

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Applications of)
LIBERTY CABLE CO., INC.)
For Private Operational Fixed)
Microwave Service Authorizations and)
Modifications)
New York, New York)

WT DOCKET NO. 96-41

To: Hon. Richard L. Sippel, Administrative Law Judge

**TIME WARNER CABLE OF NEW YORK CITY AND PARAGON
COMMUNICATIONS' REPLY TO SECOND SUPPLEMENTAL PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW OF BARTHOLDI CABLE CO.,
INC. AND THE WIRELESS TELECOMMUNICATIONS BUREAU**

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SUMMARY

The internal audit report (the "Report") requires the Presiding Judge to deny the pending microwave license applications filed by Liberty Cable Co., Inc. ("Liberty") because Liberty lacks the requisite character qualifications. In particular, the Report proves Liberty's lack of credibility before the Federal Communications Commission ("FCC" or "Commission") and its intent to violate the Commission's Rules. As such, the Report is highly relevant and decisionally significant to this proceeding.

Contrary to prior testimony and Liberty's proposed findings, the Report concludes that a Liberty principal, Liberty employees, and Liberty's FCC counsel knew of Liberty's unauthorized activation of microwave facilities prior to April 1995. These inconsistencies demonstrate Liberty witnesses' lack of credibility before the Commission. Furthermore, the Report itself is a prior inconsistent statement to the Commission by Liberty. Liberty's present decision "not to rely on" the Report and the fact that the Report was not specifically prepared to resolve the issues designated for this proceeding do not diminish the significance of the Report. The Report, as a decisionally significant document, should be accorded substantial weight. The Report was based on a complete investigation of Liberty's microwave operations; the investigating firm had unlimited access to Liberty's records, personnel, and counsel. In addition, Liberty has not denied the accuracy of any statement in the Report.

The Report also is evidence of Liberty's intent to violate the Commission's Rules. Documents attached to the Report establish that Mr. Nourain, as well as Messrs. Price, McKinnon, and Ontiveros, were informed of the appropriate licensing procedures in 1992.

Nevertheless, from 1992 through 1995, Liberty engaged in activating paths without authorization, and in several cases, without filing an application. The Report further shows that Liberty wilfully ignored an explicit warning by its FCC counsel about Mr. Nourain's problematic licensing activities. Finally, the Report demonstrates Liberty's intent to deceive the Commission about the cause of the unauthorized activations at issue in this proceeding. Although Mr. Nourain knew he was not following any licensing procedure, and no one at Liberty ensured that a licensing procedure was followed, Liberty stated to the Commission that it had a "pattern and practice" of complying with the Commission's licensing requirements.

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Time Warner Cable of New York City and Paragon Communications (collectively, "TWCNYC") submit this Reply to Second Supplemental Proposed Findings of Fact and Conclusions of Law of Bartholdi Cable Co., Inc. (hereinafter, "Liberty") and the Wireless Telecommunications Bureau (the "Bureau") in accordance with the Presiding Judge's Order. Order, WT Docket No. 96-41, FCC 97M-185 (rel. Nov. 10, 1997).

**REPLY TO SECOND SUPPLEMENTAL PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

1. The internal audit report (the "Report") requires the Presiding Judge to conclude that Liberty lacks the necessary character qualifications to be granted licenses to operate microwave facilities, and thereby to deny Liberty's pending applications to the Federal Communications Commission ("FCC" or "Commission") for such licenses. In particular, new information in the Report establishes Liberty's dearth of character

qualifications by conclusively demonstrating Liberty's credibility deficiencies and its knowing illegal operations prior to April 1995. The hearings have focused specifically on Liberty's candor and credibility regarding when it initially learned of microwave path activations without FCC authorization. Second Supp. Findings, ¶ 6.¹ Therefore, the Report is highly relevant and decisionally significant to this proceeding.

I. The Inconsistencies Revealed By The Report Demonstrate Its Relevance And Decisional Significance To The Outcome Of This Proceeding.

2. The Report discloses inconsistencies that illustrate the lack of credibility possessed by Liberty's witnesses and Liberty itself regarding when knowledge of unauthorized activation of microwave paths was first obtained. As such, serious consideration of the Report is necessary to resolve the issues of this proceeding.

3. Liberty attempts to blunt the significance of the Report by portraying the Report as irrelevant and inconsequential to the outcome of this proceeding. First, Liberty denies the relevance of the Report by stating that Liberty does not rely on the Report to support its pending license applications. See Liberty Second Supp. Findings, ¶ 17; Liberty Conclusions, ¶ 136. However, Liberty expressly relied on the Report when it submitted it to the Bureau in response to a Section 308(b) request for additional information regarding the pending applications. TWCV Ex. 67. Liberty's present decision not to rely on the Report does not eliminate the existence of the Report, nor does it render the Report insignificant to this proceeding.

¹Hereinafter, citations to "Findings/Conclusions," "Supp. Findings/Conclusions," and "Second Supp. Findings/Conclusions" refer to TWCNYC's pleadings by those names in this proceeding. Citations to Liberty's and the Bureau's corresponding pleadings are preceded by "Liberty" and "Bureau," respectively.

4. Second, Liberty contends that the Presiding Judge should not rely on the Report because the "primary thrust of the internal investigation was not to learn when anyone at Liberty found out about premature activations; it was aimed at discovering the full extent of the violations and then developing an effective Compliance Program." Liberty Second Supp. Findings, ¶ 17; see id., ¶¶ 2 n.2, 18. The fact that the investigation forming the basis of the Report was not uniquely aimed at the issues designated for this proceeding has no bearing on the Report's reliability or importance. None of the documents in evidence were prepared for the purpose of discovering when Liberty initially became aware of its illegal operations. Nevertheless, Liberty has relied on several of these documents to support its position that Liberty was unaware of any illegal operations until late April 1995. See, e.g., TWCV Exs. 18, 51; Liberty Supp. Findings, ¶ 40.

5. Notwithstanding its original purpose, the Report is highly relevant and decisionally significant to this proceeding because it demonstrates Liberty witnesses' lack of credibility before the Commission by impeaching their deposition and hearing testimony. In particular, the Report concludes that both Behrooz Nourain and Tony Ontiveros were aware prior to April 1995 that Liberty had activated microwave paths without FCC authorization. TWCV Ex. 67, at 11, 13. More significantly, the Report attributes knowledge of Liberty's unauthorized activations prior to April 1995, to Bruce McKinnon, a principal at Liberty (TWCV Ex. 67, at 11; see Second Supp. Conclusions, ¶¶ 43-44), and to Jennifer Richter, Liberty's FCC counsel. TWCV Ex. 67, at 15; Second Supp. Findings, ¶¶ 21-22. In deposition and hearing testimony, all of these witnesses stated that they were not aware of

Liberty's unauthorized activations prior to April 1995. See Second Supp. Findings, ¶¶ 17-21.

6. Moreover, the Report as a whole is a prior inconsistent statement *by Liberty* that it presented to the Commission in support of its applications. The Report states unequivocally that a Liberty principal and its FCC counsel were aware of Liberty's unauthorized activation of microwave paths as early as 1993. TWCV Ex. 67, at 11, 15. Liberty now requests the Presiding Judge to adopt findings that neither its FCC counsel nor any principal was aware of Liberty's unauthorized microwave activations until April 1995. Liberty Conclusions, ¶¶ 114, 117; Liberty Supp. Findings, ¶ 40.

7. Liberty provides no justification for these significant discrepancies. Instead, Liberty seeks to downplay the inconsistencies and urges the Presiding Judge to rely on the discovery and fact finding efforts in this proceeding because these activities occurred after issuance of the Hearing Designation Order for this case. Liberty Second Supp. Findings, ¶ 18; see also Hearing Designation Order and Notice of Opportunity for Hearing, 11 FCC Rcd 14133 (1996). Liberty also asserts that the record developed in the hearings "is more complete than what the Report disclosed in 1995." Liberty Second Supp. Findings, ¶ 18.

8. This is a surprising claim, given the difficulties Liberty had in producing the most important documents in this case (only one of the documents attached to the Report was produced during document discovery), given the radical difference between Liberty's principals' deposition testimony and their hearing testimony (given *after* the production of additional documents not available during deposition) on the most significant factual question in this case. In particular, Liberty claims that when the Report was prepared, the

investigating counsel did not have the benefit of an April 26, 1995 memorandum drafted by Mr. Nourain. This memorandum, which was belatedly produced in January 1997, purportedly assisted Liberty witnesses in recalling the events that led to Liberty's discovery of unauthorized activations. Liberty Second Supp. Findings, ¶ 18; see TWCV Ex. 35.

9. Liberty's efforts to diminish the significance of the Report fail for several reasons. First, the April 26, 1995 memorandum was drafted long after Ms. Richter and Mr. McKinnon had ceased working for Liberty, and it only concerns microwave paths that were activated after they terminated their relationship with Liberty. Therefore, review of this document could not have affected the recollections of Mr. McKinnon or Ms. Richter that were reflected in the Report.

10. Second, the record accumulated during this proceeding is not more complete than the record upon which the Report was based. During the internal audit, the investigating firm had "complete access to Liberty's books and records and an unfettered and unlimited opportunity to interview all Liberty personnel, officers, and outside-retained counsel." TWCV Ex. 29, ¶ 5. Furthermore, "thousands of documents were reviewed." TWCV Ex. 67, at 3. In fact, Ms. Richter's April 1993 letter to Mr. McKinnon was attached to the Report, and thus was available to the investigating firm, but was not produced during this proceeding until after the January 1997 hearing. TWCV Ex. 67, Exhibit F. In addition, two memoranda drafted by Joseph Stern were not produced in this proceeding, although both were attached to the Report and were responsive to discovery requests. See Second Supp. Findings, ¶ 40. Therefore, Liberty's contention that the hearing record should receive

greater weight than the conclusions in the Report because the record is more complete, lacks merit.

11. Although Liberty "does not rely on" the Report in this proceeding, Liberty does not deny the accuracy of the Report. Liberty notes that it "holds fast to its position that the Report is an accurate statement of what Liberty's investigating counsel knew and understood to be the facts as of the date that the Report was prepared." Liberty Second Supp. Findings, ¶ 8 n.14. With respect to the conclusions and findings of the Report discussed here, there is no indication of an absence of recollection on the part of any person who was interviewed, nor an indication of an absence of information available to the Report's authors. The Report presumably was based on statements from the "more than 20" interviewees and examination of the documents, and was not simply fabricated by Liberty's counsel. The Report, therefore, is a compilation of the knowledge of those involved with Liberty's microwave operations. Thus, the existence of contradictory information today does not, in this case, compromise the Report's validity as to the specific matters discussed. The contradictory information consists solely of witnesses' self-serving testimony about the same matters for which they were interviewed by the Report's authors in 1995.

12. Finally, the Report is not cumulative evidence. The Report reveals new information about Liberty's well-developed practice of activating microwave paths without FCC authorization from 1992 through 1995. TWCV Ex. 67, Exhibit B; Bureau Second Supp. Findings, ¶ 16. Liberty's pattern of disregarding FCC regulations is a material fact that bears on Liberty's ability to operate within FCC regulations in the future. The Report also contains evidence, contrary to Liberty witnesses' testimony and Liberty's proffered

conclusion, that a Liberty principal and outside counsel knew of Liberty's premature activations prior to 1995. Although Liberty witnesses' credibility on this issue has been questioned in the past (see Findings, ¶¶ 89-122), the Report is the first admission by Liberty of its principal's and its lawyers' awareness of unauthorized microwave operations prior to April 1995.

13. The Report, as a prior inconsistent statement on a key issue in this proceeding -- Liberty's knowledge of unauthorized activations -- is a decisionally significant document. Throughout this proceeding, Liberty has declined "to rely on" the Report, yet Liberty has never asserted that any statement in the Report is inaccurate. Liberty's apparent position that the Report is an accurate account of events increases the significance of this important document.

II. The Report Proves That Liberty Had The Requisite Intent To Violate The Commission's Rules And Policies.

14. In addition to the reasons TWCNYC has already set forth (Second Supp. Findings, ¶¶ 6-23; Reply to Second Supp. Findings, *supra*, ¶¶ 2-13), the Report is decisionally significant because it offers further proof that Liberty had the requisite intent to violate the Commission's rules and policies. As such, Liberty is unfit to hold the licenses for which applications are pending in this proceeding. Moreover, the Report itself establishes Liberty's intent to deceive the Commission in its explanation of how it came to activate the 19 paths at issue here without authorization to do so.

15. The record evidence is undisputed that Liberty activated 93 microwave paths without FCC authorization between June 1992 and August 1995. Second Supp. Findings, ¶ 8. Moreover, Liberty commenced service over 36 of these paths prior to even filing a

license application. Id.; TWCV Ex. 67, Exhibit B (Charts 2, 3). Initiation of microwave service without FCC authorization is "one of the most serious violations under the Communications Act." Robert J. Hartman, 9 FCC Rcd 2057 (1994) (citing Mebane Home Tel. Co., 51 RR 2d 926 (1982)).

16. As TWCNYC has explained in its prior submissions to the Presiding Judge, Liberty does not have to have intended to violate the Commission's Rules; it just has to have intended to perform the act that results in a violation of those rules. See 47 U.S.C. § 312(f)(1). Congress expressly stated that the knowing or "willful"

commission or omission of any act, means the *conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this chapter or any rule or regulation of the Commission* authorized by this chapter or by a treaty ratified by the United States.

Id. (emphasis added). Congress further explained this provision by stating that "willful means that the licensee *knew he was doing the act* in question, regardless of whether there was an intent to violate the law." H.R. Rep. No. 97-765, 97th Cong., 2d Sess. 51 (1982) (emphasis added). The Commission has repeatedly held that the willful violation of Commission rules requires only that the licensee knew he was doing the act that resulted in such violation. See Reply to Supp. Findings, at 5 & n.3. The Commission has further determined that where a "willful intent to deceive is discerned," total disqualification of a licensee or applicant is an appropriate sanction. Fox River Broadcasting, Inc., 88 FCC 2d 1132, 1137 (Rev. Bd. 1982).

17. Liberty's attempt to raise the standard for proof of an intentional violation to be one where the licensee or applicant must intend to violate the Commission's Rules at the time of the violation is directly contrary to existing Commission precedent. Compare Liberty

Second Supp. Conclusions, ¶¶ 3-4 with Reply to Supp. Findings, at 5 & n.3 (citing numerous FCC decisions holding that the willful nature of a violation is established by showing only that the act resulting in the violation was intended). Under the appropriate standard for intent, as set forth repeatedly by TWCNYC, the evidence need show only that Liberty intended to turn on the microwave paths in issue; not that Liberty intended to violate the Commission's Rules by activating such paths. The evidence amassed prior to the admission of the Report into evidence proves that Liberty had the requisite intent (Reply to Supp. Findings, at 2-8); the Report affirms and strengthens that prior evidence of Liberty's intentional violations of the Communications Act and the Commission's Rules.

18. The Report confirms that Mr. Nourain was the person responsible for activating microwave paths beginning in June 1992. TWCV Ex. 67, at 7. The Report also confirms Mr. Nourain's testimony that he turned on the paths in question. TWCV Ex. 67, at 10-11; see also Findings, ¶ 68; Supp. Findings, ¶ 31. The deliberate act of turning on microwave paths establishes the requisite intent to commit violations of the Commission's Rules, whether or not Mr. Nourain was aware that he was turning on those paths without FCC authorization. See 47 U.S.C. § 312(f)(1).

19. Liberty's "lack of intent" defense fails even if it is viewed as a "mistake" defense, *i.e.* a defense based on the alleged fact that Mr. Nourain believed that he had FCC authorization to activate the paths in question, even though he did not. First, there is no evidence that anyone in a position to know ever told Mr. Nourain, incorrectly, that he had authority to operate a particular path at the time he activated it. Secondly, even the Report concludes that Mr. Nourain's "assumptions" that he had authorization to operate the 19 paths

at issue here at the time he turned them on were "unfounded." See TWCV Ex.67, at 10. Thus, there is no evidence that supports Liberty's "mistake" defense because there is no evidence upon which a reasonable person could hold such a mistaken belief. A self-serving statement by Liberty's engineer that he assumed that he had authority to activate the paths in question is *not* such evidence, when even Liberty admits, as it does, that there is no basis for that assumption.

20. Moreover, even assuming the truth of Liberty's statements regarding its "disjointed licensing process" and its total lack of supervision over Mr. Nourain and his licensing responsibilities (Liberty Second Supp. Findings, ¶ 13; Liberty Findings, ¶¶ 32-46, 71-73; TWCV Ex. 67, at 8-9), such a lack of supervision over an employee responsible for operation of Liberty's microwave facilities does not mitigate the legal consequences of the fact that Liberty deliberately turned on facilities for which it had no FCC authorization. Violations of Commission rules that result from a licensee's lax operations of its facilities, and that could easily have been avoided (*i.e.*, with supervision), are not inadvertent violations that can be deemed "not willful." See, e.g., Paging Network of Los Angeles, Inc., 10 FCC Rcd 12213, ¶ 9 & n.22 (1995). Rather, such violations are willful because they are the result of the licensee's knowing and deliberate actions, regardless of the licensee's intent to violate Commission regulations. Id. Furthermore, a licensee is responsible for its own acts and omissions, and for complying with the Commission's Rules. Virginia RSA 6 Cellular Limited Partnership, 7 FCC Rcd 8022, ¶ 4 (1992). Thus, Liberty is responsible for Mr. Nourain's haphazard actions with regard to Liberty's licensing process, and cannot escape the consequences that follow from Mr. Nourain's willful violation

of the Commission's Rules. See Supp. Conclusions, ¶ 122 (denial of application is warranted where employee who is in a position in which he must comply with Commission rules is inadequately supervised such that the Commission's Rules are violated).

21. There is other evidence that contradicts Liberty's "mistake/lack of intent" as well. First, Mr. Stern, an outside consultant who was responsible for Liberty's licensing procedures, specifically advised Mr. Nourain, by memorandum and by personal meeting, of the details of Liberty's licensing procedures prior to transferring such responsibilities to Mr. Nourain in June 1992. TWCV Ex. 67, at 7-8 and Exhibit E. Mr. Stern sent a copy of his memorandum to Messrs. Price, McKinnon and Ontiveros. TWCV Ex. 67, Exhibit E. Thus, four people at Liberty, including the President, knew that licensing responsibility was being transferred from Mr. Stern to Mr. Nourain, and they were told what that responsibility involved.

22. Second, even though Messrs. Price, McKinnon, Ontiveros and Nourain all knew, from the Stern memorandum if not from other sources, what Liberty was supposed to do in order to obtain FCC licenses -- and knew that such licenses were necessary prior to activating microwave paths (see Findings, ¶¶ 49-53) -- Liberty nevertheless engaged in a persistent pattern of activating microwave paths without awaiting Commission authorization from 1992 to 1995. TWCV Ex. 67, Exhibit B (Charts 2, 3); Second Supp. Findings, ¶¶ 8, 25. In nearly one half of such instances, Liberty activated paths without even having filed an application. TWCV Ex. 67, Exhibit B (Charts 2, 3); Second Supp. Findings, ¶¶ 8, 25.

23. Third, Ms. Richter's April 20, 1993 letter, which was forwarded to Mr. Price, can only be read for what it is and what it was intended to be -- an express warning to

management about Mr. Nourain's problematic licensing practices, and a detailed explanation of proper licensing procedures. In fact, Ms. Richter testified that, when she sent the letter, she hoped she "would concern somebody," and that she wanted to get a reaction by sending it. Richter, Tr. 2046. For Liberty's President to have read Ms. Richter's letter and then claim to have not understood the express warning contained therein is not only implausible, but also demonstrates Liberty's willful ignorance of a matter about which it should have been very concerned. See Liberty Supp. Findings, ¶ 43. Under Commission precedent, such willful ignorance, if it results in the violation of Commission Rules, supplies the requisite intent. See Reply to Supp. Findings, at 5 & n.3.

24. Even though, at the very least, it was on notice of the high probability that it was engaging in unlicensed microwave activations, Liberty took no action to remedy, or even to examine, its licensing process. In fact, the *only* action taken by Mr. Price after receipt of the Richter letter was to request Pepper & Corazzini to file STAs. Liberty Supp. Findings, ¶ 43. The result of Liberty's complete failure to remedy its licensing problems after receiving Ms. Richter's detailed explanation of proper licensing procedures was that, for another two years, Liberty continued to violate the Commission's Rules by deliberately activating microwave facilities for which it had no licenses, and in many cases, for which it had not even filed applications. See TWCV Ex. 67, Exhibit B (Charts 2, 3). Among those facilities were the 19 at issue here.

25. Given the fact that Mr. Stern fully advised Mr. Nourain on Liberty's licensing procedures when Mr. Nourain took over licensing responsibilities in June 1992; given that, from 1992 to 1995, Liberty engaged in a persistent pattern of activating microwave paths

without Commission authorization; and given the serious, admonishing tone of Ms. Richter's April 20, 1993 letter, Liberty's utter failure to take any action aimed at remedying its licensing problems shows that Liberty willfully ignored the Commission's Rules. Liberty's failure to act when it should have, and its acting when it should not have over a three-year period are distinct expressions of Liberty's intent to violate the Commission's Rules. See 47 U.S.C. § 312(f)(1). The Commission should not tolerate such behavior by a licensee. Rather, the Commission should deny Liberty's pending applications, because the record evidence, including the Report, has shown that Liberty lacks the requisite character to be a Commission licensee. See Supp. Conclusions, ¶ 114-23.

26. The Report is also decisionally significant because it proves that Liberty knowingly made false statements to the Commission. In the Surreply, dated May 17, 1995, Liberty states that it "has been Liberty's pattern and practice to await a grant of either a pending application or request for STA prior to making a microwave path operational." TWCV Ex. 18, at 3. Liberty further notes in the Surreply that "Mr. Nourain, perhaps inadvisably, assumed grant of the STA requests, which in his experience had always been granted within a matter of days of filing, and thus rendered the paths operational." Id. Information revealed in the attachments to the Report demonstrates that when these statements were made, Liberty knew them to be false.

27. The Report shows that Liberty did not have a "pattern and practice" of complying with FCC regulations, as evidenced by the substantial number of paths that were activated without FCC authorization. See Second Supp. Findings, ¶¶ 7-8. More significantly, the Report reveals that when Liberty submitted the Surreply to the

Commission, it knew that it had no such "pattern and practice" and that Mr. Nourain had no basis for assuming that STAs were granted.

28. First, the Report attaches the June 16, 1992 memorandum drafted by Mr. Stern, which discloses the fact that he advised Mr. Nourain of appropriate licensing procedures prior to Mr. Nourain taking responsibility for licensing. TWCV Ex. 67, at 7-8 and Exhibit E. Mr. Nourain knew that he was not following any licensing procedure, as he was merely operating under assumptions that he developed himself. Second Supp. Findings, ¶ 26. Although several people at Liberty knew that a licensing procedure was a necessary part of Liberty's microwave operations, no one at Liberty ensured that the licensing procedure was followed. See Second Supp. Findings, ¶¶ 13-14, 16. Therefore, no one at Liberty had the ability to state with any degree of confidence that Liberty followed a "pattern and practice" of awaiting FCC authorizations. In fact, Mr. Price knew that Liberty's actual practice was different from that stated in the Surreply. Second Supp. Findings, ¶ 28.

29. Second, even after receiving Ms. Richter's April 20, 1993 letter, which included a detailed explanation of the FCC licensing requirements, Liberty continued to engage in a practice of activating microwave paths without regard to whether the appropriate authorization had been obtained. Liberty itself has noted that Ms. Richter's letter "pointed to a potential problem and reminded Liberty of the applicable rules so that such a problem might be averted." Liberty Reply Supp. Findings, ¶ 4. Liberty's continuation of its practice of prematurely activating microwave paths demonstrates the fact that Liberty took no action to avert future problems. The letter also did not cause Mr. Nourain to abandon his assumptions. Therefore, Liberty's statements in the Surreply were knowingly false.

30. The Report provides evidence of Liberty's intent to violate the Commission's Rules (see Reply to Second Supp. Findings, *supra*, ¶¶ 15-25), as well as of Liberty's intent to deceive the Commission about the cause of the unauthorized activation of the paths at issue here. As such, the Report mandates that Liberty be denied its pending license applications.

CONCLUSION

For the foregoing reasons, and for all of the reasons set forth in TWCNYC's Findings and Conclusions, Reply Findings and Conclusions, and Supplemental Findings and Conclusions, Liberty's pending applications should be denied, and the maximum statutory forfeiture permitted by law should be imposed on Liberty.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Debra A. McGuire, hereby certify that a copy of the foregoing Time Warner Cable of New York City and Paragon Communications' Reply to Second Supplemental Proposed Findings of Fact and Conclusions of Law of Bartholdi Cable Co., Inc. and the Wireless Telecommunications Bureau was served this 2nd day of December, 1997 via facsimile and United States first class mail, upon the following:

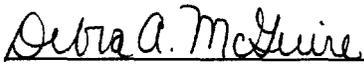
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