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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Richard L. Sippel
Administrative Law Judge
2000 L Street, N.W., Suite 220
Washington, D.C. 20554

Re: In the Matter of Liberty Cable Company, WT Docket No. 96-41

Dear Judge Sippel:

On September 10, 1997, the District of Columbia Circuit Court of Appeals denied Liberty's petition for rehearing with suggestion for rehearing *en banc*. We received notice of this denial on Friday, September 12, 1997.

While Liberty strenuously disagrees with both the Circuit's decision and the FCC's position with regard to the report, we take this opportunity to inform the Presiding Judge that we will take no further action to prevent public disclosure of the internal audit report. We will neither seek a stay of the Court's mandate, which will issue tomorrow, nor will we petition for *certiorari*.

Enclosed is a copy of the report, which is the result of a voluntary inquiry conducted by Liberty's lawyers at the request of Howard Milstein. As you know, this report was turned over to the Commission in August 1995, based upon Liberty's understanding that its confidentiality would be maintained. We are providing a copy of the report to the President Judge as a courtesy. As we have stated on a number of occasions during this proceeding, Liberty does not and will not rely upon the report for any purpose.

Respectfully submitted,



Robert L. Pettit

Enclosure

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CERTIFICATE OF SERVICE

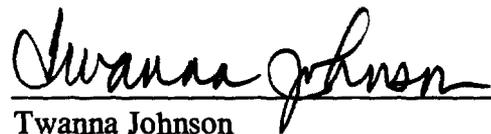
I hereby certify that on this 16th day of September 1997, I caused copies of the foregoing letter and enclosures to be hand-delivered to the following:

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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August 14, 1995

Regina Keeney, Chief
Wireless Telecommunications Bureau
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~~CONFIDENTIAL~~
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Re: Your Reference 95M003; Liberty Cable Co.
Response to Commission Inquiry;
REQUEST FOR CONFIDENTIALITY

Dear Ms. Keeney:

Pursuant to your August 4, 1994, letter, we enclose the requested information and the results of Liberty's internal audit. As explained below, we also request confidentiality for the attachments to this letter.

In answer to the specific questions contained in Mr. Davenport's letter, nineteen paths are currently unlicensed. Seventeen of these paths were discovered as a result of Liberty's internal investigation. These paths provide service to 1,808 subscribers, and this service is being provided free of charge.

This and additional information is being provided to the Commission in the enclosed attachment. These submissions contain material of a confidential and highly sensitive nature. Much of this material ordinarily would be protected by the attorney-client and work product privileges. Nonetheless, Liberty is voluntarily disclosing this information to the Commission in order to demonstrate its good faith and its desire to show the gravity it accords its responsibility to comply with FCC regulations. We hope that the Commission recognizes Liberty's sincere intention here to set matters right.

Regina Keeney, Chief
August 14, 1995
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While we are serving a copy of this letter on our competitor, Time-Warner, we are not serving a copy of the attached materials. As stated above, Liberty is voluntarily submitting the attached materials to the FCC. However, Liberty objects to the disclosure of the report to any other party and requests that the report be accorded confidential treatment pursuant to Sections 0.457 and 0.459 of the Commission's rules. 47 C.F.R. §§ 0.457, 0.459. Accordingly, the report should be accepted by the Commission on a strictly confidential basis under Section 0.457(d) of the FCC's rules. 47 C.F.R. § 0.457(d). This section -- which mirrors "Exemption 4" to the Freedom of Information Act ("FOIA"),¹ -- provides for confidential treatment of commercial or financial information obtained from any person which are privileged or confidential.

It is plain that the report contains "commercial" information that has been obtained from certain "persons." Further, the decisions of the D.C. Circuit make clear that the report is "confidential" under Exemption 4. In National Parks and Conservation Ass'n v. Morton, the D.C. Circuit established a test for determining whether such information is confidential for purposes of the exemption.² Under the National Parks test commercial information is confidential and thus exempt from disclosure if the information is likely to have either of the following effects:

- (1) to impair the Government's ability to obtain necessary information in the future; or
- (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.³

Liberty's report is "confidential" within the meaning of the exemption under both elements of the test. First, disclosure of the information in the report is likely to chill future voluntary disclosure by FCC regulatees and their employees. Indeed, as stated above, the

¹ 5 U.S.C. § 552(b)(4); see Amendment of Rules Implementing the Freedom of Information Act, 51 F.C.C.2d 52 (Report and Order) (1975); see also Mobile Communications Holdings, Inc., 10 FCC Rcd 1547 (1994) ("[o]ur own rules on confidential submissions . . . are based on FOIA Exemption 4").

² 498 F.2d 765 (D.C. Cir. 1974).

³ National Parks, 498 F.2d at 771 (footnotes omitted).

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report includes sensitive and privileged material that ordinarily would not be shared with outside parties.

Furthermore, the information in the report has been collected and submitted to the FCC voluntarily and the Commission therefore has a strong interest in ensuring the continued availability of such material. As the National Parks court observed, "[u]nless persons having necessary information can be assured that it will remain confidential, they may decline to cooperate with officials and the ability of the Government to make intelligent, well informed decisions will be impaired."⁴ Reaffirming this analysis, the D.C. Circuit recently refined the National Parks test by establishing a categorical rule that information supplied voluntarily is confidential and therefore protected from disclosure.⁵ The court stated that

we conclude that financial or commercial information provided to the Government on a voluntary basis is "confidential" for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.⁶

Hence, under applicable precedent,⁷ there is no doubt that Liberty's report fits within Exemption 4 to FOIA.

In any event, Liberty's report also is "confidential" under the second prong of the National Parks test because disclosure of the information contained in the report would substantially damage Liberty's competitive position. The material is of the type of detailed internal operating, sales, marketing, and administrative information in which Liberty has a compelling confidentiality interest. Disclosure of this information to Time-Warner would significantly disadvantage Liberty in its efforts to win new customers from the cable monopoly. Given Time-Warner's well documented history of anticompetitive actions to maintain its monopoly, it is likely that Time-Warner would use such information to further thwart competition.

⁴ National Parks, 498 F.2d at 767.

⁵ Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871 (D.C. Cir. 1992).

⁶ Id. at 879.

⁷ Critical Mass, supra, and, National Parks, supra.

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In addition, § 0.457(d) of the Commission's rules provides that the Commission is authorized to

withhold from public inspection materials which would be privileged as a matter of law if retained by the person who submitted them, and materials which would not customarily be released to the public by that person, whether or not such materials are protected from disclosure by a privilege.

The material that Liberty is submitting is protected by the attorney-client privilege and the attorney work product privilege and is material that would not be customarily released. Finally, as a great deal of the material contained in the report relates to individuals, disclosure could constitute an invasion of their privacy.

In sum, Liberty's report constitutes confidential commercial information under Exemption 4 to FOIA under both parts of the National Parks test and therefore should be accorded confidential treatment under Sections 0.457(d) and 0.459 of the Commission's rules. While the Commission nonetheless has discretion to disclose such confidential information, it is not justified in doing so where, as here, the information is not necessary to resolve a public interest issue.⁸ As stated above, all salient facts concerning Liberty's failure to comply with the Commission's rules are set forth in the letter served on Time-Warner. Release of additional material to a competitor would disserve the public interest by needlessly discouraging the further frank disclosure of information such as that contained in the report.

Finally, because Liberty is submitting the materials for which it requests confidential treatment voluntarily, Liberty hereby requests that the Commission return the material without consideration if the request for confidentiality should be denied, consistent with Section 0.459(e) of the Commission's rules. 47 C.F.R. § 0.459(e).

Should any questions arise concerning this matter, please communicate with the undersigned.

Respectfully submitted,
LIBERTY CABLE COMPANY, INC.

⁸ See, e.g., Mobile Communications Holdings, 10 FCC Rcd 1547 (1994).

Regina Keeney, Chief
August 14, 1995
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Its Counsel

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cc: Howard C. Davenport, Chief
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Arthur H. Harding, Esq.

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August 14, 1995

CONFIDENTIAL -- NOT FOR PUBLIC INSPECTION

Regina Keeney, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: Your Reference 95M003; Liberty Cable Co.
Response to Commission Inquiry

Dear Ms. Keeney:

Attached is a comprehensive and forthright account of Liberty's activities regarding the construction and operation of its OFS paths in support of the information provided in response to Mr. Davenport's August 4, 1995 letter. Also attached is a Declaration of Peter O. Price, President of Liberty Cable Co.

As previously disclosed to the Commission, 19 paths are currently unlicensed but have all received prior coordination. In addition, Liberty's counsel's investigation revealed that, at various times, transmission over other paths was commenced prior to receiving specific FCC authorization; all these paths now have all necessary licenses.

The investigation also revealed that Liberty's management at all times intended to and sought to comply with all FCC licensing requirements. The unauthorized operations resulted from incorrect assumptions and improprieties of a lower-level Liberty employee coupled with a failure to monitor by Liberty's management. The investigation indicates that Liberty initially

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created procedures to ensure compliance with the licensing requirements. Liberty retained a sophisticated outside consultant with expertise in FCC procedures. The consultant worked closely with Peter O. Price, Liberty's President, to ensure that licenses were obtained prior to commencement of any services. As a result, the paths first licensed to Liberty were, and have continued to be, in full accord with FCC procedures. Additionally, the record reflects that Liberty secured permission from Hughes Aircraft to use Hughes' experimental 18 GHz authorization for non-commercial, testing purposes, and the manager charged with supervising the engineering functions believed that the Hughes authorization covered Liberty's initial activation of paths even if those paths had not been specifically authorized by an FCC license or STA.

When a determination was made to bring Liberty's engineering function in-house, Liberty hired an experienced microwave engineer, Mr. Behrooz Nourain, suggested by the outside consultant. Liberty's management believed that its in-house engineer would continue to operate with FCC authorization, either pursuant to the Hughes experimental authorization or to receive specific FCC authorization before activating individual microwave paths. Liberty's in-house engineer appears to have done neither but instead -- acting on incorrect assumptions, relying on outside counsel and confused by the unusual number of paths and STAs -- activated paths without apparent regard for compliance with the Hughes experimental authorization or with the FCC's individual licensing procedures.

The Liberty manager responsible during most of this period for construction and activation of service believed that microwave paths were being activated (and free service was being provided) pursuant to the Hughes experimental authorization. However, neither he nor outside counsel adequately monitored the timing of the in-house engineer's activation of service to ensure that procedures previously established by Liberty's engineering consultant for use of the Hughes authorization or individual licensing were followed.

Each and every path went through the initial Comsearch prior coordination procedure. None of Liberty's signals interfered with anyone else's signals. Liberty has also hired, within the last month, a new chief engineer, Martin Sperber, to replace Mr. Nourain. Mr. Sperber has 30 years of microwave and FCC experience.

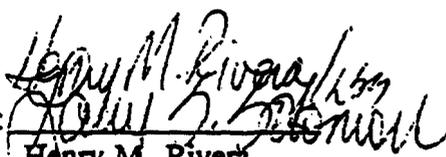
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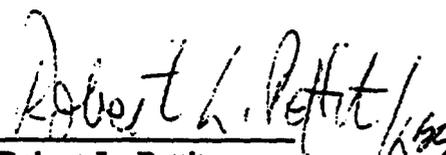
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Based on counsel's findings, Liberty has accepted the recommendation by counsel to implement a comprehensive compliance program, a copy of which is enclosed. This compliance program should insure that Liberty never again violates the licensing procedures of the FCC. This compliance program has gone into effect.

We are sure you will find Liberty's submission to be comprehensive and candid. If you need further clarification or explanation, please let us know. Liberty stands ready to assist the Commission in its inquiries.

Respectfully submitted,
LIBERTY CABLE COMPANY, INC.

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Regina Keeney
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Its Counsel

Enclosure

cc: Howard C. Davenport, Chief
Enforcement Division
Wireless Telecommunications Bureau

CONFIDENTIAL NOT FOR PUBLIC INSPECTION

Re: Liberty Cable Company Pending Requests for
Special Temporary Authority: 95M005

PETER O. PRICE hereby discloses, pursuant to 47 C.F.R. § 1.17:

1. This statement is made in response to the August 4, 1995 letter of Howard C. Davenport requesting certain information.
2. A report containing the results of Liberty's internal audit is submitted herewith under separate cover.
3. A list of all of the OFS paths that Liberty it is currently serving without FCC authorization is shown below. The list specifies the date that service at each of those paths was activated. Fifteen out of the nineteen buildings listed were disclosed to the FCC in Liberty's June 16, 1995 response to the FCC's June 12, 1995 letter (Group A). The four buildings in Group B were not disclosed in Liberty's June 16, 1995 response because Liberty did not know, at that time, that service to those buildings was not authorized. The unauthorized service to those four buildings which began in 1994 was discovered during the course of Liberty's recently completed internal audit, conducted by our law firms. Upon discovery, Liberty immediately completed the prior coordination for those four paths and is in the process of filing for necessary licenses with the FCC.
4. Liberty is not charging subscribers in any of the buildings receiving unauthorized service for the programming services they receive.
5. The following is a list of the buildings receiving unauthorized service. The earliest customer service date indicated below differs with regard to five paths from the dates

given to the Commission in the June 16 letter from Howard Barr to Michael B. Hayden. Each of the five paths is designated by an asterisk.

GROUP A

<u>Address</u>	<u>No. of Subs</u>	<u>Date Service Activated</u>
1. 114 East 72nd St.	40	1/30/95
2. 16 West 16th St.	213	3/28/95
3. 1775 York Ave.	80	*1/23/95
4. 200 East 32nd St.	111	3/27/95
5. 25 West 54th St.	45	2/6/95
6. 2727 Palisades Ave.	97	4/24/95
7. 30 Waterside Plaza	334	3/15/95
8. 433 East 56th St.	58	12/27/94
9. 524 East 72nd St.	57	11/16/94
10. 55 West End Ave.	335	1/3/95
11. 639 West End Ave.	53	2/14/95
12. NYU Res. Hall	56	*1/11/95
13. Greenberg Hall	36	*1/23/95
14. 6 East 44th St.	50	*4/12/95
15. 767 Fifth Ave.	32	*4/12/95

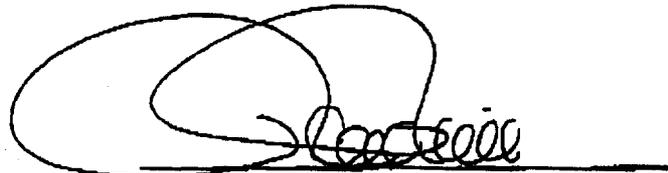
GROUP B

<u>Address</u>	<u>No. of Subs</u>	<u>Date Service Activated</u>
1. 35 East 85th St.	109	7/18/94
2. 440 East 56th St.	93	7/11/94

GROUP B (CONTD.)

<u>Address</u>	<u>No. of Subs</u>	<u>Date Service Activated</u>
3. Hotel Wales (1295 Madison Ave.)	83	7/27/94
4. Liberty Terrace (380 Rector Pl.)	136	10/12/94

7. The facts stated above are true and correct to the best of my personal knowledge, information or belief.



Peter O. Price

Date: August 14, 1995

**Investigation Into the Licensing Practice and Compliance
of Liberty Cable Co., Inc. For 18 GHz Authorizations**

In June and July 1995, Liberty Cable Company, Inc. ("Liberty" or "the Company") retained the law firm of Constantine & Partners to investigate the Company's compliance in the application for and initial operation of 18 GHz authorizations used to deliver SMATV services to 139 buildings in the New York City area.¹ The firm was assisted in this effort by the Washington, D.C. office of Ginsburg, Feldman & Bress as well as the Washington, D.C. law firm of Wiley, Rein & Fielding (the "investigating firms").² The following summarizes the findings of this investigation.

I. Background.

Liberty began providing SMATV service to six separate sites (each with its own satellite head end) in New York City and Jersey City from 1985 to 1991. By early 1991, Liberty had approximately 4,000 subscribers. In August 1991, through its consultant, Liberty applied to the Commission for permission to expand its SMATV

¹ A preliminary investigation revealed that of the 139 buildings served by the Company, 15 were operating without specific FCC authorization.

² The investigation was principally conducted by Lloyd Constantine, former New York Assistant Attorney General in Charge of Antitrust Enforcement; Robert Begleiter, former Chief of the Civil Division of the United States Attorney's Office for the Eastern District of New York; and Eliot Spitzer, former Chief of the Labor Racketeering Unit of the District Attorney's Office for New York County.

operations into a network of buildings by use of microwave frequencies in the 18 GHz band. That band had not previously been used to transmit commercial television programming.³ In February 1991, the Commission approved this use, and in December 1991, Liberty became the first company to be granted licenses to distribute video programming to subscribers using this technology.

Today, Liberty's systems operate from its head ends and additional relay hubs which transmit signals in the 18 GHz band to multiple-dwelling units and commercial properties in New York City and northern New Jersey. The availability of 18 GHz licenses enabled Liberty to expand from approximately 4,000 subscribers to its current size of approximately 25,000 subscribers in 139 buildings. With the ability to reach a large number of potential subscribers in the New York area, Liberty became the first multichannel video company in a major market to provide significant direct competition to franchised cable MSOs.

³ Hughes Aircraft, a manufacturer of 18 GHz equipment, had obtained a license for the experimental use of its equipment in this band. After testing the Hughes equipment, Liberty determined that it could support high-quality transmission of cable programming in the New York area at a more reasonable price than that offered by the incumbent franchised cable companies.

II. The Investigation.

The investigating firms were given access to the Company's records and personnel and to the records and personnel of outside counsel and consultants⁴ retained to represent Liberty in licensing matters before the FCC. In the course of the investigation, more than 20 employees and former employees were interviewed, and thousands of documents were reviewed. Specifically, the investigating firms reviewed documentation related to the initiation and operation of service to each of the 126⁵ buildings served by 18 GHz connection. In addition, the investigating firms were asked to prepare a compliance program to ensure Liberty's compliance with FCC licensing rules.

The following represents a summary of the results of the investigation along with major conclusions and findings. The recommended compliance program which has been adopted by Liberty is attached as Exhibit A.

III. The Licensing Process.

Attached as Exhibit B are charts which summarize the findings with regard to each of the 18 GHz paths. These charts reflect the Company's and Pepper &

⁴ During the period in question, Liberty was represented by the law firms of Pepper & Corazzini and James MacNaughton P.C. as well as Comsearch, a Reston, Virginia-based firm that performed the engineering analysis and prior coordination notification of the microwave paths used by Liberty.

⁵ Thirteen buildings are served by hard-wire connections.

Corazzini's ("P&C's") internal records. Liberty's internal information, as reflected in the charts, reveals that during the start-up phase of its operations, during which time Liberty relied on an outside engineering consultant, service was not initiated before receiving specific FCC authorization. However, the charts also reveal that from the time when Liberty brought the engineering function in-house, numerous instances occurred in which microwave path service was initiated before receiving specific FCC authorization. It appears that this occurred numerous times from 1992 through the fall of 1994 although each of those paths is now authorized by the Commission.

There are currently 19 microwave paths being used (and serving approximately 1,808 subscribers) without specific FCC authorization. This includes four buildings discovered during the course of this investigation for which no applications had been filed. It should be noted that only two of the 19 buildings were discovered as a result of petitions to deny filed by Time-Warner Cable. The remaining 17 buildings were discovered as the result of the Company's internal investigation. None of the subscribers in these 19 buildings is now being charged for service,⁶ resulting in a revenue loss of more than \$50,000 a month to Liberty.

⁶ Liberty stopped charging for service when it was discovered that the paths used to deliver service were not specifically authorized by the Commission.

A. Initial Operations.

Liberty began applying for licenses for 18 GHz microwave stations in August 1991. The applications were prepared by Joseph Stern, an independent consulting engineer. Soon thereafter he was under the supervision of Bruce McKinnon, who was at that time Liberty's Executive Vice President, in charge of construction and activation of Liberty's microwave installations, and Peter Price, Liberty's President.⁷ Ultimate responsibility for day-to-day operation of the Company resided with Mr. Price.⁸ The law firm of Pepper & Corazzini filed the applications with the FCC. By the end of November 1991, Liberty had filed 38 microwave applications.

During the period of initial operations, Liberty did not initiate service without specific FCC authorization. Mr. Stern monitored the licensing process closely and specifically reconciled the applications granted with the actual buildings that were to receive service. Moreover, as a matter of operational policy, Mr. Stern did not initiate service on a microwave path until he received specific verification of FCC authorization.

⁷ Mr. McKinnon left Liberty in the spring of 1993. The position of Executive Vice President was not filled.

⁸ Mr. Price, a Yale Law School graduate, is the former publisher of the New York Post.

In addition, in January 1992, Mr. Stern informed Liberty that the Company had received a test license from Hughes Microwave to operate 18 GHz equipment under Hughes' experimental license for non-commercial test purposes. Mr. Stern indicated that "we have on hand a Test License provided to Liberty by Hughes Microwave. This Test License authorizes Liberty to operate the 18 GHz equipment at any location, at any azimuth, from any type of antenna, for test purposes, on the condition that transmission would be discontinued if any interference is noted. The other condition[s] of operating are that Liberty keep a log of the 'tests' and not enter into 'commercial service' with transmissions made under the test license." (Emphasis in original.) See Exhibit C. There is no mention in Mr. Stern's memorandum that the Test License was otherwise limited in time or by further condition. Liberty has been unable to locate a copy of the Test License referred to by Mr. Stern. This Test License was interpreted by Mr. McKinnon, who supervised construction and activation, to permit service transmission using the Hughes license prior to Liberty billing for the service.

In February 1992, Mr. Stern and P&C were directed in writing by Mr. Price to establish a procedure to accurately audit which licenses Liberty had requested and which had been granted and to prepare a weekly report on the status of pending license applications. See Exhibit D. One purpose for this weekly audit report was to develop a monitoring process so that the entire licensing function could be brought in-house. While reports were produced for a brief period of time, this reporting process was inexplicably discontinued soon after the initial reports were generated, and Mr. Price

failed to require its continued preparation. Moreover, no one inside the company or at retained counsel assumed responsibility for continually monitoring the status of FCC license applications, despite the fact that P&C, Liberty's outside counsel, had been specifically instructed to do so. See Exhibit D. Additionally, no one inside the Company or at P&C subsequently developed a program to monitor Liberty's use of the Hughes experimental authorization or to ensure the consistency of that use with FCC policies regarding experimental authorizations.

B. In-House Transfer of Licensing Responsibilities.

In June 1992, general responsibility for the licensing process was transferred to Behrooz Nourain, who had been hired, upon the recommendation of Mr. Stern, as Liberty's in-house Chief Engineer. At the same time, the P&C attorney who had been working with Liberty left the firm, and was replaced on the Liberty file by a new attorney. Thus, by the summer of 1992, responsibility for licensing was in the hands of a new engineer and new attorney.

Prior to the transfer of duties, Mr. Stern met with Mr. Nourain to review the Company's practice with regard to licensing, the history of Liberty's licensing activity, the process for coordinating the paths and filing license applications, the general timing of the licensing procedure and the necessity of working with P&C in the licensing process. At this meeting, Mr. Stern transferred his files to Mr. Nourain and emphasized the necessity of tracking the FCC licenses with individual buildings. Mr.

Stern summarized this meeting in a memorandum to Mr. Nourain with copies to Messrs. Price, McKinnon and Anthony Ontiveros, the Company's General Manager for Construction and Installation. See Exhibit E.

However, despite the fact that FCC notifications regarding license and STA grants came directly to Mr. Nourain, he did not continue to follow the Company's procedures as outlined by Mr. Stern or to closely monitor the status of applications. Specifically, while Mr. Nourain appears to have routinely sought frequency coordination of microwave paths, he did not monitor in any detail the progress of the applications for licenses and STAs filed by P&C, and he followed no system for informing himself or Liberty management of the status of applications. Moreover, at P&C's request, Mr. Nourain signed multiple blank license applications, which were later completed by P&C and filed with the FCC without a Liberty employee examining them prior to filing. This practice exacerbated the information gap at Liberty with respect to the status of applications for licenses and STAs. Accordingly, at any given time, Mr. Nourain assumed that P&C knew which paths were authorized and which were not. Moreover, unlike his predecessor, Mr. Nourain did not continue the program to reconcile the FCC grants with the transmission paths, and as a result, Mr. Nourain stated that he did not know which grants went with which buildings. And fundamentally, Mr. Nourain did not wait to receive official documentation or otherwise verify grants for individual microwave paths before instituting service. This was

contrary to well-established Company policy and procedures which Mr. Stern discussed with Mr. Nourain.

It should be emphasized that the Commission's processes served to further confuse the issue of which paths were actually authorized. When Liberty began providing service, the licensing process was fairly simple, and only a few paths were involved. However, as Liberty's service grew, it was necessary to add multiple paths to each transmit site, and the Commission was unable to handle the licensing routinely because of the computers and software employed at that time. In fact, Liberty's representatives were told by FCC personnel that it was an administrative impossibility to license the facilities as they should have been. This was a new service and new procedures were necessary at the FCC. Because of the FCC's inability to promptly license new Liberty paths, in some instances, licenses were not granted for one to two years. That is why the Commission issued so many STAs. Recent attempts to obtain information from the FCC's records have been difficult at best. For example, a review of the FCC's online database provided by Interactive Services, Inc., showed Liberty as having 77 call signs with license information totalling over 1,400 pages despite the fact that all of Liberty's licenses have now been consolidated under eight licenses, one for each of its transmit locations.

Mr. Nourain appears to have received little supervision regarding the licensing process. According to Mr. Nourain, at his previous job, in-house counsel had taken

over the responsibility for licensing once the engineering part of microwave path coordination was complete. Mr. Nourain, despite his instruction to the contrary by Mr. Stern, assumed the procedure would be the same at Liberty, and he relied on outside counsel to deal with licensing matters.

Mr. Nourain appears neither to have utilized the derivative authority of the Hughes Test License nor to have waited to receive specific FCC authorization for the microwave paths. Rather, he assumed that STAs would be granted for the microwave paths within 45 days after he directed Comsearch to issue coordination notification to potentially affected parties (although in some instances he does not appear to have waited even 45 days). This rule of thumb included 30 days for the notification process, about five days for P&C to file for an STA and about 10 days for the FCC to grant an STA. Mr. Nourain could state no credible basis for his assumptions. Prior to the investigation, Mr. Nourain never communicated this practice to any other Liberty employee or official. Moreover, his belief was that any problems with initiating service would be "taken care of" by his supervisors.

As a consequence, Mr. Nourain activated microwave paths within 45 days (and some buildings in less than 45 days) without specific knowledge as to whether the paths had been approved by the FCC. While Mr. Nourain believes that he told Mr. Price that the Company was rushing and might not get approvals in time, Mr. Nourain does

not state that he specifically informed Mr. Price or other senior management that service was being instituted on some microwave paths without FCC authorization.

Other than Mr. Nourain, it appears that Mr. McKinnon was aware from Mr. Nourain that some buildings were being activated without a specific FCC license or STA. Mr. McKinnon did not inform Mr. Price or other Liberty management officials. Mr. McKinnon stated that he did not believe that the absence of a specific license or STA was a problem because he believed Liberty could operate on the authority of Hughes Aircraft's experimental license until the FCC specifically granted the microwave paths.⁹ Mr. McKinnon said that Liberty did not charge subscribers for service on these paths and, therefore, was acting in compliance with Hughes' authority. The investigation disclosed that this was true in only some of the instances of unauthorized service.

At some point in April 1993 during a conversation between Mr. Nourain and the P&C attorney handling Liberty's licensing, the P&C attorney appears to have become aware that service had been activated on certain paths without specific authorization. However, P&C never communicated this fact to any Liberty officer. Instead, the firm sent the Company a letter which indicated generally the importance of complying with FCC procedures. See Exhibit F. Shortly after this letter was sent,

⁹ As indicated above, in January 1992, Mr. Stern informed Mr. Price that Hughes had given Liberty a "Test License" under which Liberty could operate non-commercial service under Hughes' experimental authorization.