

In the Matter of Liberty Cable Co.

WT DOCKET 96-41

TIME WARNER'S  
EXHIBITS  
FOR  
MAY 28-29, 1997  
HEARING

**IN THE MATTER OF LIBERTY CABLE COMPANY, WT Docket No. 96-41**

**TIME WARNER CABLE OF NEW YORK CITY  
AND PARAGON CABLE MANHATTAN'S  
EXHIBIT LIST FOR HEARING COMMENCING MAY 28, 1997**

<b><u>Exhibit Number</u></b>	<b><u>Document</u></b>
1	Howard Barr Deposition Transcript, May 16, 1997
2	Bruce McKinnon Deposition Transcript, May 14, 1997
3	Behrooz Nourain Deposition Transcript, May 19, 1997
4	Jennifer Richter Deposition Transcript, May 12, 1997
5	Letter from J. Richter to B. McKinnon re December 4, 1992 FCC Public Notice, December 8, 1992
6	Letter from J. Richter to B. McKinnon re January 23, 1993 FCC Public Notice, February 3, 1993
7	Facsimile from J. Richter to B. Nourain enclosing cover letter to M. Roth and draft 18 GHz license inventory, March 16, 1993
8	Letter from J. Richter to B. McKinnon re inventory of microwave radio licenses, April 6, 1993
9	Pepper & Corazzini bill to Liberty Cable Co. for March 1993, dated April 10, 1993
10	Pepper & Corazzini bill to Liberty Cable Co. for April 1993, dated May 10, 1993
11	Letter from J. Richter to P. Price re grant of STAs, May 25, 1993
12	Pepper & Corazzini bill to Liberty Cable Co. for May 1993, dated June 10, 1993
13	Twenty-one instances of activation by Liberty of 18 GHz microwave facilities concurrent with or before the filing of applications for such facilities during the period July 1, 1992 through June 30, 1993, listed by transmitter
14	Letter from M. Lehmkuhl to P. Price re inventory of 18 GHz licenses issued to Liberty Cable Co., Inc., February 24, 1995



**In The Matter Of:**

*Before the Federal Communications Commission  
In Re: Application of Liberty Cable Co., Inc*

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*Deposition of Howard J. Barr  
May 16, 1997*

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*Miller Reporting Company, Inc.  
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*Original File 0516barr.asc, 64 Pages  
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**Word Index included with this Min-U-Script®**

Federal Communications Commission	
WT 96-41	Ext: TW 52
Time Warner	
Deposition	Identified <input checked="" type="checkbox"/>
	Received <input checked="" type="checkbox"/> 5-29-97
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Reporter <i>ML</i>	
Date	5-28-97

TW EXHIBIT 1

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
 In re: Application of : WT Docket No.  
 : 96-41  
 Liberty Cable Co., Inc. :  
 CONFIDENTIAL  
 Friday, May 16, 1997  
 Washington, D.C.

The deposition of HOWARD J. BARR, 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 Pepper & Corazzini,  
 1776 K Street, N.W., Suite 200, Washington, D.C.,  
 convened at 10:05 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:  
 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.  
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On behalf of the Federal Communications  
 Commission:  
 KATHERINE C. POWER, 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:  
 PETER GUTMANN, ESQ.

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PROCEEDINGS  
 Whereupon,

[1] HOWARD J. BARR  
 [2] was called for examination by counsel for Time  
 [3] Warner Cable and, after having been duly sworn by  
 [4] the notary public, was examined and testified as  
 [5] follows:  
 [6] **EXAMINATION BY COUNSEL FOR TIME WARNER CABLE**  
 [7] **BY MR. BECKNER:**

[8] **Q:** Please state your full name for the record,  
 [9] sir.  
 [10] **A:** Howard J. Barr.  
 [11] **Q:** Mr. Barr, what's your present employment?  
 [12] **A:** I'm a partner at the law firm of Pepper &  
 [13] Corazzini in Washington, D.C.  
 [14] **Q:** And how long have you worked for Pepper &  
 [15] Corazzini?  
 [16] **A:** Since June of 1988.  
 [17] **Q:** When did you become a partner?  
 [18] **A:** March of '96.  
 [19] **Q:** During the time that you have been employed  
 [20] either as a partner or an associate at Pepper &

[21] Corazzini, have you worked on the Liberty Cable  
 [22] account?  
 [1] **A:** Yes.  
 [2] **Q:** Okay.  
 [3] **A:** We have all been through this before.  
 [4] **Q:** Well, I'm going to ask the questions.  
 [5] **MR. SPITZER:** Howard has testified at the  
 [6] hearing. We have had lots of depositions. I don't  
 [7] mind your laying some necessary background, but  
 [8] there has been a convergence of issues, and I think  
 [9] the judge's opinion sort of defines the parameters  
 [10] of the inquiry. To the extent you need very simple  
 [11] preliminary, that's okay, but I'm hoping that we  
 [12] will not be going to sort of foundation issues that  
 [13] I think we have gone over at length.  
 [14] **MR. BECKNER:** We could do this either  
 [15] slowly or quickly. I asked about four questions,  
 [16] and I'm going to take the deposition as I see fit.  
 [17] If you don't like it, you could call the judge.  
 [18] **MR. SPITZER:** I know, but Mr. Beckner-  
 [19] **MR. BECKNER:** You have watched me do  
 [20] depositions in this case before. You know that I am

[1] not needlessly prolix, so I think your concerns are  
 [2] unfounded.  
 [3] **MR. SPITZER:** I want not objecting yet.  
 [4] You are starting off by how many years he was at  
 [5] Pepper & Corazzini. I think that may have been  
 [6] testified to at trial, so it may be repetitive. We  
 [7] will give you one or two other questions, and I hope  
 [8] we will be focusing on the questions that the judge  
 [9] asked this deposition to focus on.  
 [10] **MR. BECKNER:** Would you read back my last  
 [11] question.

[12] (Whereupon, the Court Reporter read back  
 [13] the previous question.)  
 [14] **BY MR. BECKNER:**  
 [15] **Q:** When did you start working on the Liberty  
 [16] Cable account? What year, if you can recall?  
 [17] **A:** As best I can recall, 1994, though I might  
 [18] have had some contact with it prior to that.  
 [19] **Q:** What kind of work did you do for Liberty  
 [20] Cable in 1994? Was it licensing work or some other  
 [21] work?  
 [22] **A:** Primarily copyright related. Todd Parriott

[1] was with the firm, and he was responsible for this  
[2] contact. When Jennifer Richter was at the firm, she  
[3] was primarily responsible for the account.  
[4] **Q:** Did you occasionally do some licensing work  
[5] for Liberty in 1992, '93?  
[6] **A:** '92, I don't recall. Doubtful. '93 it's  
[7] possible.  
[8] **MR. SPITZER:** I would note parenthetically  
[9] we have turned over billing records for the firm  
[10] during that period, so I think you could refer to  
[11] those for more precise answers, if necessary. I'm  
[12] sure the witness is happy to answer, but I'm not  
[13] sure we could gain a great deal by trying to quiz  
[14] him on the things that the documents would establish  
[15] one way or another.  
[16] (Barr Exhibit No. 1 was  
[17] marked for identification.)  
[18] **BY MR. BECKNER:**  
[19] **Q:** Mr. Barr, you have been handed what's been  
[20] marked as Exhibit 1 to your deposition, and it  
[21] appears to be a letter dated July 13, 1992,  
[22] addressed to Bruce McKinnon from you with production

[1] number FCC/CP 018123 with a public notice attached  
[2] to it.  
[3] Do you recognize this as a copy of a letter  
[4] with your signature on it?  
[5] **A:** Yes.  
[6] **Q:** Do you recall why you happened to send this  
[7] particular letter to Mr. McKinnon as opposed to,  
[8] say, Mr. Parriott?  
[9] **A:** No.  
[10] **Q:** Were you kind of a backup for Mr. Parriott  
[11] at this time; that is, in 1992?  
[12] **A:** Well, I don't think Todd was actually here  
[13] in July of 1992. He left the firm in or about that  
[14] time. I think we were transitioning to Jennifer at  
[15] that time. That's the best of my recollection.  
[16] **Q:** And so would it be fair to say that shortly  
[17] after the date of this letter, Jennifer Richter  
[18] assumed what would have been Mr. Parriott's  
[19] responsibilities for licensing?  
[20] **A:** Right.  
[21] **Q:** And-  
[22] **A:** There was some overlap between Jennifer and

[1] Todd. They were here today for a period of time. I  
[2] can't recall specifically when Todd left. I can't  
[3] recall specifically when Jennifer arrived.  
[4] **Q:** Okay.  
[5] **A:** But it was transitioned to Jennifer, yes.  
[6] **Q:** Thereafter, do you remember if you  
[7] occasionally helped Jennifer out with applications  
[8] perhaps when she was swamped with other work?  
[9] **A:** I'm sure I helped Jennifer out. I don't  
[10] know why.  
[11] **Q:** Okay. But I take it that you would not  
[12] describe your working relationship with her as one  
[13] where you were supervising her; would that be  
[14] correct?  
[15] **A:** Jennifer was not easily supervised, so, no.  
[16] **Q:** Well, were you supposed to be supervising  
[17] her then?  
[18] **A:** I really couldn't say, no.  
[19] **Q:** I want to show you some documents that have  
[20] been previously admitted as evidence in the hearing.  
[21] I'm going to show you what's marked and admitted in  
[22] the hearing as TWCV Exhibit 6. Just for the record,

[1] it's an "Inventory of 18 Gigahertz Licenses" dated  
[2] January 6, 1994, and I simply want you to tell me,  
[3] if you can, whether or not you recall having seen  
[4] the document at around the time of when it was  
[5] dated.  
[6] **MR. SPITZER:** You mean on or about January  
[7] 6th of '94?  
[8] **MR. BECKNER:** Yes.  
[9] (Document handed to the witness, and  
[10] witness reviews document.)  
[11] **THE WITNESS:** I have no recollection of  
[12] whether or if I ever saw this document before.  
[13] **BY MR. BECKNER:**  
[14] **Q:** Okay.  
[15] **A:** I note I'm not indicated as receiving a  
[16] copy on it.  
[17] **Q:** And by your answer, you mean to say that  
[18] you don't recall receiving or seeing either around  
[19] January 6, 1994 or sometime thereafter; is that  
[20] correct?  
[21] **A:** This just doesn't ring any bells.  
[22] **Q:** Okay. And as far as you know, you don't

[1] recall having seen it at any time before, let's say,  
[2] 1996?  
[3] **A:** No, I don't recall. I don't recall  
[4] Jennifer being in the habit of giving me copies of  
[5] these.  
[6] **Q:** Do you recall at any time before 1996  
[7] seeing any document like this--that is, in this  
[8] format--whether it's dated January 6th, 1994 or  
[9] having some other date?  
[10] **MR. SPITZER:** I'm going to object. I'm  
[11] going to let the witness answer the question, but  
[12] I'm assuming we are carving out inquiries that might  
[13] relate to work done in pursuit of any internal  
[14] investigation that we all know is the subject of the  
[15] D.C. Circuit--  
[16] **MR. BECKNER:** I don't know if this witness  
[17] is a part of that investigation.  
[18] I will let the question stand. The  
[19] question stands. If he wants to qualify the answer,  
[20] he has the right.  
[21] **MR. SPITZER:** I will qualify and assert the  
[22] privilege. This is in keeping with our prior

[1] discussions and understandings.  
[2] The witness can answer the question.  
[3] **THE WITNESS:** What was the question?  
[4] **MR. BECKNER:** Read it back.  
[5] (Whereupon, the Court Reporter read back  
[6] the previous question.)  
[7] **BY MR. BECKNER:**  
[8] **Q:** I will help you and Mr. Spitzer out.  
[9] Backing the date up to May 1, 1995.  
[10] Any time prior to May 1, 1995, do you  
[11] recall having seen a document set up as an  
[12] "Inventory of 18 Gigahertz Licenses" issued to  
[13] Liberty Cable in a format like TWCV Exhibit 6?  
[14] **A:** It's possible that I did. Do I have  
[15] recollection of it? Not really.  
[16] **Q:** And do you recall when you might have seen  
[17] such a document?  
[18] **A:** No.  
[19] **Q:** In connection with any work that you did on  
[20] the surreply that was filed with the FCC in May of  
[21] 1995, do you recall whether or not you saw a  
[22] document that was titled or styled "Inventory of 18

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[1] Gigahertz Licenses" belonging to Liberty Cable?  
[2] **MR. SPITZER:** If I could clarify. By  
[3] surreply, you are referring to the May 17 document?  
[4] **MR. BECKNER:** Yes.  
[5] **THE WITNESS:** Ask your question again.  
[6] (Whereupon, the Court Reporter read back  
[7] the previous question.)  
[8] **THE WITNESS:** Such that Jennifer Richter  
[9] might have prepared, no, I don't recall.  
[10] **BY MR. BECKNER:**  
[11] **Q:** I wasn't trying to limit my question to one  
[12] prepared by Jennifer but include an inventory  
[13] prepared by Michael Lehmkuhl also.  
[14] **A:** It's possible, but I don't specifically  
[15] recall.  
[16] **Q:** Prior to May 17, 1995, did you know that  
[17] someone in your firm had prepared for Liberty Cable  
[18] an "Inventory of 18 Gigahertz Licenses"?  
[19] **A:** Yes. I considered those to be primarily  
[20] for the client's purpose, though.  
[21] **Q:** Were you involved in preparation of reading  
[22] those inventories?

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[1] **A:** Only insofar as I might have reviewed them  
[2] for form.  
[3] **Q:** Do you recall whether or not you reviewed  
[4] any of the inventories prepared by Ms. Richter?  
[5] **A:** No, I don't think I did.  
[6] **Q:** Did you review the inventory prepared by  
[7] Mr. Lehmkuhl?  
[8] **A:** I think I did, yes, but again not really  
[9] for purposes of content, really. Mostly for  
[10] purposes of style, making sure it was  
[11] understandable.  
[12] **Q:** So I take it from your answer you reviewed  
[13] the inventory in a draft form before it was sent out  
[14] to the client in the final?  
[15] **A:** Right.  
[16] **Q:** Do you know whether or not drafts of that  
[17] inventory that Mr. Lehmkuhl prepared were sent out  
[18] to the client?  
[19] **A:** I have no idea.  
[20] **Q:** And I take it that you didn't, yourself,  
[21] send out drafts of that inventory to the client?  
[22] **A:** No, I really had little or nothing to do

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[1] with the preparation of these inventories.  
[2] **Q:** Can you tell me or describe for me the  
[3] process that your firm uses for logging telephone  
[4] calls. There have been produced to us handwritten  
[5] logs of telephone calls that appeared to come from  
[6] the receptionist. Can you tell me how those were  
[7] generated in general.  
[8] **MR. SPITZER:** Did you want to use a  
[9] specific document?  
[10] **MR. BECKNER:** No. I just want to know if  
[11] he could tell me how the lists were generated.  
[12] **THE WITNESS:** No.  
[13] **BY MR. BECKNER:**  
[14] **Q:** Do you know whether or not every  
[15] call-strike that.  
[16] At your firm, does the call typically come  
[17] in to the receptionist and then it's put through to  
[18] a lawyer, or does the call come straight to the  
[19] lawyer?  
[20] **A:** No, it goes to the receptionist.  
[21] **Q:** Okay. And the receptionist announces the  
[22] call to you, for example?

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[1] **A:** Right.  
[2] **Q:** And says, "John Smith calling for you"?  
[3] **A:** Right.  
[4] **Q:** Do you know whether in that circumstance,  
[5] does he or she write down the identity of the caller  
[6] and to whom the call is directed?  
[7] **A:** No.  
[8] **Q:** You don't know?  
[9] **A:** No.  
[10] **Q:** In the event that someone calls for you and  
[11] you're not able to take the call, is the  
[12] receptionist the person who takes the message that,  
[13] hypothetically speaking, John Smith called for you  
[14] and gives you that message when you come in?  
[15] **A:** It depends. We recently installed voice  
[16] mail, so typically I don't get any paper messages  
[17] anymore.  
[18] **Q:** Let's talk about prior to 1995.  
[19] **A:** In that time period, I would have, right.  
[20] If the individual called and left a message, I would  
[21] get a pink slip telling me that John Doe called.  
[22] **Q:** And do you know whether or not the

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[1] receptionist kept a separate log on lined paper of  
[2] those calls?  
[3] **A:** I really don't. I know she keeps a log,  
[4] but I don't know what calls going out are.  
[5] **Q:** Mr. Barr, I'm going to show you a copy of a  
[6] document that has been admitted in evidence in the  
[7] hearing, TWCV Exhibit Number 14. What I would like  
[8] you to tell me, if you can, is whether or not prior  
[9] to May 15, 1995, you have ever seen a document like  
[10] this that is in this format.  
[11] **MR. BECKNER:** I will note that this  
[12] document is dated February 23rd, '95.  
[13] **MR. SPITZER:** I hate to interrupt. There  
[14] is a verb tense. You mean whether he had seen it  
[15] prior to May 15, 1995, or whether he had seen it?  
[16] **MR. BECKNER:** Prior.  
[17] **THE WITNESS:** This is the first time I have  
[18] seen this document.  
[19] **BY MR. BECKNER:**  
[20] **Q:** Or any document in that format?  
[21] **A:** I'm not sure what you mean by that.  
[22] **Q:** A document entitled "Installation Progress

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[1] Report", albeit with a different date than what's on  
[2] there?  
[3] **A:** Right. I have never seen this or any other  
[4] report entitled "Installation Progress Report".  
[5] **Q:** Okay.  
[6] **MR. BECKNER:** Mark this document.  
[7] (Barr Exhibit No. 2 was  
[8] marked for identification.)  
[9] **MR. BECKNER:** And mark this.  
[10] (Barr Exhibit No. 3 was  
[11] marked for identification.)  
[12] **BY MR. BECKNER:**  
[13] **Q:** You have been handed what was marked as  
[14] number three to your deposition. It appears to be a  
[15] memo from Peter Price to Lloyd Constantine, dated  
[16] April 28th, 1995, with attached memo. The  
[17] production number of the first page is FCC/CP  
[18] 018010, and the last page is 018016.  
[19] Aside from the first page which is the memo  
[20] from Price to Constantine, do you recall having seen  
[21] the second and succeeding pages before today?  
[22] **A:** I believe it's a memo from Mr. Constantine

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[1] to Mr. Price.  
[2] **Q:** I beg your pardon?  
[3] **MR. BECKNER:** Would you read back that last  
[4] answer.  
[5] (Whereupon, the Court Reporter read back  
[6] the previous answer.)  
[7] **BY MR. BECKNER:**  
[8] **Q:** I want to know whether the part that's on  
[9] Pepper & Corazzini letterhead is something that you  
[10] recognize.  
[11] **A:** Yes.  
[12] **Q:** And the pending application status list  
[13] that follows it, is that something you recognize?  
[14] **A:** It appears to be a pending application  
[15] status report that was prepared here.  
[16] **Q:** And by "here", you mean at your firm?  
[17] **A:** At my firm, right. I didn't prepare it.  
[18] **Q:** And then behind that there are three pages  
[19] that are entitled Special Temporary Authority FCC  
[20] File Number 3- and so on.  
[21] Do you recognize that?  
[22] **A:** It looks familiar.

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[1] **Q:** Is that a draft STA request that's referred  
[2] to on the first page of your memo?  
[3] **A:** I presume it is, yes.  
[4] **Q:** Did you write that, or did someone else in  
[5] the firm write that?  
[6] **A:** Wrote which? The STA request?  
[7] **Q:** Yes, the STA request.  
[8] **A:** No, I don't believe I wrote it.  
[9] **Q:** Do you know who wrote it?  
[10] **A:** I believe it was Mike Lehmkuhl.  
[11] **Q:** Okay.  
[12] (Barr Exhibit No. 4 was  
[13] marked for identification.)  
[14] **Q:** Mr. Barr, you have been handed what was  
[15] marked as Number 4 to your deposition. The first  
[16] page appears to be a memo from you to Peter Price  
[17] and some other folks, dated May 15, 1995, and the  
[18] production number on the first page is FCC/CP  
[19] 018076, and the last page of the document is FCC/CP  
[20] 018086.  
[21] Tell me, if you can, excluding the last two  
[22] pages—that is, the one that says TX Report and the

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[1] one that appears to be a fax cover page from Liberty  
[2] Cable—excluding those two pages, do you recognize  
[3] this document as something that you sent to  
[4] Mr. Price, Constantine, Spasser and Mr. Rivera on or  
[5] about May 15, 1995?  
[6] **A:** Yes, it appears to be.  
[7] **Q:** Okay.  
[8] **A:** I note there is a note on 018077 which I  
[9] didn't write.  
[10] **Q:** I understand. My question was referenced  
[11] to the document as typed and printed and not  
[12] necessarily to the handwriting, and I appreciate the  
[13] clarification.  
[14] **A:** Okay.  
[15] **Q:** On the second page of the draft surreply,  
[16] there appears to be typed in bold face, "is this  
[17] complete and accurate?" That's the question.  
[18] And the handwritten note which you directed  
[19] my attention to appears to say, "Tony, please  
[20] confirm query on page two today to Howard Barr."  
[21] Do you recall whether or not you got  
[22] confirmation from Mr. Price or anybody else at

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[1] Liberty that the list on page two that preceded the  
[2] words "is this complete and accurate" was, in fact,  
[3] complete and accurate?  
[4] **MR. SPITZER:** Could I clarify? Were you  
[5] asking was that list itself precise, or did he  
[6] receive clarification whether such that, when this  
[7] document was filed, it was filed with complete  
[8] information? Do you understand my question?  
[9] **MR. BECKNER:** Yes.  
[10] I will phrase it this way.  
[11] **BY MR. BECKNER:**  
[12] **Q:** Did you get an answer to the question on  
[13] page two from the client?  
[14] **A:** I presume I did. I don't specifically  
[15] recall.  
[16] **Q:** All right. I have no more questions about  
[17] Barr Exhibit 4.  
[18] (Barr Exhibit No. 5 was  
[19] marked for identification.)  
[20] **Q:** Take whatever time you need to look at the  
[21] document, and let me know and I will ask you a few  
[22] questions about it.

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[1] **MR. SPITZER:** Are you going to ask textual  
[2] questions about it or issues about whether he  
[3] received it, sent it?  
[4] **MR. BECKNER:** Well, both.  
[5] **THE WITNESS:** I flipped through it.  
[6] **BY MR. BECKNER:**  
[7] **Q:** I mean, I want you to take whatever time  
[8] you need. If you need more time to answer the  
[9] question, feel free to take it.  
[10] **A:** Is there a question?  
[11] **Q:** Not yet.  
[12] **A:** Okay.  
[13] (Witness reviews document.)  
[14] **Q:** Mr. Barr, you have been handed what's been  
[15] marked as Exhibit 5 to your deposition, and the  
[16] first page of it is on Liberty Cable fax  
[17] transmission stationery, and it says to Howard Barr  
[18] from Peter Price, dated 5/15/95. And it has  
[19] production number FCC/CP 018146, and the last page  
[20] of the document is FCC/CP 018154.  
[21] First, do you recall having received this  
[22] document by fax from Peter Price on or about May 15,

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[1] 1995?  
[2] **A:** Yes.  
[3] **Q:** Okay. Now, turning to the interior pages  
[4] of the document, here and there appears to be  
[5] handwriting and editing of an otherwise typed draft.  
[6] Is that your handwriting or is that someone else's,  
[7] or is some of it yours?  
[8] **A:** Some of it is mine and some of it is other  
[9] people's.  
[10] **Q:** What I would like you to do is, beginning  
[11] with the second page of the exhibit, which is a  
[12] Pepper & Corazzini telecopier cover sheet, if you  
[13] could go through each page and tell us where is your  
[14] handwriting there.  
[15] **A:** Starting with FCC/CP 018147.  
[16] **Q:** Yes.  
[17] **A:** None of my handwriting appears there.  
[18] Following page is just my initial.  
[19] **Q:** Right.  
[20] **A:** After my name.  
[21] Now I'm on the cover page or the first page  
[22] of the pleading entitled "Surreply", and I don't see

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[1] any of my own handwriting there.  
[2] **Q:** Okay.  
[3] **A:** There is some scrawl in connection with the  
[4] first line of the second paragraph that appears to  
[5] be mine on page two.  
[6] **Q:** Okay. Hang on a second.  
[7] Could you simply circle on the exhibit, if  
[8] you would circle the writing on the page that  
[9] appears to you to be yours.  
[10] (Witness indicates.)  
[11] **Q:** And could you just read for us—strike  
[12] that.  
[13] **MR. BECKNER:** Let the record reflect that  
[14] the witness circled some handwriting on FCC/CP  
[15] 018150.  
[16] **BY MR. BECKNER:**  
[17] **Q:** And could you read the handwritten part  
[18] that you circled for us, please.  
[19] **A:** Right. There is some language in the first  
[20] line there that's crossed out that looks like I  
[21] crossed that out. And underneath that it appears to  
[22] say, "operating in current config since 1991."

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[1] **Q:** And I take it your intent was whoever  
[2] incorporated these changes into the document would  
[3] write out the word "configuration" for "config";  
[4] correct?  
[5] **A:** I'm not really sure. That just might have  
[6] been a note because if you just insert it in that  
[7] fashion, it doesn't look like it makes sense.  
[8] **Q:** If you would move on to the next page of  
[9] the document and indicate if any of the handwriting  
[10] is yours.  
[11] **A:** Yes. Again, the first full paragraph of  
[12] the page, there are some notes adjacent to that that  
[13] kind of appear to be mine.  
[14] **Q:** Could you also circle that, please.  
[15] (Witness indicates.)  
[16] **Q:** Thank you.  
[17] And could you read the handwriting that  
[18] appears to be yours that you just circled.  
[19] **A:** I think it says "to allow it to operate  
[20] while it opposes TW's baseless Petition to Deny,"  
[21] and there is some language that I have written and  
[22] crossed out.

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[1] **Q:** Okay. Is there anything else on that page  
[2] that appears to be your handwriting?  
[3] **A:** The next paragraph down there is some  
[4] handwriting adjacent to that paragraph that appears  
[5] to be mine.  
[6] **Q:** Okay. If you would circle that, please,  
[7] and read it if you can.  
[8] **A:** I really can't.  
[9] **MR. BECKNER:** Do we have an original of  
[10] this? This appears to be something that was cut off  
[11] in the reproduction process.  
[12] **MR. SPITZER:** I don't know. We could look.  
[13] It may be that that's the case, and it may be that  
[14] it was cut off when it was faxed.  
[15] Actually—I just don't know. We could make  
[16] a search for it.  
[17] **BY MR. BECKNER:**  
[18] **Q:** All right. Looks like it might say "Leslie  
[19] to fax termination."  
[20] Would those words make any sense in the  
[21] concept of this document?  
[22] **MR. SPITZER:** I don't think that's

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[1] termination.  
[2] **THE WITNESS:** I will agree with the Leslie  
[3] to fax, but beyond that I don't know what it says.  
[4] **BY MR. BECKNER:**  
[5] **Q:** Okay.  
[6] **A:** Nothing on the next page.  
[7] On the next page, at the end of the  
[8] carryover paragraph, the word "cite" is handwritten  
[9] that appears to be FCC/CP 018153.  
[10] And nothing on the next page.  
[11] **Q:** Okay. When you received this document, did  
[12] you have an understanding these other edits—that is  
[13] the other handwritten marks on the document—were  
[14] the client's edit; that is, the client wanted to put  
[15] in the document? Was that what your understanding  
[16] was?  
[17] **A:** My understanding is that they were the  
[18] client's comments on the draft.  
[19] **Q:** Okay. Did you consequently discuss this  
[20] draft with anybody at Liberty?  
[21] **A:** Very possibly I did.  
[22] **Q:** But you can't recall specifically whether

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[1] you did?  
[2] **A:** No.  
[3] **Q:** Did you ultimately incorporated these  
[4] changes into a final document?  
[5] **A:** I really couldn't say.  
[6] **Q:** Let me ask you about page three of the  
[7] draft.  
[8] **A:** Numbered page three?  
[9] **Q:** Yes. The top line there appears to be a  
[10] deletion mark over the words "Mr. Price's office".  
[11] Is that something you put in?  
[12] **A:** What do you mean by deletion?  
[13] **Q:** The words "Mr. Price's office" is circled  
[14] and there is a little loop which I interpret to mean  
[15] it was supposed to come out.  
[16] **A:** Right. And you're asking did I put that  
[17] there?  
[18] **Q:** Yes.  
[19] **A:** I don't believe so. My deletion marks  
[20] aren't as flowing.  
[21] **Q:** All right.  
[22] (Barr Exhibit No. 6 was

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[1] marked for identification.)  
[2] **Q:** Just for the record, Mr. Barr, you have  
[3] been shown what appears to be a three-page fax,  
[4] dated by the fax machine of May 17, '95 at 11:21.  
[5] **MR. SPITZER:** Can we clarify the exhibit?  
[6] The exhibit we have is only three pages, so let's  
[7] put in the Bates numbers.  
[8] **MR. BECKNER:** Yes. It's Barr Exhibit 6.  
[9] **THE WITNESS:** FCC/CP 018075, FCC/CP 018072,  
[10] FCC/CP 018074, and FCC/CP 018073.  
[11] **BY MR. BECKNER:**  
[12] **Q:** I will note for the record that the numbers  
[13] are out of order, but you were reading the pages in  
[14] order from the first page to the last of the  
[15] exhibit?  
[16] **A:** Yes.  
[17] **Q:** All right. Simple question. Do you recall  
[18] having seen this thing before today?  
[19] **A:** The first page, no, FCC/CP 018075, which is  
[20] a fax transmittal form.  
[21] The next page, FCC/CP 018072, yes.  
[22] **Q:** And that is the handwritten list of

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[1] addresses?  
 [2] **A:** Yes.  
 [3] **Q:** Okay.  
 [4] **A:** I recall having seen the next page as well,  
 [5] 018074.  
 [6] The page after that, FCC/CP 018073, is  
 [7] Liberty Cable fax transmission cover sheet, and it's  
 [8] to Tony Ontiveros from Peter Price. I don't  
 [9] remember seeing that.  
 [10] **Q:** I want to ask you some questions about the  
 [11] two pages that you have seen.  
 [12] The handwritten list of addresses, you  
 [13] indicated that you had seen it.  
 [14] **MR. SPITZER:** 018072.  
 [15] **MR. BECKNER:** Right.  
 [16] **BY MR. BECKNER:**  
 [17] **Q:** Do you recall about when you saw that  
 [18] document? Would it have been about May 17 or  
 [19] sometime sooner or later?  
 [20] **A:** I believe it was likely in that time frame.  
 [21] **Q:** Did you use it in conjunction with your  
 [22] drafting of the surreply?

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[1] **A:** It's likely that I did. I don't  
 [2] specifically recall.  
 [3] **Q:** Do you know who prepared this list or whose  
 [4] writing this is?  
 [5] **A:** No, I don't believe so.  
 [6] **Q:** Did you receive this list from someone at  
 [7] Liberty?  
 [8] **A:** It appears likely, given that there is  
 [9] faxed data at the top indicating it was from  
 [10] Liberty, or that appears that it came from Liberty.  
 [11] I'm not really sure.  
 [12] **Q:** Are you reasonably confident that this list  
 [13] did not come from someone else in your law firm like  
 [14] Mike Lehmkuhl?  
 [15] **A:** I really can't say one way or the other.  
 [16] **Q:** Did you have an understanding what the  
 [17] words "I" Block mean on this list?  
 [18] **A:** Yes.  
 [19] **Q:** Okay. Tell me what your understanding was.  
 [20] **A:** Locations connected by a wire.  
 [21] **Q:** So that, for example, this address listed  
 [22] here, 170 West End Avenue, and there is a file

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[1] number in parentheses, "I" Block presently from 160  
 [2] West End Avenue, does that mean that 170 and 160  
 [3] West End Avenues were connected by cable?  
 [4] **A:** Correct.  
 [5] **Q:** And Liberty had a pending microwave  
 [6] application for 170 West End Avenue with the file  
 [7] number of 708778?  
 [8] **A:** I presume, right.  
 [9] **Q:** Okay. I'm just asking you.  
 [10] (Counsel confers with the witness.)  
 [11] **Q:** Is the file number associated with the  
 [12] address 170 West End Avenue, as far as you know?  
 [13] **A:** 708778?  
 [14] **Q:** Yes.  
 [15] **A:** I can only assume that to answer that.  
 [16] **Q:** Let me ask you about the other page of this  
 [17] document that you said that you recall seeing  
 [18] before, and that's the grid of addresses, contract  
 [19] dates and so on.  
 [20] Do you recall using this grid in drafting  
 [21] the surreply?  
 [22] **A:** Again, it's likely that I did, although I

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[1] don't specifically recall.  
 [2] **Q:** Okay. Did you discuss the contents of this  
 [3] grid, the information presented here, with either  
 [4] Ms. Spasser or Mr. Ontiveros?  
 [5] **A:** It's possible.  
 [6] **Q:** Do you recall was it possible that each of  
 [7] them or only with one of them?  
 [8] **A:** It's possible that I spoke to both of them.  
 [9] **Q:** The little checkmarks on the side, you know  
 [10] if they're yours, or are they someone else's?  
 [11] **A:** I really don't know.  
 [12] (Off the record.)  
 [13] **MR. BECKNER:** While we were off the record,  
 [14] we were conferring about Barr Exhibit 6, and I  
 [15] discovered two pages that appear to be part of Barr  
 [16] Exhibit 6, part of the same fax transmission, and we  
 [17] have agreed to add those two pages to the exhibit,  
 [18] so the two pages added which were added at the back  
 [19] of exhibit have production numbers FCC/CP 018069 and  
 [20] FCC/CP 018068.  
 [21] So the exhibit now appears to be a six-page  
 [22] fax transmission done on May 17, 1995, and begun at

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[1] 11:21 and concluded at 11:24.  
 [2] **BY MR. BECKNER:**  
 [3] **Q:** Mr. Barr, I would just like you to take a  
 [4] look at the very last page of the exhibit, as we  
 [5] have now changed it, which appears to be one of the  
 [6] typed pages of a draft surreply that has the list of  
 [7] addresses, and there is a bunch of markings on this  
 [8] list.  
 [9] What I would like you to tell me is if you  
 [10] recall having seen this page before with all of  
 [11] these markings.  
 [12] **A:** No, I don't recall.  
 [13] **Q:** Okay.  
 [14] **MR. SPITZER:** Which Bates number was that?  
 [15] **MR. BECKNER:** Page six of the fax. I don't  
 [16] know what the production number is.  
 [17] I would like the witness to be shown Barr  
 [18] Exhibit 2, which you have marked before.  
 [19] (Document handed to the witness, and  
 [20] witness reviews document.)  
 [21] **BY MR. BECKNER:**  
 [22] **Q:** Mr. Barr, you have been shown what's been

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[1] marked as Exhibit 2 to your deposition. It's a  
 [2] one-page handwritten document, and first I would  
 [3] like you to tell me if you can identify the  
 [4] handwriting.  
 [5] **A:** Yes, it's my handwriting.  
 [6] **Q:** Is all of the handwriting yours?  
 [7] **A:** It appears to be, yes.  
 [8] **Q:** Okay. Could you tell me what Barr  
 [9] Exhibit 2 is.  
 [10] **A:** It appears to be notes of a phone  
 [11] conversation I had with Lloyd Constantine.  
 [12] **Q:** Do you know when that conversation  
 [13] happened?  
 [14] **A:** It's undated, though it indicates it  
 [15] occurred at 4:45.  
 [16] **Q:** Aside from what's on the document, do you  
 [17] recall when you had a conversation with  
 [18] Mr. Constantine about the matters identified on the  
 [19] document?  
 [20] **A:** This was in late June—I'm not really  
 [21] sure—of 1995.  
 [22] **Q:** Would it have been on June 17, 1995?

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[1] A: It could be. I don't specifically recall  
[2] the date.  
[3] Q: Okay.  
[4] MR. BECKNER: Off the record.  
[5] (Discussion off the record.)  
[6] BY MR. BECKNER:  
[7] Q: Mr. Barr, do you recall at some point  
[8] during the past couple of months executing a  
[9] declaration identifying this document in conjunction  
[10] with some pleading filed by Liberty?  
[11] A: Yes, I believe I did.  
[12] Q: Okay. And as far as you know, whatever you  
[13] said on that declaration with respect to this  
[14] document is true and correct, as far as you know?  
[15] A: Yes.  
[16] Q: Starting from the top of the document, can  
[17] you just read the handwritten material for us.  
[18] A: It says, (reading) thinks there are an  
[19] additional four buildings for which no license has  
[20] been issued.  
[21] Q: Okay. Then there are some dates on the  
[22] left side, and it looks like perhaps the first digit

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[1] of the date has been partly obliterated by the  
[2] copying. Can you read the dates or partially read  
[3] the dates?  
[4] A: Yes. The first one appears to be 3/21/94.  
[5] The rest appear to be 5/24/94.  
[6] Q: Okay. And then there are some addresses  
[7] opposite the dates?  
[8] A: There are some addresses opposite the  
[9] dates, yes.  
[10] Q: The first one is 440 East 56th?  
[11] A: Yes.  
[12] Q: The second one is 35 East 85th; is that  
[13] right?  
[14] A: Yes.  
[15] Q: Third one is Liberty Terrace, parens,  
[16] Rector Place 380?  
[17] A: Closed paren, yes.  
[18] Q: And the last one is 1295 Madison (Wales  
[19] Hotel)?  
[20] A: Right.  
[21] Q: Could you tell me what those are.  
[22] A: Buildings.

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[1] Q: Okay. And what was the information  
[2] conveyed to you about those buildings that these  
[3] notes reflect?  
[4] A: At this point in time I really don't  
[5] recall.  
[6] Q: Are these the four buildings for which no  
[7] licenses have been issued that's mentioned in the  
[8] line above?  
[9] A: It could be.  
[10] Q: Do you know of any reason why this would  
[11] not be the four buildings for which no license had  
[12] been issued?  
[13] A: Well, only insofar as beneath the list it  
[14] says, "Comsearch has cleared the path", and further  
[15] down it makes reference about getting Comsearch to  
[16] clear the path. That's the only thing that could  
[17] lead me to believe it's the four buildings that's  
[18] being referred to.  
[19] Q: What appears to be three other addresses  
[20] underneath the sentence, "Comsearch has cleared the  
[21] path", you see those?

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[1] Q: 38 East 85th. Is that the first one?  
[2] A: Yes.  
[3] Q: And is that the word "granted" 11/23/93?  
[4] A: It appears to be, yes.  
[5] Q: Do you know why that's on there?  
[6] A: No, I don't.  
[7] Q: Then the next one is 433 East 56th. Did I  
[8] read it right?  
[9] A: Yes.  
[10] Q: There is the word "pending"?  
[11] A: Yes.  
[12] Q: Then there is 200—is that Rector?  
[13] A: It appears to be Rector.  
[14] Q: Is that "granted 5/2/95"?  
[15] A: Appears to be, yes.  
[16] Q: Do you know what the significance of these  
[17] three addresses is?  
[18] A: As I sit here today, no, I don't.  
[19] Q: You just don't have any recollection of  
[20] that?  
[21] A: No.  
[22] Q: Okay. The next one appears to be,

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[1] (reading) send Lloyd a copy of Jennifer's  
[2] April 22nd, 1993 letter.  
[3] Did I read that right?  
[4] A: Yes.  
[5] Q: Was that something that—strike that.  
[6] Lloyd is Lloyd Constantine; is that  
[7] correct?  
[8] A: Yes.  
[9] Q: Was that something he asked you for, or did  
[10] you volunteer to send it to him and make a note to  
[11] remind yourself to do that?  
[12] A: I seem to recall he asked me to send it up.  
[13] Q: Was there some discussion about the content  
[14] of this letter in your phone call?  
[15] A: I really don't recall.  
[16] Q: At the time that he asked you for this  
[17] particular letter, did you know anything of the  
[18] content of the letter?  
[19] A: It's possible, but I can't say for sure.  
[20] Q: Did he tell you why it was he was  
[21] interested in a letter that was two years old?  
[22] MR. SPITZER: I'm going to object to that

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[1] question. You are now trying to ask questions about  
[2] did he think of Mr. Constantine, and this is really  
[3] within the purview of the internal inquiry. To the  
[4] extent you want to ask questions of what the witness  
[5] knew at this time of this letter or as the judge  
[6] limited what the witness knew as of May 17 of '95,  
[7] that's fair game. But since we have pretty well  
[8] established that this conversation was June, and  
[9] you're now asking questions about your understanding  
[10] of Lloyd Constantine, that is beyond the scope of  
[11] the deposition, and also privileged. So I'm trying  
[12] to give you as much latitude as I could.  
[13] BY MR. BECKNER:  
[14] Q: It Mr. Constantine tell you why he wanted  
[15] this particular letter? It's a yes-or-no question.  
[16] A: I don't recall.  
[17] Q: When he made the request of you, did you  
[18] discuss the content of the letter with him?  
[19] A: I don't recall.  
[20] Q: Can you read the last lines of this  
[21] document, the following one that has a request for  
[22] the letter

[1] A: It said, (reading) Lloyd thinks we should,  
[2] colon, get Comsearch to clear the Path ASAP and file  
[3] ASAP, then disclose to C.

[4] It says, (reading) I suggested we doubly  
[5] verify that a problem exists and, if so, that would  
[6] disclose immediately and seek STAs.

[7] Q: Now, when you wrote then for  
[8] Mr. Constantine then disclose to C, did you mean the  
[9] Commission, the C?

[10] A: Yes, I think so.

[11] Q: Now, did you, in fact, send Mr. Constantine  
[12] a copy of Jennifer's April 20th, 1993 letter?

[13] A: I believe I did.

[14] Q: Okay. I'm going to show you a copy of that  
[15] letter. It's been marked and identified in  
[16] Ms. Richter's deposition. I'm not going to re-mark  
[17] it here.

[18] (Discussion off the record.)

[19] (Document handed to the witness, and  
[20] witness reviews document.)

[21] Q: Mr. Barr, I handed you a copy of an  
[22] April 20th, 1993 letter addressed to Bruce McKinnon

[1] from Jennifer Richter.

[2] I will represent to you that this has  
[3] already been identified by Ms. Richter in her  
[4] deposition that was taken this month as being a copy  
[5] of a letter that she sent Mr. McKinnon on or about  
[6] this date.

[7] What I would like you to tell us, if you  
[8] could, does this appear to be a copy of the letter  
[9] that you sent Mr. Constantine in response to his  
[10] request.

[11] A: Yes.

[12] Q: So this is the letter that you referred to  
[13] in your notes that we just looked at?

[14] A: Yes.

[15] Q: Okay. Did you read this letter before you  
[16] sent it to Mr. Constantine?

[17] A: I really don't recall.

[18] Q: Do you recall having read the letter at any  
[19] time before your conversation with Mr. Constantine?

[20] A: Not specifically, no.

[21] Q: Were you aware of the existence of this  
[22] letter before you spoke with Mr. Constantine?

[1] A: I don't recall.

**CERTIFIED QUESTION**

[2] Q: Did you discuss the letter with Ms. Richter  
[3] at any time?

[4] MR. SPITZER: Prior to her leaving the law  
[5] firm, I presume?

[6] MR. BECKNER: At any time.

[7] MR. SPITZER: You mean up through May 17th,  
[8] '95?

[9] MR. BECKNER: Up through the conversation  
[10] that he had-up through the time he sent it to  
[11] Mr. Constantine.

[12] MR. SPITZER: That's not really up to the  
[13] period that we determined this deposition inquires  
[14] into, which was only through May 17 of '95.

[15] MR. BECKNER: The problem, Mr. Spitzer, is  
[16] the notes refer to a conversation that took place a  
[17] month after May 17, '95. The deposition is about  
[18] the notes.

[19] MR. SPITZER: No, it isn't about the notes.

[20] MR. BECKNER: Do you want to call the  
[21] judge?  
[22]

[1] MR. SPITZER: Don't start raising your  
[2] voice and getting testy.

[3] MR. BECKNER: I want to move on.

[4] MR. SPITZER: I'm stating my complaint and  
[5] I will do it in my leisurely way, and if you want to  
[6] pretend this is the way the D.C. Circuit treated  
[7] you, fine, but it's not. The deposition relates to  
[8] the knowledge of the witness on or prior to May 17,  
[9] '95. That was very clear.

[10] Now, if you can make the question relevant  
[11] to that, then you're free to ask it. That's why I  
[12] was setting the boundary for the question which was  
[13] whether he had conversations with Ms. Richter about  
[14] the letter the date the deposition was meant to  
[15] inquire, so I was just trying to set a date. You  
[16] could set no date. I was trying to define the  
[17] period so we could get a response and move on.

[18] Do you disagree that May 17 was the date  
[19] relevant date the judge determined in our conference  
[20] call two, two-and-a-half weeks ago?

[21] MR. BECKNER: He determined that for  
[22] purposes of producing certain documents.

[1] MR. SPITZER: He determined that was the  
[2] date to which knowledge-

[3] MR. BECKNER: Are we going to have the  
[4] answer to the question?

[5] MR. SPITZER: What's the question?

[6] MR. BECKNER: Read it back.

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

[9] MR. SPITZER: I asked you to define the  
[10] period, Mr. Becker. That would assist in the  
[11] progress of this deposition.

**BY MR. BECKNER:**

[12] Q: Do you understand the question?

[13] A: It's a bit broad; no, I really don't.

[14] MR. BECKNER: Certify that question.

**BY MR. BECKNER:**

[15] Q: Did you discuss this letter with  
[16] Ms. Richter at any time before May 17, 1995?

[17] A: I don't recall.

[18] Q: Did you discuss this letter at any time  
[19] between May 17, 1995, and the date of your  
[20] conversation with Mr. Constantine which is reflected  
[21] in the notes that we have discussed and marked as  
[22] Exhibit 2?

[1] in the notes that we have discussed and marked as  
[2] Exhibit 2?

[3] A: Did I discuss it with Ms. Richter?

[4] Q: Yes.

[5] A: I don't recall.

[6] Q: As we sit here today, can you say whether  
[7] or not you were unaware of the existence of this  
[8] letter prior to May 17, 1995?

[9] A: Was I unaware of the letter prior to  
[10] May 17, '95?

[11] Q: Yes. That's the question.

[12] A: I can only say I'm not really sure of when  
[13] I became aware of its existence.

[14] Q: Okay. I'm going to read you a few lines  
[15] from the original transcript of the hearing, and  
[16] this is at page 1796 of the transcript. It's from  
[17] your testimony, (reading):

[18] QUESTION: Did there come a time when  
[19] you found out that Liberty Cable Company  
[20] was providing service prematurely on paths  
[21] that had not been authorized?

[22] ANSWER: Yes.

[1] **QUESTION:** Do you remember when you  
[2] found that out?  
[3] **ANSWER:** I believe it was April 22nd.  
[4] **MR. SPITZER:** We are talking '95 in that  
[5] context?  
[6] **MR. BECKNER:** I'm reading the transcript.  
[7] I'm reading every word in the transcript. I'm not  
[8] adding a word or deleting a word.  
[9] **MR. SPITZER:** You are reading partial. The  
[10] context there was '95, was it not, Mr. Beckner?  
[11] **MR. BECKNER:** I'm not clarifying anything,  
[12] and I'm reading the transcript, and I will ask the  
[13] question.  
[14] **MR. SPITZER:** We will go back and read as  
[15] many pages as necessary so the witness is not misled  
[16] about the date since we are inquiring about dates  
[17] and years. Giving me an incomplete date is not  
[18] helping the process. I don't mean to quibble. You  
[19] could continue.  
[20] **MR. BECKNER:** I'm going to start again.  
[21] You interrupt me again and I'm calling the judge.  
[22] **MR. SPITZER:** Call the judge. I don't

[1] care. I'm just trying to clarify a point here,  
[2] Bruce. This letter is April 20, '93. You're asking  
[3] questions about knowledge of dates. I don't think I  
[4] was trying to break your line of thought by saying  
[5] is that '95.  
[6] **MR. BECKNER:** I have left the letter. I'm  
[7] reading from the hearing transcript.  
[8] **MR. SPITZER:** Wonderful.  
[9] **MR. BECKNER:** We're on another area.  
[10] **MR. SPITZER:** I'm sorry?  
[11] **MR. BECKNER:** Another area of inquiry.  
[12] **MR. SPITZER:** Wonderful.  
[13] **BY MR. BECKNER:**  
[14] **Q:** Now, I will start again. This is from page  
[15] 1796 of the transcript, beginning at line eight,  
[16] (reading):  
[17] **QUESTION:** Did there come a time when  
[18] you found out that Liberty Cable Company  
[19] was providing service prematurely on paths  
[20] that had not been authorized?  
[21] **ANSWER:** Yes.  
[22] **QUESTION:** Do you remember when you

[1] found that out?  
[2] **ANSWER:** I believe it was April 22nd.  
[3] **QUESTION:** Could you describe for  
[4] us--let me withdraw that.  
[5] Before that date, did you have any  
[6] idea that there was premature service being  
[7] provided by Liberty Cable?  
[8] **ANSWER:** No.  
[9] **QUESTION:** Before that date, had you  
[10] heard anybody suggest that there was  
[11] premature service?  
[12] **ANSWER:** No.  
[13] Now, my question to you, Mr. Barr, today  
[14] is: Are your answers to that series of questions,  
[15] do they appear to you to be correct or not correct  
[16] as we sit here today?  
[17] **MR. SPITZER:** I just want to object. I  
[18] believe I may be wrong about this, this may be an  
[19] uncorrected transcript because I think, based on the  
[20] totality of the testimony, it should not be April  
[21] 22, but April 27. So can we agree on that, Bruce?  
[22] **MR. BECKNER:** Yes.

[1] **MR. SPITZER:** Do you want to read the whole  
[2] thing again?  
[3] **MR. BECKNER:** No.  
[4] **BY MR. BECKNER:**  
[5] **Q:** Aside from the corrected date of  
[6] April 20th, is there anything else about the answers  
[7] that you gave that I just read that appears to you  
[8] today to be incorrect or incomplete or whatever?  
[9] **A:** I don't understand that question. I assume  
[10] you read the transcript as it's written.  
[11] **Q:** I did. I will show it to you.  
[12] **A:** I said I believe you.  
[13] **MR. SPITZER:** Are you asking him if his  
[14] testimony is wrong?  
[15] **MR. BECKNER:** Yes.  
[16] **THE WITNESS:** I believe my testimony to  
[17] have been true.  
[18] **BY MR. BECKNER:**  
[19] **Q:** Okay. Now, subsequent to the preparation  
[20] of this transcript, you submitted a correction sheet  
[21] where you indicated that you wanted to clarify that  
[22] these two answers were wrong answers where you were

[1] focusing on the January to April 1995 time frame.  
[2] Do you recall doing that?  
[3] **A:** I recall a clarification, right.  
[4] **Q:** Okay. In your mind, why was it necessary  
[5] to make that clarification?  
[6] **A:** Because my understanding of the questions  
[7] occurring that day were--that they were directed to  
[8] the time period between January and April of 1995.  
[9] Upon reviewing the transcript, it appeared that your  
[10] question could be read more broadly than that.  
[11] **Q:** Well, this is Mr. Spitzer's question.  
[12] **A:** Mr. Spitzer, if I recall, specifically  
[13] directed me to that January to April 1995 time  
[14] period, so my clarification would be consistent with  
[15] Mr. Spitzer's directions.  
[16] **Q:** Without that clarification, would the  
[17] answer be incorrect?  
[18] **A:** No.  
[19] **Q:** So you're saying that the clarification  
[20] doesn't change the meaning of your answer?  
[21] **A:** True.  
[22] **Q:** And so that as you sit here today, that

[1] your answer would be that before--we corrected it to  
[2] April 27, 1995--you did not have any idea that  
[3] Liberty was providing premature service?  
[4] **A:** True.  
[5] **Q:** And I'm not limiting it to the January--  
[6] **A:** At no point in time until that date did I  
[7] have knowledge that Liberty was operating anything  
[8] without authority to do so.  
[9] **Q:** Okay. And at any point in time before that  
[10] date, had you heard anybody suggest that Liberty was  
[11] operating without authority?  
[12] **A:** No.  
[13] **MR. BECKNER:** Okay. Those are my  
[14] questions. The Bureau may have some.  
[15] (Off the record.)  
[16] **EXAMINATION BY COUNSEL FOR THE**  
[17] **FEDERAL COMMUNICATIONS COMMISSION**  
[18] **BY MS. POWER:**  
[19] **Q:** Back on the record.  
[20] Mr. Barr, you may remember I'm Katherine  
[21] Power from Wireless Telecommunications Bureau, and I  
[22] want to ask about some of your prior testimony

[1] today.  
[2] I believe you said that you did not--well,  
[3] perhaps you should state again for me, so I'm not  
[4] confused, about the Jennifer Richter letter dated  
[5] 4/20/1993, and I believe you said that  
[6] Mr. Constantine brought it to your attention and  
[7] asked you to send it to him; is that correct?  
[8] **A:** He asked me to send it to him, yes.  
[9] **Q:** Are you saying, then, that he didn't bring  
[10] it to your attention?  
[11] **A:** I really don't know. Might have been the  
[12] first time, but I can't say for sure.  
[13] **Q:** So, independent of Mr. Constantine, were  
[14] you aware of the letter?  
[15] **A:** I really can't say.  
[16] **Q:** Had Jennifer Richter ever talked to you  
[17] about her correspondence with Liberty in  
[18] regard--Liberty being confused about the method to  
[19] use in turning on service?  
[20] **A:** I don't recall any such conversation.  
[21] **Q:** Did you have any follow-up conversations  
[22] with Jennifer Richter after she left the firm?

[1] **A:** Well--  
[2] **Q:** About this issue of Liberty turning on,  
[3] having unauthorized service in the time frame of  
[4] before May 17th 1995.  
[5] **A:** That's a very confusing question.  
[6] **MR. SPITZER:** I want to clarify. I don't  
[7] want it to be an implication, which may have been  
[8] implicit in the question, that there had been a  
[9] conversation in the first instance about that issue.  
[10] He said follow-up conversations.  
[11] **MS. POWER:** I was thinking about two  
[12] different time frames.  
[13] **BY MS. POWER:**  
[14] **Q:** Had you ever discussed this letter that  
[15] Jennifer Richter wrote at any time prior to May 17th  
[16] with her?  
[17] **A:** I don't recall.  
[18] **Q:** When we look at the body of the letter--I  
[19] think it's the first paragraph of the Jennifer  
[20] Richter letter--it talks about confusion; is that  
[21] correct? I don't have a copy of the letter.  
[22] (Document handed to Ms. Powers.)

[1] **Q:** And the first paragraph, the second  
[2] sentence says, "some things were revealed during  
[3] these conversations," meaning conversations with  
[4] Behrooz, "that gave both Behrooz and I (sic) pause,"  
[5] and then she goes on to reiterate the procedures of  
[6] when to turn on the service, the difference between  
[7] construction and operation, that kind of thing.  
[8] Do you have any idea what she meant by,  
[9] "some things were revealed that gave both Behrooz  
[10] and I pause"?  
[11] **A:** I wasn't a part of this conversation, so I  
[12] don't know what she meant when she wrote it, no.  
[13] **Q:** Did anything come up subsequent to that  
[14] that might have given you an idea that people at  
[15] Liberty were confused about when to turn on their  
[16] service, as to when to--what might have been what  
[17] she was talking about in this letter?  
[18] **A:** You are going to have to--I don't really  
[19] understand the question.  
[20] **Q:** Okay. Well, you said, I think, today that  
[21] prior to April 27th you had no knowledge of Liberty  
[22] operating without authorization.

[1] **MR. SPITZER:** April 27, '95?  
[2] **MS. POWER:** April 27, '95, right.  
[3] **BY MS. POWER:**  
[4] **Q:** And I'm asking you, did you have any  
[5] knowledge that Liberty might have been confused  
[6] about when to begin service prior to April 27th,  
[7] 1995?  
[8] **A:** No.  
[9] **Q:** You didn't have any idea that Peter Price  
[10] might have been confused or Behrooz Nourain might  
[11] have been confused or Bruce McKinnon might have been  
[12] confused about when to turn on the service?  
[13] **A:** I don't know that I ever would have thought  
[14] about it.  
[15] I'm having a very difficult time  
[16] understanding your questions.  
[17] **Q:** Well, I'm just trying to make sure there  
[18] isn't any ambiguity to your answer that you said you  
[19] had no knowledge of Liberty operating without  
[20] authorization.  
[21] Is there anything that you can expand upon  
[22] to make it not--I'm trying to see if it's not such

[1] an absolute statement, that if you had any idea that  
[2] not necessarily that they weren't operating without  
[3] license, but there had been confusion at some point  
[4] as to whether or not they knew the procedures that  
[5] they were to follow before they could turn on their  
[6] service.  
[7] **A:** I don't consider myself to be stupid, but  
[8] I'm just not following.  
[9] **Q:** Okay.  
[10] **A:** I don't know when I first saw this.  
[11] **Q:** You don't have any idea if it was around  
[12] the time frame of April 27th or May 17th or if it  
[13] was possibly before that time?  
[14] **A:** I really--I don't recall.  
[15] **Q:** And Lloyd Constantine didn't explain or  
[16] give you any clarification when he asked you to send  
[17] him a copy of the Richter letter?  
[18] **A:** I didn't say that. I said I really don't  
[19] recall what we talked about at the time. There is a  
[20] note on Barr Exhibit 2, "send Lloyd a copy of  
[21] Jennifer's April 22 (sic), 1993 letter," but I don't  
[22] really recall what kind of contextual conversation

[1] we had about it, if we did at all.  
[2] **Q:** It didn't strike you as peculiar that he  
[3] would be asking for a letter that was more than two  
[4] years removed from the time frame that you were in?  
[5] **A:** No. He asked me to give him something, so  
[6] I did.  
[7] **Q:** Did you have any trouble locating that  
[8] document?  
[9] **A:** Only insofar as our Liberty files are  
[10] voluminous, no. It was in the correspondence file.  
[11] **Q:** Now, I believe that Liberty filed on March  
[12] 21st, 1997 a pleading which you may be familiar  
[13] with, which was the opposition to Time Warner's  
[14] motion for enlarging the issues or to proceed with  
[15] discovery.  
[16] **A:** March 21st of this year?  
[17] **Q:** Right. I'm sorry. 1997.  
[18] **A:** Yes, I'm aware of this.  
[19] **Q:** Okay. And at the back in the attachments  
[20] there is an attachment by Jennifer Richter, a  
[21] declaration by her.  
[22] **A:** Right.

[1] **Q:** Were you approached to submit a declaration  
 [2] to this document?  
 [3] **MR. SPITZER:** I'm going to have to object.  
 [4] **MS. POWER:** On what grounds?  
 [5] **MR. SPITZER:** Privilege and work product.  
 [6] In other words, I presume--correct me if I'm  
 [7] wrong--I presume the line of inquiry is going to be  
 [8] whether Mr. Barr had conversations with anybody at  
 [9] either Wiley Rein or Constantine & Partners about  
 [10] whether he would submit an affidavit that would be  
 [11] an exhibit to this opposition.  
 [12] **MS. POWER:** Right.  
 [13] **MR. SPITZER:** And I think that is squarely  
 [14] a work product, as one can imagine, that's  
 [15] privileged.  
 [16] Now, there may be that in the fullness of  
 [17] time we might explain to you whether there was any  
 [18] such conversation or what reason there may or may  
 [19] not have been for attaching such an affidavit, but I  
 [20] don't think as much as we have tried to be  
 [21] forthcoming, without waiving all sorts of  
 [22] privileges, that again I don't think there is any

[1] reason we could permit you to inquire about why or  
 [2] why not we decided to have Mr. Barr either write or  
 [3] attach an affidavit to this opposition.  
 [4] **MS. POWER:** Okay.  
 [5] **MR. BECKNER:** Just for the record,  
 [6] Mr. Spitzer, your privilege is not a light you could  
 [7] turn off and on. If you decide you now are  
 [8] asserting the privilege, then we will object to your  
 [9] deciding, when it suits your purposes, you are going  
 [10] to reveal information that you are not allowing to  
 [11] be revealed now, just so you know.  
 [12] **MR. SPITZER:** The lights could go on and  
 [13] off, but sorry.  
 [14] **MS. POWER:** That's all the questions.  
 [15] **MR. BECKNER:** Nothing further.  
 [16] (Whereupon, at 12:05 p.m., the taking of  
 [17] the deposition was concluded.)  
 [18] (Signature not waived.)  
 [19]  
 [20]  
 [21]  
 [22]

[1] CERTIFICATE OF DEPONENT  
 [2] I have read the foregoing 62 pages, which  
 [3] contain the correct transcript of the answers made  
 [4] by me to the questions therein recorded.  
 [5]  
 [6] HOWARD J. BARR  
 [7]  
 [8]  
 [9]  
 [10]  
 [11]  
 [12]  
 [13]  
 [14]  
 [15]  
 [16] Subscribed and sworn to before me this \_\_\_\_  
 [17] day of \_\_\_\_\_, 1997.  
 [18]  
 [19]  
 [20] Notary Public, in and for  
 [21]  
 [22] My commission expires: \_\_\_\_\_

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

**Lawyer's Notes**

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## Lawyer's Notes

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Bruce F. McKinnon

May 14, 1997

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ALDERSON REPORTING COMPANY

Federal Communications Commission	
Docket No.	<u>WT 96-41</u> Exhibit No. <u>TW 53</u>
Presented by	<u>Time Warner</u>
Disposition	Identified <u>X</u>
	Received <u>X</u>
	Rejected _____
Reporter	<u>AS</u>
Date	<u>5-28-97</u>

**COMPRESSED TRANSCRIPT & WORD INDEX**  
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TW EXHIBIT 2

(1) Before the  
 (2) FEDERAL COMMUNICATIONS COMMISSION  
 (3) Washington, D.C. 20554  
 (4) ----- X  
 (5) In re Applications of WT Docket No. 96-41  
 (6) LIBERTY CABLE CO., INC.  
 (7)  
 (8) For Private Operational Fixed  
 (9) Microwave Service Authorization  
 (10) and Modifications  
 (11)  
 (12) New York, New York  
 (13) ----- X  
 (14) Deposition of Bruce F. McKinnon, a  
 (15) witness herein, called for examination by  
 (16) counsel for Time Warner Cable of New York City  
 (17) in the above-entitled matter, pursuant to  
 (18) notice, the witness being duly sworn by Cynthia  
 (19) A. Powers, a Notary Public in and for the  
 (20) Commonwealth of Massachusetts, taken at the  
 (21) offices of Choate, Hall & Stewart, Exchange  
 (22) Place, 53 State Street, Boston, Massachusetts  
 (23) 02109-2891, at 10:00 a.m., on Wednesday, May  
 (24) 14, 1997.  
 (25)

(1) APPEARANCES:  
 (2)  
 (3) FEDERAL COMMUNICATIONS COMMISSION  
 (4) Wireless Telecommunications Bureau  
 (5) By Joseph Paul Weber, Esquire  
 (6) 2025 M Street, N.W.  
 (7) Washington, D.C. 20554  
 (8) 202 418-1317  
 (9)  
 (10) CONSTANTINE & PARTNERS  
 (11) By Robert L. Begleiter, Esquire  
 (12) 909 Third Avenue  
 (13) New York, New York 10022  
 (14) 212 350-2707  
 (15) Representing Libert Cable Co., Inc.  
 (16)  
 (17) FLEISCHMAN & WALSH, L.L.P.  
 (18) By R. Bruce Beckner, Esquire  
 (19) 1400 Sixteenth Street, N.W.  
 (20) Washington, D.C. 20036  
 (21) 202 939-7913  
 (22) Representing Time Warner Cable of  
 (23) New York City  
 (24)  
 (25)

(1) C O N T E N T S  
 (2) THE WITNESS: DIRECT CROSS  
 (3) BRUCE F. McKINNON  
 (4) By Mr. Beckner 4  
 (5) By Mr. Weber 26  
 (6) By Mr. Begleiter 29  
 (7)  
 (8)  
 (9) EXHIBITS  
 (10) McKINNON EXHIBIT NO. FOR IDENTIFICATION  
 (11) 1 5  
 (12) 2 16  
 (13) 3 21  
 (14)  
 (15)  
 (16)  
 (17)  
 (18)  
 (19)  
 (20)  
 (21)  
 (22)  
 (23)  
 (24)  
 (25)

(1) P R O C E E D I N G S  
 (2) BRUCE F. McKINNON  
 (3)  
 (4) having first been duly sworn, was  
 (5) examined and testifies as follows:  
 (6)  
 (7) DIRECT EXAMINATION  
 (8) BY MR. BECKNER:  
 (9) Q. Please state your full name for  
 (10) the record.  
 (11) A. My name is Bruce, middle initial  
 (12) F, McKinnon, M C K I N N O N  
 (13) Q. Mr. McKinnon, do you recall  
 (14) having been deposed by telephone earlier, I  
 (15) guess approximately a year ago?  
 (16) A. Yes, I do.  
 (17) Q. I'm going to endeavor to the most  
 (18) extent possible not to repeat the questions and  
 (19) so on that were asked of you at that time.  
 (20) A. Sure.  
 (21) Q. If I inadvertently do that,  
 (22) please forgive me. Just by way of explanation  
 (23) since you are a third party, since the time of  
 (24) that deposition some documents have been  
 (25) produced which were not available to us at the

(1) time of your first deposition.  
 (2) Principally, we're going to be  
 (3) asking you about some of these documents. And  
 (4) they may or may not refresh your recollection  
 (5) about certain matters.  
 (6) We're focusing on the licensing  
 (7) process that Liberty Cable had in 1992 and 1993.  
 (8) (Exhibit 1 marked  
 (9) for identification)  
 (10) Q. As I remember, you had told us  
 (11) before that you left the employment that you had  
 (12) with Liberty Cable in about May of 1993; is that  
 (13) correct?  
 (14) A. It was actually four years ago to  
 (15) this very day, May 14th.  
 (16) Q. Okay. I'm going to show you what  
 (17) has been marked as Exhibit 1 to your deposition.  
 (18) It is a copy of a letter addressed to you dated  
 (19) December 8, 1992, from Jennifer Richter.  
 (20) There's a copy of an FCC Public Notice which is  
 (21) attached to the letter. The document production  
 (22) number is FCC/CP 018118 through 018122.  
 (23) A. Thank you.  
 (24) Q. Take whatever time you need to  
 (25) look at the letter. I'm not going to quiz you

(1) about the FCC Public Notice. Of course, if you  
 (2) want to look at it, you're free to, but don't  
 (3) expect to be questioned about things that are on  
 (4) it.  
 (5) A. Thank you.  
 (6) Q. Do you recall getting this  
 (7) particular letter or letters like this one from  
 (8) Jennifer Richter at Pepper & Corazzini?  
 (9) A. Yes, I do recall getting letters  
 (10) like this. I do not immediately recall this  
 (11) letter.  
 (12) Q. Was it a standard practice during  
 (13) the time that you were working at Liberty for  
 (14) the Pepper & Corazzini firm to notify when a  
 (15) Liberty notice was accepted for public notice?  
 (16) A. Yes, yes.  
 (17) Q. Now, Mr. Behrooz Nourain, the  
 (18) chief engineer at Liberty at the time, was the  
 (19) one that actually worked with the Pepper &  
 (20) Corazzini lawyers on application; is that  
 (21) correct?  
 (22) A. Yes, that's right.  
 (23) Q. Was there a particular reason  
 (24) that you know of why this letter was directed to  
 (25) you as opposed to him?