

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

In the Matter of)
Universal Service Contribution Methodology) WC Docket No. 06-122
Petition for Clarification or Declaratory Ruling of)
Stratos Government Services, Inc.)

ORDER

Adopted: May 24, 2017

Released: May 24, 2017

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this order, we address a petition filed by Stratos Government Services, Inc. (Stratos) requesting clarification or a declaratory ruling from the Wireline Competition Bureau (Bureau) concerning the scope of the exemption from universal service contribution requirements for entities that provide interstate telecommunications exclusively to government or public safety entities. Specifically, Stratos requests that we broaden the exemption to allow subcontractors providing services exclusively to government and public safety entities to avoid paying contributions. For the reasons stated below, we deny Stratos’s petition.

2. In the Universal Service First Report and Order, the Commission determined that common carriers and certain private service providers that provide interstate telecommunications to others for a fee generally must contribute to the federal universal service fund (USF or Fund) based on their interstate and international end-user telecommunications revenues. The Commission also determined that the public interest requires that certain providers of interstate telecommunications should not contribute to the federal universal service mechanisms. Specifically, and at issue in the instant matter, the Commission exempted non-governmental (i.e., private sector) providers of interstate telecommunications that exclusively provide service “to public safety or government entities” from contributing to the Fund. This exemption is commonly referred to as the “government-only” exemption.

1 Petition for Clarification or Declaratory Ruling of Stratos Government Services, Inc., WC Docket No. 06-122 (filed Sept. 15, 2009) (Stratos Petition).

2 See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9179, para. 787 (1997) (Universal Service First Report and Order) (subsequent history omitted). The Commission also requires certain other providers of interstate telecommunications to contribute to the universal service fund. See, e.g., 47 CFR § 54.706; Universal Service Contribution Methodology, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (requiring interconnected voice over Internet protocol providers to contribute to the universal service fund).

3 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11567, para. 136 (1998). See also Federal-State Joint Board on Universal Service, et al., CC Docket No. 96-45 et al., Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd 5318, 5475-76, para. 283 (1997).

4 Universal Service First Report and Order, 12 FCC Rcd at 9186, para. 800.

3. *Stratos Petition*. On September 15, 2009, Stratos filed a petition seeking clarification, or in the alternative, a declaratory ruling, that the government-only exemption applies not only to companies that provide telecommunications services exclusively to public safety or government entities but also to subcontractors providing those services to those entities on behalf of the principal provider. Stratos explains that some providers who contract with public safety or government entities to provide telecommunications services will, in some circumstances, subcontract out portions of the government contracts for efficiency reasons.⁵ In support of its request, Stratos asserts that the language of the government-only exemption itself is unclear and that the policy underlying the exemption supports including subcontractors.⁶

II. DISCUSSION

4. We deny Stratos's petition. In so doing, we confirm that the current exemption from universal service contribution requirements applies to entities providing service directly and exclusively to government and public safety entities and, by definition, does not apply to subcontractors.

5. The Commission, in 1997, recognized the unique telecommunications needs of governmental entities when it exempted from direct contribution requirements those government entities that purchased telecommunications services in bulk for their own internal needs.⁷ In doing so, the Commission reasoned that these entities, as well as government entities that self-provision, need not contribute to the USF because "telecommunications do not comprise the core of their business" and they do not lease excess capacity to others or charge others for use of their network.⁸ The Commission also concluded that public safety and local governmental entities licensed under the Commission's rules would not be required to contribute due to the eligibility requirements for these services and because of the important public safety and welfare functions for which these services are used.⁹ Finally, the Commission included in this exemption any entity that exclusively provides "interstate telecommunications to public safety or government entities and does not offer services to others."¹⁰ It is the scope of this exemption that Stratos hopes to expand further with its petition.

6. We disagree with Stratos's assertion that the language of the exemption itself is unclear because it does not explicitly include subcontractors.¹¹ Stratos argues that the "touchstone of the policy is that services must be offered exclusively to public safety and government end users, and not to other end users" and that distinguishing between prime contractors and subcontractors is a "distinction without a substantive difference" because the end user remains a public safety or government entity.¹² As set forth in the *Universal Service First Report and Order*, the exemption provides that "if an entity exclusively provides interstate telecommunications to public safety or government entities and does not offer services to others, that entity will not be required to contribute."¹³ The Commission did not elaborate on the policy behind the government-only exemption. It is, however, the prime contractor providing service to the public safety or government entity that has the contractual relationship with that entity, and thus can rely on the government-only exemption. Any subcontracting provider works at the direction of the prime

⁵ Stratos Petition at 5.

⁶ *Id.* at 3-5.

⁷ *Universal Service First Report and Order*, 12 FCC Rcd at 9186, para. 800.

⁸ *Id.* at 9185, para. 799-800.

⁹ *Id.* at 9186, para. 800.

¹⁰ *Id.* at 9186, para. 800.

¹¹ See Stratos Petition at 3. See also ARTEL Comments at 2; CGS Comments at 1; NGC Comments at 2.

¹² Stratos Petition at 5.

¹³ *Universal Service First Report and Order*, 12 FCC Rcd at 9186, para. 800.

contractor and does not have a contractual relationship with the government entity. Nothing in the language of the current exemption contemplates including subcontractors within the scope of the exemption. Given the preference for narrow exemptions to USF contribution obligations, the exemption clearly is limited to a subset of providers directly and exclusively serving end-user public safety and government customers.

7. We also find unpersuasive Stratos's argument that including subcontractors in the government-only exemption would not expand its scope because both the subcontractor and prime contractor would be limited to exclusively serving government and public safety entities.¹⁴ By allowing subcontractors to use the exemption, the number of entities claiming the exemption would, indeed, increase and the contribution base would decrease. Thus, expanding the number of entities eligible for the government-only exemption would result in fewer contributions to the Fund, increasing the burden on consumers and impacting business operations and structure. Though the Commission did not explicitly provide a rationale supporting the government-only exemption, contextually, the Commission's intent was to place on equal footing services that it viewed as equivalent (e.g., services purchased in bulk for own internal needs). Such an interpretation is consistent with the Commission's public interest policies that favor competitive neutrality and disfavor influencing corporate structure for the sole purpose of avoiding USF contributions.

8. A narrow reading of the exemption is consistent with the Commission's original intent in the *Universal Service First Report and Order*¹⁵ and acceding to Stratos' request to expand the exemption to include subcontractors likely would encourage behavior the Commission specifically intended to avoid.¹⁶ The Commission was fully aware that its contribution rules and exemptions could shape business decisions, an outcome it sought to avoid.¹⁷ As Verizon cautions, the expansion of the exemption to include subcontractors would likely encourage telecommunications providers "to implement corporate structures designed merely to take advantage of the exemption – precisely the kind of business decision motivated only by universal service contribution obligations that the Commission said it should avoid."¹⁸ For example, a provider serving government or public safety entities in addition to other customers is assessed contributions on all revenue derived from both governmental or public safety entities and all other customers. If the Commission decided to expand the exemption, that provider could spin off that business into a new subsidiary that serves only those government and public safety entities and avail itself of the exemption, circumventing its contribution obligation with respect to assessable revenues. Our decision in this matter is consistent with a Commission decision in the *Universal Service First Report and Order* where, in exercising its permissive authority to require payphone service providers to contribute to the Fund, the Commission aimed to avoid "creat[ing] incentives for telecommunications carriers to alter their business structures by divesting their payphone operations in order to reduce their contributions to the support mechanisms."¹⁹ By continuing to restrict the scope of the governmental only exemption here, we similarly intend to avoid providing incentives for contributor game playing. Thus, we find the exemption was intended to be narrowly drawn in order to further the Commission's desire to avoid having the contribution rules shape business decisions.

9. We conclude that nothing in the language of the current exemption contemplates including subcontractors within the scope of the exemption. While it is possible that allowing

¹⁴ Stratos Petition at 6.

¹⁵ See *Universal Service First Report and Order*, 12 FCC Rcd at 9183, para. 795.

¹⁶ *Id.* See also Opposition of Verizon and Verizon Wireless, WC Docket No. 06-122, at 3 (filed Oct. 30, 2009) (Verizon Opposition).

¹⁷ *Universal Service First Report and Order*, 12 FCC Rcd at 9183, para. 795.

¹⁸ Verizon Opposition at 3.

¹⁹ *Universal Service First Report and Order* at 9185, para. 797.

subcontractors could lead to competition and greater specialization in the federal contracting market as Stratos suggests,²⁰ based on the record we cannot determine if Stratos's assertions are true. Even assuming, however, that Stratos's assertions that it may lead to efficiencies in the federal contracting market are true, we find that it would likely add another layer of complexity to the administration of the exemptions. For example, prudent contractors would want to document or otherwise verify the status of the subcontractor (and vice versa) in order to establish that the provider was likewise serving only government entities.²¹ An arrangement of this type is similar to the wholesaler-reseller certification requirement which has been difficult to administer by the providers, the Universal Service Administrative Company, and the Bureau.²² For these reasons, we find that the public interest considerations that favor a consistent contribution base and narrow contribution exemptions outweigh the benefits that Stratos asserts would result from including subcontractors in the exemption. Given the language of the exemption itself, we find that the exemption is applicable to a limited subset of providers that provide telecommunications directly and exclusively to end-user government entities that, for whatever reason, do not purchase interstate telecommunications in bulk for their internal use – in effect mirroring the exemption for government entities that do buy telecommunications in bulk for their own internal use.

III. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151–154, 254, and delegated under sections 0.91, 0.291, and 1.2 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.2, the petition for clarification or declaratory ruling filed by Stratos is hereby DENIED.

11. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

²⁰ Stratos Petition at 5-6.

²¹ See *id.* at 7, n.6.

²² See Verizon Opposition at 4.