

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

In the Matter of)
Connect America Fund) WC Docket No. 10-90
High-Cost Universal Service Support) WC Docket No. 05-337

ORDER

Adopted: April 30, 2013

Released: April 30, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we dismiss without prejudice petitions filed by Dell Telephone Cooperative, Inc. (Dell), Border to Border Communications, Inc. (Border to Border), and Central Texas Telephone Cooperative, Inc. (Central Texas) (collectively Texas petitioners) for waiver of: (i) section 54.302 of the Commission’s rules capping per-line support at \$250 per month; (ii) section 36.621(a)(5) of the Commission’s rules (“the benchmark rule”) limiting capital and operating expenses for high-cost loop support (HCLS); and (iii) section 36.621(a)(4) of the Commission’s rules extending existing corporate operations expense limits to the existing HCLS and interstate common line support (ICLS) mechanisms.1 Because alternative remedies and additional support are available through a state process, we find that the Texas petitioners have not demonstrated good cause for a waiver at this time. We note that a number of carriers have already sought relief before the Public Utility Commission of Texas (PUC) pursuant to this state process, and that at least one carrier has already entered into a settlement agreement. The Texas petitioners may file petitions reasserting the need for such waivers after pursuing alternative means of relief with the PUC.

2. We commend Texas for creating a process to address any unique concerns for carriers in the state of Texas as a result of recent universal service reforms. We consider these efforts to be a positive development for federal-state coordination and partnership, and encourage other states to consider similar approaches as states may be best positioned to address any unique circumstances for carriers in their state.

II. BACKGROUND

3. In the USF/ICC Transformation Order, the Commission comprehensively reformed universal service funding for high-cost, rural areas, adopting fiscally responsible, accountable, incentive-based policies to preserve and advance voice and broadband service while ensuring fairness for

1 Petition for Waiver of Dell Telephone Cooperative, WC Docket No. 10-90 et al. (filed June 7, 2012) (Dell Petition) (seeking waiver of i-iii); Petition of Border to Border Communications, Inc. for Waiver of Section 54.302 and the Framework to Limit Reimbursable Capital and Operating Expenses for the Purpose of Determining High Cost Support, WC Docket No. 10-90 (filed June 29, 2012) (Border to Border Petition) (seeking waiver of i-ii); Petition for Waiver of Central Texas Telephone Cooperative, Inc., WC Docket Nos. 10-90 et al. (filed Sept. 4, 2012) (Central Texas Petition) (seeking waiver of ii). See 47 C.F.R. §§ 36.621(a)(4),(5), 54.302.

consumers who pay into the federal universal service fund (USF).² Among other things, the Commission imposed a presumptive per line cap of \$250 per month on total high-cost universal service support for all eligible telecommunications carriers and found that support in excess of the \$250 cap should not be provided without further justification.³ Consistent with the Commission's goal to provide reasonable transitions so that companies affected by reform have time to adapt to changing circumstances,⁴ the Commission phased in the \$250 cap over three years.⁵ From July 1, 2012 through June 30, 2013, carriers will receive no more than \$250 per line per month plus two-thirds of the difference between their uncapped per-line amount and \$250. From July 1, 2013 through June 30, 2014, carriers will receive no more than \$250 per line per month plus one-third of the difference between their uncapped per-line amount and \$250. Beginning July 1, 2014, carriers shall receive no more than \$250 per line per month.

4. The Commission also reformed HCLS by adopting a benchmark rule to moderate the expenses of rate-of-return carriers with very high costs compared to their similarly-situated peers, while further encouraging other rate-of-return carriers to invest and advance broadband deployment.⁶ The new rule responded to problematic incentives and inequitable distribution of support created by the prior rules, under which some carriers with high costs could receive reimbursement from the USF for up to 100 percent of their marginal expenditures on loop costs.⁷ The Commission adopted the benchmark rule to reverse these incentives and address these problems by, for the first time, placing reasonable overall limits separately on capital and operating expenses eligible for reimbursement through HCLS, and redistributing freed-up HCLS to carriers that stay within these limits to encourage new broadband investment.⁸ The Commission delegated to the Wireline Competition Bureau (Bureau) the authority to adopt and implement a specific methodology within the parameters set forth by the Commission, which the Bureau did in the *HCLS Benchmark Implementation Order*.⁹

5. In the *Sixth Order on Reconsideration*, the Commission reconsidered some aspects of the benchmark rule to limit capital and operating expenses for HCLS.¹⁰ Specifically, the Commission directed the Bureau to develop a regression methodology that will generate a single total loop cost cap for each study area beginning in 2014.¹¹ As an interim measure toward a single cost cap, the Commission summed capital and operating expense caps generated by the Bureau's current methodology for purposes of calculating HCLS support in 2013.¹² The Commission also modified the phase-in of the benchmarks

² See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17670, para. 11 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17765, para. 274; 47 C.F.R. § 54.302.

⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17671, para. 11.

⁵ *Id.* at 17765, para. 275.

⁶ See *id.* at 17741-47, paras. 210-26; 47 C.F.R. § 36.621(a)(5).

⁷ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17742, para. 211.

⁸ See *id.* at 17741-42, 17744-45, paras. 210, 219.

⁹ See *id.* at 17743-44, paras. 214, 217; *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 27 FCC Rcd 4235 (Wireline Comp. Bur. 2012) (*HCLS Benchmark Implementation Order*).

¹⁰ See *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, *Sixth Order on Reconsideration and Memorandum Opinion and Order*, 28 FCC Rcd 2572 (2013) (*Sixth Order on Reconsideration*).

¹¹ See *id.* at 2581-83, paras. 24-28.

¹² See *id.* at 2583-84, para. 29.

for 2013 to provide carriers additional time to adjust to the changes.¹³ Finally, the Commission reconsidered the requirement that the benchmark regression be rerun annually, and delegated consideration of the frequency for running the regression analysis to the Bureau.¹⁴

6. In addition to these reforms, in the *USF/ICC Transformation Order*, the Commission extended existing HCLS corporate operations expense limits to ICLS.¹⁵ These reforms were introduced as part of the Commission's overall goal to further fiscal responsibility and accountability.¹⁶

7. To prevent disruption to consumers as the rules in the *USF/ICC Transformation Order* are phased in, the Commission permitted "any carrier negatively affected by the universal service reforms . . . to file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service."¹⁷ In the *USF/ICC Transformation Order*, the Commission stated that "[w]e envision granting relief only in those circumstances in which the petitioner can demonstrate 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."¹⁸ In delegating to the Bureau the authority to approve or deny all or part of requests for waiver,¹⁹ the Commission indicated that it did not anticipate granting waiver requests routinely or for "undefined duration[s]."²⁰

8. In the *Fifth Order on Reconsideration*, the Commission clarified that waiver petitions will be evaluated not just based on the impact of reforms on voice service, "but also on [the] continued operation of a broadband-capable network and the effect on consumer rates."²¹ The Commission provided guidance on the types of information that would be relevant for such waiver requests and delegated authority to the Bureau and the Wireless Telecommunications Bureau to rule on all such requests.²²

¹³ See *id.* at 2584, para. 30.

¹⁴ See *id.* at 2576, para. 8.

¹⁵ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17747-48, paras. 227-33; 47 C.F.R. § 36.621(a)(4).

¹⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17747, para. 229.

¹⁷ *Id.* at 17839-40, paras. 539, 540. The Commission did not intend to replace the ordinary standard for granting waivers under section 1.3 of the Commission's rules, but rather to provide guidance in advance to potential applicants of the circumstances that would be persuasive and compelling grounds for grant of a waiver under that waiver standard, to assist potential applicants in effectively formulating their waiver petitions. See *Connect America Fund et al.*, WC Docket No 10-90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14556-57, para. 19 (2012) (*Fifth Order on Reconsideration*). Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 540.

¹⁹ *Id.* at 17840, 17842, paras. 540, 544.

²⁰ *Id.* at 17766, para. 278.

²¹ *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 20.

²² *USF/ICC Transformation Order*, 26 FCC Rcd at 17840-42, paras. 542, 544.

III. TEXAS PETITIONS

9. Presently before the Bureau are three petitions filed by rate-of-return carriers operating in Texas seeking waivers of a number of the Commission's universal service rules as described above. For purposes of this order, we jointly consider these three petitions from the Texas petitioners.

10. *Dell's Petition for Waiver.* Dell is a rate-of-return carrier with a service territory of 10,498 square miles in west Texas and southeast New Mexico, including fifty-nine miles along the Texas-Mexico border.²³ Dell filed a petition for waiver on June 6, 2012, seeking a waiver of the Commission's rules capping per-line support at \$250 per month, limiting reimbursements for capital and operating expenses, and extending corporate operations expense limits to the existing HCLS and ICLS mechanisms.²⁴ Dell argues that a waiver is warranted because it faces "extraordinarily high costs and other operational challenges,"²⁵ and states that without a waiver, Dell risks insolvency by the year 2016.²⁶

11. The Bureau sought comment on Dell's petition,²⁷ and received comments from several parties in support of Dell's petition.²⁸ On November 20, 2012, the Bureau sought additional information from the petitioner to assist in its consideration of the petition, including information pertaining to employee compensation, investment decisions, and the estimated impact of TEX. UTIL. CODE ANN. § 56.025 (c) and its implementation by the Texas PUC on Dell's revenues.²⁹ Dell provided its responses on December 6, 2012, and submitted additional information on February 12, 2013.³⁰

12. *Border to Border's Petition for Waiver.* Border to Border is a rate-of-return carrier that operates in "a very sparsely populated 760 square mile area" in southwest Texas.³¹ On June 29, 2012, Border to Border filed a petition seeking a waiver of the Commission's rules capping per-line support at \$250 per month and limiting reimbursable capital and operating expenses for HCLS.³² Border to Border argues that without a waiver of both sections 54.302 and 36.621(a)(5) of the Commission's rules, the

²³ Dell Petition at 3. Dell's New Mexico study area is not impacted either by the \$250 per line limit or the benchmark rule, and therefore we conclude that consideration of a waiver for this study area is unnecessary at this time. Because the New Mexico study area's support is not reduced by virtue of these rules, it is therefore appropriate for Dell to first pursue relief with the Texas PUC.

²⁴ *Id.* at 1-2.

²⁵ *Id.* at 20.

²⁶ *Id.* at 2, 9.

²⁷ *Wireline Competition Bureau Seeks Comment on Dell Telephone Cooperative Petition For Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Public Notice, 27 FCC Rcd 7659 (Wireline Comp. Bur. 2012).

²⁸ *See, e.g.*, Comments of the National Telecommunications Cooperative Association, WC Docket No. 10-90, (filed Aug. 10, 2012); Comments of the New Mexico Exchange Carrier Group on Dell Telephone Cooperative's Petition for Waiver, WC Docket No. 10-90 et al. (filed Aug. 10, 2012); Petition for Waiver of Dell Telephone Cooperative Comments of Kiesling Associates LLP, WC Docket No. 10-90 et al. (filed Aug. 10, 2012).

²⁹ *See* Letter from Julie A. Veach, Chief, Wireline Competition Bureau, to Denny Bergstrom, General Manager, Dell Telephone Cooperative, Inc., WC Docket No. 10-90, 27 FCC Rcd 14478 (Wireline Comp. Bur. 2012) (Dell Question Letter).

³⁰ *See* Letter from Bennett L. Ross, Counsel for Dell, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 6, 2012) (Dell Response Letter); Letter from Bennett L. Ross, Counsel for Dell, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Feb. 12, 2013).

³¹ Border to Border Petition at 9.

³² *See id.* at 1; 47 C.F.R. §§ 36.621(a)(4)-(5), 54.302.

reduction in support will preclude it from continuing to provide either voice services or broadband Internet access.³³

13. The Bureau sought comment on Border to Border's petition³⁴ and the National Telecommunications Cooperative Association filed comments in support.³⁵ In a January 16, 2013 letter, Border to Border supplemented the record regarding its communications with the Rural Utility Service (RUS).³⁶ On March 4, 2013, the Bureau sought additional information from the petitioner.³⁷ Although Border to Border did not notify the Commission, we understand that on February 5, 2013, Border to Border filed an application with the PUC seeking relief similar to that sought in Border to Border's petition for waiver before the Commission.³⁸

14. *Central Texas's Petition for Waiver.* Central Texas filed its petition on September 4, 2012, seeking waiver, for 2012 and beyond, of the benchmark rule limiting reimbursable capital and operating expenses applied to HCLS.³⁹ The Bureau sought comment on Central Texas's petition, and reply comments supporting the petition were filed by the Western Telecommunications Alliance.⁴⁰ Following the release of the *Sixth Order on Reconsideration*, Central Texas met with the Bureau to discuss the status of Central Texas's Petition in light of this recent order.⁴¹ Central Texas explained that while the changes to the benchmarking rule and the summing of the capital and operating expense caps for 2013 would greatly benefit Central Texas by providing the relief necessary to ultimately address its waiver concerns on a going forward basis, the effective date of the *Sixth Order on Reconsideration* would still result in the loss of high-cost support to Central Texas for the last six months of 2012 and at least the first three months of 2013.⁴² Central Texas therefore reiterated its interest to recover support reduced as part of the Commission's reforms.⁴³

³³ Border to Border Petition at 2-3.

³⁴ *Wireline Competition Bureau Seeks Comment on Border to Border Communications, Inc. Petition For Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Public Notice, 27 FCC Rcd 7664 (Wireline Comp. Bur. 2012).

³⁵ See Comments of the National Telecommunications Cooperative Association, WC Docket No. 10-90 (filed Aug. 13, 2012).

³⁶ See Letter from David Cosson, Counsel for Border to Border Communications, Inc., to Marlene H. Dortch, Secretary, FCC (filed Jan. 16, 2013).

³⁷ See Letter from Julie A. Veach, Chief, Wireline Competition Bureau, to David Cosson, Counsel for Border to Border, WC Docket No. 10-90, 28 FCC Rcd 1891 (Wireline Comp. Bur. 2013) (Border to Border Question Letter).

³⁸ See Application of Border To Border Communications, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to PUC Subst. R. §26.406 (filed Feb. 5, 2013), available at http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/41191_1_749154.PDF (requesting recovery in the amount of \$981,752 pursuant to 16 Tex. Admin. Code § 26.406) (Border to Border PUC Application).

³⁹ Central Texas Petition at i, 1.

⁴⁰ *Wireline Competition Bureau Seeks Comment on Central Texas Telephone Cooperative, Inc. Petition for Waiver of a High-Cost Universal Service Rule*, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 10999 (Wireline Comp. Bur. 2012); see Reply Comments of the Western Telecommunications Alliance, WC Docket Nos. 10-90, 05-337 (filed Oct. 26, 2012).

⁴¹ See Letter from Kenneth C. Johnson, Counsel for Central Texas Telephone Cooperative, Inc., to Marlene H. Dortch, Secretary, FCC (filed Mar. 4, 2013) (March 4 Ex Parte).

⁴² See *id.* at 2; see also *Sixth Order on Reconsideration*, 28 FCC Rcd at 2581, para. 23.

⁴³ See March 4 Ex Parte at 2.

IV. STATE REMEDIES

15. Pursuant to Texas state law, the rate of return carriers with waivers pending before us may pursue relief from the state as a result of any change in the Commission's policy that leads to a reduction in certain local exchange carriers' USF support.⁴⁴ The Texas Public Utility Regulatory Act (PURA) specifically affords local exchange companies that serve fewer than 31,000 access lines a mechanism to recover reductions in USF revenues caused by any Commission order.⁴⁵ In particular, the Texas statute states that, "[t]he [PUC] shall implement a mechanism to replace the reasonably projected change in revenue caused by a Federal Communications Commission order, rule, or policy that changes: (1) the federal universal service fund revenue of a local exchange company; or (2) costs or revenue assigned to the intrastate jurisdiction."⁴⁶ The PUC's implementing regulation provides that the PUC shall "replace the reasonably projected change in revenues caused by the regulatory action," through either the state universal service fund or an increase to rates, "if that increase would not adversely impact universal service."⁴⁷ In addition, the Texas Administrative Code includes an Additional Financial Assistance provision, available to qualifying incumbent local exchange carriers in rural and high cost areas, which may provide another source for carriers seeking relief.⁴⁸

16. A number of carriers have applied for relief before the PUC specifically pursuant to the Texas statute and implementing regulations, seeking a recovery of revenues reduced as a result of the reforms contained in the *USF/ICC Transformation Order*.⁴⁹ Hill Country Telephone Cooperative, Inc. was the first to file its request, and is expected to shortly reach a "meaningful settlement" with the PUC.⁵⁰ Big Bend Telephone Company has entered into a settlement agreement with the PUC.⁵¹ Border to Border also applied for relief from the PUC, and has responded to requests for information as its application remains pending.⁵²

V. DISCUSSION

17. We conclude that, in light of the state mechanisms for recovery available to Texas petitioners, and the PUC's anticipation of processing requests for replacement of USF reductions,⁵³ we

⁴⁴ See TEX. UTIL. CODE ANN. § 56.025(c) (West 2005).

⁴⁵ See *id.*

⁴⁶ *Id.*

⁴⁷ 16 Tex. Admin. Code § 26.406(b)(2).

⁴⁸ See 16 Tex. Admin. Code § 26.408.

⁴⁹ See, e.g., Border to Border PUC Application; Application of Hill Country Telephone Cooperative, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to PUC Subst. R. §26.406 (filed Sept. 17, 2012), available at http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/40755_1_736758.PDF; Application of Big Bend Telephone Company to Recover Funds From the Texas Universal Service Fund Pursuant to PURA §56.025 and PUC Subst. R. 26.406 (filed Dec. 28, 2012), available at http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/41079_1_745968.PDF.

⁵⁰ Commission Staff's Status Report (Mar. 15, 2013), available at http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/40755_74_752419.PDF.

⁵¹ Joint Motion to Admit Evidence and Approve Stipulation and Agreement (Apr. 19, 2013), available at http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/41079_26_754699.PDF.

⁵² See Border to Border Responses to PUC Staff's Highly Sensitive 1st RFI Question Nos. Staff 1-1 through Staff 1-11 (filed Mar. 19, 2013), available at http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/41191_12_752634.PDF.

⁵³ In a prospective 2013 report on the Texas universal service fund by the PUC to the Texas legislature, the PUC clarified the application of the law. The PUC recognized that the *USF/ICC Transformation Order* "led to reductions (continued...)

should dismiss without prejudice the petitions for waiver at this time. The Texas petitioners should first avail themselves of state remedies available to them pursuant to TEX. UTIL. CODE ANN. § 56.025(c) and 16 Tex. Admin. Code § 26.406(b)(2) before seeking a waiver from the Commission.⁵⁴ Indeed, Border to Border sought relief under the Texas statute,⁵⁵ requesting additional universal service funding from the state as it did with the Commission. Given the limits on federal universal service funding and the overall burden to consumers who contribute to the USF, we find that the Texas petitioners have not demonstrated good cause for relief because an alternative avenue for relief is available.⁵⁶

18. As the Commission explained in its *USF/ICC Transformation Order*, a waiver should be granted only where a petitioner demonstrates “that it needs additional support in order for its customers to continue receiving voice service in areas where there is no terrestrial alternative.”⁵⁷ In considering each waiver petition, the Bureau must take into account all revenues along with the individualized circumstances of a company.⁵⁸ And as further explained in the *Fifth Order on Reconsideration*, “a full understanding of a carrier’s financial circumstances is necessary when considering a waiver seeking additional support.”⁵⁹ The Texas petitioners either have already availed themselves of, or have identified no reason why they could not pursue relief under, this state recovery mechanism for reductions of federal universal service funding as a result of the *USF/ICC Transformation Order*, which may replace the same revenues the Texas petitioners seek to recover in the instant waiver requests.⁶⁰

19. Accordingly, we find that the availability of an alternative means of additional support precludes a finding that additional support from this Commission is warranted at this time. It appears that the Texas petitioners are eligible to receive support for reductions in federal universal service, possibly replacing fully any support reduced as a result of the Commission’s reforms. We cannot conclude that consumers are at risk of losing voice services in these circumstances.⁶¹ Moreover, by requiring the Texas petitioners to exercise available remedies at the state level first, we advance the Commission’s goal to
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in federal support for numerous eligible telecommunications carriers (ETCs) in Texas,” and that “PURA § 56.025 allows certain companies to request additional funds from [the Texas universal service fund] to offset these losses in revenue. Under these provisions, the [PUC] will process providers’ requests for [state USF] replacement for many of these [federal USF] reductions.” Report to the 83rd Texas Legislature: Review and Evaluation of the Texas Universal Service Fund Pursuant to Senate Bill 980, 82nd Legislature, Regular Session, 4 (Nov. 1, 2012) (emphasis added), available at http://www.puc.texas.gov/industry/communications/reports/TUSF/TUSF_Report_83rdLeg.pdf.

⁵⁴ See TEX. UTIL. CODE ANN. § 56.025(c) (West 2005); 16 Tex. Admin. Code § 26.406(b)(2). See also 16 Tex. Admin. Code § 26.408.

⁵⁵ In our recent letter to Border to Border, we inquired about the impact of the Texas statute on Border to Border’s revenues. See Border to Border Question Letter at 2.

⁵⁶ See 47 C.F.R. § 1.3.

⁵⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 540.

⁵⁸ See *id.* at 17839, para. 539 (“We cannot . . . evaluate . . . claims [that reductions in current support levels would threaten a company’s financial viability] absent detailed information about individualized circumstances”).

⁵⁹ *Fifth Order on Reconsideration*, 27 FCC Rcd at 14560, para. 30.

⁶⁰ We note that, to date, Dell has not chosen to pursue this state-level remedy. See Dell Question Letter at 3-4. According to Dell, it would either have to “increase rates to levels its customers are unable to afford or unwilling to pay,” or the Texas state fund would have to expand by such an amount that “neither the Texas PUC nor other constituencies in the State are likely to endorse.” Dell Response Letter at 13. However, given the plain meaning of the Texas statute, implementing regulations, and report to the legislature discussed *supra* note 53, we find the availability of state relief to be a significant opportunity for recovery, which carriers should pursue in the first instance.

⁶¹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 540 (discussing the circumstances under which a waiver would be appropriate).

further fiscal responsibility and accountability. Finally, it is critical that we ensure that there is no possibility for gamesmanship. As the Commission recently reiterated, it is committed to providing support that is sufficient but not excessive.⁶²

20. For the reasons discussed above, we therefore dismiss without prejudice the Texas petitions. Subject to the final outcome of any proceeding for relief described above,⁶³ petitioners may revisit a waiver petition with the Commission.

VI. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 254, sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and paragraph 544 of the *USF/ICC Transformation Order*, FCC 11-161, that this order IS ADOPTED.

22. IT IS FURTHER ORDERED that the petition for waiver of section 54.302 of the Commission's rules, 47 C.F.R. § 54.302, the benchmarking rule to limit reimbursements for capital and operating expenses, and section 36.621(a)(4) of the Commission's rules, 47 C.F.R. § 36.621(a)(4), filed by Dell Telephone Cooperative, Inc., IS DISMISSED as described herein.

23. IT IS FURTHER ORDERED that the petition for waiver of section 54.302 of the Commission's rules, 47 C.F.R. § 54.302, and the benchmarking rule to limit reimbursements for capital and operating expenses, filed by Border to Border Communications, Inc., IS DISMISSED as described herein.

24. IT IS FURTHER ORDERED that the petition for waiver of the benchmarking rule to limit reimbursements for capital and operating expenses, filed by Central Texas Telephone Cooperative, Inc., IS DISMISSED as described herein.

25. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief, Wireline Competition Bureau

⁶² *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557-58, para. 22.

⁶³ In addition, where lack of timely action in a proceeding before a state authority jeopardizes a carrier's ability to provide voice or continue to operate a broadband-capable network, that carrier may file for interim waiver relief, subject to a true-up, while the PUC considers the request. *See id.* at 14557, para. 20. In the event of a subsequent waiver petition, Texas petitioners may request that the record established in this proceeding be incorporated.