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**Lawyer's Notes**

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96-41

5

Deck

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**In The Matter Of:**

*Confidential - Before the FCC*

Date

1-10-97

*In Re: Application of Liberty Cable Co., Inc*

*Michael Lehmkuhl*

*May 22, 1996*

*Miller Reporting Company, Inc.*

*507 C Street, N.E.*

*Washington, DC 20002*

*(202) 546-6666 FAX: (202) 546-1502*

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
In re: Application of : WT Docket No.  
: 96-41  
Liberty Cable Co., Inc. :  
CONFIDENTIAL  
Wednesday, May 22, 1996  
Washington, D.C.

The deposition of MICHAEL LEHMKUHL, 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 Fleischman and Walsh, 1400 16th Street, N.W., Sixth Floor, Washington, D.C., convened at 2:35 p.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.  
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On behalf of Time-Warner Cable of New York City:  
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MICHAEL LEHMKUHL

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EXHIBITS

NUMBER MARKED FOR IDENTIFICATION  
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PROCEEDINGS  
Whereupon,

[1] MICHAEL LEHMKUHL  
[2] was called for examination by counsel for  
[3] Time-Warner Cable and, after having been duly sworn  
[4] by the notary public, was examined and testified as  
[5] follows:  
[6]

EXAMINATION BY COUNSEL FOR  
TIME-WARNER CABLE  
BY MR. WEBER:

[7] Q: Good afternoon, Mr. Lehmkuhl. I'm Joseph  
[8] Weber, and I represent the Wireless Communications  
[9] Bureau.

[10] State your full name for the record.

[11] A: Michael J. Lehmkuhl.

[12] Q: Could you describe for us your educational  
[13] background?

[14] A: I got my bachelor's at the University of  
[15] Wisconsin, Madison. I got my law degree at Drake  
[16] University, and Master's in communications at Drake  
[17] University.

[18] Q: How are you currently employed?

[19] A: I'm an attorney at Pepper & Corazzini.

[20] Q: And how long have you been there?

[21] A: About two years.

[22] Q: Where were you prior to being at Pepper &  
Corazzini?

A: I was a paralegal at Goldberg Godles  
Wuerner & Wright.

Q: Is your primary area—we will get into  
that.

Are you currently a member of the Bar?

A: Yes. Member of the Wisconsin Bar.

Q: What is your primary area of practice at  
Pepper & Corazzini?

A: Communications.

Q: During your time with Pepper & Corazzini,  
have you done work for Liberty Cable Company?

A: Yes, I have.

Q: Can you describe for us the type of things  
you do on behalf of Liberty.

A: I prepare Liberty's applications.

Q: Can you describe for us the process of  
preparing one of the applications. And by that, I

mean first how you obtain the information from  
Liberty of what they want you to apply for, if you  
understand what I'm asking.

A: Basically the process is that the  
frequency coordination report comes from Comsearch.  
Based on the frequency coordination report, I  
prepare the application. I send it to the client  
for signature. Once it's signed, then I file it  
with the FCC.

Q: Do you know what processes started  
Comsearch doing a frequency search?

MR. BEGLEITER: I'm going to object to the  
question.

Do you understand the question?

THE WITNESS: No, I don't understand the  
question.

BY MR. WEBER:

Q: Are there any discussions between you and  
anybody at Liberty prior to receiving the frequency  
search or the frequency report from Comsearch  
regarding a path they're interested in?

MR. BEGLEITER: One second.

(1) (Off the record.)  
 (2) **MR. BEGLEITER:** No problem. Go ahead.  
 (3) (Whereupon, the Court Reporter read back  
 (4) the previous question.)  
 (5) **MR. BEGLEITER:** I will object, but answer  
 (6) it, if you understand the question.  
 (7) **THE WITNESS:** Generally, no.  
 (8) **BY MR. WEBER:**  
 (9) **Q:** Earlier today Mr. Berkman testified  
 (10) regarding his negotiation of contracts which he  
 (11) then would send to the operations people at  
 (12) Liberty.  
 (13) Did you ever have any discussions with any  
 (14) of the operations people at Liberty after they have  
 (15) received a fully negotiated contract?  
 (16) **MR. BEGLEITER:** I'm going to object. Lack  
 (17) of foundation.  
 (18) Answer it, if you can.  
 (19) **THE WITNESS:** Generally, no.  
 (20) **BY MR. WEBER:**  
 (21) **Q:** Is it your testimony, then, that what  
 (22) started you to begin the process of filling out an

(1) **Q:** Do you know if it was Mr. Nourain that  
 (2) made the contacts with Comsearch in order to do a  
 (3) frequency coordination report?  
 (4) **A:** I'm not aware of that personally.  
 (5) **Q:** Mr. Nourain never told you that he had  
 (6) done that?  
 (7) **A:** Yes, I guess he had.  
 (8) **Q:** After the application was filed, would you  
 (9) report that to Liberty?  
 (10) **A:** Yes. I would send them a copy.  
 (11) **Q:** Who would the copy be addressed to at  
 (12) Liberty?  
 (13) **A:** Behrooz.  
 (14) **Q:** During your representation of Liberty,  
 (15) have you had any discussions with Mr. Peter Price  
 (16) regarding the applications?  
 (17) **A:** Yes, I have.  
 (18) **Q:** When, if you can remember, was your first  
 (19) conversation with Mr. Price?  
 (20) **A:** I can't remember.  
 (21) **Q:** Are you aware of Time-Warner's Petitions  
 (22) to Deny certain Liberty applications?

(1) application was the receipt of the frequency  
 (2) coordination report from Comsearch?  
 (3) **A:** Yes.  
 (4) **Q:** Do you know of instances where you began  
 (5) preparation of an application prior to receiving a  
 (6) frequency coordination report from Comsearch?  
 (7) **A:** I'm not aware of any.  
 (8) **Q:** What is generally the time frame between  
 (9) when you receive the frequency coordination report  
 (10) and when you have an application ready to send to  
 (11) Liberty for signature?  
 (12) **A:** Usually it takes 30 days for the frequency  
 (13) to be cleared. It was during this time period that  
 (14) I would prepare the application.  
 (15) **Q:** And would the application then be ready  
 (16) for signature within that 30-day period?  
 (17) **A:** That's correct.  
 (18) **Q:** And generally also is the time frame when  
 (19) you send it to Liberty for signature and when you  
 (20) get it back?  
 (21) **A:** Excuse me?  
 (22) **Q:** What is the time delay between when you

(1) **A:** Yes, I am.  
 (2) **Q:** Do you know when Time-Warner filed or  
 (3) approximately when it filed its first Petition to  
 (4) Deny?  
 (5) **A:** I believe it was sometime in January of  
 (6) '95.  
 (7) **Q:** Can you recall if you had spoken to  
 (8) Mr. Price prior to Liberty's first Petition to  
 (9) Deny?  
 (10) **MR. BEGLEITER:** Time-Warner's first?  
 (11) **MR. WEBER:** Did I say Liberty?  
 (12) Time-Warner's first Petition to Deny.  
 (13) **THE WITNESS:** I can't recall.  
 (14) **BY MR. WEBER:**  
 (15) **Q:** Did you keep Mr. Price informed of the  
 (16) application process?  
 (17) **MR. SPITZER:** Can you clarify that? What  
 (18) aspect?  
 (19) **BY MR. WEBER:**  
 (20) **Q:** Did you keep Mr. Price informed of when  
 (21) you filed applications?  
 (22) **A:** Not Mr. Price directly.

(1) send it to Liberty for signature and when you get  
 (2) it back from Liberty?  
 (3) **A:** It varies. A few days.  
 (4) **Q:** And you would file it as soon as you  
 (5) received it back from Liberty?  
 (6) **A:** That's correct.  
 (7) (Phone rings and off the record.)  
 (8) **Q:** Who, if anyone, at Liberty did you discuss  
 (9) the applications with?  
 (10) **A:** Behrooz Nourain. Yes, Behrooz.  
 (11) **MR. BEGLEITER:** When you did that  
 (12) question, does that have a time component to it?  
 (13) **MR. WEBER:** Right now I'm looking at  
 (14) really for the entire time he has been preparing  
 (15) the applications for Liberty.  
 (16) **THE WITNESS:** Yes. It would be Behrooz.  
 (17) **BY MR. WEBER:**  
 (18) **Q:** Would Mr. Nourain typically contact you  
 (19) prior to receiving any frequency report from  
 (20) Comsearch?  
 (21) **A:** Not as a matter of course. Sometimes,  
 (22) yes.

(1) **Q:** Can you explain what you mean by  
 (2) indirectly.  
 (3) **A:** Well, I sent the application to Behrooz,  
 (4) not to Mr. Price.  
 (5) **Q:** Have you also filed Special Temporary  
 (6) Authority, or STA, applications on behalf of  
 (7) Liberty?  
 (8) **A:** Yes, I have.  
 (9) **Q:** Who, if anybody, at Liberty did you  
 (10) discuss the STA applications with?  
 (11) **A:** That would be with Behrooz and with  
 (12) Mr. Price and with Andrew Berkman.  
 (13) **Q:** If you can recall, what is your best  
 (14) estimate of how many applications you have filed on  
 (15) behalf of Liberty?  
 (16) **A:** I would have to speculate. It's been  
 (17) quite a few.  
 (18) **Q:** Would you say more than 50?  
 (19) **A:** Yes.  
 (20) **MR. BEGLEITER:** You mean STA applications  
 (21) or license applications?  
 (22) **MR. WEBER:** License applications.

(1) THE WITNESS: Could you clarify that,  
(2) please? It seems to me there is a difference  
(3) between applications and amendments to the  
(4) applications.

(5) BY MR. WEBER:

(6) Q: How many applications for separate  
(7) methods, license applications for separate  
(8) microwave paths have you filed on behalf of  
(9) Liberty?

(10) MR. BEGLEITER: For licenses?

(11) MR. WEBER: I said licenses.

(12) THE WITNESS: I don't recall. Quite a  
(13) few.

(14) BY MR. WEBER:

(15) Q: Would that be more than 50?

(16) A: Yes.

(17) Q: Would it be more than a hundred?

(18) A: Possibly.

(19) Q: The Commission has already granted  
(20) numerous of these applications; correct?

(21) A: Which applications?

(22) Q: Of these license applications for

(1) microwave path that is we were just discussing that  
(2) you have filed on behalf of Liberty.

(3) A: That I filed on behalf of Liberty?

(4) Q: Yes.

(5) A: Yes, that's correct.

(6) Q: What, if anything, did you do-before I  
(7) get to that, on the application are you listed as  
(8) the contact person?

(9) A: Yes, I am.

(10) Q: Therefore, when the Commission grants a  
(11) license application, it may send you a copy of the  
(12) authorization?

(13) A: No, they do not.

(14) Q: Are you informed that the application has  
(15) been granted by the Commission?

(16) A: Unofficially.

(17) Q: Can you explain to me what you mean by  
(18) unofficially.

(19) A: Sure. The public notice that comes out is  
(20) not to be taken as a public notice or the grant of  
(21) applications. So I cannot rely on it, even though  
(22) it may say that such-and-such an application may be

(1) granted.

(2) So that's the only indication that I have  
(3) that it's granted. Otherwise, I may call  
(4) Gettysburg and talk to consumer assistance. That's  
(5) the other way I would have an indication.

(6) The other indication I might have that  
(7) something is granted is if the license was sent to  
(8) me by Liberty.

(9) Q: Did Liberty typically send you the  
(10) license?

(11) A: Yes.

(12) Q: If you can answer this, do you know why  
(13) they send it to you?

(14) MR. BEGLEITER: Would that require you to  
(15) divulge privileged communication?

(16) THE WITNESS: Yes.

(17) MR. BEGLEITER: I direct you not to  
(18) answer.

(19) MR. WEBER: I would like to make a comment  
(20) on the record about the privilege being asserted  
(21) here. I understand it's Liberty's privilege and  
(22) their right to assert. I have had discussions with

(1) Liberty's counsel regarding whether or not any of  
(2) these privileges are going to be waived, and I take  
(3) it to date they have not been. I certainly will  
(4) object if they attempt to waive the privilege at a  
(5) later point and introduce testimony from any  
(6) counsel where we have not had the opportunity to  
(7) examine counsel without the cover of privilege  
(8) being asserted, if you understand what I'm saying.

(9) MR. SPITZER: We are certainly not  
(10) requesting to agree with that for the following  
(11) reason. You're noticing depositions of those  
(12) individuals whom you wish to depose, and so we  
(13) understand your position with respect to--first we  
(14) do not agree that we could not subsequently decide  
(15) to waive the privilege even with respect to  
(16) Mr. Lehmkuhl but with respect to other people. I  
(17) see no foundation at all for your taking the  
(18) position you're taking.

(19) MR. WEBER: If we address it later, we  
(20) will do that.

(21) MR. BECKNER: To follow up on that  
(22) statement, Mr. Spitzer, you have been well advised

(1) as well as every lawyer whose name was somehow  
(2) identified with Liberty's work--and that's quite a  
(3) large number--as you know, there are three firms  
(4) that are signed on to a number of the pleadings.

(5) MR. SPITZER: You have been free to notice  
(6) depositions of anybody who you wanted to depose.  
(7) We have cooperated. The only thing has been  
(8) limiting is the judge's schedule.

(9) MR. BECKNER: We might go back to the  
(10) judge in light of the comment--

(11) MR. SPITZER: It has nothing to do with  
(12) the change--

(13) MR. WEBER: You went so far to assert the  
(14) privilege as naming the lawyers. Our interrogatory  
(15) requests specifically asked you to name lawyers and  
(16) you declined to do so.

(17) MR. BEGLEITER: Have we done it now? I  
(18) believe we have done it.

(19) MS. POWER: Is that what came yesterday?

(20) MR. BEGLEITER: I don't know that, but I  
(21) believe it's done.

(22) MR. SPITZER: But you are aware of the

(1) lawyers at different firms that worked on all these  
(2) matters and the names, as you point out, have been  
(3) on all these matters.

(4) MR. BECKNER: To close this out, certainly  
(5) speaking for Time-Warner, if a question is put to  
(6) this witness here, for example, for which you  
(7) assert an attorney/client privilege, I would  
(8) certainly expect that we would have an objection to  
(9) your introducing evidence which would have been  
(10) elicited by that question from any other source,  
(11) whether it's another lawyer who was deposed or a  
(12) client, because it's the same question.

(13) MR. BEGLEITER: If we get to that bridge,  
(14) we will cross it.

(15) MR. SPITZER: Also it's not what Mr. Weber  
(16) said before. You framed the issue differently.

(17) MR. BECKNER: I'm speaking for myself.

(18) MR. SPITZER: I understand that.

(19) MR. BECKNER: And also for the record I  
(20) don't think the question was at all objectionable.  
(21) It called for a yes-or-no answer. It was a  
(22) do-you-know question. And if he says yes, I know,

[1] that doesn't reveal any privileged communication.

[2] **MR. BEGLEITER:** Let's have the question  
[3] read back. Maybe Mr. Beckner is correct.

[4] (Whereupon, the Court Reporter read back  
[5] the previous question.)

[6] **MR. BEGLEITER:** I withdraw my objection.  
[7] You can answer it. Yes or no. Or I don't  
[8] know.

[9] **THE WITNESS:** Yes, I do.

[10] **BY MR. WEBER:**

[11] **Q:** Were you to be a record keeper for Liberty  
[12] and retained copies of licenses?

[13] **A:** That was not our primary function, no, but  
[14] yes, we did have copies. It wasn't complete.

[15] **Q:** Were there times where you learned Liberty  
[16] had been granted an application prior to receiving  
[17] a copy of a license from somebody at Liberty?

[18] **A:** No.

[19] **Q:** No? Is that your answer?

[20] **MR. BEGLEITER:** He said no.

[21] **BY MR. WEBER:**

[22] **Q:** You stated before that you would

[1] occasionally see public notices which list Liberty  
[2] applications--correct?--as being granted, and you  
[3] called that an unofficial notice of the grant.

[4] **A:** That's correct.

[5] **Q:** What, if anything, would you do upon  
[6] seeing such a public notice?

[7] **A:** I would send it to the client.

[8] **Q:** Specifically Mr. Nourain?

[9] **A:** Yes.

[10] **Q:** Anybody else?

[11] **A:** No. As I--never mind.

[12] **Q:** Go ahead, if you had more to say.

[13] **A:** No.

[14] **Q:** Would you have any follow-up conversations  
[15] with Mr. Nourain regarding the public notice?

[16] **A:** No.

[17] **Q:** Did there come a time that you learned  
[18] certain applications you had filed were for paths  
[19] that were already in operation?

[20] **A:** I was not aware of that.

[21] **Q:** Are you still not aware of that?

[22] **A:** No. I mean--could you repeat the

[1] question, please?

[2] **Q:** Are you aware of any time of filing an  
[3] application--have you now learned that any  
[4] application that you had filed on behalf of Liberty  
[5] for a covering license was for a path that was  
[6] already in operation?

[7] **A:** For covering license? Wait a minute.

[8] **Q:** Maybe we will do it a different way. I'm  
[9] going to have an exhibit shown to you.

[10] (Lehmkuhl Exhibit No. 1 was  
[11] marked for identification.)

[12] (Document handed to the witness, and  
[13] witness reviews document.)

[14] **A:** Could you ask the question again, please?

[15] **Q:** I'm going to build up to the question.

[16] For the record I have shown the witness what has  
[17] been marked as Lehmkuhl Exhibit 1. It's a  
[18] multi-page document with the cover sheet from the  
[19] law firm of Pepper & Corazzini, dated February  
[20] 21st, 1995.

[21] Could you tell us what this document is,  
[22] Mr. Lehmkuhl.

[1] **A:** It's an application for--it's an amendment  
[2] to an application for an 18 gigahertz facility.

[3] **Q:** Is that your signature on page two?

[4] **A:** Yes, it is.

[5] **Q:** And did you file this on February 21st,  
[6] 1995?

[7] **A:** To the best of my knowledge, yes.

[8] **Q:** To your knowledge, on the day you filed  
[9] this, on February 21, 1995, do you know if the  
[10] facility requested in this application was already  
[11] built and operating?

[12] **A:** No.

[13] **Q:** Do you know as of today that the facility  
[14] requested in this particular application was  
[15] already built and operating as of February 21st,  
[16] 1995?

[17] **A:** No.

[18] **Q:** Did you, or have you read the hearing  
[19] designation order in this proceeding?

[20] **A:** Yes, I have.

[21] **Q:** Did you also look over the appendices to  
[22] the hearing designation order in this proceeding?

[1] **A:** Yes, I have.

[2] **Q:** Did you learn from those appendices that  
[3] certain OFS paths went into operation prior to  
[4] being applied for?

[5] **MR. BEGLEITER:** I will object.

[6] Answer, if you can.

[7] **THE WITNESS:** Restate the question,  
[8] please.

[9] (Whereupon, the Court Reporter read back  
[10] the previous question.)

[11] **THE WITNESS:** No.

[12] **BY MR. WEBER:**

[13] **Q:** Throughout the time you have represented  
[14] Liberty Cable, has it come to your attention that  
[15] Liberty began operation of certain paths prior to  
[16] receiving a grant of an application?

[17] **A:** Yes.

[18] **Q:** And at what time did you become so aware?

[19] **A:** I became aware through the course of  
[20] Time-Warner's petitions to deny.

[21] **Q:** Did you have discussions with Mr. Nourain  
[22] regarding the pre-mature operation of facilities

[1] upon learning it from one of Time-Warner's  
[2] petitions?

[3] **MR. BEGLEITER:** Objection. Compound  
[4] question.

[5] Answer it, if you can.

[6] (Whereupon, the Court Reporter read back  
[7] the previous question.)

[8] **THE WITNESS:** No, I did not.

[9] **BY MR. WEBER:**

[10] **Q:** Did you have discussions with Mr. Price  
[11] concerning pre-mature operations after you learned  
[12] that such occurred?

[13] **A:** Yes, I have.

[14] Wait a minute. Did you say prior to or  
[15] after?

[16] **Q:** After.

[17] Can you recall the time frame in which you  
[18] had discussions with Mr. Price?

[19] **A:** Last summer.

[20] **Q:** Did the process you follow to apply for  
[21] applications change as a result of learning there  
[22] were pre-mature operational facilities in any way?

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[1] A: Yes.  
 [2] Q: Can you describe for us how they changed.  
 [3] A: We would send them to Mr. Price for  
 [4] signature.  
 [5] Q: And them you mean the application?  
 [6] A: Yes.  
 [7] Q: Prior to that they were sent to  
 [8] Mr. Nourain?  
 [9] A: Yes.  
 [10] Q: Prior to the applications being sent to  
 [11] Mr. Price for signature when they were still being  
 [12] sent to Mr. Nourain, would each and every  
 [13] application be sent to Mr. Nourain for completion  
 [14] after signature?  
 [15] A: Yes.  
 [16] Q: Now they're sent to Mr. Price. Is the  
 [17] same case true for each and every application sent  
 [18] to him for signature?  
 [19] A: Yes.  
 [20] Q: Turn to page four of Exhibit 1.  
 [21] MR. SPITZER: Fourth page of the exhibit  
 [22] or the fourth page of-

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[1] MR. WEBER: Fourth page of the exhibit.  
 [2] BY MR. WEBER:  
 [3] Q: Is that Mr. Nourain's signature at the  
 [4] bottom, to your knowledge?  
 [5] A: To my knowledge, yes.  
 [6] Q: And to your knowledge he signed on or  
 [7] about February 21, 1995?  
 [8] MR. BEGLEITER: I will object, but answer  
 [9] if you can.  
 [10] THE WITNESS: On or about, yes.  
 [11] BY MR. WEBER:  
 [12] Q: Were there ever any time constraints on  
 [13] you for getting an application filed?  
 [14] MR. BEGLEITER: Question is vague. Do you  
 [15] understand the question?  
 [16] THE WITNESS: No. Could you be more  
 [17] specific, please.  
 [18] BY MR. WEBER:  
 [19] Q: All right. Mr. Berkman this morning  
 [20] discussed contracts he had negotiated on behalf of  
 [21] Liberty. In those contracts were time frames by  
 [22] which service would have to be started. Typically

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[1] he said it was 120 days. We had one that showed 90  
 [2] days, and one even had a date certain. So right  
 [3] there there is a time that service has to be  
 [4] started by contract.  
 [5] Did you ever feel any time constraint or  
 [6] did Liberty ever put any pressure on you to get  
 [7] things rolling so they could get operation in time  
 [8] for the contract?  
 [9] MR. BEGLEITER: I object to the form of  
 [10] the question and foundational grounds, but answer  
 [11] it, if you can.  
 [12] THE WITNESS: Yes, there were times.  
 [13] BY MR. WEBER:  
 [14] Q: Were there any processes you followed to  
 [15] speed up the process of the application process?  
 [16] A: Could you be more specific? I don't  
 [17] understand what you mean by the application  
 [18] process.  
 [19] Q: What, if anything, did you do when you  
 [20] felt these time constraints.  
 [21] MR. BEGLEITER: Does the witness  
 [22] understand the question?

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[1] THE WITNESS: No, I don't understand the  
 [2] question, and I think it borders on privilege as  
 [3] well.  
 [4] MR. BEGLEITER: Could you restate the  
 [5] question?  
 [6] MR. WEBER: His answer to the question  
 [7] before was that yes, there were times he felt time  
 [8] constraints.  
 [9] MR. BEGLEITER: No pressure.  
 [10] BY MR. WEBER:  
 [11] Q: What, if anything, did you do in these  
 [12] times where you felt pressure.  
 [13] MR. BEGLEITER: He said he felt-I will  
 [14] object.  
 [15] Answer it, if you can.  
 [16] THE WITNESS: Well-  
 [17] MR. BEGLEITER: There is a foundational  
 [18] thing here.  
 [19] Answer it, if you can.  
 [20] THE WITNESS: I'm trying.  
 [21] There wasn't anything I would do to speed  
 [22] up the application process. I had to wait the 30

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[1] days. There was nothing I could do until I got the  
 [2] final coordination from Comsearch.  
 [3] BY MR. WEBER:  
 [4] Q: You are still the point person on  
 [5] applications apparently being filed on behalf of  
 [6] Liberty?  
 [7] A: That's correct.  
 [8] Q: The contact person, rather?  
 [9] A: That's correct.  
 [10] Q: Now, you stated you have also filed STA  
 [11] applications; correct?  
 [12] A: Yes.  
 [13] Q: Why is there a need to file an STA  
 [14] application?  
 [15] MR. SPITZER: In what context?  
 [16] BY MR. WEBER:  
 [17] Q: Is an STA application filed for every  
 [18] single application?  
 [19] A: No.  
 [20] Q: Why do you file an STA request in certain  
 [21] instances and not in others?  
 [22] A: The client requests it, and there are

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[1] other reasons that I believe are privileged that  
 [2] I'm...  
 [3] Q: Was the fact that Time-Warner had filed  
 [4] petitions-let's go about this differently.  
 [5] When an application is petitioned, it is  
 [6] not granted as quickly as a matter of routine an  
 [7] application that is not petitioned; correct? That  
 [8] is your understanding of what the practice is?  
 [9] MR. BEGLEITER: I object to that question.  
 [10] Answer it, if you can.  
 [11] THE WITNESS: In my experience, yes.  
 [12] BY MR. WEBER:  
 [13] Q: Accordingly, in the instances where the  
 [14] applications that Time-Warner had filed petitions  
 [15] against, did you understand at that time that those  
 [16] applications would not be granted as quickly?  
 [17] A: Yes.  
 [18] Q: Were STA requests filed relating to the  
 [19] applications which Time-Warner had petitioned?  
 [20] A: Yes.  
 [21] Q: Was part of the reason an STA was filed  
 [22] was to allow service while the Commission was

[1] considering the issues in the petition?  
 [2] **A:** That's correct.  
 [3] **Q:** Did you discuss with anybody at Liberty  
 [4] the need for filing STAs in those cases?  
 [5] **MR. BEGLEITER:** Objection. Are you asking  
 [6] him whether there was a discussion or whether he  
 [7] gave advice--discussion of the need, or are you  
 [8] asking him whether he advised of the need?  
 [9] **BY MR. WEBER:**  
 [10] **Q:** The question is did you ever discuss the  
 [11] need.  
 [12] **MR. BEGLEITER:** You may answer the  
 [13] question.  
 [14] **THE WITNESS:** Yes.  
 [15] **BY MR. WEBER:**  
 [16] **Q:** Who at Liberty did you have such  
 [17] discussions with?  
 [18] **A:** When?  
 [19] **Q:** Of the need to file an STA request because  
 [20] of Time-Warner's Petitions to Deny.  
 [21] **MR. BEGLEITER:** The question is, is it a  
 [22] discussion of the subject of need, not necessarily

[1] any advice as to whether it's needed or not needed?  
 [2] **MR. WEBER:** That's correct. That's the  
 [3] question.  
 [4] **THE WITNESS:** So the question is did I?  
 [5] **BY MR. WEBER:**  
 [6] **Q:** You answered you did, and I'm now asking  
 [7] you who.  
 [8] **A:** It would be Behrooz, Peter Price, Andrew  
 [9] Berkman.  
 [10] I also discussed it with Liberty's  
 [11] counsel.  
 [12] **Q:** By that you specifically mean Constantine  
 [13] & Partners?  
 [14] **A:** No, not specifically.  
 [15] **Q:** Who specifically do you mean, then?  
 [16] **A:** Constantine & Partners, Ginsburg Feldman &  
 [17] Bress, Wiley Rein & Fielding.  
 [18] **Q:** Were you ever aware at the time in the  
 [19] instance when you were filing an STA request of a  
 [20] path that was already in operation?  
 [21] **A:** No.  
 [22] **Q:** Are you aware today of any instances where

[1] an STA request was filed when the operation was  
 [2] already in operation?  
 [3] **A:** No.  
 [4] **Q:** I would like you, in what has been marked  
 [5] as Lehmkuhl 1, to turn to Exhibit 2.  
 [6] **MR. SPITZER:** Exhibit 2 to the  
 [7] application?  
 [8] **MR. WEBER:** Yes, Exhibit 2 to the  
 [9] application.  
 [10] **BY MR. WEBER:**  
 [11] **Q:** And I would like you to look at--first,  
 [12] just read the first page of that exhibit to  
 [13] yourself.  
 [14] (Witness reviews document.)  
 [15] **Q:** At the first sentence of the second  
 [16] paragraph states "Liberty proposes to distribute,"  
 [17] and it goes on from there.  
 [18] **A:** Umm-hmm.  
 [19] **Q:** Would you agree with me that that sentence  
 [20] is termed in the future tense?  
 [21] **A:** Yes, that's correct.  
 [22] **Q:** At the time you filed this application,

[1] did you believe that to be correct?  
 [2] **A:** Yes, I did.  
 [3] **Q:** When you sent the application for  
 [4] Mr. Nourain's signature, was this exhibit attached?  
 [5] **A:** Yes, it was.  
 [6] **Q:** Do you know if anybody else at Liberty  
 [7] reviewed applications prior to Mr. Nourain's  
 [8] signature?  
 [9] **A:** Yes.  
 [10] **Q:** Who else at Liberty reviewed applications?  
 [11] **MR. BEGLEITER:** Wait a second.  
 [12] (Counsel conferring.)  
 [13] **MR. BEGLEITER:** Go ahead.  
 [14] **THE WITNESS:** That would be Howard Barr.  
 [15] **BY MR. WEBER:**  
 [16] **Q:** But nobody else at Liberty specifically?  
 [17] **A:** Nobody else at Liberty?  
 [18] **Q:** That you're aware.  
 [19] **A:** I have no idea.  
 [20] **Q:** Did Mr. Nourain ever tell you if other  
 [21] people reviewed the applications?  
 [22] **MR. BEGLEITER:** Objection. I direct the

[1] witness not to answer the question on  
 [2] attorney/client privilege grounds.  
 [3] **MR. WEBER:** Can you explain to me why it  
 [4] would be that if Mr. Nourain said I'm letting  
 [5] Mr. Ontiveros or Mr. Price review this application  
 [6] as well, why the privilege will be asserted to  
 [7] that?  
 [8] **MR. BEGLEITER:** It's a communication  
 [9] between a client and an attorney.  
 [10] Let me discuss it with Mr. Spitzer.  
 [11] (Counsel conferring.)  
 [12] **MR. BEGLEITER:** Can I speak to the witness  
 [13] for a moment, please?  
 [14] **MR. WEBER:** Sure.  
 [15] (Counsel confers with the witness.)  
 [16] **MR. BEGLEITER:** We will let him answer the  
 [17] question.  
 [18] **THE WITNESS:** The answer is no.  
 [19] **BY MR. WEBER:**  
 [20] **Q:** Would you typically get more information  
 [21] regarding the proposed path from Comsearch or from  
 [22] Mr. Nourain?

[1] **MR. BEGLEITER:** Objection to the form of  
 [2] the question.  
 [3] **THE WITNESS:** Yes. It would be  
 [4] Mr. Nourain.  
 [5] **BY MR. WEBER:**  
 [6] **Q:** It wasn't a yes-or-no question. So the  
 [7] answer to the question is you typically got most of  
 [8] the information regarding the path Liberty sought  
 [9] from Mr. Nourain?  
 [10] **A:** That's correct.  
 [11] **Q:** After you received the frequency  
 [12] coordination report from Comsearch and before you  
 [13] completed the application, would you typically have  
 [14] discussions with Mr. Nourain in the intervening  
 [15] periods?  
 [16] **A:** Not typically. Sometimes, yes.  
 [17] **Q:** When you would have these discussions,  
 [18] would Mr. Nourain give you more information  
 [19] regarding the proposed facility?  
 [20] **A:** Yes.  
 [21] **Q:** Did Mr. Nourain ever tell you in these  
 [22] discussions that the proposed facility was

[1] operational?

[2] **MR. BEGLEITER:** Would you read that back.

[3] (Whereupon, the Court Reporter read back

[4] the previous question.)

[5] **MR. BEGLEITER:** Just a second.

[6] (Counsel conferring.)

[7] **MR. BEGLEITER:** I'm asserting the

[8] privilege on that.

[9] **MR. WEBER:** Can I ask the basis for it? I

[10] asked for a statement of fact and statement of

[11] facts are not privileged.

[12] **MR. BEGLEITER:** You are asking for a

[13] confidence between a lawyer--this particular

[14] question asks him whether the client confided in

[15] him that it was operational, and that is

[16] privileged.

[17] **MR. SPITZER:** One second. I want to talk

[18] to him.

[19] (Counsel confers with the witness.)

[20] **MR. SPITZER:** You already asked a question

[21] that his answer tells you the answer to this

[22] question. But this question is framed in such a

[1] way that answering it could theoretically

[2] constitute a waiver, which we are not willing to

[3] make. So you already have the answer to the

[4] question but we cannot permit this question to be

[5] answered without--

[6] **MR. WEBER:** I understand that, although

[7] the answer to a previous question you are referring

[8] to which should give us the answer here doesn't

[9] necessarily do it just because the client tells him

[10] something does not necessarily mean that he knows

[11] it.

[12] I would like to show the witness which has

[13] been previously marked as Ontiveros 7, and just ask

[14] him to thumb through it and tell me if he has ever

[15] seen this type of document previously.

[16] (Document handed to the witness, and

[17] witness reviews document.)

[18] **THE WITNESS:** Could I have one moment,

[19] please.

[20] (Witness confers with counsel.)

[21] **THE WITNESS:** Yes, I have. Portions of

[22] it.

[1] **BY MR. WEBER:**

[2] **Q:** What do you understand this document to

[3] be?

[4] **A:** I'm not really sure. I have only seen

[5] bits and pieces of it before.

[6] **Q:** Can you recall the time frame when you saw

[7] one for the first time or a piece of one for the

[8] first time?

[9] **A:** Within the last four months.

[10] **Q:** You had not seen this type of document

[11] prior to that?

[12] **A:** No.

[13] **Q:** Have you been asked for any input into

[14] this type of document?

[15] **MR. SPITZER:** That's vague. What do you

[16] mean by this type of document? Are you talking

[17] about this document itself?

[18] **BY MR. WEBER:**

[19] **Q:** These are called technical operational

[20] report weekly updates.

[21] Have you been asked to supply information

[22] for one of these reports?

[1] **A:** I don't know.

[2] **Q:** Sorry if I asked you this before. I want

[3] to be sure I have it clear.

[4] (Phone rings and off the record.)

[5] **Q:** Currently, the process you're following

[6] now after you complete and file an application, do

[7] you send copies to Mr. Nourain, Mr. Price and

[8] Mr. Berkman?

[9] **MR. BEGLEITER:** No foundation for that.

[10] Answer, if you can.

[11] **THE WITNESS:** Yes, that's correct.

[12] **BY MR. WEBER:**

[13] **Q:** Do you send copies to anybody else?

[14] **A:** Depends on the application.

[15] **Q:** Under what instances would you send it to

[16] somebody else?

[17] **A:** I haven't filed an application in a very

[18] long time, but they may go to the other counsel,

[19] Liberty's other counsel.

[20] **Q:** Do Messrs. Nourain, Price and Berkman

[21] receive copies of STA requests be filed?

[22] **A:** Yes.

[1] **Q:** Does anybody else at Liberty receive STA

[2] requests, discounting other counsel?

[3] **A:** No.

[4] **MR. SPITZER:** That question--I ask for a

[5] clarification. You are referring to current

[6] practice?

[7] **MR. WEBER:** Current practice.

[8] **BY MR. WEBER:**

[9] **Q:** During your tenure of representing

[10] Liberty, have you had any contact with any of the

[11] marketing personnel with Liberty?

[12] **A:** Yes, I believe I have.

[13] **Q:** Can you recall the names of people you

[14] have had contact with?

[15] **A:** Jennifer Walden; I'm not sure. Tony

[16] Ontiveros; I'm not sure.

[17] **Q:** Can you describe the nature of your

[18] contact with Ms. Walden?

[19] **A:** I think I have spoken to her once about

[20] two weeks ago regarding--

[21] **MR. BEGLEITER:** Hold it.

[22] **THE WITNESS:** Regarding--

[1] **MR. BEGLEITER:** Stop.

[2] **MR. SPITZER:** Why don't you tell us what

[3] it was, so we will know whether it's privileged or

[4] not.

[5] (Witness confers with counsel.)

[6] **MR. BEGLEITER:** We are taking the position

[7] that the consent of any conversation between

[8] Michael Lehmkuhl and an employee of Liberty is

[9] protected by the attorney/client privilege.

[10] **MR. WEBER:** Understood. I did not

[11] absolutely request specifics of the conversation.

[12] I asked the nature of the conversation.

[13] **MR. BEGLEITER:** Nature? I thought it

[14] called for a summary. But if you can--I don't

[15] know--I don't understand the difference. Nature,

[16] you mean was it telephonic or in person? By means

[17] of communication or the subject matter of the

[18] communication, or what do you mean?

[19] **MR. WEBER:** Obviously since I don't know

[20] the answer to his question, it's difficult to

[21] answer. I was looking to see if he was going to

[22] say that she called--maybe since Ms. Walden is a

[1] marketing person, if the answer was we got all  
[2] these contracts we need to get these buildings on  
[3] line, just to say that.

[4] MR. BEGLEITER: Any conversation two weeks  
[5] ago would be irrelevant.

[6] MR. WEBER: Right. And that I don't have  
[7] a problem with.

[8] MR. BEGLEITER: But you're asking for,  
[9] again, about a conversation where there was an  
[10] expectation that there was—that it was between a  
[11] client and a lawyer, I will instruct him not to  
[12] answer.

[13] BY MR. WEBER:

[14] Q: Can you recall if you have had any  
[15] discussions with Bertina Ceccarelli?

[16] A: No, I have not.

[17] Q: Can you recall if you had any discussions  
[18] with Ed Foy or Feuerstein?

[19] A: No, I have not.

[20] Q: Have you had any discussions with Edward  
[21] Milstein?

[22] A: No, I have not.

[1] Q: Have you had any discussions with Howard  
[2] Milstein?

[3] A: No, I have not.

[4] MR. WEBER: Thank you, Mr. Lehmkuhl. No  
[5] further questions.

[6] (Counsel confers with the witness.)

[7] (Brief recess.)

[8] EXAMINATION BY COUNSEL FOR  
[9] TIME-WARNER CABLE

[10] BY MR. BECKNER:

[11] Q: I'm Bruce Beckner, and I'm representing  
[12] Time-Warner Cable of New York City in this  
[13] proceeding, and Paragon Cable, whatever that is,  
[14] also known as Paragon Communication. I want to ask  
[15] you a couple of preliminary questions before we get  
[16] into the substance of more testimony.

[17] First, have you ever had your deposition  
[18] taken before today?

[19] A: No, I have not.

[20] Q: Have you ever attended a deposition before  
[21] today as a lawyer or as an observer?

[22] A: Yes.

[1] Q: And I want to advise you, as I think you  
[2] are already aware, since you are under oath and are  
[3] sworn to tell the truth to the best of your  
[4] knowledge and belief, if there is a question that I  
[5] ask you that you don't understand, you are  
[6] certainly free to say you don't understand the  
[7] question and ask me to explain it or rephrase it.

[8] A: Yes.

[9] Q: In preparation for your deposition today,  
[10] did you review any documents or papers?

[11] A: No, I did not.

[12] Q: Did you discuss the substance of anyone  
[13] else's testimony who has been deposed?

[14] A: No, I did not.

[15] Q: And did you speak with any of the persons  
[16] who had been deposed previously in this matter?  
[17] And those persons are Mr. Ontiveros and Mr. Foy or  
[18] Feuerstein.

[19] MR. BEGLEITER: And Mr. Berkman.

[20] BY MR. BECKNER:

[21] Q: And Mr. Berkman today?

[22] A: No, I have not.

[1] Q: I think you may have already answered  
[2] this, but it's not clear to me what your answer is,  
[3] and I would just like to be clear.

[4] As a general practice during the period  
[5] within which you were filing OFS path applications  
[6] and amendments and STA requests on behalf of  
[7] Liberty, was the Comsearch frequency coordination  
[8] report ordered by someone other than you or anyone  
[9] at your firm?

[10] A: Yes, it was.

[11] Q: And to your knowledge, was it ordered by  
[12] Mr. Nourain?

[13] A: Yes, it was.

[14] Q: Now, with respect to all of the FCC  
[15] microwave applications or amendments or STA  
[16] requests that you filed on behalf of Liberty in  
[17] 1992, 1993, 1994, 1995, you were acting as attorney  
[18] and agent for Liberty; is that correct?

[19] MR. BEGLEITER: Objection. My  
[20] objection—his testimony is he wasn't representing  
[21] them in '92 or '93.

[22] MR. BECKNER: I didn't get that. Withdraw

[1] that previous one.

[2] BY MR. BECKNER:

[3] Q: With respect to any of the STA requests,  
[4] microwave applications or amendments to microwave  
[5] applications that you have filed purportedly on  
[6] behalf of Liberty Cable Company, you were, in fact,  
[7] in all instances, serving as an authorized attorney  
[8] for Liberty, were you not?

[9] A: Yes, I was.

[10] Q: And was there any time with respect to any  
[11] of those applications when you were informed by  
[12] anyone at Liberty or purporting to speak for  
[13] Liberty that you, in fact, were not authorized or  
[14] had not been authorized to file any such  
[15] application, amendment, or STA request?

[16] A: No, there were no instances of that.

[17] MR. BEGLEITER: But Liberty is not  
[18] contending that there is.

[19] BY MR. BECKNER:

[20] Q: Now, I think you testified in response to  
[21] Mr. Weber's questioning that in addition to  
[22] discussing the applications that you were filing on

[1] Liberty's behalf with Mr. Nourain, you also  
[2] discussed them with Mr. Peter Price; is that  
[3] correct?

[4] A: Yes, in some instances.

[5] Q: That's what I was going to get to. How  
[6] frequently did you discuss those applications with  
[7] Mr. Price? Was it a routine thing or was it an  
[8] occasional thing?

[9] A: It was an occasional thing.

[10] Q: I think you also testified that you  
[11] discussed these applications that you filed with  
[12] the FCC with Mr. Berkman; is that correct?

[13] A: Yes, that's correct.

[14] Q: And again as I asked you with Mr. Price,  
[15] were your discussions of these applications with  
[16] Mr. Berkman an occasional thing or routine thing?  
[17] MR. BEGLEITER: Do you understand the  
[18] question?

[19] THE WITNESS: Yes, I do.

[20] MR. BEGLEITER: Do you need clarification?

[21] THE WITNESS: Yes. Could you clarify it a  
[22] little bit.

(1) MR. BECKNER: I will phrase the question  
 (2) this way.  
 (3) BY MR. BECKNER:  
 (4) Q: Would you say your discussion of the  
 (5) applications that you were filing on Liberty's  
 (6) behalf with the FCC with Mr. Berkman were more or  
 (7) less frequent than the discussions you had with  
 (8) Mr. Price about those applications? And if you  
 (9) need to change the time period, we could do that  
 (10) too.  
 (11) MR. SPITZER: If you would focus on the  
 (12) time period.  
 (13) MR. BECKNER: We will break it up by year.  
 (14) BY MR. BECKNER:  
 (15) Q: What year did you first file an  
 (16) application or an amendment or an STA request for  
 (17) Liberty?  
 (18) A: It was '94.  
 (19) Q: So let's talk about calendar year 1994.  
 (20) During that year, did you discuss any of these  
 (21) applications, amendments or requests with  
 (22) Mr. Berkman?

(1) A: No, I did not.  
 (2) Q: During that same year, did you discuss any  
 (3) of these applications, amendments or requests with  
 (4) Mr. Price?  
 (5) A: No, I did not.  
 (6) Q: During that year did you discuss any of  
 (7) these applications, amendments or STA requests with  
 (8) Mr. Nourain?  
 (9) A: Yes, I did.  
 (10) Q: Did you discuss any of these three things  
 (11) with anyone else at Liberty during 1993, other than  
 (12) Mr. Nourain, to your recollection?  
 (13) A: What year was that?  
 (14) Q: 1993. I'm sorry. 1994.  
 (15) A: No, I did not.  
 (16) Q: All right. In 1995, did you discuss any  
 (17) of these applications, amendments or STA requests  
 (18) with Mr. Price?  
 (19) A: Yes, I did.  
 (20) Q: And the same question with respect to  
 (21) Mr. Berkman.  
 (22) A: Yes, I did.

(1) Q: And you discussed them with Mr. Nourain as  
 (2) well?  
 (3) A: Yes.  
 (4) Q: In 1995, would you say that your  
 (5) discussions of these applications, et cetera, with  
 (6) Mr. Price were more or less frequent than your  
 (7) discussions with Mr. Nourain in the same year?  
 (8) A: More frequent in '95.  
 (9) Q: Did the frequency of your discussions with  
 (10) Mr. Price change during the year 1995?  
 (11) A: Yes.  
 (12) Q: In what part of the year was it more  
 (13) frequent?  
 (14) A: During the latter part of the year.  
 (15) Q: In any point during 1995, were you  
 (16) instructed to discuss these applications, et  
 (17) cetera, with Mr. Price as a matter of course?  
 (18) MR. BEGLEITER: I'm going to object to the  
 (19) form of the question.  
 (20) Answer it, if you understand it.  
 (21) THE WITNESS: I believe so, yes.  
 (22) BY MR. BECKNER:

(1) Q: I'm going to talk to you about  
 (2) Mr. Berkman, again, in 1995.  
 (3) In the first half of 1995, did you discuss  
 (4) the applications, et cetera, that you were filing  
 (5) for Liberty with Mr. Berkman?  
 (6) A: No.  
 (7) Q: Did you discuss those matters with  
 (8) Mr. Berkman in the second half of 1995?  
 (9) A: Yes.  
 (10) Q: And again as I asked you with respect to  
 (11) Mr. Price, were you instructed to discuss those  
 (12) applications, et cetera, with Mr. Berkman in the  
 (13) second half of 1995?  
 (14) A: Yes, I was.  
 (15) Q: Now, Mr. Weber asked you a few questions  
 (16) about STA requests, and again I'm not clear about  
 (17) certain things, and so if I am asking you the same  
 (18) thing, I apologize.  
 (19) I think you testified that you did not  
 (20) routinely file an STA request at the same time you  
 (21) filed an application; is that correct?  
 (22) A: Yes, that's correct.

(1) Q: Can you tell me who made the decision to  
 (2) file an STA request for a particular path when the  
 (3) application is filed?  
 (4) A: Could you clarify that, please?  
 (5) Q: I will rephrase the question.  
 (6) For those STA requests that were filed,  
 (7) were you instructed to file those requests by  
 (8) someone?  
 (9) A: Yes, I was.  
 (10) Q: And who was the person who instructed you  
 (11) to file those requests?  
 (12) MR. BEGLEITER: I'm sorry?  
 (13) THE WITNESS: What year is it? '95 or  
 (14) when?  
 (15) BY MR. BECKNER:  
 (16) Q: Let's talk about '94.  
 (17) A: '94?  
 (18) Q: Yes.  
 (19) A: '94 the only STAs that I filed were  
 (20) renewals, as I recall. So when the STA was in  
 (21) danger of expiring, I would file for another STA.  
 (22) Q: And you did that on your own?

(1) A: Yes.  
 (2) Q: Let's talk about STA requests filed in the  
 (3) first half of 1995.  
 (4) Were those requests that you filed  
 (5) pursuant to an instruction from someone?  
 (6) A: Not necessarily. I mean--yes, they were.  
 (7) Q: And who was the person who instructed you  
 (8) to do that?  
 (9) A: Any one of the three, Mr. Berkman,  
 (10) Mr. Price, or Mr. Nourain.  
 (11) Q: Were any one of those three people  
 (12) responsible for giving you instruction in the first  
 (13) half of 1995 as well?  
 (14) A: It would be Mr. Nourain.  
 (15) Q: During either 1994 or 1995, did anyone  
 (16) from Liberty ever call you, asking about the status  
 (17) of a pending application or STA request that you  
 (18) had filed?  
 (19) A: Yes.  
 (20) Q: Let's talk about 1994 first. In 1994, who  
 (21) would make those inquiries?  
 (22) A: Mr. Nourain.

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[1] Q: Same question for 1995.  
 [2] A: All of 1995?  
 [3] Q: If you need to break the year up--  
 [4] A: Mr. Nourain or Mr. Berkman.  
 [5] Q: And Mr. Berkman, would he make those  
 [6] requests in the second half of 1995?  
 [7] A: That's correct.  
 [8] Q: When you received what I'm going to call a  
 [9] status inquiry from your client, did you then make  
 [10] a status inquiry to someone or the appropriate  
 [11] person at the FCC?  
 [12] A: Yes, I did.  
 [13] Q: And then did you report back the results  
 [14] of that inquiry to your client?  
 [15] MR. BEGLEITER: Stop for a second, please.  
 [16] (Counsel conferring.)  
 [17] THE WITNESS: Yes.  
 [18] (Whereupon, the Court Reporter read back  
 [19] the previous question.)  
 [20] THE WITNESS: Yes.  
 [21] BY MR. BECKNER:  
 [22] Q: Now there were various sorts of what I'm

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[1] client a copy of the service copy; is that correct?  
 [2] A: That's correct.  
 [3] Q: And again, speaking about your firm's  
 [4] practice generally with respect to this client, was  
 [5] it your practice to forward those service copies on  
 [6] to the client within a day or two after when the  
 [7] firm received them?  
 [8] A: Yes, it was.  
 [9] Q: Were they forwarded by U.S. Mail or by  
 [10] some overnight delivery service as a general  
 [11] practice?  
 [12] A: I can't answer that. I did not send any  
 [13] myself.  
 [14] Q: As a general practice, when you receive a  
 [15] telephone call from Mr. Nourain or anyone else at  
 [16] Liberty, you make some sort of note or record of  
 [17] that conversation for yourself?  
 [18] A: Usually.  
 [19] Q: And what form is that record made? Is it  
 [20] just on a notebook, or how do you do it?  
 [21] A: Usually in a notebook.  
 [22] Q: Does the notebook also contain records

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[1] going to call general opposition papers, Petitions  
 [2] to Deny, whatever, that were filed in response to  
 [3] some of Liberty's applications and STA requests in  
 [4] 1995, and we talked about one of them earlier.  
 [5] What I would like to know is whether or  
 [6] not as a matter of routine, when you were served  
 [7] with a service copy of an opposition or Petition to  
 [8] Deny with respect to one of the Liberty  
 [9] applications, did you send a copy of that service  
 [10] copy to someone at Liberty?  
 [11] MR. BEGLEITER: Objection. Lack of  
 [12] foundation.  
 [13] MR. BECKNER: What's the foundation? That  
 [14] he wasn't served?  
 [15] MR. BEGLEITER: That he personally  
 [16] received it. If you want to know.  
 [17] BY MR. BECKNER:  
 [18] Q: Mr. Lehmkuhl, to your knowledge, was your  
 [19] firm served by counsel for other parties in these  
 [20] various application proceedings when they filed the  
 [21] Petition to Deny or objection?  
 [22] A: To my knowledge, yes.

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[1] that you have made of conversations with other of  
 [2] your clients on that same day or other days?  
 [3] A: Yes, it does.  
 [4] Q: Similarly, when you call someone at the  
 [5] FCC with a status inquiry, and you get through to  
 [6] them, do you make a note of that conversation in  
 [7] your notebook or somewhere else?  
 [8] A: Yes.  
 [9] Q: And I will be more specific now. In 1994,  
 [10] 1995, and when you made a status inquiry at the FCC  
 [11] about a Liberty application and got a response from  
 [12] someone at the FCC and then relayed that  
 [13] information back to your client, Liberty, did you  
 [14] make a note of that conversation as well?  
 [15] MR. BEGLEITER: Objection. States facts  
 [16] not in evidence.  
 [17] Answer it, if you can.  
 [18] THE WITNESS: I believe so.  
 [19] BY MR. BECKNER:  
 [20] Q: Are you aware of whether or not  
 [21] any--strike that.  
 [22] At the present time as we sit here today,

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[1] Q: And did those documents reach your desk,  
 [2] to your knowledge, or copies thereof?  
 [3] A: Some of them did.  
 [4] Q: With respect to the copies that didn't  
 [5] reach your desk, do you know on whose desk they  
 [6] landed?  
 [7] A: It would be--  
 [8] MR. BEGLEITER: Objection. Lack of  
 [9] foundation.  
 [10] Answer, if you can.  
 [11] BY MR. BECKNER:  
 [12] Q: Did they reach Mr. Barr's desk, to your  
 [13] knowledge?  
 [14] A: Yes, it did.  
 [15] Q: Did you and Mr. Barr have a practice of  
 [16] forwarding to your client the service copies of  
 [17] pleadings that were filed in Liberty Cable's  
 [18] application proceedings?  
 [19] A: As far as I know, yes.  
 [20] Q: You may not personally yourself have  
 [21] served your client with every copy, but the  
 [22] practice that your firm used was to give your

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[1] does your firm, to your understanding, continue to  
 [2] represent Liberty Cable Company, Incorporated, or  
 [3] Bartholdi Cable Company?  
 [4] A: Yes.  
 [5] Q: Do you know whether or not any review or  
 [6] search of files or documents at your law firm was  
 [7] made in conjunction with any of the document  
 [8] requests that Liberty has received in this  
 [9] proceeding?  
 [10] A: I didn't hear the whole question.  
 [11] MR. BECKNER: Would you read it back.  
 [12] (Whereupon, the Court Reporter read back  
 [13] the previous question.)  
 [14] THE WITNESS: Yes.  
 [15] BY MR. BECKNER:  
 [16] Q: Was such a file search done?  
 [17] A: Yes.  
 [18] Q: And were documents produced from your  
 [19] firm's files, do you know?  
 [20] A: Yes.  
 [21] Q: Do you know whether or not, in any form,  
 [22] the log that you testified that you kept of phone

[1] conversations was produced?  
 [2] **A:** Wasn't a log that was kept.  
 [3] **Q:** Whatever you want to call it, a notebook.  
 [4] **A:** If at the time it was something that I  
 [5] deemed important, yes, then it was put in the file.  
 [6] **Q:** I don't think you understood my question.  
 [7] Let me see if I could clear it up.  
 [8] A few minutes ago you told me that you  
 [9] made notes of phone conversations, for example, if  
 [10] your client called and asked you to make a status  
 [11] inquiry about an application. You said you made a  
 [12] note of that. And if you made the status inquiry  
 [13] and you had a conversation with someone at the FCC,  
 [14] you said you made a note of that.  
 [15] **A:** Umm-hmm.  
 [16] **Q:** And if you reported back to your client  
 [17] what you had been told by the FCC in a phone  
 [18] conversation, you may make a note of that as well.  
 [19] **A:** Umm-hmm.  
 [20] **Q:** After all those things happened, were  
 [21] those notes you made saved, or did you just throw  
 [22] them away immediately?

[1] **A:** Most of those, I believe, were sent to the  
 [2] file.  
 [3] **Q:** They were sent to the file?  
 [4] **A:** Umm-hmm.  
 [5] **Q:** And so, for example, if you had made notes  
 [6] of those kinds of conversations in 1994, they would  
 [7] still be in the file today?  
 [8] **A:** Yes.  
 [9] **Q:** Now, the question is: Was that file  
 [10] searched in conjunction with responding to the  
 [11] document requests?  
 [12] **A:** I believe it was.  
 [13] **MR. BECKNER:** Just for the record, I don't  
 [14] think we have copies of those files in this form,  
 [15] and I think while some of the material is not  
 [16] relevant and should be redacted, I think some of it  
 [17] is relevant.  
 [18] **MR. SPITZER:** You don't have a basis to  
 [19] say it's relevant or within the document request.  
 [20] You made your Motion to Compel, Mr. Beckner, and it  
 [21] was denied.  
 [22] **MR. WEBER:** I would say the Bureau filed a

[1] document request and these documents would seem to  
 [2] be responsive to the Bureau's request.  
 [3] **MR. SPITZER:** We complied fully with all  
 [4] relevant document requests. We searched through  
 [5] the file.  
 [6] Do you want to go off the record for a  
 [7] second?  
 [8] **MR. BECKNER:** Sure.  
 [9] (Discussion off the record.)  
 [10] **BY MR. BECKNER:**  
 [11] **Q:** Mr. Lehmkuhl, I'm going to show you what  
 [12] was previously marked as Foy Deposition Exhibit  
 [13] Number 32. It's a copy of Appendices A and B to  
 [14] the HDL in this case. I will show it to you.  
 [15] (Document handed to the witness, and  
 [16] witness reviews document.)  
 [17] **Q:** Have you seen these two appendices to the  
 [18] HDL before today?  
 [19] **A:** Yes, I have.  
 [20] **Q:** As you sit here today, do you have any  
 [21] reason to believe that the HDL's statement on the  
 [22] first appendix that those are instances of

[1] unlicensed OFS operations is false?  
 [2] **MR. BEGLEITER:** Objection to the question.  
 [3] Any reason to believe? I'm objecting to the form  
 [4] of the question.  
 [5] **BY MR. BECKNER:**  
 [6] **Q:** Can you answer the question?  
 [7] **A:** I'm not exactly sure what you mean by  
 [8] reason to believe. Could you please restate the  
 [9] question?  
 [10] **Q:** Do you believe that the instances  
 [11] enumerated there in the Appendix A to the HDL,  
 [12] which is what you are looking at now, are or are  
 [13] not, in fact, instances where Liberty activated a  
 [14] microwave path before it received the license to do  
 [15] so?  
 [16] **MR. BEGLEITER:** It isn't the belief, not  
 [17] knowledge?  
 [18] **MR. BECKNER:** Yes.  
 [19] **MR. BEGLEITER:** I object. Belief is not  
 [20] relevant to this proceeding. That's my objection.  
 [21] **THE WITNESS:** I believe they are.  
 [22] **BY MR. BECKNER:**

[1] **Q:** They are correct?  
 [2] **A:** I believe so.  
 [3] **Q:** Do you know any fact that would suggest  
 [4] that they are not correct?  
 [5] **A:** No.  
 [6] **Q:** Now, if you look at Appendix B, again I  
 [7] would ask you the same question. Those are  
 [8] instances where, according to the HDL, Liberty is  
 [9] providing its service by means of a coaxial cable  
 [10] from another building under different ownership.  
 [11] **MR. BEGLEITER:** Same objection. His  
 [12] belief is not relevant to this proceeding.  
 [13] **THE WITNESS:** I believe so. I have to  
 [14] take the Commission's word for it.  
 [15] **BY MR. BECKNER:**  
 [16] **Q:** And you know of no fact which would tend  
 [17] to contradict the Commission's conclusion with  
 [18] respect to those sites?  
 [19] **A:** No.  
 [20] **Q:** Now, with respect to any of the FCC file  
 [21] numbered applications that are listed on either  
 [22] Appendix A or B, can you recall now whether or not

[1] a status inquiry of you about the status of any one  
 [2] of those applications was made by your client?  
 [3] **A:** I don't recall.  
 [4] **Q:** One way or the other?  
 [5] **A:** No.  
 [6] **Q:** Do you have any recollection of a specific  
 [7] microwave path for which your client made a status  
 [8] inquiry of them?  
 [9] **A:** No, I do not.  
 [10] **Q:** I'm going to hand you again what was  
 [11] marked as Exhibit 1 to your deposition. I would  
 [12] like you to turn to the statement of the  
 [13] eligibility and use. I think Mr. Weber asked you a  
 [14] couple of questions about that. Do you have that  
 [15] in front of you?  
 [16] **A:** Yes.  
 [17] **Q:** Was the language of the statement written  
 [18] by you, or was it supplied to you from Liberty?  
 [19] **MR. BEGLEITER:** Objection. No foundation.  
 [20] Go ahead.  
 [21] **THE WITNESS:** It was written by those in  
 [22] our firm.

[1] **BY MR. BECKNER:**  
 [2] **Q:** By you or someone else in your firm?  
 [3] **A:** That's correct.  
 [4] **Q:** And I think you already testified that  
 [5] when you sent this particular application up to  
 [6] Mr. Nourain for his signature, it included the  
 [7] statement of eligibility and use; is that correct?  
 [8] **A:** Yes, it did.  
 [9] **Q:** As a regular practice, when you sent  
 [10] Mr. Nourain a completed application for his  
 [11] signature, did that include the statement of  
 [12] eligibility and use?  
 [13] **A:** Yes, it did.  
 [14] **Q:** Do you recall ever having discussion in  
 [15] 1994 or the first half of 1995 with anyone at  
 [16] Liberty regarding this statement of eligibility and  
 [17] use?  
 [18] **MR. BEGLEITER:** Could you repeat the  
 [19] question.  
 [20] (Whereupon, the Court Reporter read back  
 [21] the previous question.)  
 [22] **THE WITNESS:** No, I don't recall.

[1] **Q:** Based on what you know, the circumstances  
 [2] surrounding the filing of Exhibit 1, is there any  
 [3] way that it would have been possible for  
 [4] Mr. Nourain to have signed this document on the  
 [5] same day that you mailed it out to the FCC?  
 [6] **A:** Probably not.  
 [7] **MR. BEGLEITER:** May I speak to  
 [8] Mr. Lehmkuhl for a moment?  
 [9] **MR. BECKNER:** Sure.  
 [10] (Counsel confers with the witness outside  
 [11] the room.)  
 [12] (Brief recess.)  
 [13] **MR. BEGLEITER:** Off the record we had a  
 [14] conversation with Mr. Lehmkuhl. He wanted to  
 [15] straighten out one of his answers to clarify  
 [16] matters.  
 [17] **THE WITNESS:** Upon looking at this  
 [18] particular application further, it seems that this  
 [19] was a case where Behrooz had signed the second page  
 [20] beforehand, and a few of these--this happened in a  
 [21] few cases, and when I would file it, I had his full  
 [22] authority. This was to expedite the filing of the

[1] **BY MR. BECKNER:**  
 [2] **Q:** I want you to look at the first page of  
 [3] the exhibit, the cover letter, and that letter is  
 [4] dated February 21, 1995, and then there is what  
 [5] appears to be a received stamp.  
 [6] Is that received stamp, do you recognize  
 [7] that as one from the FCC?  
 [8] **A:** Yes, I do.  
 [9] **Q:** As far as you know, did you, in fact, send  
 [10] this letter out on February 21, 1995?  
 [11] **A:** As far as I know, yes.  
 [12] **Q:** And did it go from your office as opposed  
 [13] to, say, from Liberty's headquarters?  
 [14] **A:** Yes.  
 [15] **Q:** Now, I would like you to take a look at  
 [16] the second page of FCC Form 402. That's the page  
 [17] that has the signature on the bottom.  
 [18] **A:** Yes.  
 [19] **Q:** You testified that you recognize that as  
 [20] Mr. Nourain's signature?  
 [21] **A:** Yes, I did.  
 [22] **Q:** You note there the date is also February

[1] applications because many of them were coming at a  
 [2] very fast rate.  
 [3] **BY MR. BECKNER:**  
 [4] **Q:** Do you have anything further?  
 [5] **A:** Well, that would account for the fact that  
 [6] the date was typed in the day that it was filed.  
 [7] When he gave me his authorization to sign this or  
 [8] when he gave me his authorization to file that,  
 [9] that's when we dated it.  
 [10] **Q:** Let me just ask, in light of that  
 [11] testimony just given, in what form did this  
 [12] document exist when you sent it up to Mr. Nourain?  
 [13] I take it from your testimony you're saying that it  
 [14] went up to Nourain and came back from Mr. Nourain  
 [15] with at least the date left blank?  
 [16] **A:** It may, in fact, be the case that this  
 [17] document did not--that the whole document did not  
 [18] go up to Mr. Nourain.  
 [19] **Q:** So he didn't even see it at all?  
 [20] **A:** Well, no. He would have seen the  
 [21] Comsearch report. He would have seen all the  
 [22] technical information. And from prior applications

[1] 21, 1995.  
 [2] **A:** Yes.  
 [3] **Q:** Was Mr. Nourain in your office to sign  
 [4] this letter?  
 [5] **A:** No, he was not.  
 [6] **Q:** Do you know whether or not he sent it down  
 [7] to you on the same date that you mailed it out to  
 [8] the FCC or Fed Ex'd it out to the FCC?  
 [9] **A:** I don't recall. I don't recall how I  
 [10] received it.  
 [11] **Q:** When you sent the form to him for his  
 [12] signature, do you include his name and title which  
 [13] appears in the bottom of the second page of Form  
 [14] 402?  
 [15] **A:** Yes.  
 [16] **Q:** So you would type it in or your secretary  
 [17] would type in the Behrooz Nourain, the engineer  
 [18] director?  
 [19] **A:** Usually, yes.  
 [20] **Q:** Would she also type in a date for  
 [21] signature?  
 [22] **A:** No.

[1] because this was not the regular case, he would  
 [2] have known about the statement of eligibility and  
 [3] the form of the application as a whole.  
 [4] **Q:** Well, in particular, the first two pages  
 [5] that are actually the printed FCC Form 402, is it  
 [6] your testimony that Mr. Nourain just signed those  
 [7] forms in blank and left them in your office?  
 [8] **A:** That's correct.  
 [9] **Q:** And then acting on his instruction, you  
 [10] filled in the appropriate blanks with the  
 [11] appropriate information and typed the date next to  
 [12] his signature and then filed the package with the  
 [13] FCC?  
 [14] **A:** On his authority, that's correct.  
 [15] **Q:** And that's your testimony with respect  
 [16] specifically to what's been marked as Exhibit 1 to  
 [17] your deposition; correct?  
 [18] **A:** Yes, that's correct.  
 [19] **Q:** Do you recall whether or not you involved  
 [20] this practice with respect to other applications  
 [21] that were filed on behalf of Liberty in 1995?  
 [22] **A:** In 1995, yes, it's possible.

[1] Q: What about 1994? Same question.  
 [2] A: Yes.  
 [3] Q: Now, with respect to all of those  
 [4] applications which Mr. Nourain had signed, I'm  
 [5] going to say, in blank, is it your testimony that  
 [6] nevertheless Mr. Nourain did review the engineering  
 [7] data, the statement of eligibility and use, this  
 [8] system diagram and the Comsearch microwave path  
 [9] data and frequency coordination study which were  
 [10] unique and specific to the particular applications?  
 [11] A: They were not necessarily unique and  
 [12] specific to the particular applications. These  
 [13] exhibits, especially Exhibit 2 and Exhibit 1, and  
 [14] the first page of the 402, in most respects, are in  
 [15] routine formats so he would have been fully aware  
 [16] of what those had said.  
 [17] Q: Do you recall any specific instance when  
 [18] you actually sent what is identified as Exhibit 2  
 [19] in this particular application that's been marked  
 [20] as Exhibit 1 to your deposition, actually sent this  
 [21] Exhibit 2 to Mr. Nourain?  
 [22] A: Yes.

[1] Q: Do you remember what year that was that  
 [2] you sent it to him?  
 [3] A: It would have been in '94 sometime. This  
 [4] was not a routine practice of getting his signature  
 [5] on the blank forms.  
 [6] Q: Was there any particular set of  
 [7] circumstances under which you elected to use what  
 [8] I'm going to call the blank form method of  
 [9] completing an application of the FCC?  
 [10] A: Yes.  
 [11] Q: What were those circumstances?  
 [12] A: Generally if we had to get the application  
 [13] on file as soon as possible.  
 [14] (Lehmkuhl Exhibit No. 2 was  
 [15] marked for identification.)  
 [16] (Counsel confers with the witness.)  
 [17] A: If I may, I would like to clarify some  
 [18] earlier testimony with regard to various notes that  
 [19] I took. These notes were not in the form of a log.  
 [20] They were on scraps of paper on a yellow legal pad.  
 [21] And generally if there was really anything of  
 [22] substance in those notes, they would go into a memo

[1] and that memo would go into the file. Afterwards,  
 [2] once I incorporated information in the memo, I most  
 [3] likely throw them away.  
 [4] Q: So your testimony is that the notes  
 [5] themselves would not go into the file?  
 [6] A: More often than not, that's correct.  
 [7] Q: Did you occasionally communicate with  
 [8] Liberty by means of sending them a written  
 [9] memorandum?  
 [10] A: Yes, I did.  
 [11] Q: And I was going to add to the question, on  
 [12] the subject of the status of a particular  
 [13] application or applications?  
 [14] A: Yes.  
 [15] Q: And would it have been your practice, for  
 [16] example, at least some of the time in a  
 [17] circumstance where you were asked to inquire of the  
 [18] FCC about the status of a particular application,  
 [19] and you made such inquiry, that you put the outcome  
 [20] of your inquiry into a memorandum and sent them on  
 [21] to the client?  
 [22] MR. BEGLEITER: Objection. That's a

[1] hypothetical.  
 [2] MR. BECKNER: I'm asking about his  
 [3] practice.  
 [4] THE WITNESS: It's possible.  
 [5] BY MR. BECKNER:  
 [6] Q: All right. I would like you to take a  
 [7] look at what has been marked as Exhibit 2 to your  
 [8] deposition that's now in front of you. For the  
 [9] record, it's a copy of six pages of what I believe  
 [10] will be identified as an STA request.  
 [11] (Document handed to the witness, and  
 [12] witness reviews document.)  
 [13] Q: Have you had a chance to look at Exhibit 2  
 [14] to your deposition?  
 [15] A: Yes.  
 [16] Q: Can you tell us what it is.  
 [17] A: It's a request for Special Temporary  
 [18] Authority.  
 [19] Q: And is that your signature on the left?  
 [20] A: Yes, it is.  
 [21] Q: Drawing your attention to the narrative  
 [22] that begins on the page following the letter with

[1] your signature on it, I would like to ask you who  
 [2] was the author or authors of this narrative?  
 [3] A: That would be either--well, that would be  
 [4] myself, Mr. Barr and any other of Liberty's  
 [5] attorneys.  
 [6] Q: Again, looking at the final page, there is  
 [7] what purports to be the signature of Behrooz  
 [8] Nourain. Do you recognize that as his signature?  
 [9] A: Yes.  
 [10] Q: And with respect to this particular STA  
 [11] request that is in front of you, do you recall  
 [12] whether or not you sent it up to him for his review  
 [13] and signature before he signed it?  
 [14] A: Yes.  
 [15] Q: And with respect to STA requests generally  
 [16] that Mr. Nourain signed in 1994 and 1995, was it  
 [17] your practice to send to him the entire text of the  
 [18] request for his signature as opposed to sending the  
 [19] last page?  
 [20] A: Yes.  
 [21] MR. BEGLEITER: Objection. Lack of  
 [22] foundation. That question did not have a

[1] foundation. I object.  
 [2] BY MR. BECKNER:  
 [3] Q: So would it be fair to say you relied on  
 [4] Mr. Nourain for the accuracy of the statements  
 [5] contained in the narrative that begins on the third  
 [6] page of Exhibit 2 to your deposition?  
 [7] MR. BEGLEITER: I will object.  
 [8] THE WITNESS: As far as I know, yes.  
 [9] BY MR. BECKNER:  
 [10] Q: And did you have this narrative reviewed  
 [11] by anyone else before it was filed with the FCC?  
 [12] A: Yes.  
 [13] Q: Who?  
 [14] A: Other attorneys in the firm, other  
 [15] attorneys representing Liberty.  
 [16] Q: To your knowledge, was it reviewed by  
 [17] anyone at Liberty itself other than Mr. Nourain?  
 [18] A: It's possible, yes.  
 [19] Q: When you say it's possible, who at Liberty  
 [20] might have reviewed this request?  
 [21] A: Peter Price.  
 [22] Q: How do you know that Mr. Price might have

[1] reviewed this particular request?

[2] **MR. BEGLEITER:** Objection to the form of

[3] the question. How do you know that he might?

[4] Answer it, if you can.

[5] **THE WITNESS:** Because it was a practice to

[6] send these to Peter as well, although I'm not

[7] exactly certain when that was instituted. It's

[8] possible that he would have seen this.

[9] **BY MR. BECKNER:**

[10] **Q:** But I take it from your testimony that at

[11] some point in time it became a practice to send to

[12] Mr. Price copies of STA requests in draft before

[13] they were filed?

[14] **A:** Yes.

[15] **Q:** And can you remember when that practice

[16] began?

[17] **A:** Not specifically, no.

[18] **Q:** Do you know whether or not it was the

[19] practice in 1994?

[20] **A:** No.

[21] **Q:** And you already testified, I believe, that

[22] you don't know with respect to this particular STA

[1] request that's been marked as Exhibit 2 whether or

[2] not Mr. Price reviewed this one; is that correct?

[3] **A:** That's correct.

[4] **Q:** Do you know whether or not the practice of

[5] sending copies of draft STA requests to Mr. Price

[6] took place in the first half of 1995?

[7] **A:** I believe it did.

[8] **Q:** Do you know whether or not the narrative

[9] that's attached to your letter in this STA request

[10] was a kind of boilerplate that you used repeatedly

[11] with your STA requests that were filed in 1995?

[12] **A:** Yes.

[13] **Q:** Was it boilerplate?

[14] **A:** Yes, yes.

[15] **Q:** Do you know the first time that this

[16] narrative was used in an STA request for Liberty?

[17] **A:** That I can't recall.

[18] **Q:** Would it have been in 1995 or 1994? Do

[19] you know that?

[20] **A:** Yes. This would have been filed after

[21] Time-Warner's petitions.

[22] **Q:** So that would place it in 1995, based on

[1] your previous testimony?

[2] **A:** Yes. I mean, Time-Warner is mentioned in

[3] the STA request.

[4] **Q:** I note that the appearance of the last

[5] page of this narrative was somewhat different than

[6] in the previous three pages. The type is, for lack

[7] of a better term, fuzzy.

[8] Did Mr. Nourain keep a supply of the

[9] signature pages of these narratives up in his

[10] office that he could send down to you with

[11] signature and a date?

[12] **A:** Not that I recall. What would happen in

[13] this instance is I would fax this to him if we

[14] needed to get it out quickly, and he would sign the

[15] fax page and send it to me.

[16] **Q:** I see. So the last page here, the

[17] difference in appearance of that might be accounted

[18] for by the fact that it was sent by facsimile back

[19] to your office?

[20] **A:** That's correct.

[21] **Q:** And the remaining—the first three pages

[22] were printed out on your word-processing system?

[1] **A:** Yes.

[2] **Q:** As an attorney practicing before the FCC,

[3] do you believe you had any obligation to

[4] independently verify or inquire about the facts and

[5] STA requests in applications you filed with the

[6] Commission on behalf of clients?

[7] **MR. BEGLEITER:** Is that a question? You

[8] believe that he had something? Could you repeat

[9] the statement.

[10] (Whereupon, the Court Reporter read back

[11] the previous question.)

[12] **THE WITNESS:** Yes. I mean, if I have

[13] reason to question something, yes, yes.

[14] **BY MR. BECKNER:**

[15] **Q:** Did you have reason to question any of the

[16] information in any of the STA requests or

[17] applications filed for Liberty?

[18] **A:** No, I did not.

[19] **MR. BECKNER:** Okay.

[20] **MR. BEGLEITER:** Thank you.

[21] (Whereupon, at 5:45 p.m., the taking of

[22] the deposition was concluded.)  
(Signature not waived.)

[1] CERTIFICATE OF DEPONENT

[2] I have read the foregoing 82 pages,

[3] which contain the correct transcript of the answers

[4] made by me to the questions therein recorded.

[5]

[6] MICHAEL LEHMKUHL

[7]

[8]

[9]

[10]

[11]

[12]

[13] Subscribed and sworn to before me this \_\_\_\_

[14] day of \_\_\_\_\_, 1996.

[15]

[16]

[17] Notary Public, in and for

[18] the District of Columbia

[19] My commission expires: \_\_\_\_\_

[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  
 Notary Public in and for  
 The District of Columbia

[19]

[20]

[21] My commission expires: October 1, 1999

[22]

**Lawyer's Notes**

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