Normandie Court
1692 Third Avenue, NYC
40-45-03 N 073-56-54W

WNTM385

Expiration 08-08-99

Site No.	Azimuth	Path Name	Az Lat.	Az Long.	Status
	153.808	441 East 92nd Street	40-46-46	73-56-43	P
	298.526	44 West 96th Street	40-47-31.5	73-58-03	P
	161.953	120 East End, NYC	40-46-28	73-56-39	P
	166.327	525 East 86th Street	40-46-38	73-56-46	P
	221.315	567 Fifth Avenue	40-45-46	73-58-23	P
02	210.395	205 East 64th Street	40-45-53	73-57-48	G
03	214.653	179 East 70th Street	40-46-08	73-57-44	G
04	243.943	1 Lincoln Plaza	40-46-18	73-58-55	G
05	292.907	Stone Hedge	40-47-59	73-59-48.5	G
06	299.037	12 West 96th Street	40-47-30	73-57-58	G
07	168.286	535 East 86th Street	40-46-30	73-56-45	G
08	189.950	345 East 86th Street	40-46-37	73-57-00	G
09	168.783	1675 York Avenue (Andover)	40-46-40	73-56-48	G
10	210.395	19 East 88th Street	40-46-56.5	73-57-30	G
11	161.331	180 East End	40-46-36	73-56-42	G
12	174.561	510 East 86th Street	40-46-31	73-56-50	G
13	274.861	90 Riverside	40-47-10	73-58-42.5	G
14	200.812	302 East 88th Street	40-46-43	73-57-04	G
15	242.106	38 East 85th Street	40-46-46.5	73-57-35	G
16	175.758	60 East End	40-46-22	73-56-50	G
17	261.685	High Gate	40-47-02	73.57-03	G
18	255.993	1112 Park Avenue	40-46-57.5	73-57-23	G
19	260.053	1155 Park Avenue	40-47-00	73-57-16.5	G
20	173.412	80 East End	40-46-23.5	73-56-48	G
21	242.136	1001 5th Avenue	40-46-42.5	73-57-45	G

Normandie Court
1692 Third Avenue, NYC
40-45-03 N 073-56-54W

WNTM385

.piration 08-08-99

Site No.	Azimuth	Path Name	Az Lat.	Az Long.	Status
23	220.538	REPEATER Claridge	40-46-47	73-57-12	G
24	239.688	RX 170 East 87th Street	40-46-45	73-57-16.5	G
25	248.802	49 East 86th Street	40-46-51.5	73-57-33	G
26	250.499	1111 Park Avenue	40-46-56	73-57-20	G
27	206.295	245 East 87th Street	40-46-43	73-57-07	G

2600 Netherlands Avenue (Ce y)

40-52-42 N 073-54-56W

WNTX889

Expiration 2-06-2000

Site No.	Azimuth	Path Name	Az Lat.	Az Long.	Status
	5.834	3515 Henry H Parkway	40-53-08	73-54-52.5	G
	25.080	3601 Johnson	40-53-12	73-54-37.5	G
	18.07	3755 Henry H Parkway	40-53-20.5	73-54-39.5	G

FCC/CP 016164

TO: Bruce McKinnon

FROM: Peter O. Price

DATE: February 26, 1992

SUBJECT: FCC Licenses and Procedures

In order to accurately audit what licenses Liberty has requested and which have been provided, I have asked Joe Stern to analyze the procedure. Please don't get diverted by the piles of paper arriving from Washington because they require an inordinate amount of time in order to log and maintain. You should concentrate upon the planning, installation and operation of our system without being distracted by the administration. Once Joe has audited our list of applications against the licenses received and set up a maintenance procedure going forward, we can bring the function into Liberty as an Engineering Department responsibility. We are clearly not ready for that step, so in the meantime I will ask Stern Telecommunications to coordinate the function with Todd Parriott and advise us on a weekly basis in the form of a standardized report.

cc: J. Stern
T. Parriott
J. Curbelo

Federal Communications Commission
Docket 96-41 Exhibit 2
Presented Liberty/Bureau
Disposition: Identified ✓ Received ✓ Rejected
Reporter JE
Date 1-10-97

EXHIBIT Stern 3
Date: 6/5/96
Reporter: David A. Kasdan

[redacted]

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LIBERTY CABLE
TELEVISION
5 Madison Avenue, New York, New York 10022
(212) 891-7771 Fax (212) 891-7790

PETER O. PRICE
President

Federal Communications Commission
Docket 96-41 Exhibit 3
Proceeding Liberty/Bureau
Disposition: Identified ✓ Received ✓ Rejected
Reporter JR
Date 1-10-97

June 16, 1995

EXHIBIT 8
Date: 5/28/96
Reporter: David A. Kasdan

Mr. Michael B. Hayden
Chief, Microwave Branch
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325

[redacted]

Re: Reply Ref. No. 95M003

Dear Mr. Hayden:

I am the President of Liberty Cable Company, Inc. ("Liberty"). Attached to this letter is Liberty's response by counsel to the questions asked in your letter dated, June 9, 1995.

As you know, Liberty is currently serving 15 buildings in Manhattan by microwave paths which have not yet been approved by the Commission. After discovering that these microwave applications had not been granted, we have subsequently filed applications for 16 additional buildings, but of course, have refrained from commencing service. I respectfully restate Liberty's request that the Commission issue special temporary authority to serve these buildings while it considers the underlying applications as well as any sanctions which Liberty understands it may suffer for engaging in unauthorized service. The unauthorized service to these buildings regretfully occurred because of unintended errors in Liberty's administrative procedures, for which I take full responsibility and which have been disclosed and explained at some length in previous filings with the Commission. A complete investigation of this administrative foul-up is currently being conducted by outside counsel who have extensive government backgrounds. Steps have been implemented to assure that these errors will not occur again.

Liberty understands that it may be sanctioned by the Commission for the unauthorized service to these 15 buildings. Furthermore, Liberty will suspend service to these buildings immediately if and when the Commission directs. Service has not been suspended as of today out of concern for the consumers in these buildings. As detailed in the attached submission, five of the 15 buildings were not served by any MVPD prior to Liberty. Therefore, an immediate cessation of Liberty service would leave such consumers without service for weeks -- if not months, despite the fact that they have done nothing wrong. In the remaining buildings, it might take Time Warner days -- if not weeks -- to recommence service.

Liberty does not expect to profit from this service. As of this date and until this matter is resolved, Liberty will not charge for the service provided to these buildings. Liberty is exploring alternative, lawful means for it to deliver video service to these buildings. As previously stated, Liberty will terminate service at these locations if the Commission so directs. However, we request that in making this determination, the Commission provide sufficient time for Time Warner, Liberty or another MVPD to make alternative arrangements to service these buildings without any significant hardship to consumers.

The Commission is, no doubt, aware that applications and requests for special temporary authority were filed some time ago for each of the 15 buildings. Pending also are 16 other applications and requests for STAs, where subscribers who have opted for Liberty service are awaiting the Commission's determination. In determining any sanction which Liberty may suffer for our careless administrative errors and in determining whether and when to order Liberty to halt service to the subscribers in the 15 buildings, I would respectfully ask the Commission to consider the interests of such truly innocent subscribers.

I would also ask the Commission to consider the overall importance of Liberty's entry into the market in the last several years. The Commission has previously noted that Liberty has proven to be a much-needed force for competition which transcends the New York City market. While Liberty clearly understands that our administrative failings are a cause of our current predicament, it is also clear that there is a strong competitive dimension to this situation and that the fate of competition in this crucial market may well be determined by the Commission's handing of this matter. I would also ask that any directive concerning termination of service and sanctions be communicated directly to me.

Thank you for your consideration of the issues I have raised in this letter.

Respectfully submitted,

Peter O. Price

att.

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Federal Communications Commission

Docket 96-41 Page 4

Presented by Liberty / Bureau

Disposition: Identified ✓ Received ✓ Rejected

Reporter

Date 1-10-97

In The Matter Of:

Before the FCC [redacted]

In Re: Application of Liberty Cable Co., Inc

Howard Milstein

Vol. 1, May 30, 1996

Miller Reporting Company, Inc.
507 C Street, N.E.
Washington, DC 20002
(202) 546-6666 FAX: (202) 546-1502

Original File 0530hmil.asc, 61 Pages
Min-U-Script® File ID: 1088448385

Word Index included with this Min-U-Script®

[redacted]

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In re: Application of : WT Docket No.
: 96-41
Liberty Cable Co., Inc. :

CONFIDENTIAL

Thursday, May 30, 1996

Washington, D.C.

The deposition of HOWARD MILSTEIN, called for examination by counsel for Time Warner Cable of New York City in the above-entitled matter, pursuant to notice, in the offices of the Federal Communications Commission, 2025 M Street, N.W., Fifth Floor Conference Room, Washington, D.C., convened at 11:20 a.m., before David A. Kasdan, RPR, a notary public in and for the District of Columbia, when were present on behalf of the parties:

APPEARANCES:

On behalf of the Applicant:
ROBERT L. BEGLEITER, ESQ.
ELIOT L. SPITZER, ESQ.
Constantine & Partners
909 Third Avenue
New York, NY 10022
(212) 350-2707

On behalf of Time-Warner Cable of New York City:
BRUCE BECKNER, ESQ.
Fleischman and Walsh, L.L.P.
1400 16th Street, N.W.
Sixth Floor
Washington, D.C. 20036
(202) 939-7900

On behalf of the Federal Communications Commission:
KATHERINE C. POWER, ESQ.
JOSEPH PAUL WEBER, ESQ.
MARK L. KEAM, ESQ.
Enforcement Division
Federal Communications Commission
Wireless Telecommunications Bureau
2025 M Street, N.W.
Washington, D.C. 20554
(202) 418-0919

Also Present:
ROBERT PETIT

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By Mr. Weber	54

EXHIBITS

NUMBER	MARKED FOR IDENTIFICATION
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Howard Milstein No. 2	55

[1] PROCEEDINGS
[2] Whereupon,
[3] HOWARD MILSTEIN
[4] was called for examination by counsel for Time
[5] Warner Cable of New York City and, after having
[6] been duly sworn by the notary public, was examined
[7] and testified as follows:
[8] EXAMINATION BY COUNSEL FOR
[9] TIME WARNER CABLE OF NEW YORK CITY
[10] BY MR. BECKNER:
[11] Q: Mr. Milstein, would you please state your
[12] name for the record, sir.
[13] A: Howard Philip, one L, Milstein, one L.
[14] Q: Mr. Milstein, I want to introduce myself
[15] formally to you on the record. My name is Bruce
[16] Beckner, and I represent Time Warner Cable of New
[17] York City in this proceeding. I'm going to be
[18] asking you some questions. Mr. Weber next to me
[19] from the Wireless Bureau may ask you some questions
[20] after I finish.
[21] Have you had your deposition taken before
[22] today?

[1] A: Yes, I have.
[2] Q: Are you reasonably familiar with the
[3] process?
[4] A: Yes, I am.
[5] Q: One thing further I want to advise you of,
[6] since you are under oath, any question that I may
[7] ask you that you don't understand, you have the
[8] right to tell me you don't understand the question,
[9] and ask me to explain it or ask the Reporter to
[10] read it back so you can be sure of what question
[11] you're answering when you give an answer.
[12] Also, I would like to ask you if you
[13] choose to answer a question with a yes or no, to
[14] say "yes" or "no" as opposed to "uh-huh" or
[15] "huh-uhh," because the record will be clearer if
[16] you say "yes" or "no."
[17] In preparation for your deposition today,
[18] did you review any documents or pieces of paper?
[19] A: No, I did not.
[20] Q: Have you discussed the substance of your
[21] testimony with anyone other than your lawyers?
[22] A: No, I have not.

[1] Q: Have you discussed the substance of anyone
[2] else's testimony who has been deposed in this
[3] proceeding?
[4] A: No, I have not.
[5] Q: Mr. Milstein, can you tell me what your
[6] job title or position is with Liberty Cable.
[7] A: I'm the Chairman, CEO, and owner.
[8] Q: Now, it's correct that there are two other
[9] members of your family who are also owners of
[10] Liberty?
[11] A: Yes. They're my partners.
[12] Q: Is there anyone else who has an interest
[13] or ownership in Liberty besides those two?
[14] A: No.
[15] Q: What other businesses are you actively
[16] involved in besides Liberty Cable?
[17] A: Numerous other businesses.
[18] Q: Can you specify the names of the ones at
[19] least you are actively involved in as opposed to
[20] ones you may have a title but don't do anything for
[21] on a regular basis.
[22] A: I'm co-chairman and co-president of

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[1] Emigrant Bank Corp, the holding company for
[2] Emigrant Savings Bank, of which I am co-chairman.
[3] And it's a family-owned bank. The family owns this
[4] bank.
[5] We have a family real estate business
[6] which operates under various partnership names. Of
[7] most of the properties owned I'm a general partner
[8] in these partnerships, and I run the management
[9] company that manages those partnerships and manages
[10] the assets, which is called Milford Management.
[11] The properties fall generally under the name of
[12] Milstein Properties. We own a company called
[13] Douglas Elliman for which I'm chairman and CEO,
[14] which is the largest residential brokerage business
[15] in New York City.
[16] Q: Anything else that you're actively
[17] involved in?
[18] A: Well, I am actively involved in many other
[19] things. For instance, the Milford Plaza Hotel and
[20] all of our hotel activities which I would
[21] distinguish from our other apartment and office
[22] building activities. I'm the chairman and CEO of

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[1] Milford Hotel Corp. And we are active investors in
[2] other hotels where I have a much lesser role, but I
[3] still have meetings with regard to those
[4] investments.
[5] Q: During the years 1994 and 1995, if you can
[6] tell me, about what fraction or percentage of a
[7] typical business day would you devote to Liberty
[8] Cable matters as opposed to any of these other
[9] matters?
[10] A: Less than a day a week on average.
[11] Q: Did you attend a weekly meeting of the
[12] senior management and senior staff of Liberty Cable
[13] during the two years that I have mentioned? I
[14] think it was held on Thursday most of the time?
[15] A: Yes.
[16] Q: About how long did those meetings run?
[17] A: In general, an hour to two hours.
[18] Q: So, would it be fair to say that in a
[19] typical week of yours, maybe a third of your time
[20] devoted to Liberty was taken up by the Thursday
[21] meeting?
[22] A: Could have been a hundred percent. The

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[1] only formal time that I spent devoted to Liberty
[2] was during that meeting.
[3] Q: As far as you were concerned, who runs the
[4] business on a day-to-day basis?
[5] A: Peter Price, the president.
[6] Q: And he reports to you, I take it?
[7] A: Yes.
[8] Q: Aside from your attendance at the weekly
[9] meetings, what kinds of things would you become
[10] involved in with respect to Liberty?
[11] A: Really, at Peter's election, when he would
[12] have an issue that he would want to discuss with
[13] me, he would come into my office, sit down and chat
[14] for five minutes.
[15] Q: Is there any particular kind of issue that
[16] you instructed Mr. Price that you wanted to know
[17] about?
[18] A: No, I never instructed him per say, but he
[19] knew that my form of management style is to operate
[20] by consensus, for him to keep me informed of what
[21] he was doing. He would not make any strategic
[22] decisions without first discussing them with me.

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[1] And I think he was aware of my business
[2] philosophy which is that it's fine to do anything
[3] on your own without asking about it, but you got to
[4] be right about it. Otherwise, there is a problem.
[5] So you if you think you might not be right or want
[6] additional input, then you come in and talk about
[7] it.
[8] Q: There were written reports presented by
[9] the various department heads at Liberty at this
[10] Thursday meeting; isn't that correct?
[11] A: Yes.
[12] Q: Did you get copies of those reports?
[13] A: Yes.
[14] Q: Did you look at them?
[15] A: Yes.
[16] Q: And so it would be fair to say that on a
[17] regular basis, your information that you had about
[18] the operation of Liberty came to you through those
[19] reports and through what was said at those
[20] meetings?
[21] A: Yes.
[22] Q: And then if there were any special issues

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[1] that Mr. Price wanted to bring up with you, then he
[2] would do so?
[3] A: Yes.
[4] Q: Did you ever have any kind of meetings or
[5] discussions among the owners of Liberty alone,
[6] without Mr. Price being present, about any aspect
[7] of Liberty's business?
[8] A: Yes.
[9] Q: Can you tell me when those were
[10] approximately.
[11] A: Daily with my brother Edward, and perhaps
[12] once or twice from the founding of the company
[13] until the present with my cousin Philip, who is the
[14] third partner.
[15] Q: First off, with respect to those meetings,
[16] was Edward a part of them?
[17] A: I don't recall.
[18] Q: We will talk about meetings that you just
[19] said you had with Philip.
[20] Was either of them about the subject of
[21] Liberty's operation of unlicensed microwave
[22] facilities?

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[1] A: No.
[2] Q: If you can, can you tell me in a general
[3] way what kinds of things you discussed about
[4] Liberty with your brother Edward.
[5] A: Daily questions that he would be involved
[6] in. Sometimes we might talk about an advertising
[7] campaign or we might chat between ourselves, we
[8] might get a memo from someone as to what the
[9] disposition of the issue should be, basically those
[10] kinds of issues.
[11] Q: There was no particular regularity to the
[12] kind of issues you discussed?
[13] A: No.
[14] Q: It was just whatever seemed to be on the
[15] agenda at that moment?
[16] A: Right.
[17] Q: As between yourself and Edward Milstein,
[18] do you know which of the two of you had the greater
[19] involvement in Liberty in terms of time commitment?
[20] A: I think my brother may have spent slightly
[21] more time than I did on the business, surely as a
[22] function of the fact that he's not as involved in

[1] these other activities as I am, so he would be at
[2] his desk more. And Peter, he was there when I
[3] wasn't.
[4] Q: Mr. Milstein, I'm going to show you what
[5] was previously marked in another deposition as
[6] Berkman Exhibit Number 4. I'm not going to quiz
[7] you on it in great detail. Take your time to flip
[8] through it. It's pages 18 through 24 of that bound
[9] volume that you have.
[10] (Document handed to the witness.)
[11] Q: First off with respect to the memorandum
[12] which is on the first page of Berkman 4, do you
[13] recognize that as a type of memorandum that you saw
[14] regularly in 1994, 1995?
[15] A: Yes. It's the new contract memorandum.
[16] Whenever we enter into a new contract, Berkman
[17] sends around a summary of what it is. Typically we
[18] regard these as good news.
[19] Q: Is there any particular reason that you
[20] know why the memorandum is addressed to
[21] Mr. Ontiveros and Mr. Nourain with the rest of the
[22] people as cc's? And was there some particular

[1] action that Mr. Ontiveros and Mr. Nourain are
[2] supposed to undertake when they receive a
[3] memorandum like this one?
[4] MR. BEGLEITER: If you know.
[5] BY MR. BECKNER:
[6] Q: If you know.
[7] A: They are on the technical side of the
[8] business. They are the engineers and they
[9] understand the gigahertz, et cetera, and so they
[10] have to get the line of sight to do the coordinates
[11] and get that all organized and get the filings
[12] done.
[13] The next step is to initiate service.
[14] There is a series of technical things that have to
[15] be done.
[16] Q: And this is a message to them to get these
[17] things started, those technical things.
[18] MR. BEGLEITER: Answer if you can.
[19] THE WITNESS: That might be the inference
[20] you could draw from it. I never instructed Berkman
[21] to do it this way, but I don't know why he does it
[22] this way. It could as easily been copies to me as

[1] it was to them.
[2] BY MR. BECKNER:
[3] Q: That's fine. I want to ask you one
[4] question about the contract. During the year of
[5] this exhibit, 1994–and Liberty used a fairly
[6] Standard Form of Agreement with its customers; is
[7] that correct? When I say "fairly standard," what I
[8] mean is most of the terms were identical that might
[9] have been a slight variation to the contract?
[10] A: That was the intent, though I'm not sure
[11] what was done.
[12] Q: When there was a variation from a standard
[13] form, was that something that you wanted to know
[14] about in advance of when it was signed?
[15] A: Any substantive change to the contract,
[16] which would be greater than the ones I see here,
[17] should be brought to my attention.
[18] MR. BEGLEITER: Here he is referring to
[19] Berkman 4.
[20] BY MR. BECKNER:
[21] Q: The particular contract you were looking
[22] at?

[1] A: Right.
[2] However–and I don't have any specific
[3] recollection. I don't think I have ever seen this
[4] contract before, so I would not routinely see
[5] contracts, and Berkman took it upon himself to draw
[6] conclusions as to materiality of things. And from
[7] time to time when it would come out that maybe it
[8] was a little more material than he might think,
[9] then I would have to get him to reorganize from
[10] that point.
[11] But in general, it would have to be a
[12] fairly radical change to the basic agreement for
[13] someone to come to me.
[14] Q: I want to ask you about one particular
[15] aspect of the agreement, and that is on the first
[16] page of the agreement, paragraph numbered four,
[17] which is entitled "installation." You have that in
[18] front of you. You see there the contract–this
[19] contract provides for installation within 120 days
[20] from the date the contract was signed.
[21] And what I would like to know is whether
[22] or not a variation from this 120-day period would

[1] be one of the things that you would want to know
[2] about before it was agreed to.
[3] A: I wasn't even aware of the 120-day period,
[4] so somewhere in this system these people figured
[5] out what time they needed for each building, and
[6] this evidently was the form they were using at the
[7] time, so they provided for 120 days.
[8] Q: But if a building said that's too long and
[9] I want it done in 90 days or 60 days, would that be
[10] something you would want to know about before it
[11] was agreed to?
[12] MR. BEGLEITER: I object to the form of
[13] the question.
[14] Answer, if you can.
[15] THE WITNESS: Obviously I would want to
[16] know if we were agreeing to something, a commitment
[17] that we could honor. I wouldn't want to agree to a
[18] commitment that we could not honor. So if someone
[19] came in and they asked me question, can we do 60
[20] days? I tell them, you tell me if you can do 60
[21] days. I'm not going to tell you if you could do 60
[22] days.

[1] So I have no set agenda as to how many
[2] days it should take. Whatever it takes to go
[3] through all the procedures that should be completed
[4] is the time it must take.
[5] BY MR. BECKNER:
[6] Q: But the fact alone that there is a
[7] proposed variation from the standard contract, that
[8] fact alone is not a problem that you would want to
[9] know about?
[10] A: No.
[11] Q: Mr. Milstein, were you involved more
[12] heavily with particular buildings? I'm thinking,
[13] for example, the contract for the GM building.
[14] Were you involved more heavily with that than you
[15] were with others?
[16] A: No.
[17] MR. BECKNER: I would like the Reporter to
[18] mark this exhibit, please.
[19] (Howard Milstein Exhibit No.
[20] 1 was marked for
[21] identification.)
[22] (Document handed to the witness and

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[1] witness reviews document.)
[2] THE WITNESS: Shall I read all of these?
[3] BY MR. BECKNER:
[4] Q: I was going to advise you, I'm not going
[5] to ask you about all the details discussed there,
[6] but generally. Take that into consideration when
[7] looking at the document. Obviously, if you want to
[8] look at it again after I ask you a question, you
[9] could do that as well.
[10] Do you recall the basic subject matter of
[11] what the documents are discussing? That is, the
[12] pricing of service to tenants in the GM building?
[13] A: No.
[14] Q: You don't have any independent
[15] recollection of that?
[16] A: No.
[17] Q: As a general matter, are you involved in
[18] pricing issues or pricing policy for Liberty Cable
[19] in terms of setting prices either to customers for
[20] buying service, or in that case you are talking
[21] about the price of running or contribution towards
[22] the cost of running a horizontal cable line to

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[1] serve a particular office suite?
[2] A: I'm involved in strategic issues involving
[3] pricing. This is tactics.
[4] Q: Tactics, in your sense, is tactics of a
[5] particular building?
[6] A: Right.
[7] Q: And strategic would be more of a
[8] company-wide kind of policy?
[9] A: Right.
[10] Q: I'm going to show you an exhibit that has
[11] been marked from a previous deposition. It's
[12] Ceccarelli Exhibit 3, and it consists of actually
[13] three different memoranda by Ms. Ceccarelli
[14] addressed to you, Howard Milstein.
[15] And again as with the other ones, I'm not
[16] going to ask you about the details of what's in
[17] those memoranda, but I'm going to ask you some
[18] general questions after you have looked at them.
[19] (Document handed to the witness, and
[20] witness reviews document.)
[21] A: Yes, I reviewed this.
[22] Q: Do you recall the circumstances that

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[1] precipitated these memoranda from Ms. Ceccarelli?
[2] A: Yes, I do.
[3] Q: Could you just tell me generally what that
[4] circumstance was.
[5] A: Well, we had a case of first impression of
[6] how to deal with a particular kind of product
[7] offering and the analysis that our head of
[8] marketing did from a financial point of view was
[9] not very rigorous in her first few attempts to lay
[10] out her proposal, which led her to respond, okay,
[11] okay, I see your point, but I think this could
[12] still work.
[13] I believe this corresponded–you are
[14] missing some pieces of correspondence which would
[15] be my memos back to her which typically would take
[16] the form of me receiving a memo like this and I
[17] would write on it, that she would get it back,
[18] something like this is interesting, but not a
[19] reason to do anything.
[20] So then maybe it was a little more harsh
[21] than that. So then she works up some return on
[22] investment numbers to show that this makes sense

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[1] versus what our normal economics would be. That's
[2] what she's calling Building A.
[3] I believe she convinced me we should do
[4] this, although I'm not sure she did.
[5] Q: But the reason you became involved in the
[6] matter relating to a specific building because it
[7] was, as you say, a case of first impression?
[8] A: It was a case of first impression or it
[9] might have been violating our normal parameters by
[10] a wide margin, and so there had to be some other
[11] reasons, compelling reasons, to bring it to my
[12] attention.
[13] In general, I would say this kind of an
[14] issue could have been brought to Peter, but Peter
[15] is not as financially attuned, so it might have
[16] been brought to Peter and it might have been
[17] brought to me. It may be, the reason I think this
[18] actually came to me, as I think about it, is
[19] probably the Thursday meeting that she refers to, I
[20] told her I didn't think she proposed something and
[21] it was a certain number of units and certain price
[22] factors, and I said I don't think that makes sense

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[1] financially, so she was probably responding to the
[2] specific question that I asked her. That's what it
[3] is.
[4] Q: Okay. You mention in your answer that
[5] there were certain parameters I think is the term
[6] you used.
[7] What were those parameters that you were
[8] referring to?
[9] A: We had worked out various costs and
[10] various returns that we thought were appropriate,
[11] and I guess anywhere between about two-and-a-half
[12] and five-year return on investment was where most
[13] of our things came through.
[14] There were other parameters including, for
[15] instance, that I preferred doing buildings with a
[16] hundred units. That's why she picks Building A,
[17] hundred units, as an example, first 42 units.
[18] But each situation you have to look at the
[19] cost of the installation and the return on the
[20] installation. So you might have a more costly
[21] installation for a variety of reasons, but you
[22] might be selling a package with a higher

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[1] profitability level in it.
[2] So that was the point she was trying to
[3] make in this memo because it was a $49 package
[4] instead of the additional $15, the margin on fewer
[5] units was sufficient to provide an appropriate
[6] return.
[7] Q: Were you aware that Liberty provided its
[8] service to some buildings by means of a coaxial
[9] cable as opposed to using a microwave dish on the
[10] roof?
[11] A: Yes.
[12] Q: Do you know the situation where Liberty is
[13] providing service to a building with the small
[14] number of units? I think you said that your
[15] preferred number was a hundred units. I think that
[16] building there is 40 something, if I'm not
[17] mistaken.
[18] A: Yes.
[19] Q: Is doing that by means of a cable as
[20] opposed to a microwave dish?
[21] MR. BEGLEITER: I object to the form.
[22] Answer it, if you can.

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[1] THE WITNESS: I'm not aware of any
[2] specific buildings, although I'm sure that if a
[3] building is next door to another building, that
[4] before the issue of the hard wire came up, there
[5] were buildings that were connected that were next
[6] door to each other. They could have been either
[7] big or small. The second building, when we were
[8] under the impression that that was an okay thing to
[9] do, would always be connected by hard wire if it
[10] were next door.
[11] BY MR. BECKNER:
[12] Q: Because it was economically advantageous?
[13] A: Sure.
[14] Q: Running the wire cost a lot less than
[15] putting up another microwave dish?
[16] A: Sure.
[17] But let me put one or two caveats on that.
[18] Number one, while there would be some savings
[19] incident to running a wire instead of putting up
[20] another dish, you had to deal with New York City
[21] sociabilities. Sometimes neighboring buildings
[22] didn't like each other and that could present a

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[1] problem.
[2] The second issue always in the back of our
[3] minds was, well, what would happen if one of the
[4] buildings canceled their contract with us? So that
[5] was the second problem.
[6] On balance, it was still better and more
[7] cost effective to run a wire than to put up another
[8] dish, and that would affect this calculation, but I
[9] don't think we were successful in finding very many
[10] opportunities to actually do that.
[11] Q: Let me show the witness Edward Milstein 1
[12] and 2.
[13] (Documents handed to the witness, and
[14] witness reviews documents.)
[15] Q: Mr. Milstein, you have been handed two
[16] documents which previously had been marked as
[17] Edward Milstein deposition Exhibits 1 and 2. Each
[18] of them is a one-page memorandum concerning 211
[19] East 51st Street and 220 East 52nd.
[20] Directing your attention to Edward
[21] Milstein Exhibit 1, the January 5th memorandum,
[22] there is some writing that appears to say "CC:HPM"

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[1] and underneath that "HPM." Is that your writing or
[2] someone else's?
[3] A: The writing under the CC:HPM?
[4] Q: Yes.
[5] A: That's Janet's writing.
[6] Q: Who do you understand HPM to be referring
[7] to?
[8] A: That's me.
[9] Q: Now looking at Exhibit 2, Edward Milstein
[10] Exhibit 2, there is writing there underneath the
[11] column of numbers. It appears to say "Edward
[12] okay." Do you know whose writing that is?
[13] A: Which one are you on? The other one?
[14] Q: Yes.
[15] A: No, I don't know whose writing it is.
[16] Q: I take it it's not yours?
[17] A: No.
[18] Q: Do you remember being involved in any
[19] discussion regarding service to the two buildings
[20] identified in these exhibits?
[21] A: No, I don't.
[22] (Witness confers with the counsel.)

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[1] Q: I want to change topics on you a little
[2] bit and ask you when it first came to your
[3] attention that Liberty was or might be operating
[4] microwave paths without FCC licenses. Do you
[5] remember when that was that you first learned that
[6] might be the case or was the case?
[7] A: I don't have any–it was a while ago, a
[8] year or two ago. I don't have a specific date in
[9] mind, if that's what your question is.
[10] Q: Sure. Do you remember who brought this to
[11] your attention or how it was brought to your
[12] attention the first time?
[13] A: I think it was brought to our attention
[14] because Time Warner made a complaint to some
[15] regulatory agency.
[16] Q: And you were informed about that
[17] complaint, I take it?
[18] A: Yes.
[19] Q: So it would be correct to say that
[20] whenever that complaint had been filed at the
[21] agency, that your knowledge of the fact that
[22] Liberty was operating microwave paths, some

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[1] microwave paths, without a license, would have come
[2] after that complaint had been filed with the
[3] agency?
[4] A: That's correct.
[5] Q: Upon learning of the allegation by Time
[6] Warner, what action, if any, did you take?
[7] A: Well, I was, of course, very concerned.
[8] Time Warner is a difficult competitor, with all due
[9] respect to counsel, and I was concerned that what
[10] they were saying might be true, and what they would
[11] do with it if it were true.
[12] It didn't make sense to me that it was
[13] true because I know that we had gone to great
[14] lengths to comply with all the rules and
[15] regulations, but I immediately called in our lead
[16] outside counsel and the senior partner of the firm,
[17] Lloyd Constantine, and asked them to fully
[18] investigate the facts as alleged to find out if, in
[19] fact, there was a problem, if what the scope of the
[20] problem was, whether it was more or less than what
[21] was alleged.
[22] And as that process continued, when we

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[1] found out shortly thereafter there was a real
[2] problem, we knew that in two or three days, then I
[3] told them we have to get all the facts, get them
[4] all on the table, take them to the regulator and
[5] explain to them how it occurred, and we would have
[6] to develop a compliance program that would have
[7] belts, suspenders and safety nets and every other
[8] gadget possible, because we couldn't afford to have
[9] this kind of thing happen. This was not the way we
[10] wanted to run our business.
[11] Q: And I take it they carried out your
[12] instructions?
[13] A: Yes.
[14] There was one other thing I asked them to
[15] do, was to make a complete report to me on exactly
[16] how this had occurred and why it had occurred and
[17] who was at fault in its occurring. That report I
[18] needed internally, but I also felt that the best
[19] policy to use with our regulator was to have that
[20] report for the regulator to see exactly that we
[21] were putting all our cards on the table and telling
[22] them everything that had happened and give them the

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[1] full picture.
[2] Q: Again, when you were referring to a
[3] report, now you're talking about an actual
[4] document?
[5] A: Yes. And the FCC has that report.
[6] Q: Okay. And did you look at that report?
[7] A: Yes, I did.
[8] Q: Did you see it before it was given to the
[9] FCC?
[10] A: Yes, I did.
[11] Q: Aside from the lawyers who prepared the
[12] report, do you know who else saw the report?
[13] A: To my knowledge, it's possible my brother
[14] looked at it. It's possible Peter looked at it,
[15] although I'm not sure whether either did. To my
[16] knowledge, no one else could have seen the report.
[17] MR. BEGLEITER: With the exception, of
[18] course, of the FCC.
[19] BY MR. BECKNER:
[20] Q: I'm going to show you what has been marked
[21] before as Exhibit 31 to Mr. Foy's deposition. That
[22] begins at page 109, sir, and continues through page

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[1] 151. I'm not going to quiz you on all the contents
[2] of it, so don't feel compelled to read it from
[3] cover to cover. But the first thing I would like
[4] to know is whether or not you recall having seen it
[5] before either in that form or in draft.
[6] (Document handed to the witness, and
[7] witness reviews document.)
[8] A: I don't have any specific recollection of
[9] this particular document.
[10] No, I don't have a specific recollection
[11] of this. There has been a lot of correspondence
[12] with the FCC about our licenses. It's quite
[13] voluminous. I don't have any independent
[14] recollection of this.
[15] Q: If you just look at page 127 through 129
[16] of the exhibit, there is a declaration of Behrooz
[17] Nourain. Can you tell me if you have ever seen
[18] that declaration before today either in draft or
[19] signed as it is here?
[20] A: No, I don't believe so.
[21] Q: This letter was prepared by Mr. Howard
[22] Barr. Was he part of the group of attorneys who

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[1] was conducting the internal audit you described?
[2] A: No, he was not.
[3] Q: Do you know where he got the information
[4] that is contained in this letter? Do you know if
[5] any of it came from Liberty?
[6] A: Didn't even know Howard Barr signed the
[7] letter. I guess I would have to turn to the
[8] signature page.
[9] Q: Page 25.
[10] A: It's a letter from Pepper & Corazzini who
[11] was our licensing-what's the question?
[12] Q: The question is whether or not you know
[13] where Mr. Barr got any of the information that's in
[14] the letter.
[15] MR. BEGLEITER: Note for the record that
[16] the witness has not read the document from cover to
[17] cover, and he's already testified he doesn't recall
[18] seeing the document before, so I believe the
[19] question is unfair.
[20] MR. BECKNER: I will withdraw it.
[21] BY MR. BECKNER:
[22] Q: Let me strike that and give you the

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[1] context.
[2] You have the book in front of you. If you
[3] turn back to pages 107 and 108, which is the
[4] preceding exhibit to the one I asked you to look
[5] at, and that's Foy Exhibit 30-
[6] A: Right.
[7] Q: -that's a copy of a letter from an
[8] official of the FCC?
[9] A: Yes.
[10] Q: It's directed to Mr. Barr and Mr. Rivera?
[11] A: Yes.
[12] Q: Do you recall having seen a copy of that
[13] letter before today?
[14] A: No, I haven't.
[15] Q: Exhibit 31, the one we have been talking
[16] about, is the response to Exhibit 30 that Mr. Barr
[17] wrote.
[18] A: I see.
[19] Q: I'm trying to be fair to you.
[20] A: Okay.
[21] Q: And what I would like to know is whether
[22] or not-you told me that you don't recall having

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[1] seen either of the letters before today, and the
[2] only other thing I would like to know is whether or
[3] not you were aware that a response was being
[4] prepared by Mr. Barr or somebody else.
[5] A: To the letter that I was unaware of?
[6] Q: Or some other inquiry that the Commission
[7] had made.
[8] A: I was not aware of anything with respect
[9] to this letter.
[10] Let me just repeat to be clear about this.
[11] There were voluminous correspondence over a period
[12] of, I would estimate, six to nine months about our
[13] licenses, many of which I reviewed. I don't recall
[14] reviewing these particular ones, but there were a
[15] lot of documents, so-and I have no idea where
[16] Pepper & Corazzini actually gets their information
[17] from. I don't know who they actually speak to.
[18] They don't speak to me.
[19] Q: And I take it, then, that as far as you
[20] can recall, you did not direct someone at Liberty
[21] to supply information at Pepper & Corazzini for
[22] this letter?

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[1] A: No, I didn't.
[2] Q: With respect to the internal audit in the
[3] report that you mentioned earlier in your
[4] testimony, did you direct Mr. Constantine or any of
[5] his lawyers in his firm to share any of the
[6] information that they collected in that audit with
[7] anyone other than the people you have already
[8] identified, which I believe is the FCC and
[9] yourself?
[10] A: No.
[11] Q: Mr. Milstein, I'm going to hand you two
[12] exhibits that were marked in a previous deposition,
[13] price Deposition Exhibit Number 2, which is a
[14] two-page memo, and Price Deposition Exhibit
[15] Number 3, which is a number of pages. It's a
[16] table.
[17] The first question I want to ask you after
[18] you had a chance to look at those is whether you
[19] recall having seen either of them before today.
[20] (Documents handed to the witness, and
[21] witness reviews documents.)
[22] A: No, I don't have any independent

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[1] recollection of this, although I note I'm shown as
[2] a blind copy.
[3] Q: I will note for the record that, and also
[4] for your benefit, Mr. Milstein, that portions of
[5] Exhibit 2 and a major portion of Exhibit 3 have
[6] been redacted by your counsel because they don't
[7] concern the issues in this case.
[8] Just to make the record clear, is it also
[9] your testimony that you don't have an independent
[10] recollection of having seen Exhibit 3 before today?
[11] That's the table?
[12] A: I have no recollection of seeing this
[13] exhibit either. They seem to be two copies of the
[14] same page.
[15] Q: It appears to be. They have different
[16] production numbers on them, so that's the way it
[17] came to us.
[18] Are you aware today, as you sit here, that
[19] some of the unlicensed paths that Liberty had
[20] activated were the subject of pending applications
[21] at the FCC that simply hadn't been acted on?
[22] A: Yes.

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[1] Q: Are you also aware, as you sit here today,
[2] that others of Liberty's unlicensed paths, had been
[3] activated before any application of any kind had
[4] been filed?
[5] A: Yes.
[6] Q: Were you aware of the existence of that
[7] second group of unlicensed paths prior to July
[8] 1995?
[9] A: I can't tell you in terms of point of
[10] time.
[11] Q: Do you recall whether or not the first
[12] check or audit to see if Liberty actually had
[13] unlicensed paths, as Time Warner was claiming, did
[14] that first check or audit reveal the existence of
[15] all of the unlicensed paths that Liberty had, or
[16] did some of them get revealed later, if you know?
[17] A: My recollection is that we initially,
[18] although Time Warner inquired about two licenses,
[19] found 15 licenses that were not properly
[20] authorized. Subsequently we found another four, a
[21] total of 19.
[22] Q: Do you know any reason why the later four

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[1] unlicensed paths were not found with the initial
[2] 15?
[3] A: No, I don't. There may be a reason, but I
[4] don't recall the reason.
[5] Q: What was your reaction when your company's
[6] investigation confirmed the truth of Time Warner's
[7] charges that two paths were operating without a
[8] license?
[9] A: I was shocked, I was dismayed, I was
[10] horrified, I was embarrassed, I was mortified, I
[11] was furious.
[12] Q: Were there any individuals at the company
[13] who were the recipients of your fury, and if so,
[14] whom?
[15] A: You bet. Well, Peter, in particular,
[16] because he's the one that comes into my office, and
[17] he has a role in the problem.
[18] We had a system failure. We had a system
[19] failure that originated with Behrooz, who should
[20] have been able to do what he was doing. He had
[21] been hand-picked by the engineer who was the
[22] superstar in the field, a fellow by the name of Joe

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[1] Stern, to be our engineer. Joe got all the initial
[2] licenses and went through all the procedures
[3] properly. And I picked this fellow, Behrooz, who I
[4] think I only met once or twice, and Behrooz went on
[5] his merry way with Peter supervising him initially.
[6] And with Pepper & Corazzini as counsel.
[7] So we established a system with Joe Stern.
[8] We hired the fellow Joe Stern recommended. Peter
[9] personally got initially involved in this process
[10] to get the STAs, and he went down to Pennsylvania
[11] to get the first group of STAs.
[12] We had one of our leading groups of
[13] attorneys in the field, Pepper & Corazzini. Peter
[14] instructed Pepper & Corazzini to be sure we were
[15] doing everything properly and to audit from time to
[16] time what we were doing.
[17] And despite these precautions which should
[18] have been adequate, they were not adequate because
[19] Behrooz subsequently came out to have been confused
[20] about all these matters, and Behrooz was not
[21] properly supervised by Peter.
[22] And the hardest thing about it for me was,

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[1] of course, looking in the mirror and say, well,
[2] maybe I overestimated Peter. But that was my
[3] reaction and that was who was-my impression of who
[4] I was mad at when the dust settled.
[5] Q: And I want to be clear in my questions to
[6] you here, that I'm not asking you to disclose or
[7] even refer to this audit report which as I'm sure
[8] you are well aware of subject of various pieces of
[9] collateral litigation. Besides the names of people
[10] you identified, you have a belief that any other
[11] people or institutions, firms, are responsible for
[12] Liberty having activated these paths without a
[13] license?
[14] A: The only other person who was at least
[15] peripherally involved was Tony Ontiveros, who was
[16] our operations manager, who worked closely with
[17] Behrooz, although admittedly he was not a licensing
[18] person. The licensing chain of command really
[19] didn't go through Tony, although Tony worked with
[20] them on a daily basis.
[21] Q: Now there was a person named Bruce
[22] McKennon who worked for Liberty for a while and

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[1] left in about 1993. Does that sound about right?
[2] A: Could be. Some years ago, yes.
[3] Q: What was his job title when he was working
[4] for Liberty?
[5] A: I don't remember his job title.
[6] Q: Do you know what he did, what his
[7] functions were?
[8] A: Bruce was supposed to run the operations.
[9] He was supposed to be Mr. Inside to Mr. Peter
[10] Price's Mr. Outside. That's what he was supposed
[11] to do.
[12] Q: When you say Mr. Peter Price was
[13] Mr. Outside, did you mean Peter Price was supposed
[14] to be more involved in the public face of Liberty,
[15] sales, PR?
[16] A: Right. Peter has tremendous strengths in
[17] those areas, and the theory was to free him up to
[18] do the things that he did best.
[19] Q: Were you aware of whether or not there was
[20] any change in the way the company was operated
[21] after Mr. McKennon left and, as I understand, was
[22] not replaced?

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[1] A: No, I'm not aware of any change.
[2] Q: With respect to Mr. Nourain in
[3] particular-strike that. Let me ask you this way.
[4] There were new procedures put in place by
[5] Liberty, and I think you alluded to them as a
[6] result of the Internal Audit Report that the
[7] Constantine firm did; is that correct?
[8] A: That's correct.
[9] Q: And are you generally familiar with how
[10] those procedures now work or the new ones have been
[11] put in place in the middle of '95?
[12] A: Very generally, yes.
[13] Q: And one part of those procedures is
[14] somebody at the company has to see a copy of an FCC
[15] grant of operating authority, either a license or a
[16] temporary authority, before a new microwave path is
[17] switched on.
[18] A: That's the compliance officer, correct.
[19] Q: And that's Mr. Berkman?
[20] A: That's correct.
[21] Q: Are you aware of whether or not before
[22] those procedures are put in place there was anyone

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[1] at Liberty who was responsible for even maintaining
[2] a file for FCC licenses?
[3] A: Could you repeat the question again?
[4] (Whereupon, the Court Reporter read back
[5] the previous question.)
[6] MR. BEGLEITER: You are referring to the
[7] compliance program?
[8] MR. BECKNER: Yes, the compliance program.
[9] THE WITNESS: The answer is that it was my
[10] understanding that there were numerous people who
[11] were responsible to make sure that we had all of
[12] our ducks in a row with respect to our licenses
[13] before a switch-on. Those included Behrooz, Peter,
[14] and the law firm.
[15] BY MR. BECKNER:
[16] Q: Pepper & Corazzini?
[17] A: Pepper & Corazzini, yes.
[18] Q: There were several law firms involved, so
[19] we probably want to be specific as to which one we
[20] are talking about.
[21] A: Right.
[22] So all three of those had that

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[1] responsibility.
[2] Q: And so I take it that you assumed before
[3] the compliance procedures were put in place that
[4] whenever the Operations Department actually
[5] physically turned on a microwave path, that they
[6] checked with someone to see that there was a
[7] license or other authority to operate that path?
[8] A: Of course.
[9] Q: Now, would the law firm of Pepper &
[10] Corazzini or any other law firm have any way of
[11] knowing that Liberty was planning to turn on a
[12] particular microwave path, as far as you know?
[13] MR. BEGLEITER: I will object to the form
[14] and foundation, but answer, if you know.
[15] THE WITNESS: I am not familiar with the
[16] precise kinds of information that they were
[17] provided with, so I really don't know the answer to
[18] that question.
[19] BY MR. BECKNER:
[20] Q: What I'm trying to get at is, if I
[21] understood one of your previous answers, I gather
[22] that you feel that the Pepper & Corazzini firm was

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[1] responsible in some way for the fact that Liberty
[2] turned on these microwave paths without having a
[3] license. Am I right about that?
[4] A: Yes.
[5] Q: Good. What I'm trying to focus on, if you
[6] can tell me, is in your view, what is it that they
[7] did or failed to do that makes them responsible?
[8] A: Think I should consult with counsel. We
[9] will be right back.
[10] (Witness confers with counsel outside the
[11] room.)
[12] (Whereupon, the Reporter read back the
[13] previous question.)
[14] Q: The "they" I was talking about was Pepper
[15] & Corazzini.
[16] A: Pepper & Corazzini was the law firm which
[17] specialized in this area of filing licenses and FCC
[18] compliance. We relied on them to make sure
[19] everything we were doing was correct. They were
[20] the ones who possessed the knowledge as to exactly
[21] what was correct.
[22] Further, as I mentioned earlier, Peter

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[1] Price instructed them by memo not only to be sure
[2] everything was fine but to audit our procedures
[3] periodically.
[4] So we paid them, we relied on them to do
[5] this, and clearly this could not ever have occurred
[6] if they had done their job.
[7] Q: Well, you understood that Liberty had to
[8] have a license before it turned on microwaves.
[9] A: Yes.
[10] Q: How did you expect the law firm to know,
[11] absent some action on the part of a Liberty
[12] employee, that on a particular day Liberty was
[13] going to turn on a particular microwave path so
[14] that they could say, wait a minute, you don't have
[15] a license for that path? That's what I'm trying to
[16] get at.
[17] MR. BEGLEITER: My objection is lack of
[18] foundation.
[19] Answer, if you can.
[20] THE WITNESS: It was up to them to devise
[21] a means to monitor that.
[22] BY MR. BECKNER:

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[1] Q: I see.
[2] A: I don't know what the answer to that is,
[3] but this is not my field.
[4] Q: I understand. I'm trying to get at what
[5] your expectation is, and I think I got it. That's
[6] fine.
[7] So what you're telling us is you wanted
[8] them, you told them, meaning the law firm of Pepper
[9] & Corazzini, to set up a procedure that would make
[10] sure that licenses or operating authority was in
[11] place before a microwave path is turned on?
[12] MR. BEGLEITER: I'm going to object to the
[13] word "you."
[14] BY MR. BECKNER:
[15] Q: Liberty the company. You as Liberty the
[16] company, not you personally.
[17] A: Well, in this case, you can identify the
[18] person. The person is Peter Price. One of Peter's
[19] responsibilities was to make sure that we were
[20] complying with everything that we had to comply
[21] with. None of this would ever get past his office
[22] to my office until we knew there had been damage

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[1] done. This is not a difficult thing to do. You
[2] just know how to do it and do it properly and
[3] monitor it.
[4] One of the ways Peter insured and assured
[5] himself that it was being done was to rely on
[6] Pepper & Corazzini. Now, this doesn't fully
[7] relieve him of the obligation to monitor what was
[8] going on, which evidently he felt he did fail to
[9] monitor it appropriately, which is how we got into
[10] this problem.
[11] But if Pepper & Corazzini had done what
[12] they had been asked to do, we would have avoided
[13] this problem. So certainly they're one of the
[14] culprits.
[15] Q: And you would agree with me, I take it,
[16] that if Behrooz Nourain or the person operating the
[17] department had affirmatively verified that Liberty
[18] had a license or other authority before they
[19] activated a microwave path, that also would have
[20] avoided the problem?
[21] A: Yes. Clearly it was Peter's impression
[22] that that was what was being done.

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[1] Q: Because, in fact, the new compliance
[2] procedures, as I understand them, are set up to
[3] where that precisely is what happened before a path
[4] is activated, a Liberty employee sees a license.
[5] A: Right. Liberty employee other than the
[6] engineer and other than the person who wants to
[7] turn on the building, so we moved it to a third
[8] person.
[9] Q: Aside from expressing your unhappiness
[10] with the people that you mentioned, has, to your
[11] knowledge, Liberty in any way expressed its
[12] dissatisfaction to Pepper & Corazzini with the
[13] legal services that they performed?
[14] A: I believe that has been expressed to them,
[15] yes.
[16] Q: Do you know who said that to them?
[17] A: It would have been someone from the
[18] Constantine firm.
[19] Q: I see.
[20] A: I think they had been advised to check
[21] their errors and omissions policy.
[22] Q: That was going to be my next question.

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[1] A: I didn't have the conversation, but I
[2] think they had been advised that that should be
[3] checked.
[4] Q: So I take it that the company, meaning
[5] Liberty, is at least considering some sort of
[6] formal action against the firm?
[7] MR. BEGLEITER: I will object to that
[8] question on relevance grounds. I'm going to ask
[9] the witness not to answer that as to our
[10] considerations because that may be relevant but may
[11] implicate privileged conversations with counsel.
[12] MR. BECKNER: Let me respond to your
[13] objection. I really think I hear two objections.
[14] One is the straight relevance objection and one is
[15] an objection that's based on privilege.
[16] MR. BEGLEITER: It might.
[17] MR. BECKNER: So let me respond to the
[18] second one first.
[19] BY MR. BECKNER:
[20] Q: I'm not asking you, sir, to disclose the
[21] substance of any legal advice that you might have
[22] received or asked for. I do not believe that if a

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[1] person or a company is considering legal action
[2] against somebody that that fact alone is within the
[3] scope of the privilege.
[4] MR. BECKNER: I didn't even ask him if he
[5] discussed it with his lawyers. Obviously, he's a
[6] significant businessman, and I'm sure he's capable
[7] of thinking at least to some degree by himself
[8] whether or not he wants to exercise those rights.
[9] So just to make my question clear, Bob,
[10] I'm not asking him what his lawyers told him he
[11] might be able to do.
[12] In terms of the relevance, the problem is
[13] the old maxim, actions speak louder than words. If
[14] people fouled up and they made mistakes, it's one
[15] thing to say, we told the guy you fouled up. It's
[16] something else to hold the person or firm
[17] accountable for that mistake in a meaningful way.
[18] And there has already been testimony by other
[19] witnesses, which I wasn't going to even ask of this
[20] witness, about some consequences that have flowed
[21] to the individuals at Liberty who the company
[22] believes was responsible.

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[1] And so I'm asking about possible
[2] consequences that might flow to this law firm which
[3] the company also feels is responsible, and for that
[4] reason I think it's relevant.
[5] MR. BEGLEITER: I would like to speak to
[6] my client.
[7] MR. BECKNER: Sure. The question was very
[8] narrow and maybe you want to hear it read back
[9] again.
[10] (Whereupon, the Court Reporter read back
[11] the previous question.)
[12] (Counsel confers with the witness outside
[13] the room.)
[14] MR. BEGLEITER: He's going to answer. I
[15] will raise an objection, though. The objection is
[16] to the form of the question.
[17] Go ahead.
[18] MR. BECKNER: Form of the question? I
[19] didn't hear that before.
[20] THE WITNESS: It's pre-mature.
[21] BY MR. BECKNER:
[22] Q: By that, do you mean you have not decided

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[1] one way or the other with respect to taking action
[2] against Pepper & Corazzini?
[3] A: It means I don't have all the facts
[4] necessary to even begin to address the issue.
[5] Q: That's fine.
[6] MR. BECKNER: I don't think I have
[7] anything more. I will note for the record that we
[8] originally talked about taking a lunch break at
[9] 12:30, and I continued beyond that because I
[10] thought I was going to be finished up pretty
[11] quickly. And I assumed that if I was finished and
[12] if the Bureau didn't have a large amount, that he
[13] would prefer just to go through and be done with it
[14] and go back to New York.
[15] THE WITNESS: That would be my preference,
[16] but depending on stomachs and schedules, I'm
[17] prepared to do whatever is at your convenience.
[18] MR. WEBER: I doubt I have anything
[19] exceeding ten minutes, so I see no problem with
[20] proceeding through, unless there are objections.
[21] EXAMINATION BY COUNSEL FOR THE
[22] FEDERAL COMMUNICATIONS COMMISSION

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[1] BY MR. WEBER:
[2] Q: Good afternoon, I'm Joseph Weber and I
[3] represent the Chief of the Wireless
[4] Telecommunications Bureau.
[5] You stated earlier when you were shown
[6] what was marked as Howard Milstein 1, the memos,
[7] you stated you would write your messages on them
[8] and return the memo.
[9] Would you keep a copy of the memo with
[10] your handwritten comments in your own words?
[11] A: No, I do not.
[12] (Howard Milstein Exhibit No.
[13] 2 was marked for
[14] identification.)
[15] MR. WEBER: I'm going to be showing the
[16] witness what has been marked as Howard Milstein 2.
[17] Actually, it's a two-page memorandum with a third
[18] page which is a copy of the second page of the
[19] memorandum with handwriting, Bates number 5510
[20] through 5512.
[21] BY MR. WEBER:
[22] Q: And my question is actually a simple one.

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[1] The handwriting on the third page, I want to ask
[2] you if it's your handwriting so we could identify
[3] which is your handwriting in the documents.
[4] A: No.
[5] Q: That is not your handwriting?
[6] A: No.
[7] Q: Do you recognize whose handwriting that
[8] is?
[9] A: No, I don't.
[10] Q: Mr. Beckner concluded his questioning with
[11] some discussion about the law firm of Pepper &
[12] Corazzini and was asking whether or not Liberty had
[13] considered bringing any action against the firm,
[14] and your answer was to paraphrase that you don't
[15] have all the facts necessary to address the issue.
[16] What facts do you think you were missing
[17] in order to address the issue?
[18] A: I certainly need the resolution of these
[19] hearings to find out what penalty, if any, is being
[20] assessed against the company.
[21] Q: Anything else?
[22] A: I would have to sit down again and review

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[1] the facts and circumstances of exactly what role
[2] they did, what they didn't do, what they should
[3] have done, and all the information that we have.
[4] Q: Has anybody done that, to your knowledge?
[5] A: No. There has been no final review of
[6] that nature.
[7] Q: At this point in time, Pepper & Corazzini
[8] is still filing applications on behalf of Liberty;
[9] is that correct?
[10] A: That's correct, with a heightened sense of
[11] awareness, I believe.
[12] Q: In light of the concerns that they may be
[13] at part risk, why have you retained them for or
[14] continued to retain them to file applications for
[15] Liberty?
[16] A: That's a good question, one that was
[17] flitting across my mind during this deposition.
[18] And I guess the answer is that with respect to all
[19] legal matters, we had a number of firms
[20] representing us at various points in time, and we
[21] decided to put the Constantine firm in charge of
[22] figuring out who should do what.

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[1] And I believe it must have been their
[2] recommendation to continue with them. And I don't
[3] recall if they ever shared with me the logic of
[4] that.
[5] Q: I believe you also stated you expressed
[6] your unhappiness of the situation with Mr. Price.
[7] How did you do so?
[8] A: Well, I guess I did it in a tangible way.
[9] Peter got no bonuses whatsoever for a number of
[10] years, although he's extremely highly paid to begin
[11] with. But in our business everyone gets bonuses if
[12] they do what they are supposed to do. So he didn't
[13] get any for a few years.
[14] But I think worse than that probably is, I
[15] guess, after a few months my brother turned to me
[16] and said, are you finished torturing Peter yet?
[17] And I said no, I don't think so. So there was a
[18] long period of time when he paid a high psychic
[19] price for this.
[20] And I don't want you to get the impression
[21] that we considered firing everyone involved, which
[22] we did. However, ultimately we couldn't conclude

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[1] in our own minds it would be fair that any one
[2] person had failed because there were so many other
[3] pieces. There were always two or three other
[4] pieces, and there were some usually valid
[5] assumptions that were made by the people.
[6] So this was a case of Murphy's law, and as
[7] I described it earlier in my deposition, what my
[8] impression is of what occurred, but certainly, no,
[9] Peter was severely reprimanded. My precise words
[10] to him were that he had done to the company what
[11] Time Warner had never succeeded in doing, which was
[12] to jeopardize our existence, and he has to live
[13] with that. That occurred.
[14] MR. WEBER: Thank you. That's all I have.
[15] (Whereupon, at 1:05 p.m., the taking of
[16] the deposition was concluded.)
[17] (Signature not waived.)
[18]
[19]
[20]
[21]
[22]

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[1] CERTIFICATE OF DEPONENT
[2] I have read the foregoing 59 pages, which
[3] contain the correct transcript of the answers made
[4] by me to the questions therein recorded.
[5]
[6] HOWARD MILSTEIN
[7]
[8]
[9]
[10]
[11]
[12]
[13] Subscribed and sworn to before me this ___
[14] day of _____, 1996.
[15]
[16]
Notary Public, in and for
[17] the District of Columbia
[18] My commission expires:_____
[19]
[20]
[21]
[22]

[1] CERTIFICATE OF NOTARY PUBLIC
[2]
[3] I, David A. Kasdan, RPR, the officer
[4] before whom the foregoing deposition was taken, do
[5] hereby testify that the witness whose testimony
[6] appears in the foregoing deposition was duly sworn
[7] by me; that the testimony of said witness was taken
[8] by me stenographically and thereafter reduced to
[9] typewriting under my direction; that said
[10] deposition is a true record of the testimony given
[11] by said witness; that I am neither counsel for,
[12] related to, nor employed by any of the parties to
[13] the action in which this deposition was taken; and,
[14] further, that I am not a relative or employee of
[15] any attorney or counsel employed by the parties
[16] hereto nor financially or otherwise interested in
[17] the outcome of the action.
[18]
DAVID A. KASDAN
[19] Notary Public in and for
The District of Columbia
[20]
[21] My commission expires: October 1, 1999
[22]

[redacted]

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