

to back out these costs in developing expense factors? Would it be necessary to develop some type of refund mechanism if other carriers also benefit from the work? Parties that oppose limiting the activities for which NRCs are permitted should suggest practical methods for making such adjustments.

51. We invite parties to offer other suggestions on principles that states could apply to identify when it is appropriate to recover costs through NRCs, and the consequences of those principles on competitive entry and cost recovery. For example, of what relevance are the NRCs imposed by incumbent LECs on retail customers? Would eliminating or reducing the allocation of common costs and overhead to activities for which NRCs are imposed resolve concerns about the level of NRCs?

52. Beyond these general NRC issues, we seek comment on some specific issues. We request that parties comment on whether disconnection costs should be recovered as a separate cost at the time of disconnection or if they should be recovered through a NRC imposed at the time of installation. We ask that parties provide empirical evidence with respect to the frequency with which facilities actually are disconnected and the costs are not recovered through other charges. We ask parties that favor recovering disconnection costs at the time of installation to explain how to reflect the time value of money in calculating the costs at the time of installation and to explain whether there are other factors that outweigh the consequences of having an intentional mismatch between costs and revenues (caused by recovering the costs before they are incurred).

53. A second specific issue on which we seek comment is loop conditioning. In the *Triennial Review Order*, the Commission stated that state commissions have discretion to determine whether loop conditioning costs are forward-looking costs, and whether those costs should be recovered through recurring or non-recurring charges. We ask parties to comment on when and how the costs associated with loop conditioning should be recovered through recurring or non-recurring charges. We noted in the *Triennial Review Order* that one option available to state commissions would be to permit NRCs for loop conditioning only in extraordinary circumstances, such as copper loops that are longer than 18,000 feet. We seek comment on whether this is a useful distinction. We also seek comment on how, if at all, should such NRCs be distributed among the competitive LEC requesting

conditioning and the future carriers that provide digital subscriber line service over the conditioned loop.

54. *Rate Structure*. The current rules contain a variety of requirements regarding how UNE rates should be structured. 47 CFR 51.509. We seek comment on whether, and under what circumstances, changes are needed to our rate structure requirements. For example, would it be appropriate to require switching costs or shared transport costs to be recovered solely through flat-rated charges?

55. *Rate Deaveraging*. The Commission's current rules require that UNE rates be geographically deaveraged into at least three cost-based rate zones, and do not permit "class-of-service" deaveraging. We seek comment on whether, given the Commission's limited ability to influence or control retail local exchange rates, changes to our deaveraging policies with respect to UNEs are necessary to achieve the Commission's goal of sending appropriate economic signals with respect to competitive entry and investment or are there alternative steps the Commission might take. We seek comment on whether, and under what circumstances we should retain the requirement of geographic deaveraging. What are the consequences of deaveraging UNE prices in states where retail rates are not similarly deaveraged? Would it be appropriate to require deaveraging only in states where retail rates are deaveraged? Can such an approach be reconciled with the cost-based pricing standard contained in section 252(d)? We also seek comment on whether, and under what circumstances, to retain the requirement to average rates across different classes of service. Parties that favor elimination or modification of this requirement should present evidence demonstrating that the costs of serving different classes of customers are sufficiently different to warrant deaveraging of those rates. Also, we seek comment on whether deaveraging UNE rates across classes of customers is appropriate if retail rates do not reflect these same cost differences.

56. *Rate Changes Over Time*. UNE pricing proceedings require a substantial commitment of resources from everyone involved and typically take a considerable time to complete. We ask parties to comment on whether there might be mechanisms that could be used to adjust prices over time, thereby reducing the need for state commissions to conduct a full UNE pricing proceeding every few years. Would an approach, similar to many price cap regimes, which periodically

adjust rates based on productivity and inflation factors work for UNE prices and, if so, how? In particular, we ask parties how productivity factors might be calculated. We invite parties to produce empirical evidence regarding productivity, such as productivity studies, that could be used to establish productivity factors if we pursue this approach. We also seek comment on, if the use of productivity factors to adjust rates periodically is feasible, whether it should be mandatory and whether it satisfies a state's legal obligations under section 252. Are there methods other than the use of productivity factors that could be used to make periodic rate adjustments?

57. *Resale Pricing*. Section 252(d)(3) of the Telecommunications Act of 1996 requires that state commissions establish wholesale rates for resold services based on the incumbent LEC's retail rates, "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." 47 U.S.C. 252(d)(3). The Commission's original resale pricing rules were vacated by the U.S. Court of Appeals for the Eighth Circuit, which found that the appropriate standard for determining avoided costs is not those costs that "can be avoided," but rather "those costs that the [incumbent LEC] will actually avoid in the future." *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 755 (8th Cir. 2000). In light of this decision, we ask parties to comment on the need for the Commission to adopt new rules implementing section 252(d)(3). Is the statutory language, as interpreted by the Eighth Circuit, sufficiently clear that further guidance from the Commission is unnecessary? Parties that favor the establishment of national rules should explain what those rules would require. Is it necessary or helpful for the Commission to identify categories of costs that either are or are not presumptively avoided? Parties that favor the Commission establishing this type of presumption should provide objective evidence demonstrating the type of costs that incumbent LECs actually avoid when they provide services to competitors for resale. For example, how should common costs be treated?

58. We ask parties to discuss whether it is necessary, or helpful, for the Commission to establish evidentiary guidelines with respect to the resale discount. Should incumbent LECs be obligated to file cost studies in support of their proposed discounts, or are there alternative showings that might be sufficient? If studies are required, what level of detail should they contain?