

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: The Commission

Request for Prompt Disposition

Time Warner Cable of New York City and Paragon Communications ("TWCNYC") wish to request that the Commission promptly decide this matter, in light of the pendency of a related action in another forum.¹ That related action is an antitrust suit, brought by the applicant here (Bartholdi Cable Co., Inc. f/k/a Liberty Cable Co., Inc.) against TWCNYC and some of its corporately-related affiliates and parent. *Bartholdi Cable Co., Inc. v. Time Warner Inc., et al.*, No. 96-CV-2687 (E.D. N.Y.) ("*Bartholdi Cable*").

There are certain issues decided in this proceeding that may be highly relevant in *Bartholdi Cable*. These issues relate to summary judgment and to discovery motions in *Bartholdi Cable*.

¹ TWCNYC notes the Commission's recent Order in this proceeding indicating that additional time will be required for the Commission to issue a decision beyond the customary five months. *In Re Applications of Liberty Cable Co., Inc.*, FCC 99I-01 (rel. Jan. 20, 1999).

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In November, U.S. District Judge Weinstein heard argument on a summary judgment motion brought by Time Warner that raised issues closely related to those addressed in the Initial Decision of Administrative Law Judge Sippel that is now before the Commission. Judge Weinstein denied the motion without prejudice, but directed Time Warner to re-submit the motion “in six months” after some discovery had taken place and in the hope that the Commission would have acted by that time.

Indeed, in a decision on an important discovery issue, the Magistrate Judge in the *Bartholdi Cable* case wrote: “[T]his court is cognizant of the fact that ongoing events related to the FCC proceedings could potentially lead to findings that raise the risk of inconsistent determinations were the court to grant plaintiff’s motion at this time. Accordingly, defendants’ [discovery] motion is denied without prejudice to renew the motion after a final decision is rendered with regard to the FCC proceedings...”²

While TWCNYC appreciates the fact that many matters are currently before the Commission, it hopes the Commission will find that the relationship between the pending *Bartholdi Cable* antitrust case and this matter justifies a prompt resolution here. TWCNYC also directs the Commission’s attention to the fact that, even though Administrative Law Judge Sippel found Bartholdi unfit to hold FCC licenses, Bartholdi continues to operate the facilities that are the subject of this proceeding under conditional licenses and grants of interim operating authority awarded by the Commission nearly three years ago.

² Memorandum and Order, *Bartholdi Cable Co., Inc. v. Time Warner Inc., et al.*, No. 96 CV 2687 at 2 (E.D. N.Y., June 26, 1998).

Respectfully submitted,

A handwritten signature in black ink that reads "R. Bruce Beckner". The signature is written in a cursive style with a long, sweeping underline.

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Dated: March 1, 1999

CERTIFICATE OF SERVICE

I, R. Bruce Beckner, hereby certify that a copy of the foregoing Request for Prompt Disposition was served on this 2nd day of March, 1999 upon the following:

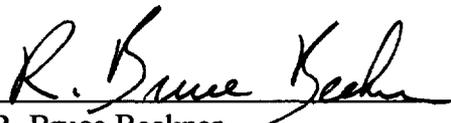
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