

**Statement of Commissioner Michael O’Rielly
Approving in Part and Dissenting in Part**

Re: In the Matter of Mitchell F. Brecher on Request for Inspection of Records, FOIA Control No. 2014-338

While I agree with the Wireline Competition Bureau’s finding that the records at issue are exempt from release under FOIA Exemption 7(E), and therefore reach the same outcome in this matter, I must dissent from the application of Exemption 5 to communications between the FCC and the Universal Service Administrative Company (“USAC”).

USAC is neither a part of the FCC nor a federal agency, but an independent, private nonprofit corporation governed by a 19-member board composed primarily of industry and advocacy group representatives. Its employees work for the corporation, not for any federal government agency. This was the intentional design when the Commission “created” it almost two decades ago, and the independence of USAC is often touted when necessary for purposes of passing the buck or insulating USAC from Commissioners’ input. The Commission cannot redefine this relationship at will to suit its needs.

FCC-USAC communications are clearly neither intra-agency nor inter-agency communications protected by the deliberative process privilege, and should not be treated as such.