

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 54****[CC Docket No. 96–45; FCC 02–307]****Federal-State Joint Board on Universal Service****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: In this document, the Commission asks the Federal-State Joint Board on Universal Service to review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled.

DATES: Effective December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Kathy Tofigh, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 96–45 released on November 8, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

1. In this Order, we ask the Federal-State Joint Board on Universal Service (Joint Board) to review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled. In particular, we request the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier (ETC) is providing service, as well as the Commission's rules regarding support for second lines. We request that the Joint Board provide recommendations to the Commission regarding if and how those rules should be modified. We anticipate that the Joint Board will seek public comment on whether these rules continue to fulfill their intended purposes, and whether modifications are warranted in light of developments in the telecommunications marketplace. We also ask the Joint Board to examine the process for designating ETCs.

2. In light of developments in the telecommunications marketplace since 1997, we believe that it is appropriate to

request the Joint Board to review the Commission's rules relating to support in competitive study areas and support for second lines. We also ask the Joint Board to examine the process for designating ETCs. The Joint Board should address how its recommendations regarding the issues set forth below further the universal service goals outlined in section 254 of the Act, including the principle of competitive neutrality. In addition, the Joint Board should consider how its analysis relates to the five-year time frame for high-cost support adopted in the *Rural Task Force Order*.

3. We ask the Joint Board to review the methodology for calculating support for ETCs in competitive study areas. In the *First Report and Order*, 62 FR 32862, June 17, 1997, the Commission determined that it was appropriate to calculate per-line portable universal service support for all ETCs based on the support that the incumbent LEC would receive for the same line. The Commission reasoned that calculating support based on the incumbent LEC's costs would aid the emergence of competition and would be the least burdensome way to administer the support mechanisms. In addition, the Commission explained that although a competitive ETC may have different costs than the incumbent LEC, a competitive ETC must also comply with section 254(e) of the Act, and that section 214(e) requirements would prevent competitive ETCs from profiting by limiting service to low cost areas. Some groups have argued that this methodology provides a windfall and creates an unfair advantage for competitive ETCs with lower costs, whereas others argue that the current rules are necessary for competitive neutrality and are the least administratively burdensome way to administer support. We ask the Joint Board to review the methodology for calculating support for ETCs in competitive study areas, taking into consideration the universal service principles outlined in section 254 of the Act and the principle of competitive neutrality. We also ask the Joint Board to examine the rules governing calculation of high-cost support for competitive ETCs utilizing UNEs.

4. Support for competitive ETCs currently is not capped under the Commission's rules. On the other hand, the Commission's rules limit the overall amount of rural high-cost loop support available to incumbent LECs. When the Commission adopted these rules in 2001, it concluded that the modified embedded cost mechanism would provide rural carriers with specific,

predictable and sufficient support over the next five years. The Joint Board should address the potential benefits and costs of modifying these rules for stability, predictability, and sufficiency of the fund, as well as their potential effects on competition and competitive neutrality. In addition, the Joint Board should address the specific concerns raised in the *Rural Task Force Order* regarding excessive growth in the fund if incumbent rural carriers lose a significant number of lines to competitive ETCs. The Joint Board should also consider the methodology for determining the location of a line served by a mobile wireless service provider, and whether modifications are warranted.

5. The Joint Board should also consider the extent to which the Commission's current rules relating to support for second lines may impact the size of the universal service fund, and provide recommendations on whether the Commission should adopt modifications in this area. Under our current rules, all residential and business connections provided by ETCs are eligible for high-cost support. In adopting these rules in 1997, the Commission recognized that "overly expansive universal service mechanisms potentially could harm all consumers by increasing the cost of telecommunications services for all." At that time, the Commission indicated it would continue to evaluate the issue. We now ask the Joint Board to consider whether the goals of section 254 would be served if support were limited to a single connection to the end-user—whether provided by the incumbent or a competitive ETC. We also ask the Joint Board to consider whether such a rule would be competitively neutral and how it would impact competition.

6. Finally, the Joint Board should address the system for resolving requests for ETC designations under section 214(e)(2) of the Act. Some parties have argued that shortcomings in the current system hamper the emergence of competition in rural areas, whereas others have expressed concerns that universal service goals will be undermined if state commissions do not impose similar universal service obligations on incumbent LECs and competitive ETCs. Taking into consideration these concerns, we ask the Joint Board to consider whether it is advisable to establish federal processing guidelines for ETC applications, and if so, what should be included in such guidelines. Furthermore, in the *Rural Task Force Order*, the Commission determined that the level of disaggregation of support should be

considered in determining whether to certify new ETCs for a service area other than a rural carrier's entire study area. We ask the Joint Board to consider whether the Commission should provide additional guidance regarding the manner in which the level of disaggregation of support should be considered, and if so, what guidance the Commission should provide.

7. Pursuant to sections 1, 4(i) and (j), 214(e), 254, and 410 of the Communications Act of 1934, as amended, this Order is adopted.

8. Pursuant to sections 1, 4(i) and (j), 214(e), 254, and 410 of the Communications Act of 1934, as amended, the Federal-State Joint Board on Universal Service is requested to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier is providing service and support for second lines and provide recommendations to the Commission.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 01-97; RM-9798; FCC 02-232]

Amendment of the Commission's Rules To Revise the Authorized Duty Cycle on 173.075 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission revised the duty cycle specifications for stolen vehicle recovery system operations on 173.075 MHz by adding a new duty cycle option of 1800 milliseconds every 300 seconds, with a maximum of six messages in any thirty-minute period. This action was taken to enable the enhancement of police performance in the recovery of stolen vehicles and apprehension of suspects. This rule change will facilitate: more efficient law enforcement, a decrease in the time between when a vehicle is discovered stolen and when the theft is reported to

the police, greater stolen vehicle recovery rates, and a greater rate of apprehension of criminals.

DATES: Effective December 26, 2002.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order*, FCC 02-232, adopted on August 9, 2002, and released on September 5, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at bmillin@fcc.gov.

In this *Report and Order*, we address the proposal set forth in the *Notice of Proposed Rulemaking (NPRM)*, 66 FR 31598, June 12, 2001, in WT Docket No. 01-97. In the *NPRM*, the Commission sought comment on whether to revise the duty cycle specifications for stolen vehicle recovery system (SVRS) operations on 173.075 MHz. The *NPRM* also invited comment on whether the public interest continues to be served by specification of duty cycles for the SVRS operations on 173.075 MHz. For the reasons explained below, we are revising § 90.20(e)(6) of the Commission's rules to add a new duty cycle option of 1800 milliseconds every 300 seconds with a maximum of six messages in any thirty-minute period. We believe that this new duty cycle option will enable the enhancement of police performance in the recovery of stolen vehicles and apprehension of suspects, while ensuring that harmful interference does not occur to television reception. It is our view that the specification of SVRS duty cycles continues to serve the public interest by also encouraging a competitive marketplace for provision of SVRS operations.

I. Procedural Matters

A. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA) of 1980, the

Commission has prepared a Final Regulatory Flexibility Analysis of the possible impact of the rule changes contained in this *Report and Order* on small entities. The Final Regulatory Flexibility Act analysis is set forth in Appendix A of the *Report and Order*. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Paperwork Reduction Analysis

2. This *Report and Order* does not contain any new or modified information collection. Therefore, it is not subject to the requirements for a paperwork reduction analysis, and the Commission has not performed one.

II. Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix A of the *Notice of Proposed Rulemaking (NPRM)* issued in this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Report and Order* in WT Docket No. 97-82 conforms to the RFA. I. Need for, and Objectives of, the *Report and Order*

3. In the *Report and Order*, we modify the duty cycle for mobile specifications for SVRS operations, contained in 47 CFR § 90.20(e)(6), to 1800 milliseconds every 300 seconds to permit use of new technology. This modification is in the public interest because it enhances the efficient use of spectrum and permits greater efficiency in use of police resources to track and recover stolen vehicles and apprehend more individuals involved in such activities.

A. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. No comments were filed in direct response to the IRFA.

B. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under