

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

In the Matter of)
Universal Service Contribution Methodology) WC Docket No. 06-122
Petition for Reconsideration of a Decision of the)
Wireline Competition Bureau)

ORDER ON RECONSIDERATION

Adopted: March 22, 2023

Released: March 22, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. SES Government Solutions (SES-GS) petitions¹ the Wireline Competition Bureau (Bureau) to reconsider a 2017 decision that clarified that the universal service government-only exemption applies only to entities providing service directly and exclusively to government and public safety entities and does not apply to subcontractors.² For the reasons stated below, we dismiss and, in the alternative, deny the Petition for Reconsideration pursuant to sections 1.106 and 1.429 of the Commission's rules.³

II. BACKGROUND

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.⁴ The Commission also determined that the public interest requires that certain providers of interstate telecommunications should not

1 Petition for Reconsideration of SES Government Solutions for Clarification or Declaratory Ruling of Stratos Government Services, Inc. Order, WC Docket No. 06-122 (filed June 23, 2017) (SES-GS Petition or Petition for Reconsideration).

2 Universal Service Contribution Methodology, WC Docket No. 06-122, Order, 32 FCC Rcd 4115 (WCB 2017) (Stratos Order).

3 SES-GS filed its petition pursuant to section 1.429 of the Commission's rules which governs petitions for reconsideration of final orders in rulemaking proceedings. 47 CFR § 1.429. We note that the standards of review in sections 1.106 and 1.429 are similar as applied to SES-GS's arguments. See 47 CFR §§ 1.106(c), (p); 1.429(b)(l).

4 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).

contribute to the federal universal service mechanisms.⁵ Specifically, and at issue here, is the government-only exemption that exempts 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.⁶

3. In 2009, Stratos Government Services, Inc. filed a petition for clarification, or in the alternative, a declaratory ruling, seeking clarification 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 services to those entities on behalf of the principal provider.⁷ The Bureau issued an Order denying the petition and confirmed that the 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.⁸ The Bureau clarified that the prime contractor providing service to the public safety or government entity is the only entity that has the contractual relationship with the government entity and therefore can rely on the government-only exemption.⁹ The Bureau found that the exemption was intended to be narrowly drawn to further the Commission’s desire to avoid having the contribution rules shape business decisions, and as such the exemption excludes subcontractors that work at the direction of the prime contractor.¹⁰

4. SES-GS filed a petition for reconsideration of the Bureau’s Order in 2017. SES-GS provides telecommunications services to government and public safety entities as a subcontractor under “task orders.”¹¹ SES-GS did not participate in the initial proceeding, asserting that its interests did not appear to be at stake at the time.¹² SES-GS claims that the Order created “substantial confusion and uncertainty over the scope and availability of the exemption and adversely affects SES-GS.”¹³ SES-GS argues that the Bureau’s “formulation” of the exemption disregards the realities of government contracting, and undermines the policy for the exemption.¹⁴

III. DISCUSSION

5. We dismiss and deny SES-GS’s Petition for Reconsideration. Pursuant to sections 1.106(p) and 1.429(l) of the Commission’s rules, the Bureau may dismiss or deny petitions for

⁵ *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).

⁶ *Universal Service First Report and Order*, 12 FCC Rcd at 9186, para. 800.

⁷ Petition for Clarification or Declaratory Ruling of Stratos Government Services, Inc., WC Docket No. 06-122 (filed Sept. 15, 2009) (Stratos Petition). The Bureau released a Public Notice announcing the filing of the Stratos Petition and established deadlines for comments and replies. See *Comment Sought on Petition of Stratos Government Services Inc. for Declaratory Ruling or Clarification Regarding Universal Service Fund Contributions*, WC Docket No. 06-122, Public Notice, 24 FCC Rcd 12121 (WCB 2009).

⁸ *Stratos Order*, 32 FCC Rcd at 4115, 4116, para. 4.

⁹ *Id.* at 4116, para. 6.

¹⁰ *Id.* at 4116-18, paras. 6-9.

¹¹ SES-GS Petition at 5.

¹² *Id.*

¹³ *Id.* at 5. SES-GS argues that the Bureau’s decision impacted the manner in which companies providing services to government and public safety entities bid for those services, and claims that it is adversely impacted because the services it provides to government entities are subject to USF contributions. See *id.*

¹⁴ *Id.* at 5-10.

reconsideration that fail to identify any material error, omission, or reason warranting reconsideration.¹⁵ As discussed below, SES-GS has failed to identify any error or other basis for reconsideration, and we therefore dismiss its Petition for Reconsideration. Independently, we deny reconsideration on the merits.¹⁶

6. SES-GS claims that the *Stratos Order* “creates substantial confusion and uncertainty over the scope and availability of the exemption.”¹⁷ The Bureau, however, clearly addressed the contractual relationship necessary to rely on the exemption, concluding that the exemption from universal service contribution requirements applies to prime contractors that have the contractual relationship with the government entity and is providing service directly and exclusively to government and public safety entities.¹⁸ SES-GS’s claim that the *Stratos Order* created confusion lacks specificity and is not supported by evidence, and no other party has made a similar claim.¹⁹ SES-GS also claims that its interests are “adversely affected” by the *Stratos Order* in ways that were “not reasonably apparent” but has not identified how its interests differ from those of Stratos in the original proceeding.²⁰

7. SES-GS also claims that the record underlying the *Stratos Order* was stale, but fails to support its position. SES-GS does not claim that there was any change in the industry between its Petition and the Bureau’s order that would have impacted the Bureau’s decision.²¹ Further, no commenter in the present record has argued that the record requires refreshing. In fact, the contribution factor’s increase in the past several years supports the policy goal articulated in the *Stratos Order* of ensuring exceptions to the contribution requirement remain narrow.²² We therefore decline to reconsider the *Stratos Order* or refresh the record in this proceeding.²³

8. SES-GS further argues that the Bureau’s interpretation of the government-only exemption is irrational, and that the exemption should apply to subcontractors because they “provide” the contracted-for services to government end users.²⁴ First, to the extent this is a new argument, we note that it does not relate to new events or changed circumstances, or facts or arguments unknown to SES-GS in

¹⁵ 47 CFR §§ 1.106(p), 1.429(l)(1); *see also, e.g., Petition for Reconsideration by Detroit Public School District, Order on Reconsideration*, 33 FCC Rcd 10019, 10020, paras. 3-4 (WCB TAPD 2018).

¹⁶ *See* 47 CFR §§ 1.106(c), 1.429(b).

¹⁷ SES-GS Petition at 5-7. SES argues that the Bureau Order adopted a formulation of the government-only exemption “that qualifies its availability on some undefined aspect of the contractual relationship between the end user and service provider” and fails to “explain, or provide any meaningful guidance to discern, the scope and contours of [the exemption’s] new qualifications.” *Id.*

¹⁸ *See supra*, para. 3; *Stratos Order*, 32 FCC Rcd at 4116-18, paras. 4-9.

¹⁹ No parties filed comments in response to SES-GS’s Petition.

²⁰ *See* SES-GS Petition at 5.

²¹ We note that parties bear a heavy burden in proving that an Order should be overturned because of a stale record. *See City of Angels Broad., Inc. v. FCC*, 745 F.2d 656, 665 (D.C. Cir. 1984) (citing *Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc.*, 419 U.S. 281, 294-96 (1974)).

²² *See Stratos Order*, 32 FCC Rcd at 4117, para. 8; *see e.g., Proposed First Quarter 2017 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 31 FCC Rcd 12918 (OMD 2016) (announcing 2017 first quarter contribution factor of 16.7 percent); *Proposed First Quarter 2023 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 22-1286 (rel. Dec. 9, 2022) (announcing 2023 first quarter contribution factor of 32.6 percent).

²³ *See* SES-GS Petition at 5 n.10.

²⁴ *Id.* at 7-8.

the underlying proceeding, and we determine that the public interest does not require us to consider this argument.²⁵ Therefore, pursuant to sections 1.106(c) and 1.429(b) of the rules we reject this argument.

9. On the merits, to the extent it was not already clear in the *Stratos Order*, the subject of this dispute is not the provision of service to the end user, but rather the USF charges paid by providers and passed through to a customer.²⁶ As the Bureau explained in the *Stratos Order*, subcontractors' customers are prime contractors, not the government entity receiving the service.²⁷ Allowing entities to circumvent their USF contribution obligations by claiming to "exclusively provide[]" service to government and public safety customers when a prime contractor, which may not itself exclusively serve governmental entities, uses a subcontractor that serves only governmental end users, would not be consistent with the meaning or purpose of the government-only exemption, and would open the exemption to abuse.²⁸ The expansion of the exemption to include entities that do not directly contract with a government entity and merely act as subcontractors under the direction of a third party would defeat the narrow purpose of the exemption and be detrimental to the stability of the fund. As we noted in the *Stratos Order*, there is a preference for narrow exemptions to USF contribution obligations, and by limiting the exemption to the "subset of providers directly and exclusively serving" government entities we advance that goal.²⁹

10. Finally, we reject SES-GS's challenges to policy considerations that were fully considered by the Bureau in the *Stratos Order*.³⁰ For example, SES-GS argues that adopting a more expansive view of the government-only exemption will not increase the number of entities taking advantage of the exemption, but it does not provide any evidence that was not already fully addressed in the *Stratos Order*.³¹ Similarly, SES-GS claims that the policy discussed in the *Stratos Order* encourages rather than discourages "game playing," but does not describe specific examples of gamesmanship that could occur from the *Stratos Order* or provide any other support for its claim that providers are restructuring their operations to take advantage of the Commission's interpretation of the government-only exemption.³² Accordingly, for the reasons discussed above, we deny reconsideration.

11. Further, and as a separate and independent basis for this disposition, insofar as section 1.106 of the Commission's rules applies to the Petition for Reconsideration, SES-GS has failed to meet its burden to show "good reason" why it was not possible to have participated earlier in the proceeding.³³ Section 1.106(b)(1) of the Commission's rules states that if a petition for reconsideration "is filed by a

²⁵ See 47 CFR §§ 1.106(c) (describing the narrow circumstances under which a petition raising new facts or arguments may be granted); 1.429(b) (same). SES-GS has not provided an adequate explanation for why it was unable to raise this argument in the prior proceeding. See *infra* para. 10.

²⁶ See 47 CFR § 54.712. While in many cases the end user and the customer are the same, that is not the case in the current proceeding.

²⁷ *Stratos Order*, 32 FCC Rcd at 4116-17, para. 6 ("Any subcontracting provider works at the direction of the prime contractor and does not have a contractual relationship with the government entity.").

²⁸ See *id.* at 4116, paras. 7-8.

²⁹ *Id.* at 4116-17, para. 6.

³⁰ See *id.* at 4117-18 (addressing the argument that including subcontractors in the exemption would promote efficiency and competition in the federal government procurement process and explaining policy considerations for excluding subcontractors from the exemption).

³¹ See SES-GS Petition at 9; *Stratos Order*, 32 FCC Rcd at 4117, para. 7.

³² See SES-GS Petition at 9-10. The Bureau previously considered Stratos's claims about the benefits of interpreting the government-only exemption to apply to subcontractors and determined that any benefits were outweighed by keeping the exemption narrow. See *Stratos Order*, 32 FCC Rcd at 4118, para. 9.

³³ 47 CFR § 1.106(b)(1).

person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding."³⁴ In explaining why it did not participate when the Commission sought comment on Stratos's petition, SES-GS merely claims "its interests did not appear to be at stake at the time," and that it "was not reasonably apparent" that the *Stratos Order* would have implications for subcontractors serving government and public safety organizations.³⁵ The very issue addressed in the *Stratos Order*, however, was whether subcontractors could claim the government-only exemption.³⁶ In any case, the unanticipated negative impact of a Commission decision after the fact does not constitute "good reason" for excusing non-participation in a proceeding.³⁷

IV. CONCLUSION

12. Based on the foregoing, we dismiss, or in the alternative, deny SES-GS's petition under sections 1.106 and 1.429 of the Commission's rules.³⁸

V. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.91, 0.291, 1.106, and 1.429 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.106, 1.429, the Petition for Reconsideration filed by SES Government Solutions, is DISMISSED to the extent SES-GS has failed to identify any material error, omission, or reason warranting reconsideration, and as an independent and alternative basis for the decision, the Petition for Reconsideration is also DENIED on the merits.

14. 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

Trent B. Harkrader
Chief
Wireline Competition Bureau

³⁴ *Id.*

³⁵ SES-GS Petition at 5.

³⁶ See *Stratos Order*, 32 FCC Rcd at 4116, para. 4.

³⁷ SES-GS Petition at 4. See, e.g., *In the Matter of Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) From Enforcement of Obsolete ILEC Legacy Regulations that Inhibit Deployment of Next-Generation Networks, Lifeline and Link Up Reform and Modernization Connect America Fund*, WC Docket Nos. 14-192, 11-42, and 10-90, 32 FCC Rcd 3885, 3888-89 at para. 11 (2017) (stating that surprise at the outcome of an order is not a "good reason" to excuse non-participation in a proceeding).

³⁸ 47 CFR §§ 1.106, 1.429.