

Walter Steimel, Jr.
202/452-4893

SteimelW@gtlaw.com
40359.020004

September 4, 2009

VIA ELECTRONIC FILING

Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Request for Confidential Treatment of Documents
and Information Produced to the FCC
File No. 0429-EX-ST-2009

To Whom it May Concern:

This letter seeks confidential treatment for certain information and documents provided with the application of United Water, Inc. ("United") for an Experimental License, and for the application itself, under the File Number noted above.

Pursuant to 47 C.F.R. §§ 0.457 and 0.459, United requests that its application and the attachments to the application ("Application") are accorded confidential treatment. United is requesting confidentiality because it will be divulging detailed information regarding contracts, business relationships, operations, marketing strategy, revenues, and issues which are considered confidential information under the relevant statutes and rules.

The above-mentioned details of United's operation constitute highly confidential trade secrets which the company has a right to keep from being disclosed to its competitors and the public at large. Much of the information provided in its Application constitutes either trade secrets or business proprietary information, the disclosure of which would subject United to significant competitive harm. United cannot afford to let its competitors know about its contemplation of entering the US market, the type of system or system configuration it is considering, or the designs, test analyses and engineering resolution of RF and similar matters.

The instant request for confidentiality comports with the regulations and rulings of the FCC. The Commission has recognized that if disclosure of information submitted to the agency

would result in competitive harm to the submitting party, the information must remain confidential. *Jeffrey A. Krause*, FOIA Control No. 96-80, MO&O, 11 FCC Rcd 10819 (1996) (citing *National Parks and Conservation Assn' v. Morton*, 498 F.2d 765, 770-71 (D.C. Cir. 1974)). In addition, the FCC has held that where, as here, a company provides information regarding its policies, practices, and procedures (especially as to its management decisions, marketing strategies, sales outlets, distribution means, engineering designs and test reports, internal dealings, operations, suppliers, distributors and expenses), the information must remain confidential due to the potential for its disclosure to cause substantial competitive harm to the disclosing company. *RCA Global Communications, Inc.*, FOIA Control No. 80-220, MO&O, 49 RR. 2d (P&F) 587 ¶ 17 (1981).

In the *Matter of Checkpoint Systems, Inc.*, 55 F.C.C.2d 268 (1975), Checkpoint requested access to applications for equipment authorization (certification) filed by Knogo for two field disturbance sensors and all supporting materials, equipment, and Commission requests. The Commission had previously determined that certain documents submitted in support of Knogo's certification applications were to be withheld from public inspection for a period of three years due to the fact that documents contained specific details (such as circuit parameters and physical layouts) of a unique physical embodiment of the state of the art theory application used in the development of the equipment. This information was found to contain trade secrets warranting confidential treatment under the FCC's rules. The Commission believed that a competitor could take advantage of any technological advances made by Knogo and thereby cause injury to its competitive position. Checkpoint's application for review was denied in light of the determinations the Commission had previously made.

In *Michael R. Reynolds; On Request for Inspection of Records*, 89 FCC 2d 450 (1982), Reynolds sought access to the complete file of the approved subscription television system (STV) of American Television and Communications Corporation (ATC) for the purposes of writing a technical article about the system. The ATC application for approval of its system had been filed in November 1978 and confidentiality was granted for a period of 2 years with respect to those records concerning video signal coding and decoding and accompanying data contained in an application for a patent which at that time had not been granted. At the time of Reynolds' request, the 2 year period of confidentiality had expired. However, the Chief Scientist notified ATC of the request for inspection. Subsequently, ATC requested extension of the original grant of confidentiality for an additional 2 year term. The Commission granted ATC's extension and denied Reynolds' request for inspection in accordance with the Commission's policy to allow confidentiality for a limited period due to the fact that there had not been lengthy marketing of the device nor anything on the record to indicate that there had been public disclosure by ATC of any of the complex details of its encoding and decoding system and apparatus. To permit disclosure would, in effect, aid or assist those persons desirous of capitalizing on another's labor. Similarly, disclosure of United's information would permit third parties and competitors to benefit from United's labor.

Finally, in *Accounting Safeguards Under the Telecommunications Act of 1996: Section 272(D) Biennial Audit Procedures*. CC Docket No. 96-150, FCC 02-239, 17 FCC Rcd 17102 (2002), the FCC discussed Rule 0.459 and set forth the showings that must be made to obtain

confidential treatment. That case mentions three criteria which should be demonstrated – explanation of the substantial competitive harm, identification of measures to prevent disclosure and identification of previous disclosure to third parties.

In response to the criteria set forth in both the above-mentioned cases and Rules 0.457 and 0.459, United states that disclosure of the items disclosed to the FCC in its Application would expose United to substantial competitive harm by disclosing details of its competitive operational plans that are otherwise not public. Disclosure would enable competitors to determine United's business plans, design and engineering strategy, marketing strategy, and design details.

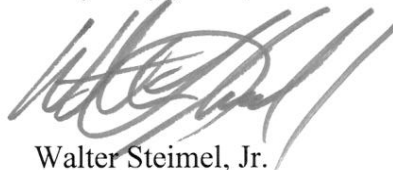
The data provided by United is specific raw data, and is not aggregated in any way to protect its confidentiality. United maintains extensive procedures to prevent the disclosure of all of this information, and it is not required to divulge this information otherwise. United does not divulge any aspect of its operations or products to third parties without strict confidentiality agreements which it vigorously enforces. United has never made a public disclosure of this information, and has not disclosed this information to any third parties.

In light of the foregoing, the FCC should keep confidential the information tendered by United in its Application, as well as the existence of its Application. United claims confidentiality for all of its FCC emissions test reports, design descriptions, manufacturers, test laboratories and engineers. It also seeks non-disclosure of its activities with respect to its development and marketing of its devices. Not only is all of this information clearly confidential and proprietary under applicable precedent, but it is particularly sensitive under the current circumstances.

Should the Commission determine that any of the information submitted is not confidential, or desires to have United redact the written submission, United requests that the Commission provide it with time to undertake that effort. United requests that should the Commission deny this request for confidentiality, or should this information be subject to a requirement to make any of its filing public, that United be granted an opportunity to oppose such release, or withdraw its submission from the Commission. United should be granted the opportunity to seek a protective order should that prove to be necessary.

If there are any questions or problems with this request, please contact me as soon as possible.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Walter Steimel, Jr.', with a stylized, cursive script.

Walter Steimel, Jr.