

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

In the matter of)
)
Implementation of Section 12.3 of the)
Commission's Rules)
)

PROTECTIVE ORDER

Adopted: May 15, 2009

Released: May 15, 2009

By the Acting Chief, Public Safety and Homeland Security Bureau:

1. Section 12.3 of the Commission's rules requires (1) local exchange carriers (LECs), (2) commercial mobile radio service (CMRS) providers required to comply with section 20.18 of the Commission's rules,¹ and (3) interconnected Voice over Internet Protocol (VoIP) service providers to analyze their 911 and E911 networks and/or systems and provide reports to the Commission addressing the redundancy, resiliency, and reliability of those networks and/or systems (911 Reports).² These reports were due February 6, 2009.³

2. These reports are presumed to be confidential.⁴ The Commission will, however, share the 911 Reports with the National Emergency Number Association (NENA), the Association of Public Safety Communications Officials (APCO), and the National Association of State 9-1-1 Administrators (NASNA) only pursuant to a protective order.⁵ The Public Safety and Homeland Security Bureau (Bureau) has the delegated authority to issue such protective orders.⁶

3. NENA, APCO, and NASNA have informed the Bureau that they would like access to the 911 Reports. Because the 911 Reports contain proprietary and confidential information, the Bureau hereby adopts, pursuant to its delegated authority, this Protective Order (Order) to ensure that the 911 Reports are

¹ 47 C.F.R. § 20.18.

² 47 C.F.R. § 12.3. In order to avoid imposing financial burden on small carriers, the following are exempt from this rule: (1) LECs that meet the definition of a Class B company set forth in Section 32.11(b)(2) of the Commission's rules; (2) non-nationwide commercial mobile radio service providers with no more than 500,000 subscribers at the end of 2001; and (3) interconnected VoIP service providers with annual revenues below the revenue threshold established pursuant to Section 32.11 of the Commission's rules. *Id.*; *see also* 47 C.F.R. § 32.11.

³ *See* 47 C.F.R. § 12.3(b) (reports due 120 days from the date that the Commission or its staff announces activation of the 911 network and system reporting process); *see also* FCC's Public Safety and Homeland Security Bureau Announces the Activation of the E911 Architecture Information System; Carriers Required to File Reports with Commission on 911/E911 Networks, Systems by February 6, 2009, *Public Notice*, DA 08-2263, 23 FCC Rcd 14757 (PSHSB 2008).

⁴ 47 C.F.R. 12.3(c). *See also infra* ¶ 6.

⁵ *Id.*

⁶ *Id.*

afforded adequate protection.⁷ Any Reviewing Party, as defined below, that seeks access to the 911 Reports must sign the Declaration of Confidentiality, which is attached as Appendix A (Declaration).

4. This Protective Order is intended to facilitate and expedite the review of documents containing proprietary and confidential information. It reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated. The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.⁸

5. Definitions.

- (a) Authorized Representative. "Authorized Representative" shall have the meaning set forth in Paragraph 11.
- (b) Commission. "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.
- (c) Confidential Information. "Confidential Information" means all of the 911 Reports submitted to the Commission pursuant to section 12.3 of the Commission's rules.
- (d) Declaration. "Declaration" means Attachment A to this Protective Order.
- (e) Reviewing Party. "Reviewing Party" means the following entities: NENA, APCO, and NASNA.
- (f) Designated Officer. An employee of a Reviewing Party that is responsible for receiving 911 Reports from the Bureau.
- (g) Submitting Party. "Submitting Party" means a person or entity that submitted a 911 Report to the Commission pursuant to Section 12.3 of the Commission's rules.

6. Claim of Confidentiality. All 911 Reports are considered confidential information and are therefore exempt from routine public disclosure under the Freedom of Information Act (FOIA) Exemption 4.⁹

7. Storage of Confidential Information at the Commission. The Bureau shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

⁷ *Id.* See also 47 C.F.R. § 0.392; Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Order*, EB Docket No. 06-119 and WC Docket No. 06-119 and WC Docket No. 06-63, 22 FCC Rcd 10541, 10571 ¶ 97 (2007).

⁸ Although the 911 Reports will be shared with NENA, APCO and NASNA pursuant to protective orders, "[a]ll other access to these reports must be sought pursuant to the procedures set forth in 47 C.F.R. § 0.461." See 47 C.F.R. § 12.3(c).

⁹ See 47 C.F.R. § 12.3(c).

8. Access to Confidential Information. Confidential Information shall only be made available to Commission staff, Commission consultants, and to a Designated Officer. Before a Designated Officer may obtain access to Confidential Information, the Designated Officer must execute the attached Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the attached Declaration.

9. A Designated Officer may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of Paragraph 11 of this Protective Order, but only after advising the Authorized Representatives of the terms and obligations of this Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration. The Confidential Information shall not be disclosed or distributed to the Reviewing Party's members.

10. Authorized Representatives shall be limited to:

- (a) A Designated Officer;
- (b) 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;
- (c) Specified persons, including employees of the Reviewing Parties, requested by the Designated Officer to furnish technical or other expert advice or service regarding the matters addressed in the Confidential Information; or
- (d) Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

11. Copies of Confidential Information. Authorized Representatives may make additional copies of Confidential Information but only to the extent required. Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party or Commission upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

12. Filing of Declaration. The Designated Officer from the Reviewing Parties shall provide to the Commission a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline that may be prescribed by the Commission.

13. Use of Confidential Information. Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than to analyze and evaluate the reliability and resiliency of the Submitting Party's 911 and E911 networks and/or systems. Unless otherwise ordered by the Commission or a court of competent jurisdiction, the Confidential Information shall not be used for competitive business purposes, 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 developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

14. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately

convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The violating party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full 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, monetary 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 Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

15. Duration of Confidentiality. Any Confidential Information shall be protected from disclosure or use indefinitely in accordance with paragraphs 12 and 14 of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the Submitting Party and Reviewing Party, an order of the Commission, or a court having jurisdiction.

16. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. 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 other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of any privilege.

17. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

18. Effect of Protective Order. This Protective Order constitutes an Order of the Commission.

19. 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 Sections 0.457(d) and 12.3(c) of the Commission's rules, 47 C.F.R. §§ 0.457(d), 12.3(c). Further, this Protective Order is adopted pursuant to the authority delegated in Sections 0.392, and 12.3(c) of the Commission's rules, 47 C.F.R. §§ 0.392, 12.3.

FEDERAL COMMUNICATIONS COMMISSION

David L. Furth
Acting Bureau Chief
Public Safety and Homeland Security Bureau

APPENDIX A

Declaration of Confidentiality

Reports Submitted Pursuant to Section 12.3 of the Commission's Rules

I, _____, hereby declare under penalty of perjury that I have read the foregoing Protective Order in the above captioned proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by Submitting Parties in this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only to analyze and evaluate the reliability and resiliency of the Submitting Party's 911 and E911 networks and/or systems. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

(signed) _____

(printed name) _____

(representing) _____

(title) _____

(employer) _____

(address) _____

(phone) _____

(e-mail) _____

(date) _____