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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of	)	
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations In Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

PROTECTIVE ORDER

Adopted: November 4, 2002 **Released: November 5, 2002**

By the Chief, Media Bureau:

1. On September 23, 2002, the Commission released a Notice of Proposed Rulemaking initiating the 2002 biennial review of its broadcast ownership rules, as required by Section 202 of the Telecommunications Act of 1996.[1] On October 1, 2002, the Commission's Media Ownership Working Group released twelve studies on competition, diversity, and localism in contemporary media markets.[2] Those studies became part of the record of the media ownership proceeding and public comment was requested on the studies and their applicability to the questions posed in the Biennial Review NPRM.

2. This Order establishes procedures for review by interested parties of the proprietary underlying data for four of those twelve studies. The data sets affected by this Order are associated with the following studies: "On the Substitutability of Local Newspaper, Radio, and Broadcast Television Advertising in Local Business Sales;" "Radio Industry Review 2002: Trends in Ownership, Format, and Finance;" "Consolidation and Advertising Prices in Local Radio Markets;" and "Consumer Substitutability Among Media."

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) at § 202.

[2] *FCC Seeks Comment on Ownership Studies Released by Media Ownership Working Group and Establishes Comment Deadlines for 2002 Biennial Regulatory Review of Commission's Ownership Rules*, Public Notice, DA 02-2476 (rel. Oct. 1, 2002).

3. Definitions.

a. Authorized Representative. An "Authorized Representative" is limited to:

(1) Counsel for the Reviewing Parties, including in-house counsel and their associated attorneys, paralegals, clerical staff, and other employees, to the extent reasonably necessary to render professional services by counsel for the Reviewing Parties.

(2) Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service or otherwise engaged to prepare material for the express purpose of formulating filings in this docket, except that disclosure to persons in a position to use this information for competitive commercial or business purposes shall be prohibited.

(3) Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

b. Commission. "Commission" means the Federal Communications Commission or any employee, consultant, or agent of the Commission acting pursuant to, and within the scope of, their official responsibilities to the Commission.

c. Data Sets. "Data Sets" means (i) data compilations that formed the basis for the analysis and conclusions for the four above-reference studies; and (2) software applied by the studies' authors to the datasets to analyze the data.

d. Declaration. "Declaration" means Attachment A to this Protective Order.

e. Reviewing Party. "Reviewing Party" means a person or entity reviewing or seeking in good faith to review the Data Sets only for the purpose of reviewing the underlying information and participating in the Biennial Review proceeding on media ownership.

4. Access to Data Sets. The Data Sets shall only be made available to the Commission and to Authorized Representatives of the Reviewing Parties. Before any Authorized Representative of a Reviewing Party may obtain access to the Data Sets, such Authorized Representative must execute the attached Declaration. Such executed Declarations must be furnished to the Media Bureau prior to on-site review of one or more Data Sets. The Reviewing Party shall not be deemed, by reason of this Protective Order, to have waived the opportunity to argue before the Commission or any other appropriate body that any Data Set is not confidential or privileged in nature. Consultants under contract to the Commission may obtain access to Data Sets only if they have signed a non-disclosure agreement or if they execute the attached Declaration.

5. Permissible Disclosure. An Authorized Representative of a Reviewing Party may disclose information contained in the Data Sets to other Authorized Representatives, as defined in paragraph 3 of this Protective Order, only after advising such Authorized Representatives of the terms and obligations of the Protective Order. In addition, before Authorized Representatives may obtain access to the Data Sets, each Authorized Representative must execute the attached Declaration.

6. Inspection of Data Sets. The Data Sets shall be maintained by the Commission for inspection at its headquarters consistent with the terms of this Protective Order. An Authorized Representative shall give Media Bureau staff reasonable advance notice of its intent to review one or more of the Data Sets.

7. Copies of Data Sets. Authorized representatives may not remove Data Sets, or copies thereof, from the agency headquarters.

8. Use of Data Sets. Reviewing Parties shall use the Data Sets, and any information derived therefrom, only for the purpose of participating in the Media Ownership Biennial Review proceeding, Docket Number 02-277. Information derived from the Data Sets shall not be used by any person granted access under this Protective Order for any other purpose and shall not be used or disclosed except in accordance with this Protective Order. This shall not preclude the use of any material or information that is in the public domain or has been lawfully acquired by any other person who has not had access to the Data Sets.

9. No patent, copyright, trademark or other intellectual property rights are licensed, granted, or otherwise transferred by this Protective Order or any disclosure hereunder, except for the right to use information in accordance with this Protective Order. Reviewing Parties may use information derived from the Data Sets to conduct their own analyses. Moreover, any such calculations or other analyses performed by the Reviewing Party using information derived from the Data Sets that do not reveal protected information shall not be considered part of the Data Set. However, a Reviewing Party's calculations, analyses or other derivative materials, the contents or outcomes of which do reveal protected information, shall be used and treated by the Reviewing Party in the same fashion as the underlying Data Sets used in such calculations, analyses and derivative materials under the terms of this Order.

10. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to the Data Sets under this Protective Order violate any of its terms, it shall immediately convey that fact to the Media Bureau. Further, should such violation consist of improper disclosure information derived from the Data Sets, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Commission retains authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to the Data Sets.

11. Return of Information. To the extent that the information derived from the Data Sets is no longer useful for the purposes set forth in this Order, such information shall be destroyed by the Authorized Representative.

12. No Waiver of Confidentiality. Disclosure of information derived from the Data Sets shall not be deemed a waiver of any privilege or entitlement to confidential treatment of such Data Sets by the owner of such data. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any separate proceedings; and (c) agree that accidental disclosure of information derived from the Data Sets shall not be deemed a waiver of the privilege.

13. Authority. This Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j), and 47 C.F.R. §§ 0.91, 0.291, and 0.457(d).

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

ATTACHMENT A:

DECLARATION

In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244)

I, _____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Media Bureau in this docket, and that I agree to be bound by its terms pertaining to the treatment of the Data Sets and the information derived therefrom. I understand that this information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes specified in the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Media Bureau.

(signed) _____
(printed name) _____
(representing) _____
(title) _____
(employer) _____
(address) _____
(phone) _____
(date) _____