Wiley Rein LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

December 6, 2012

Bennett L. Ross
202.719.7524
bross@wileyrein.com

BY HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Dell Telephone Cooperative Petition for Waiver of Section 54.302 of the Commission's Rules and the Impact of Limiting Capital and Corporate Operations Expenses on Receipt of High-Cost Universal Service Support*, WC Docket No. 10-90 and WT Docket No. 10-208

Dear Ms. Dortch:

Dell Telephone Cooperative, Inc. ("Dell Telephone" or "Company") is filing this letter in response to questions and requests for information made by the Wireline Competition Bureau ("Bureau") in its November 20, 2012 letter to Dell Telephone.[1] The Company believes this information is fully responsive to the Bureau's requests and only confirms that Dell Telephone has satisfied the requirements for the requested waiver. Accordingly, Dell Telephone urges the Bureau to grant the waiver as promptly as possible.

1. **Provide the name, position, responsibilities, annual compensation, and deferred compensation if any, of the ten highest paid employees of Dell and each of its affiliates for 2009, 2010, and 2011. Provide employment agreements, if any, with these individuals. In addition to salary, include as part of compensation any benefits or any other non-salary forms of compensation. Please separately identify the various compensation components for each employee.**

Dell Telephone does not have employment agreements with any of its employees. The information responsive to this request regarding employee names, positions, responsibilities, annual compensation, deferred compensation, and any other non-

[1] *See* Letter from Julie Veach, Chief, Wireline Competition Bureau, to Denny Bergstrom, General Manager, Dell Telephone, DA 12-1879, WC Docket No. 10-90 and WT Docket No. 10-208 (2012); *see* Dell Telephone Cooperative Petition for Waiver, WC Docket No. 10-90 and WT Docket No. 10-208 (filed June 6, 2012).

salary forms of compensation is attached as Attachment 1-A. Attachment 1-B is a copy of the Company's Executive Bonus Agreement. Both Attachments 1-A and 1-B contain confidential information and are being provided pursuant to the Protective Order in this proceeding.

2. **Do the employees or directors of Dell contribute to their defined benefits retirement plans, or their health benefit plans, or are these plans fully-funded by the cooperative? If employees or directors contribute, please specify the amount of the employee and cooperative contributions for the ten highest paid employees of Dell.**

Employees and directors do not contribute to the defined benefit retirement plans or health benefit plans offered by Dell Telephone. The Company fully funds these benefits in an effort to recruit and retain the most qualified employees and directors. If it did not do so, the Company would struggle to convince current and prospective employees and directors to live and work in the remote rural area of Texas where the Company operates.

Retirement Plan. The Company has a defined benefit pension plan covering most of its employees, which is funded entirely by Dell Telephone. The plan is part of a multi-employer retirement program administered by the National Telephone Cooperative Association (NTCA) and approved by the Internal Revenue Service. Eligibility for benefits under Dell Telephone's defined benefit pension plan is limited to those covered employees who meet the so-called "Rule of 85," which requires that a retiree's age and years of service equal or exceed 85.

Health Care Plan for Retirees. The Company also sponsors and fully funds a defined benefit health care plan that covers most retired employees and directors. NTCA also administers this plan. Eligibility for benefits under Dell Telephone's defined health care plan is limited to retirees who meet the Rule of 85.

The funded status of the defined benefit health plan, as stated in the most recent actuarial report (12/31/11), is shown below.

Post-retirement plan obligations and funded status:

Health Plan for Employees. The Company also sponsors and funds a health plan for current employees and their covered dependents. Effective January 1, 2013, the health plan will be a Preferred Provider Organization (PPO) plan, which Dell Telephone expects will lower health care costs by more than [redacted].

As reflected by its move to a PPO plan, Dell Telephone has taken steps to reduce the cost of benefits offered by the Company. For example, individuals elected or appointed to Dell Telephone's Board of Directors on or after January 1, 2010 are only entitled to receive health benefits under the plan during their active tenure on the Board. For employees hired on or after January 1, 2010, they are only entitled to receive health benefits from the date of their retirement until the age of 65. These benefit arrangements represent a change for the Company, as directors and employees hired before January 1, 2010 are eligible to receive health benefits from the date of retirement until their death.

3. **In Exhibit 5 of the Petition, Dell's financial statements indicate that Dell has, on a consolidated company basis, approximately [redacted] in marketable securities as of December 31, 2011. What factors does Dell use to determine whether to invest excess cash in marketable securities or to invest in its telecommunications infrastructure for the benefit of its subscribers, or to pay down its debt?**

The marketable securities reflected on Dell Telephone's financial statements represent investments made with funds generally resulting from the sale of assets or gains from other extraordinary events – funds that the Company determined were not needed to make network improvements or to pay down debt. The Company has

reflected investments on its books for decades. In fact, according to the Company's ledgers, the amount of investments held by Dell Telephone from 1986 through 1999 ranged from approximately [redacted] to [redacted].

Historically, management and the Board of Directors invest excess cash only after determining that it is not needed to fund planned or proposed projects within a 12-18 month period. The Company's investments have provided the Company with modest growth, particularly as compared with traditional savings vehicles that currently yield extremely low interest returns. Nonetheless, Dell Telephone's investments are available for use at any time if the funds are necessary for the Company to pay for network improvements or to reduce its debt level.

4. **Dell's 2011 financial statements in Exhibit 5 show cash value for life insurance of approximately [redacted]. Please provide additional information regarding this insurance, including the insured person(s), payable-on-death amounts, beneficiaries of the policies, annual premiums, and why these life insurance policies are held and premiums paid by Dell.**

The information responsive to this request is included in Attachment 4-A. Attachment 4-A contains confidential information and is being provided pursuant to the Protective Order in this proceeding.

The Company has life insurance policies on certain current and former members of the Board of Directors and all managers of the Company. Specifically, under a policy adopted by Dell Telephone's Board of Directors, the Company purchases a life insurance policy for each board member who serves on the board, the proceeds from which are used to reimburse Dell Telephone for the cost of the premiums and to provide the employee-designated beneficiary with any amounts greater than the premiums paid. The amounts retained by the Company are considered a reimbursement of premiums paid on the policies.

The Company also maintains life insurance policies on all managers of the Company. Consistent with a policy adopted by Dell Telephone's Board of Directors, once the Company receives the proceeds of the policy, [redacted] will be paid in death benefits to the employee-designated beneficiary with any additional amounts being retained by the Company as a reimbursement of premiums paid.

The Company provides these life insurance benefits in an effort to recruit and retain the most qualified managers and directors.

5. **Dell's 2011 financial statements show its affiliate, Delcom, Inc. received [redacted] in "construction services revenue" during 2011. In Exhibit 7, Dell's 2012 consolidated statements of projected operations indicate Delcom is expecting to receive [redacted] in construction services revenues during 2012. After 2012, [redacted].**

Delcom is not normally in the business of providing construction services. As indicated in "Note D. Revenues" of the Projected Financial Statements, however, the construction services revenue was associated with Delcom's selection as the fiber construction contractor as part of a Broadband Initiatives Program (BIP) grant received by the Region 18 Education Service Center in Midland, Texas. The Region 18 construction project was undertaken by Delcom only because the project offers long-term benefits to Dell Telephone. Delcom completed the project in 2012, [redacted] The construction revenues received and expenses incurred by Delcom will be reflected on its books in the 2012 year-end audit.

6. **Please provide a table showing total patronage capital refunds to cooperative members for each of the last five calendar years. Please provide the average annual refund to each cooperative member for each of the last five years. Please provide a copy of the cooperative's bylaws that describe how patronage capital refunds are determined.**

The information responsive to this request relating to the total patronage capital refunds to cooperative members is attached as Attachment 6-A. Attachment 6-A contains confidential information and is being provided pursuant to the Protective Order in this proceeding. A copy of Dell Telephone's By-Laws that describe how patronage capital refunds are determined is attached as Attachment 6-B.

The Company is organized under Internal Revenue Service Code Section 501(c)(12) as a non-profit. Consistent with IRS regulations, the Company refunds allocated and assigned capital credits to patrons on an annual basis. The amount of refunds is designated at the discretion of the Company's Board of Directors. The

Board authorized approximately [redacted] in total capital refunds each year from 2007 through 2010 and [redacted] in total capital refunds in 2011. The Company also refunds outstanding capital credits to estates of its deceased members.

7. **Dell's financial statements from 2007 through 2011 indicate Goodwill of [redacted]. Please explain the nature and reason for the recordation of this asset.**

The goodwill reported on the Company's balance sheet represents goodwill arising from the initial purchase of the Company's 50 percent investment in Tularosa Basin Telephone Company.

The amount of goodwill recorded on Dell Telephone's balance sheets was determined consistent with Financial Accounting Standard 142, implemented for fiscal years beginning after December 15, 2001, which provides: "Goodwill and intangible assets that have indefinite useful lives will not be amortized but rather will be tested at least annually for impairment."[2] Goodwill and intangible deemed to have indefinite lives are stated at the lower of cost or fair value and are subject to periodic impairment tests. Consistent with this standard, the Company assesses its recorded balances of goodwill each year. Through these assessments the Company previously has determined that it did not need to record any impairment for the years ended December 31, 2010 and December 31, 2011.

8. **Page 15 of Dell's Petition indicates that it provides [redacted] dedicated special access circuits to non-residential customers. Please provide the monthly recurring rates for special access circuits for each of the past three years. How much was the annual revenue for each of the past three years for these special access circuits?**

Dell Telephone participates in the Texas Statewide Telephone Cooperative, Inc. tariff for intrastate access services. The rates for intrastate special access circuits are included in Section 17.3 of the tariff, a copy of which is provided as Attachment

---

[2] *See* "Statement of Financial Accounting Standards No. 142," Financial Accounting Standards Board, at 6 (June 2001), http://www.fasb.org/cs/BlobServer?blobkey=id&blobwhere=1175820927971&blobheader=application%2Fpdf&blobcol=urldata&blobtable=MungoBlobs.

8-A. These rates were approved by the Texas PUC on September 1, 1992 and remain in effect today.

For interstate special access, Dell Telephone participates in NECA's FCC 5 Special Access Tariff. NECA's special access rates that have been in effect since June 2007 are attached as Attachment 8-B. Many of the NECA rates are "banded." For Dell Telephone, the Rate Band 9 rates applied until July 1, 2011 at which time the Company was moved to Rate Band 10.

The information responsive to the request for annual revenues from special access circuits is provided as Attachment 8-C. Attachment 8-C contains confidential information and is being provided pursuant to the Protective Order in this proceeding.

9. **We understand that the Rural Utility Service (RUS) has requested that all of its borrowers update their financial status in light of USF/ICC reforms. Has Dell provided the RUS with an updated financial assessment in light of the USF/ICC Transformation Order? If so, please provide a copy of Dell's updated financial assessment provided to RUS.**

It is Dell Telephone's understanding that certain RUS borrowers received requests from RUS to provide updated financial information in the form of a five-year forecast. However, Dell Telephone further understands that RUS made these requests to borrowers that had not met their required loan covenants.

Dell Telephone has not been contacted by RUS regarding an updated financial assessment in light of the *USF/ICC Transformation Order*, nor has Dell Telephone provided RUS with any updated financial information.

10. **Is the [redacted] in RUS funds approved under the "T" and "U" loan agreements still available to Dell at this time? If so, is Dell currently drawing on those loans and what are the outstanding balances owed on those loans? Are RUS loans allocated or directed separately to Dell's Texas and New Mexico study areas? If so, provide the breakdown of the loans between the study areas.**

"T" Loan. As of December 31, 2011, the base year of the projections, there was [redacted] of unadvanced funds available from the Company's "T" loan with RUS. This amount was drawn down in June 2012.

"U" Loan. The Company never entered into a "U" loan agreement with RUS. The Company prepared a "U" loan application that was provided to a RUS field agent in October 2010, but RUS did not process the application at the time, apparently deciding to wait for additional clarity regarding the financial impacts resulting from the Commission's universal service reform initiatives. After the Commission adopted its *USF/ICC Transformation Order* and more than a year after Dell Telephone originally submitted its "U" loan application, RUS requested that the Company provided updated financial information in order to process the application. Dell Telephone has not yet provided this updated information because of the uncertainty surrounding the Company's financial future, which in large part will be determined based on resolution of its Petition for Waiver.

Nevertheless, in preparing its Petition, Dell Telephone included in its financial projections the [redacted] in funds that it had requested in its "U" loan application. This decision was made in recognition of the fact that even with a waiver the Company will need to borrow funds to upgrade its system. [3] And the terms of RUS borrowings are more favorable than the Company could otherwise secure. At present, however, the Company has not been approved for any "U" loan funds and accordingly has not drawn any funds on such a loan.

Texas/New Mexico Allocation. All RUS loan funds are approved and allocated by exchange, which are individually allocated between the Texas and New Mexico cost study areas at the time of loan approval. However, given the volume of all outstanding RUS loans and the length of time that some of these loans have been in place, it would be extremely burdensome for Dell Telephone "to provide the breakdown of the loans between the study areas" as requested.

Specifically, Dell Telephone has [redacted] Some of the loans were approved more than 20 years ago. As part of the loan approval process, all expenditures have been allocated by exchange, which directly relate to either Texas or New Mexico. As the infrastructure projects related to the loans are

[3] "Note G. Long-Term Debt" of the Projected Financial Statements states: "Long-term debt for the years 2012 through 2015, included in the projection, reflect a drawdown of approved remaining "T" Loan funds from RUS and an additional borrowing from the RUS of approximately [redacted] to finance construction. The Company is assuming that the loan will be approved as qualifying hardship funds."

completed, the expenditures were capitalized into the appropriately-designated Texas or New Mexico general ledger accounts in the Company's records. In order to provide the requested breakdown, Dell Telephone would have to review each of its [redacted] separate loans and calculate from various books and records the outstanding loan balance for each study area. This would be a time consuming exercise that Dell Telephone estimates would take more than 100 hours.

As a proxy for determining state allocations on a loan-by-loan basis, the Company has: (1) compared the total Plant in Service in both states; and (2) applied this ratio of total Plant in Service to the Company's outstanding loan balance. This approach should provide the Commission with some insight into the relative geographic breakdown because the Company uses RUS funds for all major projects and any expenditures using RUS loan funds are required to be capitalized. As of December 31, 2011, the total Plant in Service in both states was [redacted].

11. In the "Five-Year Financial Projection With Full FCC Order Impact" presented in Exhibit 8 of Dell's Petition, Note F states that plant additions, for the years 2012 through 2016, are based upon [redacted] Dell stated, however, during the September 28, 2012 ex parte meeting with Bureau staff, that it was [redacted], pending resolution of the impact of the universal service fund reforms. What is the [redacted]

To the extent the Bureau understood the Company to state at the September 28, 2012 ex parte meeting that it delayed drawing down on any approved RUS loan pending resolution of the impact of the universal service reforms, that was not Dell Telephone's intent, and the Company regrets this misunderstanding. What the Company intended to convey in the meeting—and what is reflected in its response to Request No. 10—is that Dell Telephone's "U" loan application has not been

approved and thus no funds from this loan have been drawn down. However, if the Commission grants the requested waiver, Dell Telephone intends to examine potential buildout projects and associated financing alternatives.

12. **Dell's October 9, 2012 ex parte filing stated that Dell does not offer so-called "triple play" or "quadruple play" bundled services to its customers because Dell "has not observed any customer demand for a voice and data bundled service offering." What marketing analysis or other analysis has Dell conducted to determine ways to increase its revenues?**

Dell Telephone has not conducted any formal "marketing analysis" responsive to this request. However, Dell Telephone is continually looking for opportunities to increase its revenues, although it does not believe that bundled service offerings to residential customers would be particularly helpful in that regard. Dell Telephone's potential customer base is very small, and Dell Telephone has no reason to believe that offering a video service would be a profitable exercise. Indeed, DirecTV and Dish Networks currently offer a very affordable and viable video service in Dell Telephone's territory against which it would be difficult for Dell Telephone to compete.

In looking at increased revenue opportunities, Dell Telephone has focused on expanding facilities to serve the enterprise market. For example, Dell Telephone's fiber segment into El Paso is part of a ring configuration with ENMR Telephone Cooperative (Plateau) and Baca Valley Telephone. Dell receives income from its percentage of the route segments sold into El Paso or as part of a redundant configuration for business customers. Dell is also a member and segment provider of the Texas Lone Star Network (TLSN), which is primarily a reseller of private line circuits in Texas. TLSN sells circuits to business customers into major POPs across Texas. Dell Telephone has pursued these network arrangements in order to expand the Company's revenue base.

Additionally, Delcom, the subsidiary of Dell Telephone, has a dark fiber IRU with Region 18 Education Service Center (R18) in Midland TX. R18 received stimulus money to construct fiber to 33 school districts in its region, and Delcom was selected as a contractor to construct fiber to 7 of the 33 school districts in the region as well as an additional 32 Community Anchor Institutions in the area. In return for maintaining and operating this fiber network over 20 years, Delcom received a dark fiber IRU for half of the fibers, which it is using to offer Internet and wholesale

services to the business customers in six underserved west Texas cities in an attempt to expand revenues.

13. **We understand that the State of Texas has enacted a statute that requires the Public Utility Commission of Texas (Texas PUC) to "implement a mechanism to replace the reasonably projected change in revenue caused by a Federal Communications Commission order, rule, or policy . . ." TEX. UTIL. CODE ANN. § 56.025 (c) (West 2005). Please estimate the impact, if any, of that Texas statute and the implementation by the Texas PUC on Dell's revenues as a result of the USF/ICC Transformation Order.**

In 2005, the State of Texas enacted Section 56.025, which provides that, "[i]n the event of a Federal Communications Commission order, rule, or policy, the effect of which is to change the federal universal service fund revenues of an ILEC or change costs or revenues assigned to the intrastate jurisdiction, the commission shall, through either the universal service fund or an increase to rates if that increase would not adversely impact universal service, replace the reasonably projected change in revenues caused by the regulatory action."[4]

In implementing this statute, the Texas PUC adopted regulations that provide small carriers with two alternatives for recovering lost federal support. Specifically, the Texas PUC can either: (1) permit the carrier to increase its rates; or (2) transfer money from the state universal service fund to the carrier. Because a carrier applying for relief under Section 56.025 may be permitted either to increase rates or secure funding from the state universal service fund, it is not possible to estimate the financial impact of this statute on Dell Telephone as a result of the *USF/ICC Transformation Order*.

As a practical matter, neither option afforded rural carriers under Section 56.025 is likely to afford Dell Telephone significant relief. Because of the impoverished nature of its service territory, authorizing Dell Telephone to increase rates to levels its customers likely are unable to afford or unwilling to pay would not result in increased revenues sufficient to offset the reduction in federal universal service funding that is the subject of its Waiver Petition.

---

4 TEX. ADMIN. CODE § 26.406(b)(2).

Indeed, just as the FCC has sought to constrain the size of the federal universal service fund, the Public Utility Commission of Texas ("Texas PUC") is under similar pressure to control growth of the state universal service fund. In fiscal year 2011, the Texas PUC disbursed $4.6 million under the fund established to implement Section 56.025.[5] If Dell Telephone were permitted to recover from the Section 56.025 fund its losses in federal universal service resulting from the *USF/ICC Transformation Order*, the size of the Texas Section 56.025 Fund would expand by approximately 40 percent – a result that neither the Texas PUC nor other constituencies in the State are likely to endorse.

Hill Country Telephone Cooperative's experience in attempting to seek relief from the Texas Section 56.025 fund is illustrative. On September 17, 2012, Hill Country Telephone Cooperative filed the first petition with the Texas PUC seeking recovery from the Texas Section 56.025 Fund as a result of the Commission's *USF/ICC Transformation Order*. Although Hill Country Telephone Cooperative sought to recover less than $520,000 from the fund, its request has been opposed by Sprint Communications Company, L.P., tw telecom of Texas, llc, and the Texas Cable Association, which complained about potential increases in the state USF assessment that would result if the Texas PUC granted the requested relief.[6]

Hill Country Telephone Cooperative also has since been served with multiple discovery requests by opposing parties, and the Texas PUC recently referred the

---

[5] *See* "Report to the 83rd Texas Legislature: Review and Evaluation of the Texas Universal Service Fund Pursuant to Senate Bill 980, 82nd Legislature, Regular Session," Texas Public Utility Commission, Figure 8 (Nov. 1, 2012), http://www.puc.texas.gov/industry/communications/reports/TUSF/TUSF_Report_83rdLeg.pdf. The funds disbursed in 2011 were used to "replace the reduction in high cost assistance revenue caused by a [Texas PUC] or other agency order, rule or policy" and to "replace the reasonably projected reduction in contribution caused by a change of [Texas PUC] policy regarding intraLATA '1-plus' dialing access." *Id.* at 13. The Texas PUC has noted that the *USF Transformation Order* "may result in a number of petitions for replacement of revenues …." *Id.*

[6] *See, e.g., Application of Hill Country Telephone Cooperative, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to P.U.C. Subst. R. 24.606*, Motion to Intervene of Sprint Communications Company, L.P., tw Telecom of Texas, LLC, and the Texas Cable Association, Docket No. 40755 (filed Oct. 22, 2012).

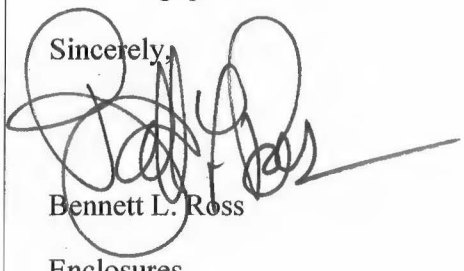
matter to an administrative law judge for an evidentiary hearing. Under the circumstances, the legal resources that Hill Country Telephone Cooperative (as well as any other rural incumbent telephone company) will be required to expend in an attempt to secure relief from the Texas Section 56.025 Fund are likely to be substantial, which further complicates the ability to forecast the financial effect of any relief that may ultimately be granted.

Finally, Dell Telephone believes that its Petition for Waiver is well grounded in fact and law and is entirely consistent with the requirements of the *USF/ICC Transformation Order*. As a result, the Commission should grant the requested waiver, which would obviate the need for and eliminate the ability of Dell Telephone to seek relief under Section 56.025.

* * *

Dell Telephone trusts that the foregoing information responds fully to the Bureau's remaining questions.

Sincerely,



Bennett L. Ross

Enclosures

cc: Rebekah Goodheart
Gary Seigel
Joseph Sorresso
Joseph Cavender
Dania Ayoubi