

Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154(i)–(j), 157, 201–209, 218–220, 251, 271–273, and 403 that this Memorandum Opinion and Order *is adopted*.

2. The Commission has thus completed its review of the record in the above-captioned rulemaking. Accordingly, the above-captioned proceeding *is terminated*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–26108 Filed 10–16–03; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 03–173; FCC 03–224]

Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document initiates a rulemaking proceeding to examine the rules applicable to pricing of unbundled network elements (UNEs) and resold telecommunications services made available by incumbent local exchange carriers (LECs) to competitive LECs. The Federal Communications Commission (Commission) adopted the current UNE pricing regime known as the Total Element Long Run Incremental Cost (TELRIC) methodology in 1996. This Commission stated at that time that it intended to re-examine this methodology over time, and this rulemaking represents the Commission's first such re-examination of its UNE pricing rules. The Commission also adopted resale pricing rules in 1996. The U.S. Court of Appeals for the Eighth Circuit reversed the resale pricing rules in 2000. This document seeks comment on whether, and, if so, in what manner, to revise the Commission's UNE pricing rules and on whether, and, if so, in what manner, to promulgate resale pricing rules.

DATES: Comments due December 16, 2003, and reply comments due January 30, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See*

SUPPLEMENTARY INFORMATION for filing instructions.

FOR FURTHER INFORMATION CONTACT: Steve Morris, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 03–173, adopted on September 10, 2003, and released on September 15, 2003. The full text of this document is available on the Commission's website Electronic Comment Filing System and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The full text of the NPRM may also be purchased from the Commission's duplicating contractor, Qualex International, Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or e-mail at qualexint@aol.com.

Background

1. This NPRM, adopted September 10, 2003 and released September 15, 2003 in WC Docket No. 03–173, FCC 03–224, initiates a proceeding to examine the Commission's UNE pricing and resale pricing rules. Currently, the Commission's TELRIC rules, 47 CFR 51.501 *et seq.*, which were promulgated in 1996, apply to the pricing of UNEs. The U.S. Supreme Court affirmed the Commission's jurisdiction to promulgate these rules in 1999 and affirmed the reasonableness of these rules in 2002. In contrast, however, because the U.S. Court of Appeals for the Eighth Circuit reversed the Commission's resale pricing rules in 2000, there currently are no resale pricing rules. Because the Commission's UNE pricing rules have not been examined in over seven years, and because the Commission does not have resale pricing rules, we conclude that it is time to examine the pricing rules for UNEs and resale.

Discussion

2. We undertake this rulemaking with the goal of modifying or clarifying the Commission's UNE and resale pricing rules to aid state commissions in more easily developing UNE pricing and resale discounts that meet the statutory standards established by Congress in section 252(d) of the Telecommunications Act of 1996 and to provide more certainty and consistency in the results of these state proceedings.

See 47 U.S.C. 252(d). We seek to determine whether our UNE pricing methodology is working as intended and, in particular, whether it is conducive to efficient facilities investment. We also undertake this rulemaking to examine whether, and, if so, in what manner, to promulgate resale pricing rules.

3. As a preliminary matter, we reaffirm our commitment to using forward-looking costing principles to determine UNE rates. We decline to open an inquiry into alternative pricing theories, including historical cost, efficient component pricing rule, and Ramsey pricing theories. Instead, in examining UNE pricing rules, the NPRM focuses, and seeks comment, on whether clarifications or modifications should be made to the current forward-looking economic cost-based rules.

4. In the NPRM, we will examine whether the UNE pricing rules distort our intended pricing signals by understating forward-looking costs and thereby thwart the development of facilities-based competition. We will consider whether modifications to the current UNE pricing rules are necessary to both preserve their forward-looking emphasis and pro-competitive purposes, while simultaneously making the rules more transparent and theoretically sound. Specifically, we tentatively conclude that UNE prices should be based on costs more firmly rooted in the real-world attributes of the existing networks of incumbent LECs rather than the speculative attributes of a purely hypothetical network. We seek comment on this tentative conclusion.

5. We seek comment on the appropriate goals of a UNE pricing regime. Should UNE prices continue to be set in a manner that sends efficient entry and investment signals to competitors and that enables incumbent LECs to recover their forward-looking costs? We ask that parties comment on whether these remain the appropriate goals and, if not, that parties identify alternative pricing goals. We seek information on how the Commission can measure whether a pricing regime is sending appropriate entry and investment signals. We request parties comment on the value of comparisons to an incumbent LEC's historical costs? We also seek comment on potential other goals of a pricing regime, such as transparency and verifiability.

6. We seek comment on the effect of the Commission's recent decision in the *Triennial Review Order*, 68 FR 52276, September 2, 2003. In particular, the Commission adopted a new interpretation for determining whether requesting telecommunications carriers