

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

ORIGINAL

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	

**PETITION FOR WAIVER OF DELL TELEPHONE COOPERATIVE**

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**PETITION FOR WAIVER OF DELL TELEPHONE COOPERATIVE**

**I. INTRODUCTION AND SUMMARY**

Pursuant to Section 1.3 of the Commission’s rules, Dell Telephone Cooperative (“Dell Telephone” or the “Company”) respectfully requests that the Commission waive three of its rules regarding the distribution of universal service support as applied to the Company.<sup>1</sup> Specifically, Dell Telephone requests a waiver of: (i) the \$250 per line monthly cap on High Cost Loop Support (“HCLS”);<sup>2</sup> (ii) the rule limiting reimbursable capital and operating expenses for

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 47 C.F.R. § 54.302.

HCLS;<sup>3</sup> and (iii) the updated and extended limits on recovery of corporate operations expenses applied to HCLS and Interstate Common Line Support (“ICLS”).<sup>4</sup>

Dell Telephone appreciates the challenges facing the Universal Service Fund (“USF”) and understands fully the importance of reforming the high cost fund in order to preserve and advance universal service consistent with the requirements of 47 U.S.C. § 254. Dell Telephone also realizes the difficulty confronting the Commission in implementing “one-size-fits-all” reforms when, as the Commission has recognized, one size does not in fact fit all.

Anticipating the need to accommodate the individual circumstances of particular rate-of-return carriers, the Commission made plain its willingness to waive its new rules in circumstances when such rules had the effect of reducing a carrier’s support to a level that “would not be ‘sufficient to achieve the purposes of [section 254] of the Act.’”<sup>5</sup> For Dell Telephone, such circumstances plainly exist here. Absent a waiver and the continued receipt of existing levels of high-cost support, consumers in Dell Telephone’s service territory are likely to lose access to voice and broadband services. Indeed, unless the Commission grants the requested waiver, Dell Telephone has projected that it will realize net losses as early as next year, will deplete its cash reserves by 2015, and will be insolvent by 2016.

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<sup>3</sup> *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161, ¶ 220 (rel. Nov. 18, 2011) (“*USF Transformation Order*”); see also *Connect America Fund, High-Cost Universal Service Support*, WC Docket No. 10-90 & WC Docket No. 05-337, Order, DA 12-646 (rel. Apr. 25, 2012) (adopting methodology to limit reimbursable capital and operating expenses for HCLS) (“*HCLS Benchmark Methodology Order*”).

<sup>4</sup> *USF Transformation Order*, ¶¶ 227-33; 47 C.F.R. § 36.621(a)(4).

<sup>5</sup> *USF Transformation Order*, ¶ 540.

Like many rate-of-return carriers, Dell Telephone is a small company that must recover its largely fixed costs over a small base of customers. Its service territory consists of 10,498 square miles located in West Texas and Southeastern New Mexico, including 59 miles of the Texas-Mexico border. Dell Telephone currently serves approximately 800 rural customer premises, including ranchers and farmers as well as anchor institutions. Many of its customers are low income minority households, and Dell Telephone's service territory includes some of the poorest counties in the nation.

Dell Telephone's vast service area features rugged, mountainous terrain that presents unique and significant challenges to the deployment and maintenance of communications networks. In particular, deploying facilities and burying plant in the solid rock terrain that pervades much of Dell Telephone's territory adds significant time and expense. And although Dell Telephone uses fixed wireless solutions to reduce costs, the Company's ability to avail itself of less expensive, traditional fixed wireless solutions that require line-of-sight wireless links is limited by the mountainous terrain of its service territory. Furthermore, the Company faces higher network maintenance costs due to climatic conditions, poor road infrastructure, and the long distances required to reach remote facilities.

Additionally, Dell Telephone's location in a very remote area along the Texas-Mexico border also translates into higher operational costs. Despite the Company's otherwise small scale, Dell Telephone must provide the highest level of redundancy and reliability to provide critical communications services to a number of institutions tasked with protecting our nation's border, including the U.S. Border Patrol, U.S. Customs, the Department of Homeland Security ("DHS") and the Texas Department of Transportation. Due to the very remote nature of the

Company's service territory on the border, which includes the Sierra Blanca and Highway 62/180 border checkpoints, Dell Telephone has long provided service to Federal and State law enforcement personnel involved in combating drug trafficking and related criminal activity. Apart from requiring higher levels of network capacity and reliability, serving border security institutions requires that Dell Telephone's network technicians be trained to handle the prioritization of network repairs according to the FCC's Telecommunications Service Priority system.

Notwithstanding these geographic, topographic, and national security challenges, Dell Telephone has deployed and currently operates an innovative and cost-effective advanced communications network that integrates both traditional wireline and new wireless technologies. In doing so, Dell Telephone has been able to meet the high capacity, high security needs of its border security institution and anchor institution customers, while also reaching its most remote customers in compliance with its Texas provider of last resort obligations.

Nonetheless, despite its efforts to utilize cost-effective technology and to otherwise prudently operate and maintain its network, Dell Telephone's costs remain extraordinarily high, only a small portion of which Dell Telephone can recover from its customers. In 2011, approximately [REDACTED] of the Company's revenues came from its end user customers, even though Dell Telephone's local rates exceed the Commission's rate benchmark by several dollars.<sup>6</sup> And, as a practical matter, given the low income households it serves, Dell Telephone is constrained in its ability to recoup costs through increased rates.

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<sup>6</sup> *USF Transformation Order*, ¶ 236.

Under the circumstances, the anticipated reduction in universal service support to Dell Telephone resulting from application of the Commission's new high-cost rules will have devastating consequences to the Company and its customers, as explained in detail below. In short, absent a waiver, Dell Telephone will be unable to continue providing service to its customers, who have no viable competitive alternatives. Thus, unless the Commission grants the requested waiver, consumers will not only be put "at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service," they will in fact lose such services – a result contrary to the letter and the spirit of section 254.<sup>7</sup> For these reasons, the Commission should promptly grant the requested waiver.

## **II. STATEMENT OF FACTS**

For more than fifty years, Dell Telephone has served a very remote area in the Trans-Pecos Region of West Texas and Southeastern New Mexico along the U.S.-Mexico border. The Company's service area is 10,498 square miles—nearly the size of the state of Massachusetts—with just 0.08 customers per square mile and 0.1 access lines per square mile. In this vast, sparsely populated territory, Dell Telephone must contend with difficult terrain, including ten mountain ranges, solid rock soil, and extreme temperature fluctuations, all of which increase the costs of deploying and maintaining communications networks.

To add to this challenging geographic environment, Dell Telephone serves a socioeconomically disadvantaged customer base, as the counties in Dell Telephone's Texas study area – Hudspeth and Culberson Counties – are some of the poorest counties in the country. According to the most recent available Census data, 46 percent of the population in Hudspeth

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<sup>7</sup> *Id.*, ¶ 540.

County live below the federal poverty level—triple the national rate of 15.3 percent.<sup>8</sup> And the median household income in Hudspeth County is \$22,647, which is less than half the national average of \$50,046.<sup>9</sup> Similarly, Culberson County, Texas has a median household income of \$35,500, and 28.8 percent of its population lives below the poverty threshold.<sup>10</sup>

Additionally, in both of the Company's Texas and New Mexico territories, the Latino population far exceeds the national average of 16.3 percent.<sup>11</sup> Both Hudspeth and Culberson counties are more than 75 percent Latino, and Dell Telephone's New Mexico service is approximately 40 percent Latino.<sup>12</sup> Commission data show that Latinos continue to have lower

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<sup>8</sup> Selected Economic Characteristics, 2006-2010 American Community Survey 5-Year Estimates Hudspeth County, Texas, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_10\\_5YR\\_DP03&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_5YR_DP03&prodType=table).

<sup>9</sup> Selected Economic Characteristics, 2010 American Community Survey, 1-Year Estimates, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_10\\_1YR\\_CP03&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_CP03&prodType=table).

<sup>10</sup> Selected Economic Characteristics, 2006-2010 American Community Survey 5-Year Estimates Culberson County, Texas, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_10\\_5YR\\_DP03&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_5YR_DP03&prodType=table).

<sup>11</sup> Hispanic or Latino by Type: 2010, 2010 Census Summary File, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC\\_10\\_SF1\\_QTP10&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_SF1_QTP10&prodType=table).

<sup>12</sup> See *id.* Dell Telephone serves approximately 30 percent of *Otero County*, New Mexico and 10% of *Eddy County*, New Mexico. Dell Telephone's New Mexico service area is south of Alamogordo, borders Fort Bliss Army Base to the east, and is southwest of Carlsbad, NM.

telephone and broadband subscribership rates than most other ethnic groups.<sup>13</sup> Accordingly, the demographic characteristics of Dell Telephone's service area present additional challenges in ensuring the availability of affordable service.

In spite of these challenges, Dell Telephone has provided reliable voice and broadband communications in the most cost-effective manner possible. As shown in Dell Telephone's network map in Exhibit 1, Dell Telephone has deployed wireline and wireless network solutions to serve its far-flung and remote customer base. Approximately [REDACTED] percent of Dell Telephone's customers receive service over copper last-mile loop facilities connected to a middle mile fiber network, [REDACTED] percent are served directly by fiber facilities, and [REDACTED] percent of Dell Telephone's most remote customers are served by Redline™ wireless radios, an Ethernet packet-based radio link.<sup>14</sup> Dell Telephone's most remote customers served by Redline™ wireless solution can receive comparable voice and Internet services as Dell Telephone's wireline customers today, although the limitations of these wireless radios will make provisioning higher broadband speeds technically impossible in the future.

As part of its wireline infrastructure, Dell Telephone has deployed [REDACTED] fiber route miles in its service territory. The network has four ring-protected fiber configurations to provide

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<sup>13</sup> *Universal Service Monitoring Report*, CC Docket No. 98-202 at Table 3.5 (rel. Dec. 2011), at <http://transition.fcc.gov/wcb/iatd/recent.html> (showing that telephone subscribership rates for Latinos were 92.6 percent compared with 95.6 percent nationwide); *Connecting America: The National Broadband Plan*, Exhibit 3-I available at <http://www.broadband.gov/download-plan/> (showing that broadband adoption rates were 49 percent for Latinos compared with 59 percent for African Americans and 69 percent for Whites).

<sup>14</sup> Consistent with its carrier-of-last resort obligations in Texas, Dell Telephone must provide its customers with a minimum of a 14.4 kbps connection. See Tex. Admin. Code § 26.54.

highly reliable service to its customers. Dell Telephone also has collaborated with neighboring telecommunications carriers as part of the Texas Lone Star Network to leverage existing fiber infrastructure in the region and to deploy other ring configurations that enable business customers to receive high capacity broadband as well as connectivity to major Points of Presence in the region. And Dell Telephone has built fiber to each of its [REDACTED] Broadband Loop Carriers (“BLC”), with the exception of two that are located in extremely remote areas serving less than 25 customers each. Dell Telephone has installed solar panels to power these two BLCs and others in remote areas to preserve energy and avoid the high cost of powering the BLCs through more traditional means.

Within Dell Telephone’s service area, the Company is the sole provider of voice and broadband services that cover the entire service area. AT&T, Verizon, and Sprint provide limited voice coverage in the region, primarily covering the interstates, and these providers rely on Dell Telephone for wireless fiber backhaul services. No other alternative terrestrial providers provide voice or broadband services throughout the territory.

Outside of its service territory, Dell Telephone has invested in nonregulated business ventures in an attempt to increase its revenues and reduce its reliance on USF support. For example, Dell Telephone’s subsidiary, Delcom, Inc., is one of five rural telecommunications company partners that are providing construction services to Region 18 Educational Service Center (“R18”) in Midland Texas, which involves burying fiber to 33 school districts in West Texas. R18 received funds from the Rural Utilities Service’s (“RUS”) Broadband Initiatives Program (“BIP”) to bring broadband to these school districts, enhancing their educational opportunities. Delcom will use a portion of the new fiber network to offer competitive

broadband service to four underserved markets outside of its territory. Delcom will expand its broadband services to 7 new schools and 32 anchor institutions outside of its service area. These new services are projected to begin in the first quarter of 2013. Dell Telephone is also considering other investments to offer wireless Internet and voice services outside of its regulated service area.<sup>15</sup> However, Dell Telephone has not yet been able to finalize its investment plans, due in large part to the uncertainty created by the Commission's USF reforms.

In short, Dell Telephone has deployed a cost-effective network to meet the needs of its rural customers, anchor institutions, and border security institutions within its territory. Nevertheless, Dell Telephone projects that the reduction in its universal service support resulting from the FCC's new rules will cause the Company to deplete its cash reserves by 2015 and will render the Company insolvent by 2016. In the meantime, Dell Telephone will be in violation of its loan covenants beginning next year and will likely be unable to secure additional funding necessary to survive. Given the lack of alternative providers in Dell Telephone's service area, consumers will lose access to terrestrial voice as well as broadband services in the near future unless the requested waiver is granted.

Consistent with the *USF Transformation Order*, Dell Telephone provides the following information in support of its petition for waiver.<sup>16</sup>

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16 *USF Transformation Order*, ¶ 542.

**A. Density Characteristics**

Dell Telephone's service area covers 10,498 square miles in West Texas and Southeastern New Mexico, including 59 miles along the Texas-Mexico border. The Company's territory also includes 2,476 road miles, three-quarters of which are unpaved. Within its territory, Dell Telephone provides [REDACTED] access lines ([REDACTED] in Texas and [REDACTED] in New Mexico) to approximately 800 customer premises—or approximately 0.08 customers per square mile, and 0.3 customers per road mile. The only town in Dell Telephone's service area, Dell City, is a small farming and ranching community of approximately 385 people. The remainder of Dell Telephone's customers are spread throughout its territory in even smaller farming and ranching clusters. As a result, Dell Telephone has extremely high costs—the Company's total cost per loop is [REDACTED]

Apart from very low density, Dell Telephone's extremely high costs are driven by the challenges of serving rough, mountainous terrain in an arid, desert climate. Dell Telephone's customers live in and around ten different mountain ranges that enter its territory, including the highest point in Texas in Guadalupe National Park at 8,750 feet elevation. The Guadalupe, Delaware, and Apache Mountains surround Dell Telephone to the east. The Hueco, Finley, Cornudas and Sierra Blanca Mountains ranges surround the Company to the west. And on the north and south, Dell Telephone is flanked by the Sacramento Mountains and the Devil Ridge and Eagle Mountains.

The sheer expanse of Dell Telephone's territory in addition to the difficult, mountainous terrain and rocky soil type drive up significantly the costs of building and maintaining a communications network. For example, the size of the service area requires each of the

Company's service trucks to traverse between 55,000 and 60,000 miles annually, including more than 1,800 miles of unpaved roads, simply to carry out necessary network maintenance and service requests. Indeed, one of the company's new trucks that was put into service in February 2012 logged more than 10,000 miles in just two and a half months. And, because much of the territory consists of rock soil, Dell Telephone must use a rock saw instead of a bulldozer to bury plant, which is a slow, tedious and costly process.

Dell Telephone's location in an arid region further adds to the Company's high costs. Dell Telephone's service area contains very few bodies of water and features very hot, dry summers. From May to mid-September, temperature highs range between the mid 90's to the lower 100's, and temperatures can drop by as much as 40 degrees in the evenings. The region is also subject to very cold temperatures in the wintertime. These temperature fluctuations, coupled with extreme thunderstorms that lead to flooding in the Salt Flat region and in Dell Valley, where Dell City is located, are damaging to communications network equipment and drive up maintenance and repair costs.

**B. Alternative Providers**

The only alternative providers of voice telephony or broadband services in Dell Telephone's territory are Verizon Wireless, AT&T Mobility, and Sprint. However, these wireless providers only cover a small fraction of Dell Telephone's territory, and all three providers rely on Dell Telephone for wireless fiber backhaul services.

*Terrestrial Voice Telephony Services.* Dell Telephone is the only provider of terrestrial voice telephone services throughout its service territory. Dell Telephone estimates that Verizon Wireless, AT&T Mobility, and Sprint each covers less than [REDACTED] percent of Dell Telephone's

territory, primarily along the interstate, IH-10, and less than [REDACTED] of its territory is covered by the three wireless providers combined. Exhibit 1 provides maps showing each wireless provider's coverage in Dell Telephone's territory.

*Broadband Service.* Dell Telephone is the only provider of high-speed broadband services in its territory. Verizon Wireless, AT&T Mobility, and Sprint provide only limited, non-3G data services within the covered areas. In fact, based on data from Verizon Wireless and AT&T Mobility, the Company has determined that Verizon Wireless' 3G services cover less than 0.2 percent of Dell Telephone's territory, and AT&T Mobility's 3G services cover less than 2 percent of Dell Telephone's service area.<sup>17</sup> There are no cable providers or other terrestrial broadband providers in the Company's territory.

**C. Accounting of Unused or Spare Equipment**

Unused or spare equipment or facilities are booked to Part 32 Account 2410, Cable & Wire Facilities. Dell Telephone follows the National Exchange Carrier's Association's ("NECA") interpretation of Section 36.153 of the interpretation of Section 36.153 of the FCC's rules, 47 C.F.R. § 36.153, in the apportionment of spare facilities.<sup>18</sup> Based on this interpretation,

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<sup>17</sup> See Reply Comments of Verizon, AU Docket No. 12-15 (filed Mar. 26, 2012); Comments of AT&T, AU Docket No. 12-25 (filed Mar. 16, 2012).

<sup>18</sup> NECA's Cost Guideline titled "Spare Fiber C&WF Investment" states that "the spare portion of any facility, including fiber, is categorized in the same manner as the in-use portion of the same section of cable. If the spare facility is part of an existing "in use" cable facility, the spare capacity/facilities would get categorized in the same proportion of "in use" categorization (or directly assigned if the entire facility is assignable to one category)." Furthermore, the guideline states that "the FCC's rules also acknowledge that certain C&WF investment that is 'reserved' can be categorized based on an analysis of company records. To the extent that supportable documentation consistent with the FCC's rules (e.g., cable engineering and assignment records) identifying the facilities 'kept or set apart for a specific use' is provided,

Dell Telephone assigns spare facilities to the following categories: Category 1-Exchange Line, Category 2-Wideband and Exchange Trunk, Category 3-Interexchange. Dell Telephone's accounting for its spare and unused equipment is provided in detail in the attached Exhibit 2.

**D. Corporate Operations**

Dell Telephone's total corporate operations expense for 2011 was [REDACTED]. Exhibit 3 details the components of this expense.

**E. End User Rate Plans**

Dell Telephone offers the following end-user rate plans:

**Standard Local Voice Services:**

Voice Plan	Jurisdiction	Price
Residential	TX	\$18.65
	NM	\$21.34
Business	TX	\$25.90
	NM	\$29.90

**CLASS and Custom Calling Features:**

Feature	Monthly Fee
Anonymous Call Rejection	\$2.50
Auto Callback	\$2.00
Auto Recall	\$2.00
Call Forwarding	\$1.50
Call Forward Do Not Answer	\$1.50
Caller ID, Name & Number	\$1.50
Call Waiting ID	\$4.50
Distinctive Ringing	\$2.00
Selective Call Acceptance	\$2.00
Selective Call Forwarding	\$2.00

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companies have the ability to separately assign the cost of reserved cable to the various C&WF categories within the boundaries of the FCC's rules."

Selective Call Rejection	\$2.00
Speed Calling 8	\$0.50
Speed Calling 30	\$4.50
Three-way Calling	\$1.00
Touch Tone	\$1.25
Call Package 2 (Includes any two of Call Waiting, Call Forwarding, Three-Way Calling and Speed Calling 8)	\$1.75
Call Package 4 (Includes Call Waiting, Call Forwarding, Three-Way Calling and Speed Calling 8)	\$2.75
Voice Messaging	\$5.95

**Long Distance Services:**

Plan	Price and Description
Rate Plan A	\$0.15 per minute, anytime, anywhere in the continental U.S.
Rate Plan B	\$0.10 per minute anytime, in-state \$0.10 per minute, out-of-state, within the continental U.S. \$5.00 monthly fee
International Calls	\$0.60 per minute

**Broadband Services:**

Plan	Price	Data Rate
Basic (dialup replacement)	\$24.99	128kBps x 128Kbps
Copper	\$39.99	1Mbps x 1Mbps
Bronze	\$69.99	1Mbps x 2Mbps
Silver	\$89.99	1Mbps x 3Mbps
Gold	\$114.99	1Mbps x 5Mbps
Platinum	\$124.99	1Mbps x 7Mbps

**F. List of Services Other Than Voice Services Provided Over the USF Supported Plant**

*Broadband Service.* Dell Telephone offers Digital Subscriber Line (“DSL”) and fiber-to-the-premises service to [REDACTED] percent of its customers. Approximately, [REDACTED] percent of Dell

Telephone's customers subscribe to its broadband services. As of April 2012, Dell Telephone's customers subscribed to the following broadband rate plans:

Basic (dialup replacement)	128Kbps x 128Kbps	
Copper	1Mbps x 1Mbps	
Bronze	1Mbps x 2Mbps	
Silver	1Mbps x 3Mbps	
Gold	1Mbps x 5Mbps	
Platinum	1Mbps x 7Mbps	

*Special Access.* Dell Telephone provides [REDACTED] dedicated special access circuits to anchor institutions, border security institutions, utility companies, local and state government institutions and cellular service providers.

*Multichannel Video Service.* Dell Telephone does not offer multichannel video service. Due to the great expense of obtaining programming rights, the relatively limited number of potential customers, and the fact that video service from DIRECTV and Dish Networks is ubiquitously available in Dell Telephone's service area, Dell Telephone does not believe a viable business case exists for it to offer video service.

**G. Customers Served**

As of April 2012, Dell Telephone served [REDACTED] access lines to approximately [REDACTED] customer premises.

*Anchor Institutions.* Dell Telephone serves the following anchor institutions:

- U.S. Border Patrol – Sierra Blanca Checkpoint and Highway 62/180 Checkpoints
- U.S. Immigration and Customs Enforcement, Department of Homeland Security
- U.S. Department of Agriculture
- U.S. Department of the Interior – Park Services

- U.S. Forest Service
- NOAA National Weather Service
- Federal Aviation Administration – Harris Eagle Peak
- Texas Department of Transportation
- Rio Grande Council of Governments
- Dell City Independent School District

*Business Customers.* In addition to serving a number of local agricultural and ranching businesses in the region, Dell Telephone serves various electric and gas utilities, the Union Pacific Railroad, and Blue Origin, an aerospace research and development company owned by Amazon founder, Jeff Bezos.

**H. Procedures for Allocating Shared or Common Costs Between Regulated and Nonregulated Services or Operations**

Dell Telephone’s cost allocation procedures are provided in the appended Exhibit 4, which details the Part 36/69 cost allocation procedures used by the Company to allocate regulated and non-regulated costs.

**I. Audited Financial Statements**

The audited financial statements of Dell Telephone for 2008-2011 are attached as Exhibit 5.

**J. Information Regarding Outstanding Loans**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 20

**K. Five-Year Pro Forma Financial Analysis of the New USF Rules' Impact on Dell Telephone**

Dell Telephone had an independent accounting firm prepare a financial analysis of the projected impact of the FCC's new USF rules. The analysis starts with a five-year pro forma baseline financial statement, which is attached as Exhibit 7, that reflects the Company's projected financial performance without taking into account the Commission's new universal service rules. The accounting firm also prepared a five-year pro forma financial statement, which is attached as Exhibit 8, that estimates the financial effects of applying the *USF Transformation Order* to Dell Telephone.

Exhibits 7 and 8 underscore the dire financial situation in which Dell Telephone will find itself in the absence of a waiver. The most immediate impact of the FCC's new rules will be to reduce the Company's universal service support by more than [REDACTED] in 2012, a reduction of approximately 14 percent. Dell Telephone estimates that it will lose approximately [REDACTED] in universal service support in 2013 and that its total support during the period from 2013 through 2016 will decrease from approximately [REDACTED] to approximately [REDACTED], a reduction of more than 36 percent.

Dell Telephone's projections show that the decrease in universal service support resulting from application of the FCC's new USF rules will cause the Company to violate the TIER requirements of its loan agreements and to realize net losses as early as next year. Indeed, the

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[REDACTED]

devastating financial consequences of the decrease in federal USF as a result of the Commission's new rules would actually be felt immediately were it not for the Company's efforts to diversify its operations. Specifically, the Company would experience a net loss this year but for the fact that the Company's nonregulated affiliate, Delcom, Inc. received a construction contract under a BIP grant that will provide approximately [REDACTED] in construction revenues in 2012. Without this construction revenue, the Company would incur a net loss of [REDACTED] this year as a result of the Commission's new rules.

Due to the decrease in universal service support and resulting negative net margins, Dell Telephone's cash reserves will be significantly reduced in 2013 and will continue to decrease until the Company runs out of cash by 2016. Dell Telephone estimates that the Company's current cash reserves will support the Company for only three years. At such time, the Company's only option would be to liquidate all investments in marketable securities (approximately [REDACTED]), which would only cover the Company's cash requirements through sometime in 2016. At that point, Dell Telephone would be insolvent.

**L. Identification of the Specific Facilities That Will Be Taken Out of Service**

Because the expected results of the anticipated reduction in USF as a result of the FCC's new rules will cause the Company to become insolvent within four years, selecting facilities to be taken out of service is not an option and would not forestall the Company's eventual demise. Indeed, Dell Telephone does not see a viable scenario under which it will remain in operation beyond 2014 in the absence of a waiver.

### III. A WAIVER OF THE COMMISSION'S NEW USF RULES IS WARRANTED

To serve the public interest, the Commission should waive three of its USF rules as applied to Dell Telephone: (i) the \$250 per line monthly cap on HCLS;<sup>21</sup> (ii) the rule limiting reimbursable capital and operating expenses for HCLS;<sup>22</sup> and (iii) the updated and extended limits on recovery of corporate operations expenses applied to HCLS and ICLS.<sup>23</sup> The Commission may waive its rules for good cause shown.<sup>24</sup> The Commission may exercise its discretion to waive a rule when the particular facts make strict compliance inconsistent with the public interest.<sup>25</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>26</sup> In short, a

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<sup>21</sup> 47 C.F.R. § 54.302.

<sup>22</sup> *USF Transformation Order*, ¶ 220; *HCLS Benchmark Methodology Order*.

<sup>23</sup> *USF Transformation Order*, ¶¶ 227-33; 47 C.F.R. § 36.621(a)(4).

<sup>24</sup> 47 C.F.R. § 1.3.

<sup>25</sup> The Commission has considerable discretion as to whether to waive its rules. *See Office of Communication of United Church of Christ v. FCC*, 911 F.2d 803, 812 (D.C. Cir. 1990) (upholding the Commission's grant of a waiver "[g]iven the deference due the agency in matters of this sort"); *City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 663 (D.C. Cir. 1984) (noting that the scope of review of a waiver determination by the Commission "is narrow and constrained"). As the D.C. Circuit has observed, the Commission's waiver determinations are entitled to heightened deference because "the agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety-value procedure for consideration of an application for exemption based on special circumstances." *AT&T Wireless Services, Inc. v. AT&T*, 270 F.3d 959, 965 (D.C. Cir. 2001) (internal quotation marks omitted).

<sup>26</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

waiver is justified when special circumstances warrant a deviation from general rules and such deviation will serve the public interest.<sup>27</sup>

Such circumstances exist here. *First*, absent a waiver, consumers, businesses, and critical anchor institutions—including government entities tasked with protecting our nation’s border—will lose voice and broadband services. Not only will Dell Telephone’s customers lose access to voice and broadband services, but wireless customers in the area will also be at risk of losing service as the cellular providers in Dell Telephone’s service area rely on Dell Telephone for backhaul services. *Second*, a waiver is necessary because the new rules do not provide sufficient support given the extraordinarily high costs and other operational challenges that Dell Telephone faces in providing service. And *third*, a waiver will support, not undermine, the Commission’s objectives to make the USF more efficient and to expand broadband services to unserved areas.

A. **Allowing Consumers, Businesses, and Critical Anchor Institutions to Lose Voice and Broadband Services Is Contrary To The Public Interest.**

Absent a waiver, consumers, businesses, and critical anchor institutions – including federal border security agencies – will lose access to voice and broadband services. As noted above, Dell Telephone is the only voice and broadband provider that covers its entire service territory. Dell Telephone’s only competitors for terrestrial voice services are wireless providers that offer limited coverage, mainly along the major roads within the Company’s service area. Furthermore, Dell Telephone provides wireless fiber backhaul services to all cellular towers within its territory. Rural consumers, local agricultural businesses and the anchor institutions

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<sup>27</sup> *Northeast Cellular*, 897 F.2d at 1166; see also *Allband Communications Cooperative, Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission’s Rules*, WC Docket No. 05-174, Order, 2005 FCC LEXIS 4527 (Aug. 11, 2005).

located outside of the limited wireless coverage must rely entirely on Dell Telephone for their communications needs. Broadband services are similarly limited. The wireless providers in Dell Telephone's territory—AT&T Mobility, Verizon Wireless, and Sprint—collectively cover less than 2 percent of Dell Telephone's service area with 3G data services.

Moreover, because Dell Telephone's territory covers 59 miles of the Texas-Mexico border, a number of state and federal institutions tasked with securing the border rely on the Company for voice, high-speed broadband, and high-capacity services. Dell Telephone provides service to U.S. Customs and the Department of Homeland Security at the Sierra Blanca and Highway 62/180 border checkpoint stations. Additionally, the Federal Aviation Administration uses special access circuits from Dell Telephone in its operation of a long-range radar site from Eagle Peak to control airspace along the border and into El Paso. And federal, state and local law enforcement agencies rely on the Company's communications services as they combat drug trafficking and associated criminal activity in this remote border region.<sup>28</sup>

However, all of the customers will lose service if the Commission's high-cost rules are applied to Dell Telephone. Indeed, unless the Commission grants the requested waiver, based on Dell Telephone's projections that it will realize net losses as early next year and will deplete its existing cash reserves by 2015, there is little reason for the Company to remain in business beyond 2014 absent a waiver.

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<sup>28</sup> See, e.g., "At Sierra Blanca Checkpoint, Agents Find 660 Lbs of Dope in 18-Wheeler," HUDSPETH COUNTY HERALD-DELL VALLEY REVIEW, May 4, 2012.

**B. The Combined Impact of the Commission's New USF Rules Does Not Provide Sufficient Support Given the Extraordinarily High Costs That the Company Faces.**

The combined impact of the \$250 per line monthly cap, the limits on HCLS set by the Commission's new HCLS methodology, and the updated corporate operations expense limitations results in a more than 36 percent reduction in Dell Telephone's universal service support between 2013 and 2016. In fact, in 2013 alone, Dell Telephone stands to lose nearly [REDACTED] in universal service support, which represents an almost 30 percent reduction in subsidies upon which the Company relies in order to operate. This reduced level of support is insufficient to advance and preserve universal service as required by section 254, given the unique challenges and extraordinarily high costs that Dell Telephone faces. Dell Telephone's territory is very sparsely populated with just 0.08 customers per square mile and no concentrated population centers other than Dell City, Texas—a community of just 385 people. But, Dell Telephone's territory is not just very low density, it is also geographically large, consisting of a physical area that is nearly 10,500 square miles. As a result, completing routine service orders and maintenance requests requires Dell Telephone's technicians to travel hundreds of miles on a daily basis.

Dell Telephone's high costs are also driven by the mountainous and rocky terrain that makes up the majority of its territory. Mountainous terrain drives up the costs of both constructing and maintaining communications networks as carriers must bore into solid rock to bury plant or construct wireless infrastructure, and weather conditions are hard on equipment requiring carriers to make frequent repairs to hard-to-reach facilities. Furthermore, the mountainous terrain in Dell Telephone's service area limits the Company's ability to avail itself

of more cost-effective, fixed wireless line-of-sight solutions. Even where Dell Telephone has cost-effectively deployed wireless solutions to its most remote customers, the cost of constructing these wireless facilities is higher as the Company is required to construct poles and subscriber equipment on solid rock.

In addition, because Dell Telephone serves border security and law enforcement institutions along the Texas-Mexico border, Dell Telephone has the added cost of providing high capacity, reliable and redundant communications services to border security institutions. Building in the level of reliability and redundancy required for these border security and public safety users is costly and may not be a priority for other carriers that serve low density, rural areas. Furthermore, due to the high profile special access circuits provided to these users, Dell Telephone's technicians must be trained to respond to any degradation in service according to the FCC's Telecommunications Service Priority user system.

Dell Telephone cannot cover the costs of operations without current levels of universal service subsidies. In fact, even if current universal service support is maintained, the Company faces financial challenges in providing voice and broadband service in an exceedingly challenging geographic area.

Raising rates is not a viable option. Dell Telephone's local rates already exceed the Commission's benchmark by several dollars. And, because of the socioeconomically challenged area it serves, the Company is constrained in its ability to increase rates. Indeed, under the existing regime, Dell Telephone is challenged in selling nonregulated services such as broadband to its customers, as evidenced by the fact that less than [REDACTED] percent of the Company's customers subscribe to the service.

C. **The Commission's Objectives Will Be Strengthened, Not Undermined, by Grant of the Requested Waiver.**

The requested waiver relief will not undermine the Commission's objective to "eliminate waste and inefficiency and improve incentives for rational investment and operation by rate-of-return LECs."<sup>29</sup> To the contrary, grant of the requested waiver would strengthen the Commission's quest for greater efficiency. Dell Telephone currently operates in a consciously cost-effective manner and is taking additional steps to increase efficiencies.

For example, Dell Telephone employs a wireless technology solution to serve its most remote customers with a Redline™ wireless radio, instead of burying plant to every home in its territory. And as Dell Telephone maintains and updates its facilities, the Company has buried fiber to the premises only in new builds where the Company already needed to incur the cost of burying plant. Dell Telephone also is leanly staffed. Dell Telephone currently employs just 27 people that are cross-trained to handle multiple duties. Two of the Company's employees are retiring this year and will not be replaced.

Furthermore, Dell Telephone continues to work towards building its nonregulated operations outside of its service area to grow alternative sources of revenues. For instance, Dell Telephone's subsidiary, Delcom, Inc.'s partnership in the R18 BIP project in Midland Texas, will provide the Company with construction revenues and the opportunity to expand its broadband service offerings beyond its territory. Specifically, Delcom will use a portion of the new fiber network to offer competitive broadband service to four underserved markets outside of its territory.

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<sup>29</sup> *USF Transformation Order*, ¶ 195.

Dell Telephone is also considering other business opportunities as well that do not involve universal service subsidies. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] However,

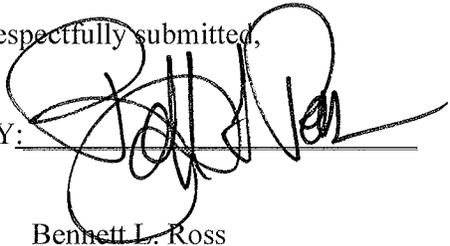
Dell Telephone has not yet been able to finalize its investment plans, due in large part to the uncertainty created by the Commission's USF reforms.

Given Dell Telephone's consistent attempts to operate on a cost-effective and efficient basis, a waiver would be consistent with the Commission's overall objectives for universal service reform.

**IV. CONCLUSION**

For the foregoing reasons, the Commission should waive: (i) its \$250 per line monthly cap on HCLS;<sup>30</sup> (ii) its rule limiting reimbursable capital and operating expenses for HCLS;<sup>31</sup> and (iii) its updated and extended limits on recovery of corporate operations expenses applied to HCLS and ICLS.<sup>32</sup>

Respectfully submitted,

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<sup>30</sup> 47 C.F.R. § 54.302.

<sup>31</sup> *USF Transformation Order*, ¶ 220; *HCLS Benchmark Methodology Order*.

<sup>32</sup> *USF Transformation Order*, ¶¶ 227-33; 47 C.F.R. 36.621(a)(4).

**REDACTED—FOR PUBLIC INSPECTION**

ORIGINAL

**EXHIBIT 1**

**Map of Dell Telephone's Network and Estimated Cellular Coverage**

**[4 pages]**

Redacted - For Public Inspection.

**REDACTED—FOR PUBLIC INSPECTION**

**EXHIBIT 2**

**Accounting of Spare Equipment**

**[1 page]**

**REDACTED—FOR PUBLIC INSPECTION**

**EXHIBIT 3**

**Corporate Operations Expense**

**[1 page]**

**REDACTED—FOR PUBLIC INSPECTION**

**EXHIBIT 4**

**Cost Allocation Procedures**

**[8 pages]**

**REDACTED—FOR PUBLIC INSPECTION**

**EXHIBIT 5**

**Audited Financial Statements**

**[122 pages]**

**REDACTED—FOR PUBLIC INSPECTION**

**EXHIBIT 6**

**RUS Loans**

**[1 page]**

**REDACTED—FOR PUBLIC INSPECTION**

**EXHIBIT 7**

**Five-Year Financial Projection Without FCC Order Impact**

**[15 pages]**

**REDACTED—FOR PUBLIC INSPECTION**

**EXHIBIT 8**

**Five-Year Financial Projection With Full FCC Order Impact**

**[15 pages]**