

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

In the Matter of)	
)	
UNITED SYSTEMS, INC.)	FOIA Control No. 2007-331
)	
On Request for Inspection of Records)	

MEMORANDUM OPINION AND ORDER

Adopted: September 25, 2009

Released: September 30, 2009

By the Commission:

1. By this memorandum opinion and order, we deny an application for review filed by United Systems, Inc. (United)¹ seeking review of the Wireline Competition Bureau's (WCB) denial of United's Freedom of Information Act (FOIA) request.² United requested records concerning the review of applications by several school districts for funding under the Commission's E-Rate program.³ For the reasons set forth below, we affirm WCB's ruling that the documents requested by United are exempt from disclosure pursuant to FOIA Exemptions 7(A) and 7(E).

I. BACKGROUND

2. United is a provider of internal connections products and services for school districts in Oklahoma participating in the Commission's E-Rate Program.⁴ Under this program, a component of the universal service support mechanism, eligible schools, libraries, and consortia may apply for discounts on telecommunications services, Internet access, and internal connections.⁵ The E-Rate Program is administered for the Commission by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC), a private, not-for-profit organization.⁶

3. United's FOIA Request sought records relating to SLD's review of E-Rate funding applications by specific school districts (listed in Exhibits 1 and 2 of the Request), each of which specified United as their service provider.⁷ The Request sought:

¹ Letter from Cynthia B. Schultz and Paul C. Besozzi to Sam Feder, Esq., General Counsel (Aug. 15, 2007) (AFR), *as supplemented* October 30, 2007 (AFR Supp).

² Letter from Cynthia B. Schultz to Managing Director (May 18, 2007) (Request).

³ See paragraph 2, *infra*.

⁴ AFR at 1; AFR Supp. at 1. See also <http://www.unitedsystemsok.com/education.html> (United website).

⁵ See, e.g., *Academy of Careers and Technologies San Antonio, TX*, 21 FCC Rcd 5348, 5348-49 ¶ 2 (2006).

⁶ See, e.g., *United Talmudical Academy, Brooklyn, New York*, 15 FCC Rcd 423, 424-25 ¶ 4 (2000). See also <http://www.usac.org/fund-administration> (information concerning USAC).

⁷ AFR at 1-2. Request, Exhibit 1 (Funding Year 2005 – 45 school districts), Exhibit 2 (Funding Year 2006 – 55 school districts).

the following information and materials pertaining to the schools listed in Exhibits 1 and 2: (1) identification of any schools listed in Exhibits 1 and 2 that have been subject to Selective Review; (2) identification of any schools listed in Exhibits 1 and 2 that have been subject to a PAIR review; (3) a copy of the PAIR letter(s) sent to each school listed in Exhibits 1 and 2 and the schools' response thereto; and (4) identification of any schools listed in Exhibits 1 and 2 that have been subject to Special Compliance Review.⁸

4. The various forms of review mentioned in the FOIA Request are conducted by SLD as part of the E-Rate funding process. Pursuant to this process, to obtain funding, the applicant school district, after formulating a technology development plan, first submits to SLD an FCC Form 470 describing the plan.⁹ The Form 470 is posted on the USAC website for at least 28 days, during which time interested service providers, such as United, may submit bids to provide the requested services. Under the Commission's competitive bidding rules, service providers may not participate in the applicant's selection of a provider. After entering into a contract with the service provider, the applicant files an FCC Form 471, describing the contracted services.

5. SLD reviews the application to ensure compliance with the Commission's rules. SLD may also initiate Selective Review by submitting to the applicant a Selective Review Information Request (SRIR) seeking additional information about the data submitted in the Form 471.¹⁰ Selective Review may be triggered by a variety of criteria that raise concern about an applicant.¹¹ Pattern Analysis Review occurs in instances in which SLD detects a pattern of similar language in multiple Form 470s that suggest improper participation by providers in formulating the applicants' proposals, in violation of the competitive bidding rules.¹² A Pattern Analysis Information Request (PAIR) is sent to the affected applicants to acquire additional information. Special Compliance Review is initiated by SLD when it believes that certain circumstances warrant a more detailed review of an applicant's compliance with applicable FCC and USAC rules, regulations, policies, and precedents.

6. United indicates that it filed its FOIA Request because of concerns that "Targeted Action" has been taken against school districts solely because they specified United as their service provider.¹³ United claims that there has been a lengthy delay in the issuance of funding commitments to the school districts listed in Exhibits 1 and 2, all of which specify United as their service provider.¹⁴ United further alleges that it is aware of PAIR letters that advise the applicant in question not to consult with United about the matter.¹⁵ United states that it has been unable to

⁸ Request at 2.

⁹ See *Academy of Careers and Technologies San Antonio, TX*, 21 FCC Rcd at 5348-49 ¶ 2 (describing process).

¹⁰ See <http://www.usac.org/sl/applicants/step08/undergo-selective-review/> (describing Selective Review process).

¹¹ See *Inter-Tel Technologies, Inc.*, 19 FCC Rcd 5204, 5205-06 ¶ 5 (2004).

¹² See *Academy of Careers and Technologies San Antonio, TX*, 21 FCC Rcd at 5349-50 ¶¶ 3-6.

¹³ See Request at 2.

¹⁴ See AFR at 1-2; AFR Supp at 1-2.

¹⁵ See AFR at 2; AFR Supp. at 2.

obtain information directly from USAC¹⁶ and characterizes itself as an interested and aggrieved party trying to ascertain the basis for USAC's actions.¹⁷

7. WCB denied United's request, and indicated that it was withholding 218 pages of responsive documents.¹⁸ WCB cited four statutory exemptions as the bases for withholding these documents. First, WCB relied on FOIA Exemption 5, which covers "inter-agency and intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."¹⁹ WCB found that the documents United requested were covered by the deliberative process privilege included under Exemption 5 because the documents discuss deliberations concerning the E-Rate application review process and disclosure would harm the deliberative process.²⁰

8. WCB also relied on two provisions of FOIA Exemption 7, which applies to "records or information compiled for law enforcement purposes."²¹ WCB found that records relating to proceedings to ensure compliance with the Commission's E-Rate Program are enforcement records²² within the meaning of the FOIA exemption. Exemption 7(A) exempts law enforcement records that "could reasonably be expected to interfere with enforcement proceedings."²³ WCB found that the release of the applicant's or service provider's identity, for example, could interfere with USAC enforcement proceedings by disclosing the nature and subject of USAC's investigation, impeding USAC's ability to gather information, and enabling an entity under investigation to destroy or alter critical documents.²⁴ WCB also relied on Exemption 7(E), which exempts law enforcement documents that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law."²⁵ WCB withheld reviewers' notes and communications discussing review related to Special Review and Special Compliance Review, as well as PAIR letters on the grounds that their

¹⁶ See AFR at 2; AFR Supp. at 1-3.

¹⁷ See AFR at 2. United suggests that as an aggrieved party it has the right to obtain the evidence against it. AFR Supp at 2. United's reasons for seeking information by means of the FOIA, however, have no bearing on whether we will grant its request. As a general matter, the identity of the FOIA requester is irrelevant to the merits of the request. See *U.S. Dept. of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 771 (1989) ("[Unless the requesting party can claim a privilege against disclosure], the identity of the requesting party has no bearing on the merits of his or her FOIA request [the requester's] rights are no different from those that might be asserted by any other third party").

¹⁸ Letter from Kirk S. Burgee, Chief of Staff to Mrs. Cynthia Schultze (Jul. 17, 2007) (Response). Under established policy, FOIA requests seeking USAC records are directed to the Commission, where WCB is deemed the custodian of the records. See *Inter-Tel Technologies, Inc.*, 19 FCC Rcd at 5204 n.3. See also <http://www.usac.org/privacy.aspx>.

¹⁹ 5 U.S.C. § 552(b)(5).

²⁰ Response at 2, principally citing *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 149 (1975).

²¹ 5 U.S.C. § 552(b)(7).

²² Response at 2.

²³ 5 U.S.C. § 552(b)(7)(A).

²⁴ Response at 2.

²⁵ 5 U.S.C. § 552(b)(7)(E).

disclosure would reveal USAC techniques and guidelines for conducting investigations.²⁶ Finally, WCB also found that FOIA Exemption 2 permits the withholding of documents that, if released, would risk circumvention of a legal requirement.²⁷ As an additional matter, WCB found that no portions of the withheld documents could reasonably be segregated and disclosed. United sought review of WCB's ruling on August 15, 2007.²⁸ In its application for review, United challenges the applicability of each exemption relied on by WCB. As discussed in greater detail below, we find that WCB correctly applied Exemptions 7(A) and 7(E) in withholding the requested documents, and that we therefore need not reach the question of whether WCB properly withheld the documents pursuant to Exemptions 2 and 5.

II. DISCUSSION

9. United questions the general applicability of Exemption 7 on several grounds. United contends that USAC proceedings cannot be deemed law enforcement for purposes of the FOIA because USAC is a private entity²⁹ with limited administrative functions and not a federal agency with law enforcement authority.³⁰ United further contends that USAC review does not constitute a pending enforcement proceeding for purposes of Exemption 7(A) because such review is merely a part of USAC's routine processing of E-rate applications and is not an enforcement activity.³¹ Additionally, United observes that the information it seeks has already been disclosed to the school districts that have been subjected to review and that in acknowledging that PAIR letters exist, USAC has disclosed the general nature and scope of the investigation. Thus, in United's view, its FOIA request would not result in new, damaging disclosures. As to Exemption 7(E), United asserts that none of the documents requested (in particular the PAIR letters) are the type of "internal agency material" that are covered by Exemption 7(E).³² Rather, according to United, they are public documents that should have been served on any party interested in the application.

10. We find, as did WCB, that the material requested by United falls within the scope of Exemption 7. Exemption 7 applies to several categories of "records or information compiled for law enforcement purposes."³³ We reject United's contentions that records related to USAC review are not covered by Exemption 7, either because USAC is not a government agency with law enforcement powers or because E-Rate application review is an administrative, rather than a law enforcement function. The term "law enforcement" in Exemption 7 applies to regulatory

²⁶ Response at 2-3.

²⁷ See 5 U.S.C. § 552(b)(2) (exempting records "related solely to the internal personnel rules and practices of an agency").

²⁸ See note 1, *supra*.

²⁹ Additionally, United notes (AFR at 2 n.3, 13) that USAC implements its administration of the E-Rate Program using a private, shareholder-owned firm called Solix. See http://www.solixinc.com/source/Solix_AboutUs_2213.asp; http://www.solixinc.com/source/Solix_CurrentPrograms_2491.asp.

³⁰ AFR at 13-14, 16. United specifically notes that USAC refers legal violations to the Commission for enforcement and for possible further referral to the United States Department of Justice. *Id.* at 16.

³¹ *Id.* at 15.

³² *Id.* at 15-16.

³³ See 5 U.S.C. § 552(b)(7).

enforcement proceedings, such as those of the FCC, in addition to criminal and civil actions.³⁴ In this regard, we find unpersuasive United's arguments that USAC does not have law enforcement powers in its own right.³⁵ USAC administers the E-Rate Program on behalf of the Commission³⁶ and USAC's actions are reviewable by the Commission.³⁷ Thus, the regulatory authority involved here is ultimately that of the Commission,³⁸ just as it was in the case of the radio regulatory authority involved in *Kay*,³⁹ in which the Commission exercised that authority directly and Exemption 7 was found to apply.

11. Moreover, we find that the E-Rate application review process constitutes a law enforcement function to which Exemption 7 applies, as opposed to an administrative function to which it would not.⁴⁰ To constitute a law enforcement function, agency action must meet a two-prong test.⁴¹ First, an agency must be able to identify a particular individual or a particular incident as the object of its investigation and the connection between that individual or incident and a possible violation of federal law.⁴² Second, the nexus between the investigation and one of the agency's law enforcement duties must be based on information sufficient to support at least a colorable claim.⁴³ As explained above,⁴⁴ the review process in this case is triggered by several

³⁴ See *Kay v. FCC*, 976 F.Supp. 23, 37 (D.D.C. 1997), *aff'd*, 172 F.3d 919 (D.C. Cir. 1998). The exemption applies both to pending actual enforcement proceedings and reasonably foreseeable proceedings that are regarded as prospective. *Id.* at 38. See also *Daniel E. Riordan*, 22 FCC Rcd 4316, 4317-19 ¶¶ 6-9 (2007).

³⁵ See AFR at 13-14.

³⁶ See 47 C.F.R. § 54.701(a) (designating USAC as administrator of the universal service support mechanisms); 47 C.F.R. §§ 54.702(a),(j) (USAC shall be responsible for administering programs and must provide Commission with full access to data collected pursuant to administration of universal service support programs); *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, 20 FCC Rcd 11308, 11310 ¶ 4 (2005) (USAC administers the universal service fund in accordance with Commission rules and orders); *Changes to the Board of the National Exchange Carrier Association, Inc.*, 13 FCC Rcd 25058, 25067-68 (1998) (the Commission retains the ultimate control over the operation of the federal universal service support mechanisms through its authority to establish rules governing the support mechanisms and its review of administrative decisions that are appealed to the Commission).

³⁷ See 47 C.F.R. § 54.719(c) (any person aggrieved by an action of USAC may seek review from the Commission); 47 C.F.R. § 54.722(a) (requests for review will be acted on by WCB in the first instance, except for novel questions of fact, law or policy, which will be acted on by the full Commission). The Commission may review USAC decisions *sua sponte*. See *Changes to the Board of the National Exchange Carrier Association, Inc.*, 13 FCC Rcd at 25093 ¶ 68 (granting WCB delegated authority to review USAC decisions on its own motion).

³⁸ Indeed, United recognizes that the Commission can impose penalties against companies such as United if they fail to follow Commission rules. See AFR at 14.

³⁹ See note 34, *supra*.

⁴⁰ See *Pratt v. Webster*, 673 F.2d 408, 416, 418-19 (D.C. Cir. 1982) (distinguishing between a "mixed-function" agency's law enforcement and administrative functions). See also *Kay*, 976 F. Supp. at 37 (finding that documents compiled by FCC were for law enforcement purposes).

⁴¹ See *Pratt*, 673 F.2d at 420-21.

⁴² See *id.* at 420.

⁴³ See *id.* at 421.

factors that raise questions about a specific applicant's compliance with the Commission's rules. The review process involves both a potential violation by a specific individual and factors raising a colorable claim against that individual. It therefore meets both prongs of the test and is properly characterized as a law enforcement function. Having determined that the context here is one of law enforcement to which Exemption 7 generally applies, we turn to the specific Exemption 7 provisions which WCB invoked in denying United's request for disclosure of certain documents.

12. We first find that the material requested by United is properly withheld under Exemption 7(A). Exemption 7(A) permits withholding law enforcement records to the extent that the production of such records "could reasonably be expected to interfere with enforcement proceedings."⁴⁵ An agency may demonstrate the potential for interference by showing that disclosure would, for example, "reveal the scope and direction of the investigation and could allow the target to destroy or alter evidence, fabricate fraudulent alibis, and intimidate witnesses."⁴⁶ As discussed above,⁴⁷ United is aware of circumstances suggesting that United, as a provider of services, is under scrutiny by USAC. United seeks to learn the nature and scope of the matters that USAC is examining, information that USAC does not wish to disclose to United.⁴⁸ Depending on the outcome of this examination, USAC, and ultimately the Commission, could take adverse action affecting United, in response to any assessed violations of the Commission's rules. We find that these circumstances are inconsistent with United's assertion that Exemption 7(A) does not apply because there is no USAC "investigation."⁴⁹ We agree with WCB that allowing United to see the specifics of PAIR letters sent to particular school districts would give United insight into the "nature and subject" of USAC's scrutiny by enabling it to discern a pattern of school districts that have been made subject to the various kinds of review. This could result in the consequences noted by the courts, such as impeding USAC's ability to gather information or leading to the destruction or alteration of critical documents.⁵⁰ We therefore affirm WCB's determination that the records requested by United should be withheld under Exemption 7(A).⁵¹

⁴⁴ See paragraph 5, *supra*.

⁴⁵ 5 U.S.C. § 552(b)(7)(A).

⁴⁶ *North v. Walsh*, 881 F.2d 1088, 1097 (D.C. Cir. 1989). See *Kay*, 976 F.Supp. at 39 (agency may establish interference with law enforcement proceeding by demonstrating that premature release of records could give litigant the ability to construct defenses to avoid charges entirely); see also *Campbell v. Dep't of Health and Human Services*, 682 F.2d 256, 265 (D.C. Cir. 1982) (indicating that interference would occur where requester was an actual or potential target of an enforcement proceeding who seeks early discovery of the strength of the government's case in order to tailor his defense).

⁴⁷ See paragraph 6, *supra*.

⁴⁸ Because United, as a target of investigation, is not aware of which school districts are under review or of the contents of the PAIR letters, it is irrelevant that the school districts under review already are aware. As United notes, USAC has advised the affected school districts not to discuss these matters with United, indicating USAC's view that disclosure of this information to United would interfere with the investigation. AFR at 2. Compare with *Wireless Consumer Alliance*, 20 FCC Rcd 3874, 3880-81 ¶ 20 (2005) (Exemption 7(A) does not apply where documents in question are already in the possession of the targets of the investigation).

⁴⁹ See AFR at 14-15 ("... [T]he Bureau has painted no prospect that any [law enforcement] proceeding is in the offing").

⁵⁰ See Response at 2.

⁵¹ We note that United's Exemption 7(A) discussion is difficult to follow, because under its Exemption 7(A) heading, it mostly discusses Exemption 7(E). See AFR at 14-15.

13. We further find that the material requested by United is properly withheld under Exemption 7(E). Exemption 7(E) permits withholding law enforcement records to the extent that production of such records “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”⁵²

14. At the outset, we disagree with United’s contention that Exemption 7(E) applies only to an agency’s internal materials.⁵³ Such an interpretation would tend to make Exemption 7(E) superfluous, because it would mean that records that could be withheld under Exemption 7(E) could also be withheld under Exemption 2, which permits withholding internal material if disclosure may risk circumvention of agency regulation.⁵⁴ In some cases, such as with respect to internal agency manuals and guidelines, both Exemption 2 and Exemption 7(E) might apply to exempt the same material from disclosure.⁵⁵ Exemption 7(E), however, has also been applied to materials that are not internal, provided that their specifics are not widely known to the public.⁵⁶ Thus, for example, courts have upheld withholding under Exemption 7(E) the specific questions asked during polygraph examinations, on the grounds that giving subjects of future polygraph examinations the opportunity to examine specific sequences of questions would enable them to undermine the integrity of the examination.⁵⁷ Questions actually asked during a polygraph examination would not be internal material; although they are not disclosed to the general public, they are obviously disclosed to the subject of the examination. Accordingly, although we do not deem the records requested by United to be predominately internal, we find that this does not bar application of Exemption 7(E).

⁵² 5 U.S.C. § 552(b)(7)(E).

⁵³ See AFR at 15-16.

⁵⁴ See *Schwanner v. Dep’t of the Air Force*, 898 F.2d 793, 794 (D.C. Cir. 1990) (Under Exemption 2, material that meets the test of “predominant internality” will be withheld if “disclosure may risk circumvention of agency regulation” [high 2] or “the material relates to trivial administrative matters of no genuine public interest” [low 2]). See also *Crooker v. Bureau of Alcohol, Tobacco & Firearms*, 670 F.2d 1051, 1065 (D.C. Cir. 1981) (holding that it would be “inconsistent to no small degree” if Exemption 2 would not bar the disclosure of investigatory techniques when contained in a manual restricted to internal use, but that Exemption 7(E) would exempt from disclosure the release of such techniques if contained in an “investigatory record”).

⁵⁵ See *Tax Analysts v. IRS*, 294 F.3d 71, 79 (D.C. Cir. 2002) (holding that Exemption 7(E) applies to internal agency materials relating to guidelines, techniques, sources, and procedures for law enforcement investigations or procedures, such as internal IRS memorandums). See also *Dorsett v. U.S. Dep’t of the Treasury*, 307 F.Supp.2d 28, 35-37, 40 n.11 (D.D.C. 2004) (court does not reach question of whether internal investigation document used to analyze and profile individuals was exempt under Exemption 7(E) because court already concluded that it was exempt under Exemption 2); *Daniel E. Riordan*, 22 FCC Rcd at 4317-20 ¶¶ 5-13 (applying both Exemptions 7(E) and 2).

⁵⁶ See *Coleman v. FBI*, 13 F.Supp.2d 75, 83-84 (D.D.C. 1998) (withholding documents related to FBI techniques that had already been publicly identified by the FBI, where the specific manner and circumstances of the techniques were not generally known to the public).

⁵⁷ See *Blanton v. Dep’t of Justice*, 64 Fed. Appx. 787, 788-89 (D.C. Cir. 2003) (withholding polygraph question used to interrogate individuals in particular investigation); *Coleman*, 13 F.Supp.2d at 83-84 (release of details concerning polygraph examination involving requester withheld because disclosure of polygraph matters would lessen their effectiveness); *Edmonds v. FBI*, 272 F.Supp.2d 35, 55-56 (D.D.C. 2003) (release of polygraph information involving requester could defeat the usefulness of polygraph examinations in the future).

15. We find that disclosure of the records requested by United would risk circumvention of the law. Examining a list of school districts subject to various forms of review could give a knowledgeable person insight into the criteria USAC uses to select which applications to review and thereby assist such a person in evading USAC scrutiny. Similarly, the contents of specific PAIR letters and responses could provide insight into USAC's investigatory techniques, standards, and guidelines that would facilitate attempts to frustrate USAC review. As WCB aptly stated, the documents requested "would supply detailed information concerning the review process and provide a blue print for those wishing to frustrate or defeat such reviews."⁵⁸ Thus, Exemption 7(E) also warrants withholding the records requested by United.⁵⁹ Because we agree that the records requested should be withheld under Exemption 7, we need not and do not reach the question of whether Exemptions 2 and 5 provide additional bases to withhold these documents.

16. As an additional matter, we have examined the records at issue here to determine whether any additional portions could be segregated and released, or whether we should as a matter of our discretion release the records we have found are exempt from disclosure under the FOIA.⁶⁰ We have reviewed the records responsive to United's request to determine whether any portions may be segregated and released, and have found none. Accordingly, our disposition fulfills the mandate of the FOIA and Attorney General Holder's FOIA Memo to release segregable portions of the records. Moreover, while it is true that "[e]ven when particular information falls within the scope of a FOIA exemption, federal agencies generally are afforded the discretion to release the information on public interest grounds,"⁶¹ we decline to exercise our discretion to do so here. We do not discern any overriding public interest in releasing the records that we have determined are exempt from disclosure under FOIA Exemption's 7(A) and 7(E) given the substantial governmental interests attendant to those records.⁶²

⁵⁸ Response at 2.

⁵⁹ See *Inter-Tel Technologies, Inc.*, 19 FCC Rcd at 5205-06 (release of records regarding selective review process would signal which applications were subject to selective review and permit the public to ascertain the attributes that triggered such reviews, enabling them to avoid triggering selective review, even where their practices would otherwise justify it); *Donna Harrington-Lueker*, 16 FCC Rcd 16591, 16592 (2001) (release of documents regarding review process would give detailed information regarding the review process and provide a blueprint for those wishing to frustrate or defeat such reviews); *Daniel E. Riordan*, 22 FCC Rcd at 4317-18 ¶ 7 (release of the E-Rate review procedures would cause great damage to the E-Rate program). As this analysis suggests, we see no way of segregating any non-exempt material that would have any meaning to United. Accordingly, we reject United's argument (Response at 16) that WCB had no basis for concluding that the records sought contain no segregable information. See *Daniel E. Riordan*, 22 FCC Rcd at 4321 ¶ 14 (finding no segregable portions of procedural guidelines).

⁶⁰ See *Memorandum to Heads of Executive Departments and Agencies, Freedom of Information Act*, 74 Fed. Reg. 4683 (2009) (President Obama's memorandum concerning the FOIA); *The Freedom of Information Act (FOIA)*, available at <<http://www.usdoj.gov/ag/foia-memo-march2009.pdf>> (Attorney General Holder's FOIA Memo).

⁶¹ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, 24818 (1998), citing *Chrysler Corp.*, 441 U.S. at 292-93. See also Attorney General Holder's FOIA Memo, *supra*.

⁶² See U.S. Department of Justice, Office of Information Policy, FOIA Post, *President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines Creating a "New Era of Open Government,"* (2009), available at <<http://www.usdoj.gov/oip/foiapost/2009foiapost8.htm>> (recognizing

III. ORDERING CLAUSES

17. Accordingly, it is ordered that the application for review filed by United Systems, Inc. IS DENIED. United may seek judicial review of this action pursuant to 5 U.S.C. § 552(a)(4)(B).

18. The following officials are responsible for this action: Chairman Genachowski, and Commissioners Copps, McDowell, Clyburn, and Baker.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

that discretionary release of records is less likely when the requirements of Exemption 4 are met for withholding records).