

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 2, 73, 74 and 90 of the)	ET Docket 03-158
Commission's Rules to Permit New York)	
Metropolitan Area Public Safety Agencies to)	MB Docket <u>03-159</u>
Use Frequencies at 482-488)	

ORDER ADOPTING PROTECTIVE ORDER

Adopted: December 3, 2003

Released: December 4, 2003

By the Chief, Media Bureau:

1. On December 5, 2002, the Police Department of the City of New York (Department) submitted a report to the Commission regarding the allocation of TV channel 16 in the New York Metropolitan area. Accompanying the report was a Technical Report, presented in both a redacted and complete format that described the public safety communications infrastructure in the New York Metropolitan area. Subsequent to the submission of the report the Commission commenced the above proceedings.¹

2. To facilitate resolution of these proceedings, The Department offered on November 13, 2003, to provide interested parties who have submitted comments in the proceedings access to the Technical Report, conditioned on the Commission's confirmation that "the information provided be treated as confidential under Sections 0.457 and 0.459 of the Commission's rules."² The Department states that the information is entitled to confidential treatment because of the need to protect critical systems, facilities, and other law enforcement assets from security breaches and harm and that the release of this information would endanger the life or physical safety of law enforcement personnel and citizens.

3. The Comments and Reply Comments submitted in these proceedings indicate the requests of parties to review the Technical Report. It is appropriate to provide this information, so long as the confidentiality of this information is maintained and the parties agree to abide by the conditions contained in the Commission's Order. The public interest will be served by issuing the attached Protective Order (Appendix A). It will afford parties who have filed Comments and/or Reply Comments in the above proceedings access to the information while maintaining the security of the information. Granting the attached Protective

¹ Notice of Proposed Rulemaking in ET Docket No. 03-158 and MB Docket No. 03-153, FCC 03-165, released July 10, 2003.

² 47 C.F.R. §§0.457 and 0.459

Order will also facilitate the prompt resolution of the issues raised in this proceeding.

4. Parties may file supplemental comments based on their review of the material covered by the protective order. Comments are due December 29, 2003 and Reply Comments are due January 5, 2004.

5. ACCORDINGLY, IT IS ORDERED, that the request for confidential treatment is GRANTED consistent with the attached Protective Order.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "W. Kenneth Ferree", with a long horizontal flourish extending to the right.

W. Kenneth Ferree
Chief, Media Bureau

APPENDIX A

PROTECTIVE ORDER

1. On December 5, 2002, the Police Department of the City of New York (Department) submitted a report to the Commission regarding the allocation of TV channel 16 in the New York Metropolitan area. The Commission has commenced proceedings to examine the issues addressed by the report. With its report, the Department submitted to the Commission a Technical Report which it requests be accorded confidential treatment because of the need to protect the public safety communications infrastructure in the New York Metropolitan area. The Department also submitted a redacted version of the Technical Report which was attached to the Notice of Proposed Rulemaking in this proceeding. Because the unredacted Technical Report contains confidential information, the Bureau hereby enters this Protective Order to ensure that the Technical Report provided to the Commission and considered by the Department to be confidential is afforded protection.

2. *Non-Disclosure of Confidential Document.* Except with the prior written consent of the Department, or as hereinafter provided under this Order, neither the Confidential Document nor the contents thereof may be disclosed by a reviewing party to any person. "Confidential Document" shall mean the material submitted by the Police Department of the City of New York, in a letter dated December 11, 2002, wherein it requested confidential treatment and the issuance of a protective order.

3. *Permissible Disclosure.* Subject to the requirements of Paragraph 5, the Confidential Document may be reviewed by associated counsel of record of parties who have submitted Comments and/or Reply Comments in the proceedings. Subject to the requirements of Paragraph 5 and subject to the obligation to secure the confidentiality of the Confidential Document in accordance with the terms of this Order, such counsel may disclose the Confidential Document to any of the following persons: (i) the associated attorneys, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this proceeding, (ii) Commission officials involved in this proceeding; (iii) outside consultants or experts retained for the purpose of assisting counsel in these proceedings, and (iv) the party, through its principal, officers or employees, of any entity filing comments or reply comments in these proceedings.

4. *Access to Confidential Document.* Persons described in Paragraph 3 shall have the obligation to ensure that access to the Confidential Document is strictly limited as prescribed in this Order. Such persons shall further have the obligation to ensure: (i) that the Confidential Document is used only as provided in this Order; and (ii) that the Confidential Document is not duplicated except as necessary for filing at the Commission under seal as provided in Paragraph

5. *Procedures for Obtaining Access to the Confidential Document.* In all cases where access to the Confidential Document is permitted pursuant to Paragraph 3, and before reviewing or having access to the Confidential Document, each person seeking such access shall execute the Acknowledgment of Confidentiality attached hereto and file it with the Commission and serve it upon the Department so that it is received by the Department five business days prior to such person's reviewing or having access to the Confidential Document. The Department shall have an opportunity to object to the disclosure of the Confidential Document to any such person. Any objection must be filed at the Commission and served on counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment of Confidentiality. Until any such objection is resolved by the Commission and any court of competent jurisdiction prior to disclosure, and unless that objection is resolved in favor of the person seeking access, persons subject to an objection from the Department shall not have access to the Confidential Document. Notwithstanding the foregoing, the individuals listed on Appendix C attached hereto shall be provided with a copy of the Confidential Document upon receipt by the Department of each such person's Acknowledgment of Confidentiality.

6. *Requests for Additional Disclosure.* If any person requests disclosure of the Confidential Document outside the terms of this protective order, such requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

7. *Use of Confidential Information.* Persons described in Paragraph 3 may, in any documents that they file in this proceeding, reference information found in the Confidential Document or derived therefrom (hereinafter, "Confidential Information"), but only if they comply with the following procedures.

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

b. The portions of the pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;

c. Each page of any party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "Confidential information included pursuant to Protective Order, ET 03-158 and MB 03-159"; and

d. The confidential portion(s) of the pleading shall be filed with the Secretary of the Commission and served on the Department. Such confidential portions shall be filed under seal, and shall not be placed in the Commission's Public Files. A party filing a pleading containing Confidential Information shall also place a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's Public Files. Parties may provide, under seal, courtesy copies to Commission staff of pleadings containing

Confidential Information.

8. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Department of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing this material: (a) agree not to assert any such waiver; (b) agree not to use information derived from the Confidential Document to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information by the Department shall not be deemed a waiver of any privilege or entitlement as long as the Department takes prompt remedial action

9. *Subpoena by Court or Other Agencies.* If a court or another administrative agency subpoenas or orders production of the Confidential Document or Confidential Information that a party has obtained under terms of this Order, such party shall promptly notify the Department of the pendency of such subpoena or order. Consistent with the independent authority of any court or administrative agency, such notification must be accomplished such that the Department has a full opportunity to oppose such productions prior to the production or disclosure of the Confidential Document or Confidential Information.

10. *Client Consultation.* Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of the Confidential Document; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose the Confidential Document or Confidential Information, unless the client and individuals employed by the client have complied with the provisions of Paragraphs 3 and 5.

11. *Violations of Protective Order.* Persons obtaining access to the Confidential Document or Confidential Information under this Order shall use the information solely for preparation and the conduct of this proceeding as delimited in Paragraphs 4, 7 and 10, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including business, governmental, commercial, or other administrative, regulatory or judicial proceedings. Should a party that has properly obtained access to Confidential Information under this Order violate any of its terms, that party shall immediately notify the Commission and the Department of such violation. Further, should such violation consist of improper disclosure of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violation of this 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 Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Department at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

12. *Termination of Proceeding.* The provisions of this Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding (which includes any administrative review or judicial review), the Confidential Document and all copies of same shall be returned to the Department. No material whatsoever derived from the Confidential Document may be retained by any person having access thereto, except outside counsel to a party in this proceeding may retain, under the continuing strictures of this Order, two copies of each pleading containing Confidential Information prepared on behalf of that party. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the Department not more than three weeks after conclusion of this proceeding.

13. *Additional Rights Preserved.* The entry of this Order is without prejudice to the rights of the Department to apply for additional or different protection where it is deemed necessary or the rights of any reviewing party to request further or renewed disclosure of the Confidential Document.

14. *Department's representative.* For purposes of this Order any notice to the Police Department of the City of New York shall be made to John E. Logan, Special Counsel to the Police Department of the City of New York, 1050 Connecticut Avenue, NW, Tenth Floor, Washington, D.C. 20036, phone 202.772.1981, facsimile, 202.318.4257.

15. *Time Period.* Any request for access to the Confidential Document shall take place between December 5, 2003, and December 11, 2003.

16. *Authority.* This Protective Order is issued pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i); Section 7 of the Freedom of Information Act, 5 U.S.C. § 552(b)(7); and authority delegated under Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283; and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION



W. Kenneth Ferree
Chief, Media Bureau

APPENDIX B

ACKNOWLEDGMENT OF CONFIDENTIALITY

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding and I understand it. I agree that I am bound by this Order and that I shall not disclose or use the Confidential Document or any information gained therefrom except as allowed by the Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order accrues to the Police Department of the City of New York.

Without limiting the foregoing, I acknowledge specifically that my access to any information obtained as a result of the Order is due solely to my capacity as counsel to, or representative or employee of, a party or other person described in Paragraph 3 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Order.

Executed at _____ this ___ day of _____, 2003

Signature

Title

APPENDIX C

Thomas P VanWazer, Esquire
Counsel to the Tribune Television Company

Wray Fitch, Esquire
Timothy R Obitts, Esquire
Counsel for Catholic Views Broadcasters

K Licensee, Inc.

John J Mullaney
Mullaney Engineering, Inc.