May 19] request for STA." TWCV Ex. 39, p. 1. The amendment also included a copy of the May 19 STA request, without modification. Lehmkuhl, Tr. 1271-72; TWCV Ex. 39. At hearing, Lehmkuhl agreed that Liberty was seeking special temporary authority to operate 4525 Henry for the same reasons specified in its May 19 STA for 2727 Palisades. Lehmkuhl, Tr. 1272. Again, Liberty did not disclose in its May 24 STA amendment that service to 2727 Palisades was already being provided without FCC authority. Lehmkuhl, Tr. 1273; TWCV Ex. 39. Nor did it modify its affirmative misstatements about the need for special temporary authority to "institute" service to 2727 Palisades.

On May 26, 1995, at a time when Liberty plainly knew that its activities were under heightened FCC scrutiny, Liberty filed a Reply to Time Warner's petition opposing Liberty's May 4 requests for special temporary authority (the "May 26 Reply"). TWCV Ex. 19. The May 26 Reply included a chart that purported to show various contractual obligations that Liberty represented to the Commission were "imperiled as a result of the Time Warner filings." *Id.*, at 3. Liberty described the sites specified in the chart as "a sample of locations with which Liberty has contracts to serve, the relevant contract date and the contractual commitment to install, demonstrating the urgency of Liberty's situation. *Id.* (emphasis added). 2727 Palisades was identified in the chart as having a contract date of February 13, 1995 and a contractual commitment to install within 120 days. *Id.* Liberty then asserted that these dates demonstrated that it was facing "short timeframes within which to meet its contractual commitments as represented in the STA requests," thereby supporting Liberty's

urgent request for swift action on its pending STA Requests. *Id.*, at 4. The pleading was signed by Howard Barr, and the truthfulness of the claims made therein were certified by Peter Price. *Id.*, at 8 and 9.

What Liberty did not disclose in its May 26 Reply was that service to 2727 Palisades had already commenced on April 24, 1995, well within the 120 day period specified in Liberty's contract for that facility. Thus, Liberty had already met its commitment under the Palisades contract over a month before the May 26 Reply. There was absolutely no basis for Liberty to suggest that prompt FCC action granting its STA request was necessary to ensure that Liberty could meet its contractual commitment for 2727 Palisades. Liberty knew at the time that its obligation to initiate service had already been satisfied. Yet Liberty's pleading was clearly designed to convey precisely the opposite conclusion. There was absolutely no "urgent" contractual situation that needed to be addressed.

On June 13, June 22, and July 12, 1995, Liberty once again amended its application for 2727 Palisades to add paths from the Century transmitter site to OFS receive sites located at 3215 Arlington Parkway, 3001 Henry Hudson Parkway, 3875 Waldo Avenue, and 2500 Johnson Avenue, Riverdale, New York. TWCV Ex. 40, p. 2, 6; TWCV Ex. 43, p. 1; Lehmkuhl, Tr. 1273-1274, 1276.^{19/} Again, Liberty did not disclose in those applications that it had already commenced service to 2727 Palisades without FCC authority.

^{19/} Each of these receive sites is located in within the territory currently served by Cablevision. Lehmkuhl, Tr. 1276. The locations specified in TWCV Ex. 40, p. 9 use abbreviated names for the streets where the receive sites are located. See, e.g., TWCV Ex. 43. Again, these locations were incorporated under the FCC file number for 2727 Palisades (File No. 713295) as amendments to that application. TWCV Ex. 40 and Ex. 43; Lehmkuhl, Ex. 1276-1277.

On July 12, 1995, and again on July 24, 1995, Liberty amended its original STA request for 2727 Palisades to include additional receive sites located at 3001 Henry Hudson Parkway, 3875 Waldo Avenue and 2500 Johnson Avenue. TWCV Exs. 40 and 43.^{20/} Consistent with Liberty's new "compliance program," both of those STA amendments were signed by Peter Price, Liberty's President. TWCV Ex. 40, at 5; TWCV Ex. 43, at 5; Lehmkuhl, Tr. 1277-1278. In both of those STA amendments, Liberty observed that its original application for 2727 Palisades was still pending, and that special temporary authority was required in order to operate the requested facilities until grant of the underlying application. TWCV Exs. 40 and 43. Yet neither of these STA requests made any mention of the fact that service to 2727 Palisades had already commenced without FCC authority. TWCV Exs. 40 and 43; Lehmkuhl, Tr. 1279. Yet Lehmkuhl admitted at hearing that it "probably it should have been." Lehmkuhl, Tr. 1280. Nor did Liberty correct its misstatements to the Commission about the need for special temporary authority to "institute" service to 2727 Palisades, which Liberty knew had already commenced without FCC authorization.

^{20/} Both of the amendments were incorporated under the FCC file number for 2727 Palisades (File No. 713295).

The foregoing evidence clearly reveals that Liberty knowingly and repeatedly failed to correct the material omissions and affirmative misstatements made in its May 19 STA request for 2727 Palisades, and that it perpetuated the omissions and false impressions conveyed by that document in subsequent filings with the Commission. Liberty cannot argue now that the vague reference to 2727 Palisades made in its Surreply was sufficient to apprise the Commission of all facts known to Liberty concerning its unauthorized operation of 2727 Palisades. As discussed above, Liberty failed to provide key information in the Surreply that would have allowed the Commission and others to determine that 2727 Palisades was not one of the applications against which Time Warner had filed a Petition to Deny.^{21/} Moreover, Liberty concealed the fact of its unauthorized operation and affirmatively misrepresented the status of its operations in both its May 19 STA and its May 26 Reply.

Even if the cryptic reference to 2727 Palisades in Liberty's Surreply could be construed as some sort of disclosure, it plainly fails to support a conclusion that Liberty can be relied upon to deal truthfully with the Commission. The FCC cannot be expected to play procedural games with parties that come before it. A vague reference to an OFS site made in an FCC pleading that neither identifies the underlying application to which it relates, nor provides any information from which the Commission could discern that information, falls far short of the stringent standards for disclosure required by the Commission. Liberty was

^{21/} Liberty also provided an explanation for its unauthorized operations that did not apply to 2727 Palisades. On the contrary, the record shows that Liberty took affirmative steps to secure authorization to operate 2727 Palisades before its unauthorized service was discovered.

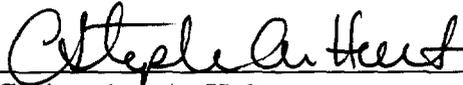
clearly obligated to advise the Commission that it had already commenced service to 2727 Palisades both in its May 19 STA Request and in subsequent FCC filings. This was an obligation that Liberty knowingly and willfully failed to honor. Liberty has not demonstrated the high degree of trust required of Commission licenses.

CONCLUSION

For the reasons stated herein and in TWCV's Proposed Findings, Liberty's application relating to 2727 Palisades, as amended (FCC File No. 717325) should be denied.

Respectfully submitted,

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Dated: March 10, 1997

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I hereby certify that on this 10th day of March, 1997, copies of the foregoing Reply Findings were served by hand delivery or U.S. mail (as marked with an asterisk) upon the following:


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