

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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
	)	

**REPLY TO COMMENTS ON PETITION FOR WAIVER OF DELL TELEPHONE  
COOPERATIVE**

On June 6, 2012, Dell Telephone Cooperative (“Dell Telephone” or “Company”) filed a petition<sup>1</sup> requesting that the Commission waive the following three new universal service distribution rules as applied to the Company: (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

---

<sup>1</sup> Petition for Waiver of Dell Telephone Cooperative, WC Docket No. 10-90 *et al.* (filed June 6, 2012) (“Petition”).

<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>

In its petition, Dell Telephone highlighted several reasons why a waiver would serve the public interest. *First*, absent a waiver, consumers, businesses, and critical anchor institutions—including government entities tasked with protecting our nation’s border—will lose access to wireline and wireless voice and broadband services.<sup>5</sup> Indeed, unless the Commission grants the requested waiver, Dell Telephone projects that it will realize net losses as early as next year, will deplete its cash reserves by 2015, and will be insolvent by 2016. *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.<sup>6</sup> And *third*, a waiver will advance, not undermine, the Commission’s objectives to make the USF more efficient and to expand broadband services to unserved areas.<sup>7</sup>

Not surprisingly, Dell Telephone’s petition – and its justifications for a waiver – have drawn strong support from a diverse mix of commenters, including local residents and businesses, public safety officials that protect the Texas-Mexico border, and numerous rural carriers, among others. In total, 18 parties filed substantive comments on the Petition—all

---

<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/ICC Transformation Order*”); *see also Connect America Fund, High-Cost Universal Service Support*, WC Docket No. 10-90, Order, DA 12-646 (rel. Apr. 25, 2012) (adopting methodology to limit reimbursable capital and operating expenses for HCLS).

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

<sup>5</sup> *See* Petition at 20-21.

<sup>6</sup> *See id.* at 22-23.

<sup>7</sup> *See id.* at 24-25.

*urging the Commission to maintain Dell Telephone’s existing universal service support.* As detailed below, these commenters emphasize that Dell Telephone’s services play a critical role in maintaining the vitality of Dell City and the surrounding areas, and they fear that this rural region will suffer a dramatic downturn if the waiver is not granted and Dell Telephone ceases to exist, given the lack of competitive alternatives. The commenters also provide first-hand accounts of the extraordinarily high costs and challenges of doing business and living in rural Texas and New Mexico. All told, the record overwhelmingly confirms the importance of granting the requested waiver. Accordingly, the Commission should promptly grant Dell Telephone’s petition.

**A. Commenters Confirm That a Waiver Is Necessary to Ensure that Consumers, Businesses, and Critical Anchor Institutions Continue to Have Access to Vital Voice and Broadband Services.**

Commenters – including many citizens and businesses in Dell City – all urge the Commission to grant the requested waiver.<sup>8</sup> They highlight the “indispensible role” that Dell Telephone’s communications services have played in developing the region.<sup>9</sup> They also

---

<sup>8</sup> See, e.g., Joint Comments of Tularosa Basin Telephone Company, The Ponderosa Telephone Co., and Table Top Telephone Company at 2 (August 6, 2012) (“Joint Telecommunications Provider Comments”) (“It is evident from the Petition and supporting materials submitted by Dell Telephone that application of the new universal service rules to Dell Telephone will have severe and undesired impacts on the ability of the Cooperative to continue to serve its customers.”); Comments of Leaco Rural Telephone Cooperative, Inc. at 2 (August 9, 2012) (“Leaco Telephone Comments”) (“Without the federal high-cost universal service programs, there would be no affordable voice or broadband services available to customers residing in the areas served by ... Dell.”); Comments of the National Telecommunications Cooperative Association at 2 (August 10, 2012) (“NTCA Comments”) (“Dell demonstrates that absent a waiver, it is not financially viable and rural consumers would lose access to voice and broadband services.”); Comments of Baca Telephone Co., Inc. at 1 (August 6, 2012) (“Baca Telephone Comments”).

<sup>9</sup> Letter from Anne Lynch Hanson to the Federal Communications Commission, WC Docket No. 10-90, at 1 (July 3, 2012) (“I am a resident of Dell City since 1952. Telephone and Internet communication service played an indispensable role in the development of our community”); Letter from Judge Becky Dean-Walker to the Federal Communications

emphasize that Dell Telephone “provides important and necessary communications services to its rural customers, who in turn provide food, water, gas/oil, military defense and testing, border security and other natural resources for America.”<sup>10</sup>

Commenters also point out that they have “no other competitive options” for much of Dell Telephone’s service area.<sup>11</sup> As explained in its Petition, Dell Telephone is the only voice and broadband provider that covers its entire service territory.<sup>12</sup> Its only competitors for terrestrial voice services are wireless providers that offer limited coverage, mainly along major roads.<sup>13</sup> Rural consumers, local agricultural businesses, and the anchor institutions located

---

Commission, WC Docket No. 10-90, at 2 (June 22, 2012) (“Life in the outlying areas [of this region] has improved because of companies like Dell Telephone ... who were willing to take on the daunting task. No one has a real feeling about how the conditions are in these rural areas until you live here or at least go ride with one of the fellows who work for these businesses when he goes on a long distance rural call.”).

<sup>10</sup> Letter from Joanna Lou Schafer to the Federal Communications Commission, WC Docket No. 10-90, at 1 (July 10, 2012).

<sup>11</sup> Letter from Anne Lynch Hanson at 1; *see also* Letter from Sarah Bishop to the Federal Communications Commission, WC Docket No. 10-90, at 1 (July 2, 2012) (“I rely on Dell Telephone for voice and broadband service. Because we have no other competitive options, I respectfully request that the Commission grant the relief requested by Dell Telephone. Otherwise, we stand to lose service ...”); Comments of Kiesling Associates LLC at 3 (August 10, 2012) (“Kiesling Comments”) (“Currently no other provider is serving the residential, business, and governmental agencies, including those agencies that provide national security and border patrol functions, throughout its serving area.”); Comments of Pensasco Valley Telephone Cooperative Inc. at 3 (August 10, 2012) (“Penasco Telephone Comments”) (“There are scant alternatives for Dell’s customers if it is forced into liquidation.”).

<sup>12</sup> *See* Petition at 11.

<sup>13</sup> *See* NTCA Comments at 3 (“Dell is the sole provider of voice and broadband services that cover the entire service territory and provides wireless fiber backhaul to the wireless providers who offer limited voice coverage in the region.”).

outside of the limited wireless coverage areas rely entirely on Dell Telephone. And even where wireless services are sold, residents stress that “[c]ell phone use ... is unreliable at best ....”<sup>14</sup>

Understandably then, commenters “fear[] that Dell Telephone will go out of business if the Commission fails to grant the requested waiver.”<sup>15</sup> Indeed, if Dell Telephone ceases operations, local families, businesses, and schools will be left with “no options for meeting [thei]r communications needs.”<sup>16</sup> A local ranch owner, for example, explains that it “would be devastating for this area to lose service from Dell Telephone” and that her company “would lose access to the internet, and would struggle to stay in business.”<sup>17</sup> Another small business owner explains that if the Commission’s reforms effectively force Dell Telephone out of business, her “company would be unable to communicate with its customers,” her “children would lose access

---

<sup>14</sup> Letter from Judge Becky Dean-Walker at 2; *see also* Comments of TRC Engineering Services, Inc. at 3 (August 8, 2012) (“TRC Comments”) (“Through the good efforts of Dell Telephone, its customers have access to broadband service that cannot be matched by wireless networks in the area.”). Furthermore, Dell Telephone provides wireless fiber backhaul services to all cellular towers within its territory. *See* Kiesling Comments at 3 (“Additionally, these customers are likely to lose wireless services as Dell Telephone provides the wireless backhaul necessary to make wireless services function.”).

<sup>15</sup> Letter from Anne Lynch Hanson at 1.

<sup>16</sup> *Id.*; *see also* Letter from Judge Becky Dean-Walker at 2 (“If the Commission fails to grant the requested waiver, I am fearful that Dell Telephone will not survive, leaving not only my company and home without reliable options for communication needs, but much of the county and a huge portion of New Mexico.”); Letter from Anne Lynch Hanson at 1 (“[g]rowth and sustainability” of the region’s “farming and business community depends on having” Dell Telephone stay in business); Letter from Joanna Lou Schafer at 1 (“Should the FCC decide to implement its proposed funding changes under the National Broadband Plan, it will effectively end services to most of DTC’s customers .... Most DTC customers ... will not be able to afford the basic telephone services that are essential to the education, public health, and/or public safety.”); Letter from Kevin Lynch, CL Ranch, to Chairman Genachowski, Federal Communications Commission, WC Docket No. 10-90, at 1 (July 5, 2012) (“Because we have no other competitive options,” if we lose service from Dell Telephone “my company would immediately be unable to communicate with its customers, would lose access to the Internet, and would struggle to stay in business.”).

<sup>17</sup> Letter from Judge Becky Dean-Walker at 2.

to on-line studies,” and her family’s “ability to remain in this area of rural west Texas will be at risk.”<sup>18</sup> Likewise, an owner of a small quarry, a grass farm, and rental properties emphasizes that Dell Telephone’s phone and Internet access services are her “only source of customers,” without which this commenter would go out of business as well.<sup>19</sup>

Commenters also highlight that Dell Telephone’s services play an important role in protecting national security, and they stress that failing to grant a waiver will harm our country’s safety.<sup>20</sup> The Texas Border Sheriff’s Coalition is “particularly concerned about the impact of the new rules on Dell Telephone.”<sup>21</sup> The Coalition explains that Dell Telephone serves Hudspeth, Culberson, and Jeff Davis counties, which includes a 59-mile stretch of the Texas-Mexico border. They emphasize that “[w]ithout the communications services provided by Dell Telephone, we could not do our job” of “secur[ing] the Texas-Mexico border.”<sup>22</sup> Indeed, they “rely on Dell Telephone’s network for voice and broadband services and dedicated special

---

<sup>18</sup> Letter from Anne Lynch Hanson at 2.

<sup>19</sup> Letter from Laura Lynch at 1.

<sup>20</sup> *See, e.g.*, Letter from the Texas Border Sheriffs’ Coalition to the FCC, WC Docket No. 10-90, at 1 (June 28, 2012) (“Texas Border Coalition Comments”); Kiesling Comments at 3 (“Currently no other provider is serving the ... agencies that provide national security and border patrol functions” throughout Dell Telephone’s service area.). As explained in its Petition, 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. *See Petition* at 21.

<sup>21</sup> Letter from the Texas Border Sheriffs’ Coalition to the FCC, WC Docket No. 10-90, at 1 (June 28, 2012).

<sup>22</sup> *Id.*

access circuits, which are necessary for critical border security and public safety operations.”<sup>23</sup> This coalition of local, state, and federal border security officials fears that failing to grant a waiver “*would greatly compromise security along the Texas-Mexico border*”—a result clearly not in the public interest.<sup>24</sup>

In sum, commenters unanimously agree that absent a waiver, consumers, businesses, and critical anchor institutions – including border security agencies – will lose access to voice and broadband services. And this loss will devastate the local economy, force many people to leave Dell City and the surrounding areas, and greatly compromise public safety. Accordingly, a waiver is clearly in the public interest.

**B. Commenters Agree that Dell Telephone Faces Extraordinarily High Operating Costs, Which Justify a Waiver.**

Commenters all agree that the reduced support Dell Telephone stands to receive under the Commission’s reforms is grossly inadequate given the unique challenges and extraordinarily high costs that Dell Telephone faces in serving Dell City and the surrounding areas.

Specifically, commenters emphasize that Dell Telephone’s territory is very sparsely populated with no concentrated population centers other than Dell City, Texas—a community of just 385

---

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 2. Commenters also highlight how Dell Telephone’s services aid local health and safety efforts. Perhaps most importantly, Dell Telephone is the only provider that offers E-911 service throughout the entire region. *See* TRC Comments at 3 (emphasizing the importance of Dell Telephone’s E-911 services, especially given that “medical services are 90 to 100 miles away from it[s] service area”); *see also* Letter from Laura Lynch at 1 (“Many farmers here are on heavy machinery 24 hours a day, posing a safety issue if there is not adequate phone services in these far corners of west Texas.”). Dell Telephone’s services also help patients keep in touch with their health service providers and caretakers. One long-time resident, who is caring for her elderly mother, emphasizes that Dell Telephone’s communication services “are imperative for an aging parent” in such a rural area. Letter from Joanna Lou Schafer at 1.

people.<sup>25</sup> Commenters also explain that Dell Telephone’s territory is not just very low density, it is also geographically large,<sup>26</sup> 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. All told, these “particular circumstances” cause Dell Telephone “to be highly exposed to extraordinarily harsh consequences from application of the Commission’s new USF rules.”<sup>27</sup>

Furthermore, commenters highlight that Dell Telephone’s high costs are driven by the “rugged, mountainous terrain” that makes up the majority of its service area, as well as unique costs due to climatic conditions and poor road infrastructure.<sup>28</sup> As one rural carrier explains, the mountainous terrain found in West Texas and New Mexico “translates into higher operating and capital costs, particularly in burying plant in solid rock terrain.”<sup>29</sup> Indeed, Dell Telephone “must

---

<sup>25</sup> See, e.g., NTCA Comments at 2 (“Dell is a small company with a small base of customers over which to recover its cost.”); Letter from Laura Lynch at 1 (“Our vast area and very low population surely would meet the most stringent rural criteria. Our area is 10 thousand square miles with about 800 people.”); Comments of the Valley Telephone Cooperative, Inc. at 2 (August 2, 2012) (explaining that the “demographics of Dell” make deployment of broadband particularly expensive); Comments of the New Mexico Exchange Carrier Group at 2 (August 10, 2012) (“New Mexico Carrier Group Comments”); Kiesling Associates Comments at 2.

<sup>26</sup> See Letter from Laura Lynch at 1.

<sup>27</sup> New Mexico Carrier Group Comments at 2.

<sup>28</sup> NTCA Comments at 3 (“The company has high construction and operational costs due to rugged, mountainous terrain ...”); see also Baca Telephone Comments at 1; Kiesling Comments at 2; Pensasco Comments at 2; TRC Comments at 2 (“Dell Telephone’s certified service area is situated in an area of Texas that is ... mountainous, rugged and extremely rocky. The area also experiences extreme changes in weather such as temperatures ranging from well over 100F to well below freezing. During late fall and winter months, it is common to experience ice and snow.”).

<sup>29</sup> Pensasco Comments at 2. 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

frequently use [a] rock saw[], a 100,000 pound heavy equipment machine used to cut through the rocky terrain, instead of bulldozers, to bury plant ....”<sup>30</sup> Often, a rock saw “only cuts through 300 yards per day, as compared to the multiple miles of cable plowing per day that is possible in non-rocky soil, and undergoes regular damage requiring costly replacement parts.”<sup>31</sup> Naturally, this laborious process comes with a steep price tag.

Deploying new communications facilities in such a harsh environment significantly drives up Dell Telephone’s costs—especially compared to other rural providers.<sup>32</sup>

Unfortunately, Dell Telephone cannot cover these costs without current levels of universal service support.<sup>33</sup> In fact, even if the current federal support level is maintained, the Company will face financial challenges in providing voice and broadband service in such a challenging geographic area.

## II. CONCLUSION

For the foregoing reasons, and as uniformly endorsed by commenters, the Commission should waive: (i) its \$250 per line monthly cap on HCLS; (ii) its rule limiting reimbursable capital and operating expenses for HCLS; and (iii) its updated and extended limits on recovery of

---

Company is required to construct poles and subscriber equipment on solid rock. *See* Petition at 22-23.

<sup>30</sup> Pensasco Comments at 2.

<sup>31</sup> *Id.*

<sup>32</sup> As noted above, Dell Telephone also serves border security and law enforcement institutions along the Texas-Mexico border. 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. *See* Petition at 23.

<sup>33</sup> 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. *See* Petition at 23.

corporate operations expenses applied to HCLS and ICLS. A waiver is undoubtedly in the public interest and is strongly supported by the record.

Respectfully submitted,

By: /s/ Bennett L. Ross

Bennett L. Ross  
Steven E. Merlis  
**Wiley Rein LLP**  
1776 K Street, NW  
Washington, DC 20006  
(202)-719-7000

August 24, 2012

*Counsel to Dell Telephone Cooperative*