

FCC MAIL SECTION
 Before the
 FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FCC 97M-64
 71113

APR 25 12 45 PM '97

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

ORDER

Issued: April 18, 1997

;

Released: April 21, 1997

In view of the need to reopen the hearing to permit further discovery and testimony due to substantial questions raised by the post-hearing discovery of the Richter Letter, the Barr clarification of testimony, and Liberty trial counsel's disavowal of testimony of Behrooz Nourain, it is most probable that the Joint Motion For Summary Decision would have to be denied under the Commission's standards for summary decision. However, the Joint Motion will remain under advisement and it will be the subject of a ruling in an initial decision.

In order to complete the record for initial decision, it is appropriate to find facts that are based on reliable papers which were submitted by the parties on the Joint Motion For Summary Decision. The Commission authorized use of these procedures in holding that when "basic facts are conceded ---, testimony [on candor] may still be appropriate to determine whether [a licensee] was acting in good faith, or for base or worthy motives." Summary Decision Procedures, 34 F.C.C. 2d 485, 488 n.3 (1972). In other words:

In such circumstances, summary decision of the basic facts would be appropriate, but a hearing on the inferences to be drawn from them or as to the ultimate findings of fact would also be appropriate.

Id.

The hearing testimony, thus far, has been limited to facts and circumstances concerning Liberty's admitted premature activations of 19 OFS sites. There will be additional evidence and hearings arising out of disclosures during the hearing and related post-hearing discovery. See Memorandum Opinion And Order, FCC 97M-63, issued April 17, 1997. Mr. Behrooz Nourain (among others) will be returning to the witness stand. In the interest

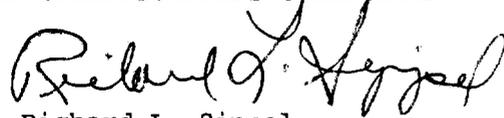
of a complete record concerning his and Liberty's credibility, Mr. Nourain should be questioned fully on the two Nourain Affidavits which are cited in the designation order and which are the subject of a designated issue. See Hearing Designation Order And Notice Of Opportunity For Hearing (FCC 96-85) at Paras. 8, 20, 30.¹

Counsel also shall confer on appropriate additional procedures and determine whether Mr. Price and Mr. McKinnon should be questioned on the hard wire franchise issues which have not been the subject of hearing testimony. The Presiding Judge favors reliance on the documents and deposition transcripts to the extent possible. But testimony will be allowed on conflicting questions of inferences to be drawn from documentary evidence relating to all issues.

A Status Report on these matters shall be submitted to the Presiding Judge by **April 28, 1997 at 12 noon.**

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION²



Richard L. Sippel
Administrative Law Judge

¹ There was some questioning permitted on the Affidavit of Behrooz Nourain, dated February 21, 1995, submitted in U.S.D.C.S.D.N.Y. 94 Civ. 8886 (TWCV Exh. 13) in the January hearing session. There will be additional questioning permitted on the Affidavit of Behrooz Nourain, dated May 17, 1995, that was submitted to the Commission, and questions on both Affidavits in context.

² Copies of this Order were faxed or e-mailed to counsel on the date of issuance solely as a courtesy to counsel and the parties. An Order of the Presiding Judge can only be officially released when a copy is made available to the public. See 47 C.F.R. §1.4(b)(2).