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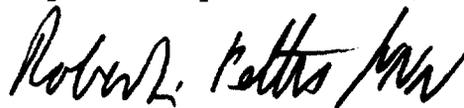
William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Bartholdi Cable Company, Inc.'s Proposed
Findings of Fact and Conclusions of Law in Reply

Dear Mr. Caton:

Enclosed is an attachment which was inadvertently omitted from
the above referenced matter, filed with the Commission earlier
today.

Respectfully submitted,



Robert L. Pettit

Enclosure

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LIBERTY

ATTACHMENT A

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

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JUL 24 1996

	WT DOCKET NO. 96-41	FEDERAL COMMUNICATIONS COMMISSION OFFICE OF SECRETARY	
In Re Applications Of)		
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LIBERTY CABLE CO., INC.)	File Nos.:	
)	708777	WNTT370
)	708778, 713296	WNTM210
For Private Operational Fixed)	708779	WNTM385
Microwave Service Authorization	)	708780	WNTM555
and Modifications	)	708781, 709426, 711937	WNTM212
	)	709332	NEW
New York, New York	)	712203	WNTW782
	)	712218	WNTY584
	)	712219	WNTY605
	)	713295	WNTX889
	)	713300	NEW
	)	717325	NEW

To: The Honorable Richard L. Sippel
Administrative Law Judge

**OPPOSITION BY BARTHOLDI CABLE CO., INC.
TO MOTION FOR ORDER TO TAKE DEPOSITION
SUBMITTED BY TIME WARNER CABLE NEW YORK CITY
AND PARAGON CABLE MANHATTAN**

Pursuant to the Presiding Judge's Order, FCC 96M-185 (released July 25, 1996), Bartholdi Cable Co., Inc., formerly known as Liberty Cable Co., Inc. ("Liberty"), hereby submits this opposition to the Motion for Order to Take Deposition (the "Motion") submitted by Time Warner Cable of New York City and Paragon Cable Manhattan (together, "Time Warner"). After the Wireless Telecommunications Bureau joined with Liberty to file a Joint Motion for Summary Decision with respect to all the issues in this case, Time Warner again seeks to create groundless factual issues and expand litigation based upon the same

speculation and conjecture that formed the basis for the Joint Motion to Enlarge Issues filed on July 12 by Time Warner and Cablevision of New York City - Phase I. This time, Time Warner argues that one of Liberty's attorneys, Howard Barr, should be deposed because the February 24, 1995 Michael Lehmkuhl memorandum concerning the status of Liberty's various 18 GHz licenses (the "Lehmkuhl Inventory"), suggests that individuals at Liberty knew about premature activations before they actually did. Time Warner, as it did with its Joint Motion to Enlarge Issues, confuses what "could have been" or even what "should have been" with "what was," as established by the uncontroverted facts. Moreover, Time Warner takes the limited information contained in the Lehmkuhl Inventory to an irrational extreme, and in the process accuses Barr -- an attorney whose integrity has never been challenged nor is it an issue in this proceeding -- of making misrepresentations to the Federal Communications Commission (the "Commission").

For the reasons stated below, Time Warner's Motion is baseless and without merit. Accordingly, Liberty urges the Presiding Judge to reject Time Warner's latest attempt to re-open discovery and otherwise increase litigation unnecessarily.

BACKGROUND

During the course of depositions in this case, the bulk of which took place in the last two weeks of May, Time Warner sought repeatedly to depose Howard Barr. However, despite ample opportunity to do so, Time Warner failed to establish the necessity of deposing Mr. Barr or to show that relevant evidence could not be obtained from other deponents.

Liberty then produced to Time Warner and the other parties additional documents discovered in the course of Liberty's preparation of a privilege log pursuant to the Presiding

Judge's Order, FCC 96M-153 (released June 13, 1996). Time Warner received these documents, which included the redacted copies of the Lehmkuhl Inventory, on June 18, 1996. The initials "HJB" appeared as a "bcc" on that version of the Lehmkuhl Inventory. The predicate for Time Warner's current motion was thus disclosed on June 18. Nevertheless, Time Warner inexplicably waited until July 19, more than a month later, to seek an order to take Mr. Barr's deposition.

Pursuant to an Order issued on June 25, 1996, FCC 96M-164 (released June 27, 1996), Liberty produced on June 26 an unredacted version of the same Lehmkuhl Inventory which included information on buildings not subject to this proceeding. Since all of the same information regarding buildings subject to this proceeding had already been produced to Time Warner on June 18, nothing contained in the later produced Lehmkuhl Inventory can explain Time Warner's delay in seeking to depose Mr. Barr. Time Warner waited more than three weeks after receiving the unredacted Lehmkuhl Inventory before making the present Motion. This delay was strategically timed after the Joint Motion for Summary Decision was filed, apparently to kick up sufficient dust in an attempt to derail the Joint Motion for Summary Decision.

In opposition to Time Warner's latest Motion, Mr. Barr submits a declaration (attached hereto as Exhibit ("Ex.") A) stating that (1) he did not learn about Liberty's premature activations from the Lehmkuhl Inventory (Ex. A, ¶¶ 4, 6); (2) the Lehmkuhl Inventory, which Mr. Barr reviewed only for form and not substance, did not provide necessary information for him to conclude that Liberty had initiated service to buildings without authorization from the Commission (Ex. A, ¶¶ 3, 4); (3) Mr. Barr learned about

Liberty's premature activations in late April 1995 (Ex. A, ¶ 6); and (4) Mr. Barr's representations to the Commission were in all respects true and accurate at the time they were made (Ex. A, ¶ 7).

ARGUMENT

Time Warner's current Motion is based on the same argument that Time Warner advanced in support of the Joint Motion to Enlarge Issues filed on July 12: that the Lehmkuhl Inventory should have alerted Liberty and its attorneys about premature activations earlier than late April or early May 1995, the time frame established by the uncontroverted testimony and the prior written record as the period during which Liberty found out about premature activations. Given the disjointed license application process already described in the Joint Motion for Summary Decision filed on July 15, the fact that Liberty's attorneys did not know about premature activations, despite the existence of the Lehmkuhl Inventory, is neither surprising nor inconsistent with the uncontroverted facts developed through extensive discovery in this case. Indeed, the Lehmkuhl Inventory addressed only license application status and provided no other information from which Mr. Barr could conclude that unauthorized service was occurring. Ex. A, ¶ 4. Moreover, neither Mr. Barr nor his law firm was involved with the operational and contracting side of Liberty's business, so that neither he nor the law firm knew when Liberty had signed up or turned on a building for service. Ex. A, ¶ 5.

Time Warner raises speculative and unsupported inferences, rather than hard evidence, to argue that Mr. Barr's knowledge of the relevant facts is more extensive than, and differs in material respects from, what has already been revealed in discovery. A

straightforward reading of the Lehmkuhl Inventory by Mr. Barr would not lead him to conclude that Liberty was engaging in any premature activations of buildings. Mr. Barr's receipt and review of the Lehmkuhl Inventory thus does not provide any evidence that Mr. Barr made the jump from the information contained in the Lehmkuhl Inventory to the conclusion that Liberty was commencing service without authorization from the Commission.

Against the weight of the uncontroverted record and based on pure speculation, Time Warner now argues that Mr. Barr learned about premature activations from the Lehmkuhl Inventory and, armed with this knowledge, proceeded to mislead the Commission not once but twice in written submissions about when Liberty discovered the problem. Time Warner's allegations of serious ethical and professional breaches by Mr. Barr -- an attorney in good standing (Ex. A, ¶ 2) whose integrity has never been challenged and is not at issue in this proceeding -- should be supported by much more than the mere conjecture offered in the pending Motion.

The declaration submitted by Mr. Barr directly refutes the bases for Time Warner's Motion. Mr. Barr forthrightly states that he learned about the premature activations in late April 1995, not from the Lehmkuhl Inventory but in discussions with Peter Price and other Liberty counsel. Ex. A, ¶ 6. In fact, Mr. Barr's cursory review of the Lehmkuhl Inventory at the time it was sent to Liberty could not lead to his concluding that Liberty activated buildings prematurely, since the information needed to reach this conclusion was not contained in the Lehmkuhl Inventory. Ex. A, ¶ 4. Furthermore, Mr. Barr was not aware when Liberty signed up the buildings at issue in this proceeding nor when Liberty activated service to any of these buildings. Ex. A, ¶ 5. Thus, not only is Mr. Barr's knowledge

consistent with the facts revealed in discovery, Mr. Barr's knowledge is in line with the prior written record. Under these circumstances, a deposition of Mr. Barr would add nothing new to the record and is thus unnecessary, duplicative and wasteful, as well as burdensome, harassing and vexatious.

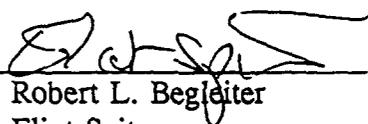
Liberty further opposes Time Warner's Motion to the extent it seeks to discover privileged information. Mr. Barr, as one of Liberty's attorneys, necessarily engaged in privileged communications in the course of representing Liberty before the Commission. Privileged matter is expressly excluded from the scope of examination under the Commission's Rules. 47 C.F.R. § 1.311(b). Time Warner should not be allowed to re-open discovery to inquire into matters protected by the attorney-client privilege and the attorney work product doctrine.

CONCLUSION

Based on the foregoing, Time Warner's Motion for Order to Take Deposition should be denied in its entirety.

Dated: Washington, D.C.
July 24, 1996

CONSTANTINE & PARTNERS

By: 
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- and -

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Attorneys for
Bartholdi Cable Company, Inc.

DECLARATION OF HOWARD BARR, ESQ.

HOWARD BARR, ESQ., hereby declares under penalty of perjury, that the following is true and correct:

1. I am a member of the law firm of Pepper & Corazzini, and I have represented Bartholdi Cable Co., Inc., formerly known as Liberty Cable Co., Inc. ("Liberty"), before the Federal Communications Commission (the "Commission"). I make this declaration on personal knowledge in support of Liberty's Opposition to the Motion for Order to Take Deposition filed by Time Warner Cable of New York City and Paragon Cable Manhattan (together, "Time Warner").

2. I was admitted to the practice of law before the bars of both the State of Maryland in 1986 and District of Columbia in 1989. I am an attorney in good standing and have never been the subject of any disciplinary proceedings.

3. In connection with preparing this declaration, I reviewed a copy of Time Warner's Motion and a document dated February 24, 1995 from Michael Lehmkuhl of my law firm addressed to Peter Price, Behrooz Nourain and Thomas Courtney entitled Inventory of 18 GHz Licenses Issued to Liberty (the "Lehmkuhl Inventory"). While I do not specifically recall seeing the Lehmkuhl Inventory previously, I most likely did receive it. Any review I may have done with respect to that particular document would have been for form only and not substance.

4. Any suggestion in Time Warner's Motion that I learned about Liberty's premature activation of service to buildings from the Lehmkuhl Inventory is unfounded. The Lehmkuhl Inventory did not inform me as to when Liberty activated service to its buildings,

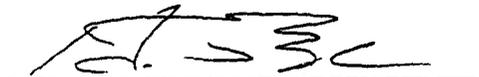
because that is not the type of information contained in the Lehmkuhl Inventory. In addition, because I reviewed the Lehmkuhl Inventory for form only, I did not peruse it for any substantive information.

5. Also, neither I nor anyone in my firm was involved in the operational and contracting side of Liberty's provision of video programming services to its buildings. Consequently, I was not aware when Liberty signed up the buildings at issue in this proceeding nor when Liberty activated service to any of these buildings.

6. I learned about Liberty's premature activation of buildings approximately at the end of April 1995. The Lehmkuhl Inventory played no part in my discovery of Liberty's premature activation of service to buildings.

7. Since I learned about Liberty's premature activation of service to buildings at the end of April and not earlier, my written submissions to the Commission on this issue were true and accurate, based on my knowledge of the facts and circumstances at the time. At no time in the course of this proceeding, both generally and with respect to the premature activation issue in particular, did I or anyone at my law firm make any misrepresentations, lack candor or intend to deceive the Commission in written or oral statements made to the Commission.

Dated: Washington, D.C.
July 24, 1996



HOWARD BARR

Certificate of Service

I hereby certify that on this 24th day of July 1996, I caused copies of the foregoing "Opposition by Bartholdi Cable Co., Inc. to Motion for Order to Take Deposition Submitted by Time Warner Cable New York City and Paragon Cable Manhattan" to be served by hand delivery to the following:

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