

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:09-cv-02076-REB-CBS

NRC BROADCASTING, INC.,

Plaintiff,

v.

COOL RADIO, LLC,
THOMAS DOBREZ, and
GABRIE HIGBIE,

Defendants.

STIPULATED PROTECTIVE ORDER

The parties to this case have requested that the following Stipulated Protective Order be entered to govern the exchange of discovery material that the parties regard as confidential. Given the nature of the case, discovery will necessarily focus on several areas of a sensitive proprietary nature - such as the parties' respective marketing and business development efforts, customer information, and financial information. Many documents concerning these subjects contain confidential proprietary information and/or trade secrets. Because disclosure of such material poses a substantial risk of causing harm to the parties' respective competitive positions, the parties have developed and reached agreement upon a protocol for controlling disclosure of such information produced in discovery. The agreed-upon protocol is embodied in this Stipulated Protective Order.

Good cause exists for entry of this Order. See Fed. R. Civ. P. 26(c); In re Standard Metals Corp., 817 F.2d 625, 628 (10th Cir. 1987). The nature of the case requires the parties to seek and produce documents and information and elicit deposition testimony, the disclosure of

which poses a substantial risk of harm to the producing or designating party's legitimate proprietary interests. This Stipulated Protective Order provides reasonable restrictions on the disclosure of such sensitive materials. In order to streamline the discovery process and minimize the need for Court intervention, this Stipulated Protective Order adopts an approach that allows the producing party, or other party to which such information is proprietary or confidential, to designate certain materials being produced or deposition testimony as confidential. Disclosure of materials designated as **CONFIDENTIAL INFORMATION** or **HIGHLY CONFIDENTIAL INFORMATION** is limited to specific classes of persons. In addition, this Stipulated Protective Order provides for filing confidential documents with the Court under seal, if such documents need to be filed as part of motion practice or other proceedings.

This Stipulated Protective Order also provides that the party requesting production of the information may challenge the producing or designating party's confidentiality designation before the Court, thereby minimizing the likelihood that non-sensitive documents will be unnecessarily designated as confidential. The Stipulated Protective Order allocates to the producing or designating party the burden of justifying the confidentiality designation. Accordingly, the Court hereby enters the following Stipulated Protective Order:

Whereas, the parties recognize that pursuant to discovery they may be required to disclose trade secrets and other confidential information; and

Whereas, the parties, through counsel, stipulate that good cause exists for the entry of this Stipulated Protective Order pursuant to Fed. R. Civ. P. 26(c) to protect against improper disclosure or use of confidential information produced in this case.

The following provisions of this Stipulated Protective Order shall control the disclosure,

dissemination, and use of information in this case.

IT IS HEREBY ORDERED that:

1. Any party to this action, and any non-party from whom discovery is sought in connection with this action, may designate as **CONFIDENTIAL INFORMATION** or **HIGHLY CONFIDENTIAL INFORMATION** any documents, things, interrogatory answers, responses to requests for admissions, trial or deposition testimony, or other material that contains **CONFIDENTIAL INFORMATION** or **HIGHLY CONFIDENTIAL INFORMATION** as set forth below. Information so designated shall include all copies, excerpts, summaries, indices, or abstracts of such information, regardless of the manner disclosed, including designated information disclosed during a deposition, in a document, in an interrogatory answer, by production of tangible evidence, during a hearing or trial, in responses to requests for admissions or otherwise disclosed in connection with this action.

2. As used in this Stipulated Protective Order, the term **CONFIDENTIAL INFORMATION** means material or information not generally known to the public that the producing or disclosing party in good faith believes to incorporate sensitive business or commercial information, trade secrets, know-how, proprietary data, or private or personal information.

3. As used in this Stipulated Protective Order, the term **HIGHLY CONFIDENTIAL INFORMATION** means **CONFIDENTIAL INFORMATION** that is competitively sensitive to the producing party or competitively useful to the receiving party, such as proprietary pricing

information, proprietary marketing information, proprietary customer lists (including current and prospective customers), proprietary financial and accounting information, or proprietary licensing or contractual information which has been designated by producing party as **HIGHLY CONFIDENTIAL**.

4. Any party may designate a document, thing, material or information as **CONFIDENTIAL INFORMATION** or **HIGHLY CONFIDENTIAL INFORMATION** by providing, if possible, a designation on each page thereof or by identifying, in writing, such thing, material or information as **CONFIDENTIAL INFORMATION** or **HIGHLY CONFIDENTIAL INFORMATION**.

5. Until and unless the Court rules otherwise, documents, things, material and information marked or otherwise designated as **CONFIDENTIAL INFORMATION** shall be maintained in confidence by the person to whom such material is produced and shall not be disclosed to any person except to:

- a. officers, directors, managers and/or employees of a party who have a need to know the information in connection with this lawsuit;
- b. counsel of record for the respective parties, and the secretarial, clerical, litigation support, and paralegal personnel employed or retained by such counsel;
- c. outside experts and consultants, who are not officers, directors, employees, or shareholders of a party, who have been retained in connection with this action, pursuant to paragraph 9;

d. the Court and its employees (including court reporters, persons operating video equipment at depositions, translators, and any special master appointed by the Court) whose function requires them to have access to material designated as

CONFIDENTIAL INFORMATION under this Stipulated Protective Order;

e. employees of third-party contractors involved solely in one or more aspects of organization, translation, copying, filing, coding, converting, storing, or retrieving data designing programs for handling data in connection with this litigation, including providing computerized litigation support; and

f. any other person as to whom the parties must first agree.

6. **HIGHLY CONFIDENTIAL INFORMATION** shall not be disclosed to any person except to those identified in paragraphs 5(b)-5(f).

7. Notwithstanding paragraphs 5 and 6, any party or third-party witness may be shown at a deposition or examine any document if it appears from the face of the document that the witness authored or received a copy of it. With the exception of third party witnesses who either authored or previously received a copy **CONFIDENTIAL INFORMATION** or **HIGHLY CONFIDENTIAL INFORMATION**, such information may be disclosed to other persons not authorized by this Stipulated Protective Order only with the mutual agreement in writing between Counsel in advance of any disclosure to such person and only upon execution of the Acknowledgment attached hereto as Exhibit A.

8. The terms of this Stipulated Protective Order shall be applicable to any third party

who produces information which is designated by such third party as CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION, and any party seeking discovery in any manner of a third party or non-party witness shall provide to them a copy of this Stipulated Protective Order at the time any subpoena or other request for discovery is first served on such third party or non-party witness. Nothing in this paragraph permits a party to designate as CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION any information produced by a third party which that third party did not itself designate CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION, unless such information contains information proprietary or confidential to a party hereof.

9. A party seeking to disclose CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION to an outside expert or consultant shall notify counsel for the producing party of the proposed disclosure and provide the name, address, and resume of such expert or consultant at least five (5) days before disclosing CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION. The producing party may object to disclosure to any designated expert or consultant within five (5) days of receiving notice of such expert or consultant. No CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION shall be disclosed to such expert or consultant unless agreed to by the parties or ordered by the Court. Prior to disclosing CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION to an expert or consultant, such expert or consultant shall be provided with a copy of this Stipulated Protective Order, agree that he or she

will not use CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION for any purpose other than to prepare and/or provide expert testimony in this action, and sign an undertaking in the form of Exhibit A.

10. Testimony or information disclosed at a deposition may be designated by a party as CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION by indicating on the record at the deposition those portions of the testimony which contain CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION that is to be made subject to the provisions of this Stipulated Protective Order. Alternatively, a party may designate testimony or information disclosed at a deposition as CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION by notifying the other parties, in writing, within fifteen (15) days of receipt of the transcript of the deposition, those portions of the testimony that are to be designated CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION. Each party shall attach a copy of such written statement to the face of the transcript and each copy thereof in its possession, custody, or control. Whether or not designation is made at the time of a deposition, all depositions shall be treated as HIGHLY CONFIDENTIAL from the taking of the deposition until twenty (20) days after receipt of the transcript, or until receipt of the notice referred to in this paragraph, whichever occurs sooner.

11. If any party objects to a designation hereunder, that party may request in writing that the designating party rescind the designation. If the parties cannot agree, the objecting party may move the court to change the designation of any material. The designating party shall bear

the burden of establishing the need for the CONFIDENTIAL or HIGHLY CONFIDENTIAL designation. A party may object to the designation of particular CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION by giving written notice to the party designating the disputed information. The written notice shall identify the information to which the objection is made. If the parties cannot resolve the objection within ten (10) business days after the time the notice is received, it shall be the obligation of the party designating the information as CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION to file an appropriate motion requesting that the Court determine whether the disputed information should be subject to the terms of this Stipulated Protective Order. If such a motion is timely filed, the disputed information shall be treated as CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION under the terms of this Stipulated Protective Order until the Court rules on the motion. If the designating party fails to file such a motion within the prescribed time, the disputed information shall lose its designation as CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION and shall not thereafter be treated as CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION in accordance with this Stipulated Protective Order. In connection with a motion filed under this provision, the party designating the information as CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION shall bear the burden of establishing that good cause exists for the disputed information to be treated as CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION.

12. (a) Within sixty (60) days after the conclusion of this action, including, all appeals, all information designated CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION, including extracts and summaries thereof, and all reproductions thereof, shall be returned to the producing party or designating party, or shall be destroyed, at the option of counsel in possession of such copies. If the materials are destroyed, counsel responsible for the destruction shall within seven (7) days of such destruction certify to counsel for the producing or designating party that destruction has taken place. Notwithstanding the foregoing, counsel for the parties may retain the pleadings, court papers, transcripts of depositions and hearings and any exhibits thereto, expert reports, written discovery requests and responses, and correspondence despite the presence of CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION in those materials. Insofar as the provisions of this and any other Order entered in this action restrict the communication and use of information, such Order(s) shall continue to be binding after the conclusion of this litigation except (i) that there shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were filed under seal); and (ii) that a party may seek the written permission of the producing party or designating party (as appropriate), or further order of the Court with respect to dissolution or modification of any such Order(s).

(b) This Court shall retain jurisdiction over the parties and this Stipulated Protective Order for the purposes of compliance with and enforcement of its terms, and the final termination of this action shall not terminate this Stipulated Protective Order or its terms.

13. Any pleading, brief, declaration, affidavit, or other filing marked CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION or containing CONFIDENTIAL

INFORMATION or HIGHLY CONFIDENTIAL INFORMATION shall be filed electronically under seal pursuant to the requirements of D.C.COLO.LCivR 7.2 and 7.3. The Clerk of Court is directed to maintain under seal all material filed in this Action which has been marked or designated, in whole or in part, as CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION and filed in accordance with this paragraph. The sealed material shall not be opened or released from the custody of the Clerk of Court except by order of the Court.

14. The restrictions set forth in any of the proceeding paragraphs shall not apply to information or material that:

- a. was, is, or becomes public knowledge in a manner other than by violation of this Stipulated Protective Order;
- b. is acquired by the non-designating party from a third party having the right to disclose such information or material;
- c. was lawfully possessed by the non-designating party prior to the entry of this Order by the Court; or
- d. independently developed by the non-designating party.

15. Any discovery documents produced in this litigation may be later designated as “Attorney-Client Privilege” or “Attorney Work Product” promptly upon discovery by the producing party that any such privileged or protected document was produced through inadvertence, mistake or other error, and no waiver of privilege or immunity shall be deemed to have occurred. Upon such designation, the receiving attorney shall promptly collect all such

documents and copies thereof and return them to the producing party within five (5) business days. Notwithstanding the foregoing, the receiving attorney reserves the right to contest the assertion of privilege or other protection with respect to any document. The inadvertent or unintentional failure by a producing party or designating to designate specific information as CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION shall not be deemed a waiver in whole or in part of a party's claim of confidentiality as to such information. Upon notice to the receiving party of such failure to designate, the receiving party shall cooperate to restore the confidentiality of the inadvertently disclosed information, without prejudice to the receiving parties' right to challenge the designation pursuant to paragraph 11.

16. Any party may apply to the Court for modification of this Stipulated Protective Order. This Stipulated Protective Order shall remain in full force and effected after the termination of this litigation, or until cancelled or otherwise modified by Order of this Court. Nothing in this Stipulated Protective Order shall prejudice the right of any party, or any third party, to seek relief from the Court, upon good cause shown, from any of the restrictions provided above or to impose additional restrictions on the disclosure of any information.

17. Nothing in this Stipulated Protective Order shall bar or otherwise restrict counsel from rendering advice to his or her client with respect to this action and, in the course thereof, relying in a general way upon his or her examination of CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL produced or exchanged in this action; provided, however, that in rendering such advice and in otherwise communicating with a person not entitled to view any CONFIDENTIAL

INFORMATION or HIGHLY CONFIDENTIAL INFORMATION, the attorney shall not disclose the contents of CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION produced by any other party or non-party.

18. All CONFIDENTIAL INFORMATION and HIGHLY CONFIDENTIAL INFORMATION shall be stored and maintained in a manner that will prevent access to that information by unauthorized persons.

19. By agreeing to the entry of this Stipulated Protective Order, the parties adopt no position as to the authenticity or admissibility of the documents produced or testimony subject to it.

20. In the event that any party or individual described herein is served with a subpoena, Public Information Act request, or other judicial process demanding the production or disclosure of any information designated CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION, such party or individual shall (a) provide counsel for the party that produced the CONFIDENTIAL INFORMATION and/or HIGHLY CONFIDENTIAL INFORMATION with a copy of such subpoena or other judicial process within five (5) business days following receipt thereof and (b) shall initially object thereto to the extent permitted by law, citing this Stipulated Protective Order. Nothing herein shall be construed as requiring such party or individual to further challenge or appeal any order requiring production of this CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION.

21. Nothing herein shall preclude the parties in the lawsuit from filing any subsequent proceeding involving the parties and/or requesting any discovery related thereto.

22. The Court reserves the right, upon Motion or upon its own Motion, to amend or modify this Stipulated Protective Order for good cause shown.

DATED at Denver, Colorado, this 23rd day of November, 2009.

BY THE COURT:

s/Craig B. Shaffer

Craig B. Shaffer
United States Magistrate Judge

AGREED AND APPROVED:

s/ Leslie Gallagher Moylan

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s/ Brett N. Dorny (With Permission)

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ATTORNEY FOR DEFENDANTS
COOL RADIO, LLC
THOMAS DOBREZ, and
GABRIE HIGBIE

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:09-cv-02076-REB-CBS

NRC BROADCASTING, INC.,

Plaintiff,

v.

COOL RADIO, LLC,
THOMAS DOBREZ, and
GABRIE HIGBIE,

Defendants.

PROTECTIVE ORDER NOTICE

STATE OF_)

)ss.

COUNTY OF_)

I, _____, being first duly sworn, state that:

My address and phone number

are _____

My present employer is _____ and the address
of my employer is _____.

I have received and read a copy of the Stipulated Protective Order in this case signed by United States Magistrate Judge Shaffer on _____ in the case of NRC Broadcasting, Inc. v. Cool Radio, LLC, et al., Civil Action No. 09-cv-02076-REB-CBS, in the United States District Court for the District of Colorado.

I understand that I can be held in contempt of court for violating the terms of the Stipulated Protective Order and I submit to the jurisdiction of the Court referenced above for the purposes of the Stipulated Protective Order.

I promise that I have not and will not divulge, or undertake to divulge to any person or recording device any CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION shown or told to me except as authorized in the Stipulated Protective Order. I will not use the information for any purpose other than this litigation.

[signature on next page]

I have carefully read and understand the provisions of the Stipulated Protective Order,
and I will comply with all of its provisions.

(Signature)

(Print Name)

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____ by

_____.
WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____