

## **PROPOSED FINDINGS OF FACT**

1. A discount rate formula that is based on the incumbent carrier's expenses for all services, including services not subject to resale, is inappropriate because it understates the discount and could result in excess profits for the incumbent carrier.
2. A discount rate formula that is based on the incumbent carrier's retail revenues from services subject to resale is appropriate because it ensures that avoided costs are matched with the services for which the costs are avoided and should not affect the incumbent's profits.
3. It is a standard practice for state commissions and carriers to calculate wholesale discount rates by dividing avoided costs by retail revenues from services subject to resale.
4. The methodology of NDTC's cost study is inconsistent with the requirements of the Communications Act, the FCC's interpretation of the Communications Act and the practices of other state commissions and carriers.
5. The underlying data in NDTC's cost study was not authenticated by any witness with personal knowledge of the information.
6. There are significant discrepancies between the data in the cost study and the data in NDTC's annual report that were not explained.
7. NDTC was unable to explain what specific activities were covered by certain relevant accounts and where the costs of certain activities relevant to avoided cost calculations were addressed in the data it provided to the Commission.
8. NDTC did not account for avoided costs associated with DSL service, even though that service is subject to wholesale resale.
9. NDTC's calculation of severance pay expense is unreasonable because it assumes too long a period for such pay, because it did not support the claim that the employees would be terminated and because it is inappropriate for NDTC to be compensated for losses caused by competition.
10. NDTC's calculation of customer service expenses is unreasonable because it assumes that Midcontinent will have more inquiries, not fewer, than a retail customer and because NDTC is fully compensated under the parties' proposed resale agreement for costs associated with initiating service and PIC changes.
11. NDTC's calculation of audit costs is unreasonable because audits are optional, not required, and because NDTC assumes that they will occur every year.
12. NDTC's amortization period of two years is unreasonable because it assumes that no resale will occur after that time.
13. The significant methodological and numerical errors in NDTC's cost study make it unreasonable for the Commission to rely on it in setting an interim wholesale discount.

14. The Midcontinent discount calculation methodology is consistent with the requirements of the Communications Act, the FCC's interpretation of the Communications Act and the practices of other state commissions and carriers.
15. Midcontinent's adjustments to NDTC's proposed avoided costs are reasonable and consistent with the FCC's rules.
16. It is reasonable for Midcontinent to base its avoided cost calculations on the information provided by NDTC.
17. The results of Midcontinent's cost study are consistent with the FCC's safe harbor and with alternative approaches to calculating a discount rate that are in conformance with basic principles of the statute.
18. The true up mechanism proposed by NDTC and ratified by Midcontinent is reasonable and will address any differences between the interim and final discount rates.

The next two findings are appropriate only to the extent the Commission adopts an interim discount rate based on the FCC's safe harbor:

19. The use of the FCC safe harbor is consistent with the data provided to the Commission in this proceeding.
20. The use of the FCC safe harbor is consistent with the Qwest discount rate and the discount rate adopted voluntarily by another rural carrier, Missouri Valley, and therefore should not be unreasonably burdensome on either NDTC or Midcontinent.

## PROPOSED CONCLUSIONS OF LAW

1. Section 252(d)(3) of the Communications Act requires that calculations of wholesale discount rates be based on a comparison of the incumbent carrier's avoided costs and the revenues for services subject to wholesale resale.
2. It would be inconsistent with the requirements of the Communications Act to adopt a model for calculation of wholesale discount rates that compared avoided costs to a carrier's total expenses or to otherwise include expenses for services not subject to wholesale resale in the calculation of the wholesale discount rate.
3. The FCC has not adopted any specific cost model to be used in calculating wholesale discount rates and has not adopted different models for calculating interim and final wholesale discount rates.
4. It would be impermissible to adopt a wholesale discount rate based on data that cannot be authenticated or that is otherwise unreasonable.
5. The discount rate calculation proposed by NDTC (9.36%) is inconsistent with the requirements of the Communications Act and therefore cannot be adopted.
6. The discount rate calculation proposed by Midcontinent (25.39%) is consistent with the requirements of the Communications Act and therefore can be adopted.
7. The true up calculation proposed by NDTC is consistent with the requirements of the FCC rules governing interim rates and therefore can be adopted.

The next three conclusions are appropriate only to the extent the Commission adopts an interim discount rate based on the FCC's safe harbor:

8. The FCC's rules permit the Commission to adopt an interim wholesale discount rate from 17 to 25 percent if it does not have sufficient evidence to calculate a specific discount rate.
9. The Commission does not have sufficient evidence to adopt an interim discount rate based on the studies provided to it in this proceeding.
10. A discount rate of [insert number from 17 to 25] percent is consistent with the requirements of the FCC's rules.