

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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APR 29 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

REQUEST FOR ORAL ARGUMENT

Bartholdi Cable Company, Inc. f/k/a Liberty Cable Co., Inc. ("Liberty"), pursuant to Section 1.277(c) of the Commission's rules, hereby requests oral argument in the above-captioned matter.¹ The complex and voluminous record in this proceeding catalogues two years of exhaustive documentary discovery, depositions, and testimony before an administrative law judge. Oral argument will enable the Commission to evaluate the parties' claims regarding particular elements of the record and to flesh out the issues of decisional significance.

This request comes before the Commission in the context of an appeal of an initial decision ("ID") disqualifying Liberty from holding FCC licenses. The ID imposing disqualification -- the Commission's harshest remedy -- is replete with reversible error.

¹ 47 C.F.R. § 1.277(c). This request is timely filed within 5 days of submission of reply briefs. *Id.*; see also 47 C.F.R. § 1.4(g).

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Paramount among the errors is the negative inference drawn by the ALJ from Liberty's exercise of its right to appeal. The ALJ found that Liberty lacked candor by prosecuting a good-faith appeal of a Commission decision on a FOIA request and, thereby, punished Liberty in violation of the company's right to due process. In addition, many of the ID's conclusions -- including the suggestion that Liberty knew of unauthorized activations prior to April 1995 and the finding that Liberty intended to deceive the Commission -- are not supported by record evidence. The ALJ frequently ignored evidence and made unsupported inferential leaps in reaching a preordained result: disqualifying Liberty. The Commission is bound to correct these errors and to enter a decision reflecting the evidence adduced in this proceeding.

The comportment of the Wireless Telecommunications Bureau (the "Bureau") in this proceeding also merits review from the Commission. In every pleading before the ALJ, the Bureau consistently supported Liberty by advancing findings of fact similar to Liberty and arguing for a forfeiture rather than disqualification. However, in the reply round of exceptions to the ID -- the last pleading filed in the proceeding -- the Bureau completely reversed itself based on identical facts and argued that Liberty is not qualified to hold Commission licenses. The timing of this reversal deprived Liberty of any opportunity to reply. Moreover, the Bureau's dramatic change in position occurred without any additions or changes in the record, and remains unexplained. Oral argument will afford the Commission an opportunity to solicit clarification of the Bureau's position.

Finally, the public interest issues at stake in this proceeding require the Commission's attention. Time Warner -- the incumbent monopoly cable provider in New York City, the nation's largest television market -- participated in this proceeding with the apparent intention of driving a competitor out of the marketplace. If the ID is allowed to stand, Time Warner will

have succeeded. Oral argument will enable the Commission to assess the impact on competition in New York and the possible displacement of Liberty's current subscribers. The Commission should not render a decision until it has had an opportunity to hear the parties directly on these issues.

Respectfully submitted,

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April 29, 1998

CERTIFICATE OF SERVICE

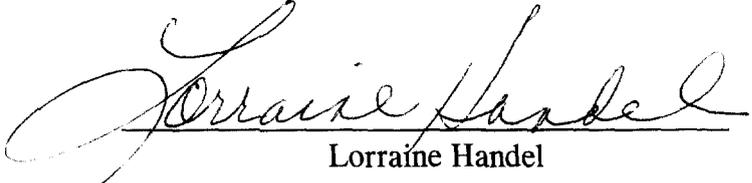
I hereby certify that on this 29th day of April 1998, I caused copies of the foregoing
“Request for Oral Argument” to be hand-delivered to the following:

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