significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

Accordingly, 32 CFR part 806b is amended to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Appendix C to part 806b, is amended by adding paragraph (b)(23) to read as follows:

Appendix C to part 806b—General and specific exemptions.

* * * * *

(b) *Specific exemptions.* * * *

(23) *System identifier and name:* F031 DoD A, Joint Personnel Adjudication System.

(i) *Exemption:* (1) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(2) Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(5) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, the AF will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Air Force Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

Dated: November 18, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–29812 Filed 11–27–02; 8:45 am]

BILLING CODE 5001–08–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; DA 02–2976]

Comment Sought on Recommended Decision Issued by Federal-State Joint Board on Universal Service Regarding the Non-Rural High-Cost Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; solicitation of comments.

SUMMARY: In a document released on November 5, 2002, the Wireline Competition Bureau sought comment on the Recommended Decision of the Federal-State Joint Board on Universal Service addressing issues from the *Ninth Report and Order* that were remanded by the United States Court of Appeals for the Tenth Circuit.

DATES: Submit comments on or before December 20, 2002, and reply comments on or before January 3, 2003.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Katie King, Jennifer Schneider, or Narda Jones, Attorneys, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400; TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireline Competition Bureau's Public Notice in CC Docket No. 96–45 released on November 5, 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.

The Wireline Competition Bureau (Bureau) seeks comment on the Recommended Decision of the Federal-

State Joint Board on Universal Service (Joint Board), released on October 16, 2002, addressing issues from the *Ninth Report and Order,* (64 FR 67416, December 1, 1999), that were remanded by the United States Court of Appeals for the Tenth Circuit. The *Ninth Report and Order* established a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs. The court remanded the *Ninth Report and Order* to the Commission for further explanation of its decision. On February 15, 2002, the Commission issued a *Notice of Proposed Rulemaking,* 67 FR 1087, March 11, 2002, seeking comment on issues remanded by the court and referring the record collected in the proceeding to the Joint Board for a recommended decision.

Comment is sought on the Joint Board's recommendations. Specifically, in its *Recommended Decision,* the Joint Board recommended continued use of statewide average costs and a national benchmark of 135 percent to determine non-rural high-cost support, but recommended that the Commission modify the non-rural high-cost support mechanism by adopting additional measures to induce states to ensure reasonable comparability of urban and rural rates. In particular, the Joint Board recommended that the Commission implement a supplementary rate review, through an expanded annual certification process under section 254(e) of the Act, as a check on whether non-rural high-cost support continues to provide sufficient support to enable the states to maintain reasonably comparable rural and urban rates. The Joint Board recommended that states be required to certify that the basic service rates in their high-cost areas are reasonably comparable to a national urban rate benchmark or explain why they are not. States would have the opportunity to demonstrate that further federal action is needed because current federal support and state actions together are insufficient to yield reasonably comparable rates.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments December 20, 2002, and reply comments January 3, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other then U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will continue to be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Attachment

I. Introduction

1. In this Recommended Decision, the Federal-State Joint Board on Universal Service (Joint Board) provides its recommendations on issues from the *Ninth Report and Order,* (64 FR 67416, December 1, 1999), that were remanded to the Commission by the United States Court of Appeals for the Tenth Circuit. The *Ninth Report and Order* established a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs. Consistent with the court's decision, the Joint Board recommends that the Commission modify the non-rural high-cost support mechanism implemented in the *Ninth Report and Order* by adopting additional measures to induce states to ensure reasonable comparability of urban and rural rates. We also recommend that the Commission implement a supplementary rate review as a check on whether non-rural high-cost support continues to provide sufficient support to enable the states to maintain reasonably comparable rural and urban rates. In addition, we recommend continued use of statewide average costs to determine non-rural high-cost support. We believe that these recommendations will enable the Commission to satisfy the court's remand and continue to fulfill Congress's directive in the Telecommunications Act of 1996 to preserve and advance universal service.

II. Discussion

2. Based on examination of the record in this proceeding, the Joint Board recommends that the Commission modify the non-rural high-cost support mechanism implemented in the *Ninth Report and Order* by adopting additional measures that will establish specific inducements for states to ensure that rates in all regions of the nation are reasonably comparable to rates in urban areas. We also recommend that the Commission implement a supplementary rate review to assess whether non-rural high-cost support continues to provide sufficient support to enable the states to maintain reasonably comparable rates. Consistent with the court's decision, our recommendations with regard to these additional measures will support and complement the Commission's initial decision in the *Ninth Report and Order.* Specifically, we recommend a process that includes the following: (1) Continuing use of a national average cost benchmark based on 135% of the national average cost; (2) funding 76% of state average costs exceeding the national benchmark; (3) establishing a national rate benchmark based on a percentage of the national average urban rate; (4) implementing state review and certification of rate comparability; and (5) providing states the opportunity to demonstrate that further federal action is needed because current federal support and state actions together are insufficient to yield reasonably comparable rates.

3. The Joint Board's recommendations comprise an integrated approach to the complex and interrelated issues referred by

the Commission. We believe that these recommendations will enable the Commission to satisfy the court's remand and continue to fulfill Congress's directive to preserve and advance universal service. We note that this mechanism calculates support only for non-rural carriers. Certain assumptions in this Recommended Decision may not make sense for rural carriers. For example, as discussed below, while statewide averaging is appropriate in the non-rural mechanism, it may not be appropriate for the high-cost mechanism providing support to rural carriers.

A. Sufficiency

4. The Joint Board recommends that, for purposes of non-rural high-cost support, sufficiency should be principally defined as enough support to enable states to achieve reasonable comparability of rates. Sufficiency should be defined based on the relevant statutory goals under section 254(b). Thus, the definition of the term may vary depending on the underlying purpose of the universal service program in question. The principal purpose of the non-rural high-cost support mechanism is to provide enough federal support to enable states to achieve reasonable comparability of rural and urban rates, the principle found in section 254(b)(3). As discussed in more detail below, non-rural high-cost support is designed to provide high-cost states enough support so that their net average costs are reasonably comparable to the national average cost. With reasonably comparable net costs, these high-cost states should then have the resources to ensure that rural and urban rates within their borders are reasonably comparable. The Joint Board recommends below that the Commission require states to certify that their rates are reasonably comparable or explain why they are not, and provide states the opportunity to demonstrate that further federal action is needed because current federal support and state action together are insufficient to achieve reasonably comparable rates. Accordingly, for purposes of non-rural high-cost support, the Joint Board recommends that sufficiency be defined as enough support to enable states to achieve reasonably comparable rates.

5. The Joint Board also reaffirms that the statutory principle of sufficiency means that non-rural high-cost support should be only as large as necessary to achieve its statutory goal. Correct fund size is essential to ensure that all consumers benefit from universal service.

A. Use of Costs Rather Than Rates To Determine Non-Rural High-Cost Support

6. We explain more fully here why costs rather than rates should continue to be the principal basis for determining federal support flows among states. Congress adopted section 254 to ensure that, as competition develops, there would be explicit support mechanisms in place to preserve the fundamental communications policy goal of providing universal telephone service in all regions of the nation at reasonably comparable rates. Section 254(b)(3) requires reasonably comparable rates. This would be a relatively easy undertaking if the cost of providing telephone service were comparable in urban and rural areas. But costs are not comparable. The cost of providing telephone service is largely a function of population density and distance. Sparsely populated, rural areas have longer telephone loops, the most expensive portion of the telephone network, and fewer customers to spread the costs among. In some rural areas the cost of providing telephone service may be one hundred times greater than costs in urban areas.

7. Although rates generally are related to costs, states may base rates on numerous considerations in addition to cost. For example, local rates may vary from state to state depending upon each state's local rate design policies; whether or not a carrier's rates are set based on a price cap approach; the degree to which implicit subsidies may remain within local rates; whether a state universal service fund exists; and other factors. Attempting to develop cost support levels based principally on rates would therefore likely be difficult to implement considering the lack of uniformity in local rate design practices and could lead to inequitable treatment between states with substantially similar costs but different local rate policies.

8. For these reasons, the use of costs rather than rates to determine federal support was central to the Commission's decision adopting the non-rural high-cost support mechanism in the *Ninth Report and Order.* We agree with the Commission's past decision that cost analysis offers advantages over rate analysis for purposes of determining Federal support levels. Cost analysis enables accurate comparison of states for purposes of determining federal support levels. The Commission has stated that ''[a] state facing costs substantially in excess of the national average may be unable through any reasonable combination of local rate design policy choices to achieve rates reasonably comparable to those that prevail nationwide.'' Examining the underlying costs enables the Commission to ''evaluate the cost levels that must be supported in each state in order to develop reasonably comparable rates.''

9. While the inducements to state action on rates and supplemental rate review contained in this recommendation recognize that the ultimate test of rate comparability will be the rates customers actually pay for service, the use of costs for determining the areas of greatest need establishes a firm foundation for the states to fulfill the goals of section 254 of the Act. We recommend that the Commission continue to use a cost-based approach as the principal means of achieving the statutory goal of rate comparability.

B. Use of Statewide Averaging To Reflect Appropriate Federal and State Roles in Achieving Rate Comparability

10. The Joint Board recommends that the Commission continue to determine high-cost support for non-rural companies by using statewide average costs. We believe that this reflects an appropriate division of federal and state responsibility for achieving rate comparability for non-rural companies. Because the states, not the Commission, set intrastate rates, the states have primary responsibility for ensuring reasonably comparable rural and urban rates. States tend to rely on either implicit or explicit mechanisms to transfer support from low-cost lines to high-cost lines within a state.

11. Despite implicit or explicit state support mechanisms, the low-cost areas of some states cannot balance their high-cost areas. Although such states could, through their own efforts, achieve reasonably comparable rates within their own boundaries, those rates would still be high relative to the national average because of the states' high average costs. The Commission's primary role is to identify those states that do not have the resources within their borders to support all of their high-cost lines. The non-rural high-cost support mechanism achieves this through the comparison of statewide average cost to a national cost benchmark. The averaging process provides a logical means to assess the relative extent to which states can support their high-cost areas by using resources from low-cost areas. By shifting funds to states with average costs above the national benchmark, the Commission provides federal support that is intended to enable high-cost states to set rates that are reasonably comparable to all rates across the nation.

12. The Commission explained in the *Ninth Report and Order* that the non-rural high-cost support mechanism ''has the effect of shifting money from relatively low-cost states to relatively high-cost states.'' The Commission believed that its non-rural support mechanism ensured that no state with costs greater than the national benchmark would be forced to keep rates reasonably comparable without the benefit of federal support. Statewide averaging assigns to the states the primary responsibility for ensuring reasonable comparability of rates within their borders and permits states to use their resources to achieve the goal of reasonable comparability within states. We continue to support these policies.

13. We disagree with the contention of the Rural Utilities Service that high-cost customers are being hidden by statewide averaging. The Rural Utilities Service was concerned about the circumstance in which some customers have high costs but the state average is not high enough to qualify for support. The use of statewide average costs reflects what we believe to be an appropriate policy decision that in such cases the state has the primary responsibility and demonstrated ability to ensure rate comparability. Federal support is needed when the state, because of its high average cost, cannot solve such a problem without imposing an undue burden on its own ratepayers.

14. While statewide averaging is appropriate in the non-rural mechanism, it may not be appropriate for the high-cost mechanism providing support to rural carriers. Many rural carriers lack the economies of scale and scope of the generally larger non-rural carriers, as the Rural Task Force established in documenting differences that exist between rural and non-rural companies. The Commission has stated that

it intends to ask the Joint Board to conduct a comprehensive review of the high-cost support mechanisms for rural and non-rural carriers as a whole to ensure that both mechanisms function efficiently and in a coordinated fashion. Accordingly, the Joint Board does not address the complex issues surrounding high-cost support for rural telephone companies in this Recommended Decision. The Joint Board emphasizes that the current recommendation is not intended to apply to rural companies. Now that the Joint Board has concluded its recommended decision on the issues in the court's remand, we look forward to a Commission referral of a comprehensive review of the rural and non-rural high-cost support mechanisms.

C. Benchmark

15. Based on examination of the record, the Joint Board continues to support the 135% benchmark. The court appeared to consider the ability to produce reasonably comparable urban and rural rates as a key factor in supporting an appropriate cost benchmark. As the court observed, although non-rural high-cost support is distributed based on a comparison of national and statewide average costs, the benchmark must be ultimately based on attainment of the statutory principle of reasonable comparability of urban and rural rates. We have noted that the Joint Board and Commission have found in prior rulings that current rates are affordable and reasonably comparable. These findings are supported by a recent General Accounting Office (GAO Report). Based on data contained in the GAO Report, it appears that six years after passage of the Act the national averages of rural, suburban and urban rates for residential customers diverge by less than two percent. We believe that the comparability of average rural and urban rates supports continued use of the 135% cost benchmark. In addition, the Joint Board finds that the current benchmark is empirically supported by a cluster analysis and a standard deviation analysis. Both of these methods indicate that the 135% benchmark targets support to states with substantially higher average costs than other states, consistent with the purpose of non-rural high-cost support.

16. Verizon argues that the 135% benchmark is consistent with Congressional intent that federal support be sufficient to maintain the range of rates existing at the time the 1996 Act was adopted. We agree with Verizon that one of the goals of the 1996 Act was to ensure that rates remain reasonably comparable as competition develops. Congress was concerned that competition would erode implicit support and adopted section 254 to preserve and advance universal service. Verizon argues further that rates have not changed substantially since 1996, so the range of existing rates, as reflected in the GAO Report, should be used to determine what is reasonably comparable. Because 95% of rates fall within two standard deviations of the mean, Verizon argues that rural rates within two standard deviations of urban rates should be considered reasonably comparable. Verizon points out that an analysis of the Commission's cost model shows that two standard deviations translates approximately to a 135% cost benchmark. Thus, Verizon argues that rural rates within two standard deviations of urban rates should be considered reasonably comparable and that the cost benchmark level of 135% is justified because it is nearly equivalent to two standard deviations. As discussed below, we agree.

17. The current benchmark is supported by a standard deviation analysis. Standard deviation is a commonly used statistical analysis that measures dispersion of data points from the mean of those data points. In a normal distribution, data points within two standard deviations of the mean will comprise approximately 95% of all data points. In other words, use of two standard deviations will identify data points that are truly outliers within the sample studied. Verizon points out that both the Commission and state commissions have adopted this statistical approach as a standard for determining parity or comparability. As applied to the cost of non-rural lines, the measurement of two standard deviations from the national average cost results in approximately 132% of the national average cost. Based on this information, the Joint Board concludes that the 135% benchmark is a reasonable dividing line separating high-cost states from the remainder of average and low-cost states.

18. The Joint Board used a cluster analysis to determine that the states receiving non-rural high-cost support under the current 135% benchmark are states that have substantially higher average costs than other states. Cluster analysis is an analytical technique that organizes information around variables so that relatively homogeneous groups, or clusters, can be identified. The Joint Board used cluster analysis to identify groups of states that had similar cost characteristics, thereby warranting different treatment regarding universal service support. Specifically, states were sorted from lowest- to highest-cost based on statewide average cost per loop. Clusters were identified in this ranking if the difference in average costs between states was greater than ''cluster split differences'' ranging from 2.5 to 0.5. Under this analysis, Mississippi was the first to break out into a separate cluster, and the second was the District of Columbia. The first group of states to break out into a separate rural, high-cost cluster included Kentucky, Maine, Alabama, Vermont, Montana, West Virginia and Wyoming. The remaining states, ranging from New Jersey to Nebraska, formed a separate urban, low-cost cluster. When Mississippi and the District of Columbia, the respective high- and low-cost ''outliers,'' were combined into the two larger clusters, ''cluster stability'' was achieved for a wide range of numerical values from 2.5 to 0.85. ''Cluster stability'' means that the same clusters are maintained even as the numerical values are varied, indicating a strong similarity among members of the cluster groups. Because cluster analysis identifies a high-cost, rural cluster of states that matches the group of states currently receiving support under the non-rural high-cost support mechanism, the Joint Board finds that the cluster analysis empirically supports the current 135% benchmark.

19. Because the standard deviation analysis and the cluster analysis both support 135% as a reasonable benchmark, the Joint Board recommends continued use of the 135% benchmark. The court recognized that the use of any benchmark may be somewhat arbitrary; however, choice of a specific, percentage-based benchmark (as opposed to a mathematically calculated benchmark based on two standard deviations which may result in a different percentage each year) provides certainty to the funding process that carriers and states desire. Accordingly, the Joint Board recommends continued use of a 135% benchmark. The supplemental rate comparability review which we recommend will allow the Commission to assess how successfully the non-rural high-cost support ensures reasonable comparability of rates.

20. Some commenters suggest that, in light of the court's decision, it would be more appropriate to use a benchmark based on average urban cost, rather than nationwide average cost. The Joint Board recommends that the Commission continue to use a nationwide cost benchmark. The national benchmark is intended to ensure that each state has a relatively equal ability to achieve reasonable comparability of urban and rural rates. We do not agree that an urban cost benchmark would better satisfy the statutory comparison of urban and rural rates. Like the current mechanism, the urban benchmark substitutes costs for rates. In addition, rather than comparing rural and urban costs, it compares statewide average costs to nationwide urban costs.

21. The urban benchmark proposal would require more funding or a higher benchmark level because urban average costs are lower than national average costs. For example, an urban benchmark of 165% would yield roughly the same support amounts as the current 135% national benchmark. An urban benchmark of less than 165% would require more federal support. The *GAO Report* suggests that more federal support is not necessary because urban and rural rates are similar. Proponents of the urban benchmark have not explained how additional funding produced by an urban benchmark would produce reasonably comparable rates, nor have they provided a rational justification for setting the benchmark at any particular level.

22. The urban benchmark proposal is premised in part on the argument that the current 135% national benchmark cannot enable rate comparability because it is equivalent to about 165% of urban average cost, near the 70–80% range of variability that the court doubted was reasonably comparable. As explained, however, rates do not necessarily equate to costs, so setting a 135% national benchmark (or 165% urban benchmark) does not mean intrastate rates will vary to the same degree. For the same reason, establishing cost support based on an urban benchmark will not ensure that urban and rural rates will be reasonably comparable. Because the urban benchmark proposal does not improve the operation of the high-cost support mechanism, nor address the rate comparability concerns of the court, the Joint Board recommends that the current national benchmark be retained, supplemented by rate review to ensure comparability of urban and rural rates.

23. As discussed, a ''step function'' provides gradually more support for costs that exceed certain thresholds or ''steps'' above the national average. BellSouth supports the 135% benchmark, but proposes an additional, lower benchmark to provide some support to carriers in states with average costs between 100 and 135% of the national average cost. BellSouth proposes a step function as a means of distributing support more widely among states and, thereby, inducing states to ensure reasonable comparability of urban and rural rates. As discussed, the purpose of non-rural high-cost support is to provide sufficient support to enable high-cost states to develop reasonably comparable rates. Providing additional support merely to induce states to ensure rate comparability without determining that additional support is necessary may conflict with the principle that support should be only as large as necessary. Nevertheless, a step function could promote predictability by preventing a total loss of federal support if small cost changes cause a state's average cost per line to fall below the dollar amount of the 135% benchmark in a given year. We believe that use of a step function may have benefits and warrants further consideration; however, the Joint Board does not recommend that the Commission add a step function to the non-rural high-cost support mechanism at this time. In light of the need to respond expeditiously to the court's remand, the Joint Board expects to address the issue of a step function in its comprehensive review of the rural and non-rural support mechanisms.

D. Reasonable Comparability and State Inducements

24. The Joint Board recommends that the Commission implement a procedure that will induce states to achieve reasonably comparable rates and enable the Commission to take additional action, if necessary, to achieve comparable rates. Specifically, the Joint Board recommends the Commission expand the current annual certification process under section 254(e) of the Act to require states to certify that the basic service rates in high-cost areas served by eligible telecommunications carriers (ETCs) within the state are reasonably comparable to a national rate benchmark. For purposes of this state certification process, the Joint Board recommends that high-cost areas be defined as all wire centers with a line density less than 540 lines per square mile. As part of the certification process, all states should be required to compare basic service rates based on a standard template. The Commission should also establish a ''safe harbor'' whereby a state whose rates are at or below a certain rate benchmark may certify that their basic service rates in high-cost areas are reasonably comparable without the necessity of submitting rate information. However, states would have the option of submitting additional data to demonstrate that other factors affect the comparability of their rates. If a state's rates are more than the rate benchmark, the state could request further federal action based on a showing that federal support and state actions together were not sufficient to yield reasonably comparable basic service rates statewide. Further federal actions could include, but are not limited to, additional targeted federal support, or actions to modify calling scopes or improve quality of service where state commissions have limited jurisdiction. A state requesting further federal action must show that it has already taken all actions reasonably possible and used all available state and federal resources to make basic service rates reasonably comparable, but that rates nevertheless fall above the benchmark. A state whose basic service rates exceed the rate benchmark and that requests further federal action should be required to submit rate data in support of its certification, based on a basic service rate template. The Joint Board recognizes that it may be appropriate to use 135% for the safe harbor rate benchmark, but recommends that the Commission further develop the record to establish the appropriate rate benchmark for the safe harbor.

25. The Joint Board believes that this expanded certification process meets the court requirement to induce state action to achieve rate comparability. With any support mechanism, the proof of success must be evaluated not only on whether the mechanism as a whole generally achieves rate comparability, but also upon the degree and nature of any exceptions. The court criticized the Commission for failing to adequately reconcile its conclusion that rates were generally comparable in light of instances where state rates were reportedly high. Together with federal non-rural high-cost support, the expanded certification process will ensure that rates ''* * * in all regions of the Nation * * * are reasonably comparable * * *'' as set forth in section 254(b)(3). The expanded certification process encourages states to scrutinize their rates using the basic service rate template, to determine whether they are reasonably comparable, and if not, to take actions to make them reasonably comparable. When state basic service rates are at or below the rate benchmark level, then there should be a presumption that rates in that state are reasonably comparable to national urban rates. This recommended approach affords the states maximum flexibility to determine basic service rates. The Commission should accord substantial deference to these state certifications.

i. Rate Benchmark

26. As an initial matter, the Joint Board recommends that the Commission base the rate benchmark on the most recent average urban residential rate as shown in the Bureau's *Reference Book,* as modified to reflect the most recent changes in subscriber line charges (SLC). The average urban rate can be adjusted annually based on data from the Bureau's annual rate survey. The Joint Board recognizes that it may be appropriate to use 135% for the safe harbor benchmark. Use of a 135% rate benchmark is consistent with the national average cost benchmark of 135%. The Joint Board believes that, since cost-based support is provided to ensure statewide average costs do not exceed 135% of the national average, most states should be able to maintain average rates below 135% of the national average urban rate. Based on the current national average urban rate, as adjusted, a 135% rate benchmark would be $30.16 per line per month. The Joint Board recommends that the Commission further develop the record to establish the appropriate rate benchmark for the safe harbor.

27. The Joint Board emphasizes that any rate benchmark established is meant simply as a ''safe harbor'' for the purposes of determining rate comparability. The Joint Board does not suggest through this Recommended Decision that it is appropriate that any rates be increased to that level. The Joint Board recognizes and supports the role of state commissions in setting rates within each state. The Joint Board recommends requiring that states review only residential rate information at this time. The Joint Board suggests that it may be appropriate to solicit comment as to whether only residential or residential and business rates eventually should be reviewed by the states.

ii. Basic Service Rate Template

28. The Joint Board recommends that the Commission establish a basic service rate template for states to use to compare rates. We suggest that the basic service rate template should include the items contained in the annual rate survey by the Bureau. The Joint Board recommends that the template include the following factors: the rate for a line with access to the public switched network, federal subscriber line charge, state subscriber line charge (if any), federal universal fund charge, state universal fund charge (if any), local number portability charge, telecommunications relay service charge, 911 charges, federal universal service credits (if any), state universal service credits (if any) and the federal excise tax.

iii. Expanded Rate Certification Process

29. The expanded state certification process would augment the existing state certification under section 254(e) of the Act. The existing procedure requires states to certify that all ETCs that receive federal universal service funding are using the funds to achieve the goals of the Act. The new procedure would expand reporting requirements to include a discussion of rate comparability. In the expanded certification process, states typically would report in one of four ways:

a. Rates within the state fall below the benchmark and are considered by the state to be reasonably comparable. No further showing should be required.

b. Rates are not below the benchmark, but may nevertheless be considered reasonably comparable. A state could show that due to other factors—for example, additional services included in the basic service rate or the method in which the state has targeted existing universal service support—the rates above the benchmark actually should be presumed reasonably comparable. In the alternative, the state could report on actions it intends to take to achieve reasonable comparability.

c. Rates are below the benchmark, but are not reasonably comparable. A state may show that even though actual rates are within the safe harbor, the price paid for service received results in rates and services that are

not reasonably comparable. In this case, a state could show that existing basic service is lacking in some way. For example, the state could show that the local calling area size is too small to be considered comparable service, and that toll or extended area service charges should be included to produce a reasonably comparable rate. In addition to explaining why rates within the safe harbor should not be considered reasonably comparable, the state must also show the actions it has taken or is going to take to remedy the discrepancy, prior to requesting additional federal actions to achieve reasonably comparable rates.

d. Rates are above the benchmark and are not reasonably comparable. A state could request federal action based on a showing that current combined federal and state actions are insufficient to produce reasonably comparable rates. If the state asserts that existing federal support and state resources are not sufficient for the state to attain reasonably comparable rates, the state should be required to show that it has already taken all available steps to remedy the situation, but that rates remain above the benchmark. If the state can make this showing, the Commission would consider taking further action to meet the needs of the state in achieving reasonably comparable rates.

30. The Joint Board recommends that states certifying that their rates fall at or below the national rate benchmark and are reasonably comparable should not be required to submit any additional rate information. Any states requesting additional federal action should be afforded great flexibility in making their presentations, but should be required to fully explain the basis for their request. Factors that should be addressed by any such state would include, but not be limited to: Rate analysis and a demonstration why the state contends that rates are not reasonably comparable; any other factors that should be considered in evaluating rates; and a demonstration that the state has taken all reasonably possible steps to develop maximum support from within the state. The requesting state should fully explain how it has used any federal support currently received to help achieve comparable rates and whether the state has implemented a state universal service fund to support rates in high-cost areas of that state. The Joint Board recommends the Commission develop exact procedures to be used in filing and processing requests for further federal actions. In particular, the Joint Board recommends that the Commission establish a time limit for consideration of such state requests, to ensure that requests will be processed and decided expeditiously.

III. Recommending Clause

31. This Federal-State Joint Board pursuant to section 254(a)(1) and section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 254(a)(1) and 410(c), recommends that the Commission adopt the proposals described relating to issues from the *Ninth Report and Order* that were remanded to the Commission by the United States Court of Appeals for the Tenth Circuit.

Federal Communications Commission.

William Scher,

Assistant Division Chief, Telecommunications Access Policy Division.

[FR Doc. 02–30164 Filed 11–27–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; DA 02–3210]

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On September 18, 2002, the Commission released a document (67 FR 62667, Oct. 8, 2002) seeking comment on whether it should change its rules restricting telemarketing calls and facsimile advertisements. This document grants, in part, and denies, in part, the motion of the American Teleservices Association (ATA) to extend the time to file comments in our TCPA proceeding in CG Docket No. 02–278.

DATES: Comments are due in this proceeding on December 9, 2002, and reply comments are due January 8, 2003.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies with the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *http://www.fcc.gov/e-file/ecfs.html.*

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith, Consumer & Governmental Affairs Bureau, (202) 418–2512.

SUPPLEMENTARY INFORMATION: On November 13, 2002, the American Teleservices Association (ATA) filed a motion for extension of time to file comments in CG Docket No. 02–278. It is not Commission policy to routinely grant extensions of time. However, we find that a brief extension of time to file comments in this proceeding is in the public interest. We therefore grant, in part, and deny, in part, ATA's request to extend the comment period in this proceeding. In so doing, we note that many parties seeking to file comments in this proceeding are consumers who may lack familiarity with the Commission's process for filing comments. We believe an extension of time will help to ensure that these parties have ample opportunity to participate. In addition, because the Consumer & Governmental Affairs Bureau (Bureau) responded to ATA's FOIA request on November 14, 2002 by giving ATA 250 redacted complaints, the additional time will afford ATA ample opportunity to review those complaints. Finally, we extend the reply comment period to 30 days following the comment deadline to allow parties a sufficient opportunity to respond to the large number of comments already filed in this proceeding. As of November 19, 2002, over 4,100 comments have been filed in response to the Notice of Proposed Rulemaking (Notice).

We decline, however, to extend the comment period to the full extent requested by ATA. We do not believe that it would be in the public interest to delay this entire proceeding by several months based on the rationale provided in ATA's motion. In particular, we disagree with ATA's contention that ATA must obtain the approximately 11,000 TCPA-related complaints and 1,500 inquiries filed from 2000–2001 prior to commenting on the issues presented in the Notice. The Notice presents, in detail, the specific issues and rules that are under consideration for review in this proceeding. We believe this information allows parties a full and complete opportunity to respond to these issues. In addition, as noted above, the Commission has provided 250 such complaints to ATA in response to its FOIA request. ATA will have an opportunity to analyze those complaints prior to submitting its comments. The Commission intends to work diligently to provide a complete response to ATA's FOIA request. To the extent necessary, ATA will have additional opportunities to supplement its comments through *ex parte* filings.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 02–30252 Filed 11–27–02; 8:45 am]

BILLING CODE 6712–01–P