

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of: )  
)  
Use of Television Channel 16 by the ) ET Docket No. 03-158  
New York Police Department and ) MB Docket No. 03-159  
NYMAC for Public Safety Services )

To the Commission:

**COMMENTS IN OPPOSITION**

Mullaney Engineering, Inc. (“MEI”), hereby submits its comments in response to the Notice of Proposed Rulemaking released by the Commission on July 10, 2003 in ET/MB Docket No. 03-158 / 03-159 (“NPRM”), which proposes to permanently allot TV Channel 16 in the New York City area for uses by public safety services (“NYC”).

MEI questions the need to dedicate yet another TV channel for exclusive use of public safety services in the New York City area. Especially, since ET Docket 97-157 granted exclusive use of **four additional TV channels** (62, 63, 68 & 69) for public safety use. Utilization of these newly assigned channels should be fully exploited before removing yet another channel from the broadcast spectrum. In addition, MEI questions the tactics of NYC. In FCC 95-115, NYC was granted a “**conditional waiver**” of parts 2 and 90 to permit temporary use of TV Channel 16 over a restricted geographical area near New York City. The order granting a conditional waiver only talks in terms of how NYC was to protect TV broadcast facilities with nothing said about what protection NYC was entitled to. It is clear that the order intended their use to be **secondary** to that of broadcasters. Despite this secondary status, NYC filed an objection to a pending displacement application of W11BJ (BPTVL-19980601QZ) to

move from Ch. 11 to Ch. 16 at Hartford, CT. Although it was **demonstrated** that W11BJ provided the protection specified in the rules to a co-channel land mobile operation, NYC **continued to insists** that interference would be caused. Although, it should be noted that because of their secondary status, NYC was entitled to no protection what so ever. It was not until a review of this docket (03-158/159) that it was discovered that NYC's technical objections were based upon **use of an F(10,10) contour** rather than the normal F(50,10) contour specified in the rules for prediction of interference. Failure to disclose this fact is a **flagrant abuse** of the Commission process. It appears that NYC simply relied upon their governmental status to deny W11BJ due process. In fact it is surprising that NYC filed this NPRM without apparently being required to serve W11BJ and making it a party to this proceeding.

We have little doubt that given the horrific acts on September 11, 2001, that the FCC is inclined to give NYC whatever it requests. However, MEI requests the NPRM address the following issues:

Is use of the **F(10,10)** contour to predict interference going to be the normal method of analysis? If yes, then will existing broadcast facilities be required to **come into compliance or cease operation?**

At present, resolving potential conflicts between Land Mobile operations and TV broadcast facilities is shared between the Wireless Bureau and the Media Bureau. This present policy **falls completely short of efficiently serving the public interest**. This is evidenced by the fact that W11BJ's application filed in June 1998 is still pending in the Media Bureau **over five years after** it was filed. The FCC needs to **select a single bureau** to be charged with resolving objections. Given that most objections would be filed against TV broadcast facilities MEI suggests that the Media Bureau would be best suited to resolve

these such issues. However, selection of a **single point of resolution** would be a vast improvement regardless of which bureau is charged with the primary responsibility.

Thus, MEI hereby requests that the FCC **deny the request** to dedicate the use of Channel 16 to public safety services in the New York City area or at a minimum make it clear **how existing and future interference** from broadcast facilities is to be calculated and to **charge a single bureau** with the responsibility of resolving future objections.

Filing of these comments were in part delayed by affects of Hurricane Isabel. If a waiver is needed for late acceptance one is hereby requested.

Respectfully submitted,

**MULLANEY ENGINEERING, INC.**

24 September 2003

By:           /s/ John J. Mullaney

President of Mullaney Engineering, Inc.  
Mullaney Engineering, Inc.  
9049 Shady Grove Court  
Gaithersburg, MD 20877  
[301] 921-0115