

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Federal-State Joint Board on Universal Service)	WC Docket No. 05-337
)	
)	

APPLICATION FOR REVIEW OF DELL TELEPHONE COOPERATIVE

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY.....	1
II.	BACKGROUND	4
III.	THE BUREAU EXCEEDED ITS DELEGATED AUTHORITY BY UNILATERALLY ADOPTING AN “EXHAUSTION OF STATE REMEDIES” REQUIREMENT AS A CONDITION TO DELL TELEPHONE’S REQUEST FOR A WAIVER.....	8
IV.	THE BUREAU’S DECISION IS ARBITRARY AND CAPRICIOUS BECAUSE IT DISCRIMINATES BETWEEN SIMILARLY-SITUATED ENTITIES.....	10
V.	THE BUREAU’S DECISION IS INCONSISTENT WITH THE PURPOSE OF A FEDERAL USF SYSTEM.	12
VI.	CONCLUSION	15

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I. INTRODUCTION AND SUMMARY

Pursuant to Section 1.115 of the Commission’s rules, Dell Telephone Cooperative (“Dell Telephone”) respectfully seeks Commission review of the Wireline Competition Bureau’s (“Bureau”) order dismissing without prejudice Dell Telephone’s petition for waiver of certain universal service rules adopted in *USF/ICC Transformation Order*.¹ Even though Dell Telephone provided all the information and met all the requirements for a waiver specified by the Commission, the Bureau declined to reach the merits of Dell Telephone’s Petition, deciding instead that Dell Telephone was required to “first avail [itself] of state remedies available” under Texas law before seeking relief from the Commission.²

The Commission created a waiver process in response to arguments by eligible telecommunications carriers (“ETC”) that the Commission’s universal service reforms “would

¹ See *Connect America Fund*, Order, WC Docket No. 10-90, DA 13-965 (Wireline Bureau April 30, 2013) (“*Order*”) (dismissing similar waiver petitions filed by Dell Telephone, Border to Border Communications, Inc., and Central Texas Telephone Cooperative, Inc.); *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”), *pets. for review pending sub nom. In re: FCC*, 11-161, No. 11-9900 (10th Cir. filed Dec. 8, 2011); see also Petition for Waiver of Dell Telephone Cooperative, WC Docket No. 10-90 *et al.* (filed June 6, 2012) (“*Petition*”).

² *Order* ¶ 17.

threaten their financial viability, imperiling service to consumers in the areas they serve.”³

While making clear that any request for a waiver would be subject “to a rigorous, thorough and searching review,” the Commission invited “any carrier negatively affected” by its universal service reforms to seek a waiver by demonstrating that “the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service to consumers”⁴

Dell Telephone accepted the Commission’s invitation, spending countless hours and more than \$250,000 in making this requisite demonstration. It prepared the legal, financial, and policy justifications for a waiver consistent with the Commission’s requirements and submitted all of the relevant information specified by the Commission in the *USF/ICC Transformation Order*. In doing so, Dell Telephone took to heart the representation by then-Commissioner, now Acting Chairwoman Clyburn that the Commission’s waiver process would truly be “use[d] [as] a safety net in order to ensure consumers aren’t inadvertently harmed by our reforms.”⁵

Sadly, the *Order* renders any concept of a credible waiver process under the *USF/ICC Transformation Order* as fleeting and far off as a mirage in the desert. Even though Dell Telephone demonstrated beyond any doubt that the Commission’s universal service reforms will lead to the company’s insolvency and result in its customers losing voice and broadband service, the Bureau summarily dismissed the Petition by inventing an entirely new requirement—which apparently only ETCs in Texas must meet—that conditions a waiver of federal rules on the

³ *USF/ICC Transformation Order* ¶ 539.

⁴ *Id.* ¶¶ 539-540.

⁵ *Universal Service Fund Reform: Ensuring a Sustainable and Connected Future for Native Communities*, Before the S. Comm. on Indian Affairs, 112th Cong., Written Statement of Commissioner Clyburn, 7 (2012), available at <http://indian.senate.gov/hearings/upload/Mignon-Clyburn-testimony060712.pdf>.

exhaustion of state administrative remedies. The Bureau's actions are unlawful, and the Commission should set aside the *Order* for three reasons.

First, the Bureau exceeded its delegated authority in dismissing Dell Telephone's Petition. For any ETC seeking a waiver, the Commission established the standard for a waiver that an ETC must meet and specified the information that an ETC must include in its waiver petition. Nowhere in its discussion of the waiver standard or the waiver process did the Commission require, let alone contemplate, that an ETC seeking a waiver must first pursue relief that may be available under state law to replace reduced federal universal service support. The Bureau was not at liberty to create new procedural requirements or impose new substantive obligations on an ETC as a condition to a waiver. By dismissing the Petition due to Dell Telephone's failure to satisfy the condition it improperly imposed, the Bureau acted contrary to its delegated authority.

Second, the Bureau violated the Administrative Procedure Act ("APA") by treating similarly-situated ETCs differently in considering their requests for a waiver. Specifically, although the Bureau has granted only a limited number of waiver requests, none of the ETCs granted a waiver to date were first required to seek available relief under state law. For example, the Bureau found good cause to grant waivers to ETCs in Arizona and Alaska without their pursuing "alternative means of additional support" under state law, even though both states have universal service funds that could provide carriers with funding to offset lost federal universal service revenues. The Bureau's decision to subject similarly situated ETCs seeking a waiver to entirely different standards is the essence of arbitrary and capricious decision-making prohibited by the APA.

Third, by requiring that Dell Telephone first pursue alternative means of additional support in Texas before seeking relief from the Commission, the Bureau improperly seeks to saddle residents of Texas with the burden of providing recovery for the financial harms resulting from the *USF/ICC Transformation Order*. Such an approach is inconsistent with the fundamental underpinnings of the federal universal service regime and should be rejected by the Commission.

Accordingly, the Commission should grant Dell Telephone's Application for Review and prohibit the Bureau from conditioning a waiver request upon an ETC's taking advantage of any recovery mechanism that may be available under state law.⁶

II. BACKGROUND

Recognizing the need to accommodate the individual financial circumstances of particular ETCs, the Commission made plain in the *USF/ICC Transformation Order* its willingness to waive its new universal service 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].'"⁷ In particular, the Commission emphasized that a waiver

⁶ Because of the dire financial circumstances facing the company and because its waiver petition had been pending for more than ten months before being dismissed by the Bureau, Dell Telephone had no choice but to seek available relief from the Texas Public Utility Commission. Specifically, on May 13, 2013, Dell Telephone filed a petition pursuant to the requirements of Texas law seeking recovery from the Texas Universal Service Fund in the amount of \$561,629 for 2012 and \$1,431,444 for 2013 to replace revenue reductions at the federal level. However, this state filing does not moot the issues raised in Dell Telephone's Application for Review because any relief granted at the state level will be limited in time, which will necessitate that Dell Telephone renew its waiver request at the Commission. Dell Telephone seeks review of the *Order* because it does not want to be caught in the position of having any second waiver petition dismissed by the Bureau due to its failure or inability to seek state recovery beyond 2013.

⁷ *USF/ICC Transformation Order* ¶ 540 (quoting 47 U.S.C. § 254(e)).

would be justified when reduced support “put consumers at risk of losing voice services”⁸ In its *Fifth Order on Reconsideration*, the Commission clarified that it “will consider the impact of reforms not only on voice service alone, but also on continued operation of a broadband-capable network and the effect on consumer rates.”⁹ The Commission also emphasized that “[t]o the extent carriers have already made the investment in such broadband-capable networks, reductions in support that would threaten their ability to continue to maintain and operate those existing networks offering service at reasonably comparable rates in areas where consumers have no alternatives would be a public policy concern.”¹⁰

The Commission set forth specific requirements for an ETC to follow when petitioning for a waiver. Specifically, a petition must “include a specific explanation of why the waiver standard is met in a particular case” and not rely on “[c]onclusory assertions that reductions in support will cause harm to the carrier or make it difficult to invest in the future”¹¹ To satisfy this showing, the Commission identified dozens of types of financial data and other information that would be required to “verify the carrier’s assertions”¹² Importantly, despite the detailed information the Commission required a waiver applicant to provide and the specific standard the Commission established for a waiver applicant to meet, the Commission did not mandate that an ETC demonstrate that: (i) alternative means of additional support were not available at the state level; or (ii) the ETC had exhausted its available remedies under state law.

⁸ *Id.*

⁹ *Connect America Fund*, Fifth Order on Reconsideration, WC Docket No. 10-90, FCC 12-137, ¶ 20 (2012).

¹⁰ *Id.* ¶ 21.

¹¹ *USF/ICC Transformation Order* ¶ 541.

¹² *Id.* ¶ 542.

Dell Telephone scrupulously adhered to the Commission’s instructions. After discussions with external financial consultants which confirmed that the company was in grave financial danger as a result of the Commission’s universal service reforms, Dell Telephone filed its waiver petition on June 7, 2012. The Petition requested a waiver of the following universal service rules as applied to Dell Telephone: (i) the \$250 per line monthly cap on High Cost Loop Support (“HCLS”);¹³ (ii) the rule limiting reimbursable capital and operating expenses for HCLS;¹⁴ and (iii) the updated and extended limits on recovery of corporate operations expenses applied to HCLS and Interstate Common Line Support (“ICLS”).¹⁵

Dell Telephone’s Petition contained all of the showings and information required by the *USF/ICC Transformation Order*. First, the Petition highlighted that, absent a waiver, consumers, businesses, and critical anchor institutions—including government entities tasked with protecting our nation’s border—would lose access to wireline and wireless voice and broadband services in Dell Telephone’s service area.¹⁶ Indeed, absent a waiver, Dell Telephone projected that it would realize net losses as early as 2013, would deplete its cash reserves by 2015, and would be insolvent by 2016. Second, the Petition demonstrated that 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 in its vast

¹³ 47 C.F.R. § 54.302.

¹⁴ *USF/ICC Transformation Order* ¶ 220; 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).

¹⁵ *USF/ICC Transformation Order* ¶¶ 227-33; 47 C.F.R. § 36.621(a)(4).

¹⁶ See Petition at 20-21.

rural territory.¹⁷ And *third*, the Petition explained that a waiver would advance, not undermine, the Commission's objectives to make the USF more efficient and to expand broadband services to unserved areas.¹⁸

After it was placed on public notice, Dell Telephone's Petition—and its justifications for a waiver—drew strong support from a diverse mix of commenters, including local residents and businesses, public safety officials that protect the Texas-Mexico border, and other rural carriers, among others. In total, 18 parties filed substantive comments on the Petition in August 2012—*all urging that the Commission grant the requested relief and maintain Dell Telephone's existing federal universal service support.*¹⁹ These commenters uniformly emphasized that Dell Telephone's services play a critical role in maintaining the vitality of Dell City and the surrounding areas and predicted that this rural region would suffer a dramatic downturn if the waiver were not granted, given the lack of competitive alternatives. The commenters also provided first-hand accounts of the extraordinarily high costs and challenges of doing business and living in rural Texas. All told, the record evidence overwhelmingly confirmed that Dell Telephone had satisfied the requirements for a waiver.

After filing the Petition, Dell Telephone worked diligently to ensure that the Bureau had the necessary information to evaluate its waiver request. On September 28, 2012, representatives of Dell Telephone met with the Bureau to answer questions about the Petition. On October 9, 2012, Dell Telephone filed a letter that answered several discrete questions raised by the Bureau staff during the September 28, 2012 meeting. On December 6, 2012, Dell Telephone responded

¹⁷ See *id.* at 22-23.

¹⁸ See *id.* at 24-25.

¹⁹ See Reply Comments of Dell Telephone, WC Docket No. 10-90, at 3-9 (Aug. 24, 2012) (highlighting support for Dell Telephone's Petition).

to 13 multi-part questions and requests for information contained in a November 20, 2012 letter from the Bureau to Dell Telephone. Throughout this whole process, Dell Telephone went to great lengths—and at great expense—to fully respond to the Bureau’s requests. At each step, the information Dell Telephone provided only further confirmed that the company had satisfied the Commission’s waiver standard. And, at no time during this process did the Bureau raise any procedural or substantive concerns about Dell Telephone’s Petition.

III. THE BUREAU EXCEEDED ITS DELEGATED AUTHORITY BY UNILATERALLY ADOPTING AN “EXHAUSTION OF STATE REMEDIES” REQUIREMENT AS A CONDITION TO DELL TELEPHONE’S REQUEST FOR A WAIVER.

Rather than addressing the merits of the Petition – which plainly satisfied the standard for a waiver established by the Commission – the Bureau unilaterally adopted a new procedural requirement to which apparently only Texas ETCs are subject. Specifically, the Bureau required Dell Telephone “to exercise available remedies at the state level first”²⁰ According to the Bureau, by virtue of Texas having established a “state recovery mechanism for reductions of federal universal service support as a result of the *USF/ICC Transformation Order*,” Dell Telephone had failed to demonstrate “good cause for relief because an alternative avenue for relief is available.”²¹

As a threshold matter, the Bureau’s suggestion that Texas established a “state recovery mechanism” after the Commission released its *USF/ICC Transformation Order* is misleading. In fact, the Texas statute in question – Tex. Util. Code Ann. § 56-025(c) – was enacted in 2005, six years *before* the Commission adopted its universal service reforms. Thus, the Texas recovery mechanism upon which the Bureau relied in dismissing Dell Telephone’s Petition has been on

²⁰ *Order* ¶ 19.

²¹ *Id.* ¶¶ 18-19.

the books for years. Yet, nothing in the *USF/ICC Transformation Order* can reasonably be read to suggest that the Commission expected a Texas ETC to seek relief under this state recovery mechanism prior to obtaining a federal waiver.

Although the Commission delegated to the Bureau “the authority to approve or deny all or part of requests for waiver . . .,”²² it did not empower the Bureau to unilaterally adopt whatever requirements it may consider appropriate as a condition to obtaining a waiver. In fact, the Commission’s rules prohibit the Bureau from exercising such wide-ranging discretion.²³

The Bureau appears to suggest that its application of an “exhaustion of state remedies” precondition is simply a way for it to “advance the Commission’s goal to further fiscal responsibility and accountability.” But this explanation—and the Bureau’s reliance on the notions of “fiscal responsibility and accountability”—do not justify the Bureau’s decision to unilaterally modify the Commission’s waiver standard.

Had it intended for a waiver applicant to first avail itself of state universal service funding as a condition to a waiver, the Commission plainly would have said so. The Commission was well aware of the existence of state universal service programs in adopting its federal universal service reforms but did not require an applicant to first obtain relief from such programs prior to seeking a waiver.²⁴ Indeed, in connection with its intercarrier compensation

²² See *USF/ICC Transformation Order* ¶ 544.

²³ 47 C.F.R. § 0.291(a)(2) (“The Chief, Wireline Competition Bureau shall not have authority to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines”).

²⁴ See, e.g., *USF/ICC Transformation Order* ¶ 243, n.386 (noting that “Nebraska has conditioned state USF eligibility upon carriers increasing local rates” to specified rate floors); *id.* ¶ 859 (noting that the Alaska USF subsidizes carriers’ intrastate revenues); see also Statement of Michael J. Copps, Commissioner (praising the Commission’s decision to retain “a key role for

reforms, the Commission envisioned that carriers requiring “additional subsidies” after the transition to bill-and-keep would seek “such subsidies ... from the Connect America Fund, and/or state universal service funds.”²⁵ Here, by contrast, the Bureau took the opposite approach, unilaterally requiring that Dell Telephone seek subsidies from the Texas universal service fund before obtaining relief from federal universal service rules. The Bureau did not have the authority to unilaterally impose such a requirement and acted contrary to its delegated authority in doing so in considering Dell Telephone’s Petition.²⁶

IV. THE BUREAU’S DECISION IS ARBITRARY AND CAPRICIOUS BECAUSE IT DISCRIMINATES BETWEEN SIMILARLY-SITUATED ENTITIES.

The *Order* also violates the APA because it discriminates between similarly-situated waiver petitioners. As the D.C. Circuit has explained, an agency acts arbitrarily and capriciously when it “applies different standards to similarly-situated entities and fails to support this

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states, including ... helping to implement our Universal Service Fund as well as, in many cases, their own state universal service funds”).

²⁵ *Id.* ¶ 737.

²⁶ *See, e.g., In the Matters of Responsible Accounting Officer Letter 20, Unif. Accounting for Postretirement Benefits Other Than Pensions in Part 32 Amendments to Part 65, Interstate Rate of Return Prescription Procedures & Methodologies, Subpart g, Rate Base*, Memorandum Opinion and Order, 11 FCC Rcd 2957, ¶ 25 (1996) (granting application for review of the Common Carrier Bureau’s ratemaking instructions on the grounds that the Bureau exceeded its authority by directing exclusions from and additions to a rate base “for which the Part 65 rules do not specifically provide”); *In the Matter of Applications of Little Dixie Radio, Inc., Assignor & Kesc Enterprises, LLC, Assignee Little Dixie Radio, Inc., Assignor & Se. Oklahoma Radio, LLC, Assignee Bottom Line Broad., Inc., Assignor & Se. Oklahoma Radio, LLC, Assignee*, Memorandum Opinion and Order, 25 FCC Rcd 4375, ¶ 5 (2010) (holding that the Media Bureau exceeded its delegated authority by departing from the Commission’s *Jefferson Radio* policy and by granting a broadcaster’s assignment application while the character qualification of the assignor remained in issue); *In Re Applications of Tully-Warwick Corp. Concord, New Hampshire Req: 1140 Khz, 5 Kw, Da-D Concord Broad. Associates Concord, New Hampshire Req: 1140 Khz, 10 Kw, Da-D for Constr. Permit*, Memorandum Opinion and Order, 95 FCC 2d 1427, ¶ 5 (1983) (holding that the Media Bureau exceeded its delegated authority by designating for filing broadcast applications where such designation was not specifically permitted by the Commission’s rules or Commission precedent).

disparate treatment with a reasoned explanation and substantial evidence in the record.”²⁷ Here, the Bureau dismissed Dell Telephone’s request for a waiver on the grounds that the company was first required to seek “alternative means of additional support” at the state level. However, no other ETC granted a waiver to date by the Bureau has had to satisfy this requirement.

For example, the Bureau granted a limited waiver to Accipiter, which operates in Arizona.²⁸ Arizona maintains a state universal service fund that provides local exchange carriers with financial support to ensure that they are able to universally offer basic telephone service at reasonable rates.²⁹ Of particular relevance here, the amount of state support a provider may receive in Arizona is “based upon the difference between the benchmark rates for basic local exchange telephone service provided by the carrier, and the appropriate cost to provide basic local exchange telephone service as determined by the Commission, *net of any universal service support from federal sources.*”³⁰ As a practical matter, this state regulation provides Arizona carriers – like carriers in Texas – with a “state recovery mechanism for reductions of federal universal service funding as a result of the *USF/ICC Transformation Order.*”³¹ Nonetheless, the Bureau granted a limited waiver to Accipiter without requiring that it first seek funding from a state recovery mechanism.

²⁷ *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005); *Airmark Corp. v. FAA*, 758 F.2d 685, 692 (D.C. Cir. 1985) (vacating orders failing to meet this standard as “patently arbitrary”).

²⁸ *Connect America Fund; Accipiter Communications, Inc. Petition for Temporary Waiver of Certain High-Cost Universal Service Rules*, Order, WC Docket No. 10-90, DA 13-105 (Wireline Bur. 2013) (waiving certain high-cost support rules through December 31, 2014).

²⁹ Ariz. Admin. Code R14-2-1113.

³⁰ Ariz. Admin. Code R14-2-1202(A) (emphasis added).

³¹ *Order* ¶ 18.

Similarly, the Bureau granted a limited waiver to Adak Eagle Enterprises and Windy City Cellular, which operate in Alaska.³² Like Arizona, Alaska maintains a state universal service fund that is designed “to promote the efficiency, availability and affordability of universal telephone service” by providing financial support to Alaskan LECs.³³ Although the specific workings of the Alaska universal service fund are not spelled out in the statute, this state fund represents a recovery mechanism to which ETCs in Alaska presumably could avail themselves. However, in contrast to its treatment of Dell Telephone, the Bureau granted the waiver requests of Adak Eagle Enterprises and Windy City Cellular without requiring that they first seek funding from a state recovery mechanism.

The point here is not that the rural carriers mentioned above that have been fortunate enough to receive a waiver were not entitled to such relief. Rather, the point is simply that all waiver applicants are legally entitled to be held to the same waiver standard. By applying a different standard to Dell Telephone in considering its waiver request as compared to similarly-situated waiver applicants, the Bureau acted arbitrarily and capriciously in violation of the APA.

V. THE BUREAU’S DECISION IS INCONSISTENT WITH THE PURPOSE OF A FEDERAL USF SYSTEM.

The principle that all Americans should have universal access to communications services has been at the core of the Commission’s mandate since its inception. Congress created the Commission in 1934 for the purpose of making “available ... to all the people of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service

³² *Connect America Fund; Universal Service Reform – Mobility Fund; Petitions for Waiver of Windy City Cellular, LLC and Adak Eagle Enterprise, LLC*, Order, WC Docket No. 10-90; WT Docket No. 10-208, DA 12-2044 (Wireline and Wireless Burs. 2012) (providing Windy City Cellular and Adak Eagle Enterprises with interim support while the Bureaus complete their review of the companies’ respective waiver petitions).

³³ Alaska Admin Code 3, Section 53.300(b)(1)(A).

with adequate facilities at reasonable charges.”³⁴ In the Telecommunications Act of 1996, Congress built upon that longstanding principle by enacting Section 254, which sets forth six principles upon which the Commission must “base policies for the preservation and advancement of universal service.”³⁵ Among these principles are that “[q]uality services should be available at just, reasonable, and affordable rates,” that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation,” and that “[c]onsumers in all regions of the Nation ... should have access to telecommunications and information services, including ... advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas” and at reasonably comparable rates.³⁶

Consistent with these principles, the Commission launched its high-cost Universal Service Fund that explicitly shifts cost recovery from individual subscribers in high-cost areas to all subscribers nationwide.³⁷ This approach is borne from the notion that the entire country benefits from having service available in every corner of the nation, and therefore the costs associated with constructing, operating, and maintaining telecommunications networks in high-cost areas should be borne by the entire population. Although consumers in high-cost areas undoubtedly benefit from universal service funding, so do individuals and business in urban and suburban areas that seek to communicate with those in high-cost areas.

³⁴ 47 U.S.C. § 151.

³⁵ 47 U.S.C. § 254(b).

³⁶ 47 U.S.C. § 254(b)(1)-(3).

³⁷ *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶49 (2011) (the “Universal Service Fund effectively shifted cost recovery for a portion of loop costs from the intrastate jurisdiction to the interstate jurisdiction”).

The Bureau's *Order*, however, throws this entire framework on its head. Specifically, the Bureau now demands that the state of Texas and Texas ratepayers shoulder the financial burdens associated with reductions in the federal universal service support to Texas ETCs as a result of the *USF/ICC Transformation Order*. This approach is inconsistent with the precepts of Section 254 and the Commission's implementing regulations. Furthermore, this approach effectively punishes those states like Texas that proactively established recovery mechanisms in anticipation of federal universal service reforms and which now must pay the price for such reforms. Ultimately, the Bureau's attempt to shift federal universal service obligations to an individual state is contrary to the federal universal service regime and requires that the Commission grant Dell Telephone's application for review.³⁸

³⁸ The Bureau claims that "it is critical that we ensure that there is no possibility for gamesmanship." *Order* ¶ 19. However, this claim makes no sense because had the Bureau acted on the merits of Dell Telephone's Petition – as it was required to do – Dell Telephone would continue to receive the federal universal service support that it currently receives. Thus, it would have no basis for seeking recovery under Texas law.

VI. CONCLUSION

For the foregoing reasons, the Commission should grant Dell Telephone's Application for Review and prohibit the Bureau from conditioning a waiver request upon an ETC's taking advantage of any recovery mechanism that may be available under state law.

Respectfully submitted,

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