

FCC MADE BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

FCC 97M-79  
 71200

MAY 8 4 13 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)

**O R D E R**

Issued: May 2, 1997 ; Released: May 6, 1997

In accordance with Order FCC 97M-64, released April 21, 1997, on April 30, 1977, the parties submitted Status Reports on the readiness of the record for initial decision.

On May 28, 1997, there will be a hearing on the questions raised by the Richter Letter. Memorandum Opinion And Order FCC 97M-63, released April 21, 1997. During that hearing session, Mr. Behrooz Nourain also will be questioned on the two affidavits [February 23, 1995 and May 17, 1995] which are included in the issues set for hearing by the Commission's designation order. Hearing Designation Order And Notice Of Opportunity For Hearing (FCC 96-85), released March 5, 1996 at Paras. 8, 19-20 and 30(3)(a)(b).<sup>1</sup> Counsel for TWCNY and Cablevision will be prepared at the hearing to have marked and received in evidence the second affidavit dated May 17, 1995.<sup>2</sup> TWCNY, Cablevision and the Bureau may fully examine Mr. Nourain on the alleged inconsistencies of his affidavits.

The parties are agreed that except for the testimony on the Nourain affidavits, the present record on summary decision is sufficient to support an initial decision that would include the issues pertaining to hard wiring and local franchises. There will be no further evidence taken on the hard wire/franchise issues.

<sup>1</sup> "Specifically, we find it difficult to reconcile Mr. Nourain's February 23, 1995, District Court affidavit, in which he acknowledges that he was aware of Time Warner's petition to deny, with his May 17 statement to the Commission that, until April, 1995, he was unaware of Time Warner's petition to deny." Id. at Para. 20.

<sup>2</sup> The first affidavit of February 23, 1995 is already in evidence as TWCV Exh. 13, Tr. 1969.

TWCNY also asks for an opportunity to comment on an appropriate penalty. The Bureau has joined in a Motion For Summary Decision which could involve an agreed forfeiture of over \$750,000. TWCNY has not had an opportunity to comment on forfeiture. Since there continues to be newly discovered evidence that could impact any forfeiture,<sup>3</sup> it would be appropriate for the parties to address forfeiture in posthearing briefs.

Rulings

IT IS ORDERED that the reopened hearing on May 28, 1997, shall include the cross-examination of Mr. Behrooz Nourain under the issues on alleged inconsistencies with respect to his affidavits of February 23, 1995, and May 17, 1995.

IT IS FURTHER ORDERED that all pleadings and papers which have been filed in support of and in opposition to the Joint Motion For Summary Decision ARE IN EVIDENCE as marked and filed by the parties.<sup>4</sup>

IT IS FURTHER ORDERED that Comments On Forfeiture SHALL BE SUBMITTED with proposed findings (and hand-delivered in Washington, D.C.) on June 11, 1997,<sup>4</sup> and Reply Comments SHALL BE SUBMITTED with reply findings on June 18, 1997.

FEDERAL COMMUNICATIONS COMMISSION<sup>5</sup>



Richard L. Sippel  
Administrative Law Judge

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<sup>3</sup> In view of Liberty's late disclosure of evidence at the time of the January hearing, the Bureau has indicated that an additional forfeiture is warranted. The Bureau may seek an even greater forfeiture after the hearing on the Richter Letter.

<sup>4</sup> In the initial decision, the Presiding Judge will take appropriate official notice of the record that has been compiled in connection with the Joint Motion For Summary Decision. See 47 C.F.R. §1.361; FRE 201.

<sup>5</sup> 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).