



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

In re Applications of )  
 )  
**LIBERTY CABLE CO., INC.** )  
 )  
 For Private Operational Fixed )  
 Microwave Service Authorization )  
 and Modifications )

W.T. Docket NO. 96-41  
 File Nos.:  
 708777 WNTT370  
 708778, 713296 WNTM210  
 708779 WNTM385  
 708780 WNTT555  
 708781, 709426  
 711937 WNTM212  
 709332 (New)  
 712203 WNTW782  
 712218 WNTY584  
 712219 WNTY605  
 713295 WNTX889  
 713300 (New)  
 717325 (New)

<u>New York, New York</u> Federal Communications Commission	
Docket No. <u>96-41</u>	Exhibit No. <u>16</u>
Presented by <u>Liberty/Bureau</u>	
Identified _____ Received _____ Rejected _____	✓
	✓
To: <u>Administrative Law Judge Richard L. Sippel</u>	
Reporter _____	
Date <u>1-15-97</u>	

**DECLARATION UNDER PENALTY OF PERJURY**

I, Michael J. Lehmkuhl depose and state as follows:

1. I am an associate with the law firm of Pepper & Corazzini, L.L.P., with offices at 1776 K Street, N.W., Washington, D.C. 20006.

2. On or about April 9, 1996, via a memorandum from Eliot Spitzer of the law firm of Constantine & Partners to myself we were provided with copies of certain requests for production of documents from the FCC and from Time Warner. Mr. Spitzer requested that I review the discovery requests, particularly the FCC's request number 10, and respond to Constantine & Partners by Thursday, April 11, 1996 as its responses and document production were due on April 15 and 16, 1996. Upon receipt of this memorandum, I gave a copy to Howard Barr, a Pepper & Corazzini partner, for his review.

3. Our firm's internal client number for Liberty Cable is 1808. All work for Liberty Cable is conducted and billed under the 1808 client number and all documents pertaining to the Liberty account and maintained by Pepper & Corazzini are maintained in the 1808 files.

4. Under the supervision of Howard Barr and with the assistance of David Jakubowski, a paralegal of this law firm, I searched through the firm's voluminous Liberty Cable 1808 client

files in an effort to locate documents relevant to the document requests. Mr. Jackbowski and I searched through multiple correspondence files which consisted of nineteen (19) files of documents.

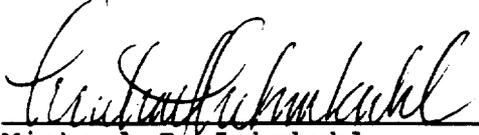
5. Mr. Jakubowski and I reviewed the document production requests prior to commencing the search and, at Mr. Barr's instruction, broadly construed those requests such that all documents possibly fitting within the scope of the requests would be provided to Constantine & Partners. Between us, Mr. Jakubowski and I examined each document in the files and individually considered that document's responsiveness to the document requests.

6. Documents appearing to fit within the scope of the requests were marked with a Post-it Tape Flag. Once a file was completely reviewed, it was sent to Kevin Langley, manager of our services department, for copying. Mr. Langley was instructed to copy all documents (and any attachments thereto) marked with a Post-it Tape Flag. The items, once copied, were boxed and sent to Eliot Spitzer for Constantine & Partners' further review and production to the requesting parties. The idea was to cast a wide net on the assumption that Constantine & Partners would further winnow our production.

7. I made a good faith effort to identify and produce any and all documents that could possibly be deemed to be responsive to the discovery requests. I am also confident that Mr. Jakubowski did the same. Any failure to produce a document responsive to the discovery requests was unintentional and could only have arisen through inadvertence somewhere in the chain of production.

8. On January 6, 1997, while searching through Liberty's files regarding an unrelated matter, I happened upon a memo, dated April 28, 1995, that I wrote to Behrooz Nourian with a copy to Peter O. Price. At that time I recognized the relevance of this document to recent discussions I had with Bob Begleiter and Eliot Spitzer, attorneys with Constantine & Partners. Later that day I presented it to them merely for their reference. At the time I had no reason to believe that this document was not a part of those documents produced to Constantine & Partners, as described above.

I declare under penalty of perjury that the foregoing is true and correct.

  
Michael J. Lehmkuhl

Date: Jan 13, 1997





ords in an effort to locate documents possibly relevant to the document requests. Liberty's 1808 files, in total, consume in excess of six (6) file drawers, including multiple correspondence files, pleading files, application files, authorization files and copyright files. At the time of the document production, Liberty's 1808 correspondence files alone consisted of nineteen (19) files of documents, each file being approximately two (2) inches or more in width.

5. The search consisted of a screening of the 1808 files for responsiveness and was conducted under my supervision. Messrs. Lehmkuhl and Jakubowski were instructed to review the document production requests prior to commencing their responsiveness search and to broadly construe those requests in their search for responsive documents, such that all documents possibly fitting within the scope of the requests would be provided to Constantine & Partners. Messrs. Lehmkuhl and Jakubowski were instructed to examine each document in the files and to individually consider that document's responsiveness to the document requests.

6. Documents appearing to fit within the scope of the requests were marked with a Post-it Tape Flag. Once a file was completely reviewed, it was sent to Kevin Langley, manager of our services department, for copying. Mr. Langley was instructed to copy all documents (and any attachments thereto) marked with a Post-it Tape Flag. The items, once copied, were boxed and sent to Eliot Spitzer for Constantine & Partners' further review and production to the requesting parties. Again, the idea was to cast a wide net, on the assumption that Constantine & Partners would further winnow our production.

7. I am confident that each of the individuals at Pepper & Corazzini that was associated with the document production used his best efforts to identify and produce any and all documents he reviewed that could possibly be deemed to be responsive to the discovery requests. Any failure on the part of this law firm to produce a document responsive to the discovery requests was unintentional and could only have arisen through inadvertence somewhere in the chain of production.

I declare under penalty of perjury that the foregoing is true and correct.

  
Howard J. Barr

Date: 11/13/97

PRIVILEGED & CONFIDENTIAL  
ATTORNEY WORK PRODUCT

CONSTANTINE & PARTNERS

MEMORANDUM

VIA FACSIMILE

Date: April 9, 1996

To: Michael Lehrkuhl, Esq.

From: Eliot Spitzer, Esq. 

Re: *Document Request and Interrogatories from FCC and Time Warner*

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Please review the attached discovery demands as soon as possible and let us know if you have any comments with respect to any responsive answers or documents. In particular, please look at document request number 10 in the FCC document demand. Since our responses and document production are due on April 15 and 16, we appreciate your comments by Thursday, April 11, 1996.

ES/YC/aes

Encls.