



Federal Communications Commission
Washington, D.C. 20554

December 12, 2024

Scott Madison


Re: FOIA Control No. 2024-000602-A

Dear Mr. Madison:

This letter responds to the application for review you filed in response to the Federal Communications Commission (Commission or FCC) Enforcement Bureau's decision dismissing your Freedom of Information Act (FOIA) request of June 28, 2024, as supplemented by email dated July 15, 2024.¹ The *FOIA Request* seeks a copy of a record of the Commission directing the Universal Service Administrative Company to suspend all funding committed to Network Services Solution (NSS) in connection with the Commission's Notice of Apparent Liability, DA 16-158, 31 FCC Rcd 12238 (2016) (the NAL).² As explained below, we dismiss your application for review under our delegated authority for failure to articulate specific grounds for review.³

By way of background, the *FOIA Request* was assigned Control No. 2024-000602 and was referred to the Enforcement Bureau (the "Bureau"). Upon review of the *FOIA Request* and the supplemental material you submitted on July 15, 2024, the Bureau concluded that the *FOIA Request* was fully encompassed by your previous FOIA request, FOIA Control No. 2022-000180 (submitted Jan. 7, 2022), which sought the same record and to which the Bureau responded that no responsive records were identified.⁴ Further, the Bureau "found no information that provided any evidence that the records you request exist in any location that was not searched or any other indication that the prior search for responsive records was not diligent, reasonable, and complete."⁵ The Bureau accordingly closed the *FOIA Request* as duplicative.⁶ In advising you of your right to appeal, the Bureau informed you that the permissible grounds for challenging the *2024 FOIA Decision* were limited to the Bureau's determination that the *FOIA Request* was functionally duplicative to the earlier request you filed and received a response

¹ See Letter from Scott Madison to the Office of General Counsel, FCC (Oct. 11, 2024) (*FOIA Application for Review*).

² See FOIA Control No. 2024-000602 (submitted June 28, 2024) (*FOIA Request*); see also E-mail from Scott Madison to Carla Conover, Investigative Counsel, Fraud Division, FCC Enforcement Bureau (July 15, 2024) (*July 15 Supplement*).

³ See 47 C.F.R. § 0.251(j) (as the Commission's Chief FOIA Officer, "the General Counsel is delegated authority to dismiss FOIA applications for review that are untimely, repetitious, or fail to articulate specific grounds for review.").

⁴ See Letter from Meghan Ingrisano, Chief, Fraud Division, Enforcement Bureau, FCC to Scott Madison, FOIA Control No. 2024-000602 (Sept. 3, 2024) (*2024 FOIA Decision*).

⁵ See *2024 FOIA Decision* at 1.

⁶ *Id.*

to, and that an application for review of its decision must be filed with the Office of General Counsel within 90 calendar days.⁷

You filed a timely application for review, in which you state, in relevant part:

I note that in the FCC's response dated September 3, 2024, that [sic] functionally duplicative requests will not be considered. The reason I am submitting this appeal to the Office of General Counsel is that I did not submit an appeal request for earlier FOIA's [sic] I had submitted requesting the same information. I am adhering to the guidance provided to me by the Office of Government Information Services, which advised me to file a new FOIA and also submit an appeal to the Office of General Counsel.⁸

The remainder of the *FOIA Application for Review* appears to be an attempt to raise and prosecute certain objections you have with respect to the NAL itself and not to the *2024 FOIA Initial Decision*.

Apart from stating that you acted upon advice from the Office of Government Information Services (OGIS), the *FOIA Application for Review* does not attempt to demonstrate how the Bureau erred in reaching its conclusion that the *FOIA Request* was duplicative to requests that you filed previously, nor does it present any legal arguments related to the Bureau's finding for the Commission's consideration. In fact, the language quoted above makes plain both that you have filed multiple FOIA requests for the same information⁹ and that you are invoking the Commission's FOIA procedures in this case because you did not timely seek administrative review of the Commission's decisions previously. These points tend to confirm, rather than undermine, the appropriateness of the Bureau's actions here.

Moreover, the fact that you were operating on advice from OGIS is not evidence of error on the part of the Bureau. While OGIS serves important functions under the FOIA, OGIS cannot supersede the Commission's administrative review procedures. As was made clear at the time, our procedures authorized you to seek review of the initial decisions with respect to your FOIA requests Control Nos. 2022-000180 and 2021-000306, by filing an application for review with the Office of General Counsel within 90 calendar days of those decisions.¹⁰ You admit that you did not timely challenge either decision. And, regardless of OGIS's advice, our procedures do not permit you to resuscitate those appeal opportunities by means of filing yet another identical, or functionally identical, FOIA request after the appeal deadlines have passed.

In sum, the *FOIA Application for Review* does not attempt to demonstrate why the Bureau's response was in error, nor does it present any legal arguments regarding the Bureau's finding for the

⁷ *Id.* ("As applied to the instant matter, we note that the grounds for any application for review are limited to the determination that the instant request is functionally duplicative to requests that have already been filed and responded to.").

⁸ *FOIA Application for Review* at 1.

⁹ See *FOIA Request*; FOIA Control No. 2022-000108 (submitted Jan. 7, 2022); FOIA Control No. 2021-000306 (submitted Mar. 4, 2021).

¹⁰ See Letter from Meghan Ingrisano, Chief, Fraud Division, Enforcement Bureau, FCC to Scott Madison, FOIA Control No. 2022-000180 (June 13, 2023); See also Letter from Mercedeh Momeni, Deputy Division Chief, Fraud Division, Enforcement Bureau, FCC to Scott Madison, FOIA Control No. 2022-000180 (May 3, 2021).

Commission's consideration. Accordingly, we dismiss your application for review under section 0.251(j) of the Commission's rules for failure to articulate specific grounds for review.¹¹ To the extent that you seek to prosecute your objections to matters related to the NAL, the Commission's FOIA process is not the proper avenue to raise your concerns.

Under section 1.115 of the Commission's rules, you have the right to seek review by the Commission of our dismissal of the *FOIA Application for Review* under delegated authority.¹² Applications for review filed with the Commission must concisely and plainly state the question presented.¹³ In addition, your application for review must specify, with particularity, the factors that warrant the Commission's consideration of the Office of General Counsel's action, the respects in which that action should be changed, and the form of relief being sought.¹⁴ Your application for review should not solely reiterate arguments about the NAL or the merits of your underlying FOIA request.¹⁵

Should you elect to pursue Commission review, consistent with the standards set forth above, you must submit a new application for review which must be *received* within 30 calendar days of the date that appears on this letter.¹⁶ You may file this application for review by mailing it to Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554, or it may be submitted electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action AFR Dismissal." Your application for review will be addressed consistent with sections 1.115(g) and (h) of the Commission's rules.

If you would like to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison
Federal Communications Commission, Office of the Managing Director, Performance
Evaluation and Records Management
45 L Street NE
Washington, DC 20554
(202) 418-0440
FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Federal FOIA Ombudsman's office within the OGIS offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration

¹¹ See 47 CFR § 0.251(j).

¹² *Id.* § 1.115.

¹³ See *id.* § 1.115(b).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *id.* §§ 1.115(d), 1.4(b)(5). See also *id.* § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

Mr. Scott Madison
December 12, 2024

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Sincerely,

/s/

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Assistant General Counsel
Office of General Counsel

cc: FCC FOIA Office