

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

BUSINESS DATA SERVICES ACCESS SERVICE

TARIFF F.C.C. No. 6

TRANSMITTAL NO. 1608

JUNE 16, 2020

**DESCRIPTION AND JUSTIFICATION**

**I. INTRODUCTION**

The National Exchange Carrier Association, Inc. (NECA) hereby files its 2020 annual tariff revisions to Tariff F.C.C. No. 6 for the 2020/2021 test period. NECA proposes revisions to the rates and charges applicable to the provision of Business Data Services (BDS) within the operating territories of the Issuing Carriers listed on Title Pages 2 through 4 of the accompanying tariff effective July 1, 2020.<sup>1</sup>

BDS provides customers with dedicated, high-capacity point-to-point data transmission capabilities at guaranteed speeds and service levels. NECA is filing this tariff pursuant to the Commission's *RoR BDS Order*, which allows rate-of-return (RoR) carriers receiving model-based or other fixed high-cost USF support to move certain of their business data services to incentive regulation.<sup>2</sup> While electing carriers are required to remove their BDS and other special

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<sup>1</sup> The Commission has established July 1, 2020 as the effective date for Annual Access Tariff filings made on 15 days' notice. *See July 1, 2020 Annual Access Charge Tariff Filings*, WC Docket No. 20-55, Order, DA 20-413 (rel. Apr. 15, 2020) (*2020 Procedures Order*).

<sup>2</sup> *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket No. 17-144, *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, *Special Access for Price Cap Local Exchange Carrier*, WC Docket No. 05-25, Report and Order, 33 FCC Rcd. 10403 (2018) (*RoR BDS Order*).

access services from NECA Tariff F.C.C. No. 5 and the special access portion of the traffic sensitive pool, they may continue to participate in a joint tariff for such services and some have elected to have their rates listed in NECA Tariff F.C.C. No. 6.<sup>3</sup>

The RoR BDS Order grants two opportunities for carriers to elect to remove their BDS offerings from RoR regulation – one effective as of July 1, 2019, and a second effective as of July 1, 2020.<sup>4</sup> On June 17, 2019, NECA filed Transmittal No. 1580 containing BDS rates for carriers that elected in 2019.<sup>5</sup> An update to some ex ante rates, to account for final exogenous cost factors, was filed September 16, 2019 via Transmittal No. 1587.<sup>6</sup> In addition, Transmittal No. 1594 was filed December 17, 2019 to implement one carrier's decision to detariff its non-ex ante rates listed in Tariff F.C.C. No. 6.<sup>7</sup>

NECA Tariff F.C.C. No. 6 contains study area specific rates applicable to interstate BDS access services provided by issuing carriers in their respective states of operation and references NECA Tariff F.C.C. No. 5 for its terms and conditions. For carriers participating in NECA Tariff F.C.C. No. 6, rates for carriers that elected to move their BDS to incentive regulation effective July 2019 and rates for carriers electing BDS effective July 2020 have been developed according to the rules set forth in the Commission's *RoR BDS Order* as described herein.<sup>8</sup>

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<sup>3</sup> *Id.* ¶¶ 29, 34, n. 91.

<sup>4</sup> *Id.* ¶ 23.

<sup>5</sup> National Exchange Carrier Association, Inc., Tariff F.C.C. No. 5, Transmittal No. 1580 (filed June 17, 2019).

<sup>6</sup> National Exchange Carrier Association, Inc., Tariff F.C.C. No. 5, Transmittal No. 1587 (filed September 16, 2019) (*2019 BDS Exogenous Cost Filing*).

<sup>7</sup> National Exchange Carrier Association, Inc., Tariff F.C.C. No. 5, Transmittal No. 1594 (filed December 17, 2019).

<sup>8</sup> *See RoR BDS Order* ¶ 33 et. seq.

The following sections explain the methods used to determine rate levels for lower speed BDS services subject to ex ante pricing regulation and adjustments to the initial price cap and service band indexes to reflect the Commission's established productivity factor, inflation factor and other adjustments, as required under the Commission's BDS rules.

Information is also provided on the treatment of rate elements in areas deemed competitive under the competitive market test adopted in the *RoR BDS Order*,<sup>9</sup> as well as information on non-*ex ante* rates filed on behalf of companies electing to include such rates in this filing.

## II. BACKGROUND

As noted above, the *RoR BDS Order* allowed two opportunities for RoR carriers receiving model-based or other fixed high-cost USF support to elect to move certain of their BDS offerings to incentive regulation.

Carriers must elect incentive regulation at the holding company level for study areas in all states where that carrier receives fixed support.<sup>10</sup> Electing carriers are prohibited from returning their BDS offerings in those study areas to RoR regulation.<sup>11</sup> Electing carriers are, however, permitted to continue offering switched access services subject to the multi-year transition provided for in the Commission's 2011 *USF/ICC Transformation Order*.<sup>12</sup>

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<sup>9</sup> *Id.* ¶¶ 82-93.

<sup>10</sup> *Id.* ¶ 22.

<sup>11</sup> *Id.* ¶ 25.

<sup>12</sup> *Id.* ¶ 27. See also *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service – Mobility Fund*, WT Docket No. 10-208, Report and Order and FNPRM, 26 FCC Rcd. 17663 (2011). (*USF/ICC Transformation Order*), petitions for review denied *In re*: FCC 11-161, No. 11-9900 (10th Cir. May 23, 2014).

While the *RoR BDS Order* requires electing carriers participating in NECA Tariff F.C.C. No. 5 to remove costs and revenues associated with their BDS and special access offerings from the NECA traffic sensitive pool, they may continue to participate in Tariff F.C.C. No. 5 for switched access services and participate in the switched access portion of the traffic sensitive pool.<sup>13</sup>

Following adoption of the *RoR BDS Order*, NECA informed its members of the options available to them under the Commission's revised BDS rules. To facilitate implementation of the rules, NECA created methods to develop rates for BDS electors' lower speed special access services based on an incentive-based pricing model using each carrier's data and inputs and to file those rates for carriers wishing to continue participating in NECA tariff arrangements.<sup>14</sup> Those methods are described in Section VI.A.

Carriers also have the option for NECA to file their non-*ex ante* rates for competitive special access services in NECA Tariff F.C.C. No. 6.<sup>15</sup> NECA's tariff election system and pooling procedures permit companies electing the BDS framework to participate in the switched access portion of NECA Tariff F.C.C. No. 5 and NECA's traffic sensitive pool.

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<sup>13</sup> *RoR BDS Order* ¶ 29.

<sup>14</sup> This approach mirrors the option for model companies to tariff common line rate elements with NECA after exiting the CL pool, which NECA implemented in 2017 following adoption of the Commission's 2016 RoR USF Reform Order. *See Connect America Fund*, WC Docket No. 10- 90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 3087 (2016).

<sup>15</sup> Companies electing to have NECA file BDS tariffs on their behalf do not participate in the NECA traffic sensitive pool for such services and to that extent do not contribute towards recovery of NECA administrative expenses. *See generally* 47 C.F.R. § 69.603(g). Accordingly, NECA provides such tariffing services on a fee basis.

### III. TARIFF 6 PARTICIPANTS

Twenty-four study areas electing BDS in 2019 opted to have NECA file their lower speed BDS rates subject to ex ante pricing. These study areas are listed in Table 1. Seventy-five study areas electing BDS in 2020 opted to have NECA file their lower speed BDS rates subject to ex ante pricing. These study areas are listed in Table 2. Two of the 2019 and twenty-two of the 2020 electing study areas (identified with an asterisk in Tables 1 and 2), have chosen to also tariff in NECA F.C.C. Tariff No. 6 their non-*ex ante* rates for higher speed TDM (greater than DS3) and packet-based BDS, as permitted by the *RoR BDS Order* during the transition period.<sup>16</sup>

**Table 1**

Study Area Code	Study Area Name	Study Area Code	Study Area Name
351105	AYRSHIRE FARMERS MUT	391660	FT RANDALL-MT RUSHMR
270426	CAMPTI-PLEASANT HILL*	341016	GENESEO TEL CO
340984	CASS TEL CO*	341029	HENRY COUNTY TEL CO
361370	CLARA CITY TEL EXCH	300633	MIDDLE POINT HOME
371532	CONSOLIDATED TEL CO	371574	NEBRASKA CENTRAL TEL
371530	CONSOLIDATED TELCO	351261	NORTHWEST TEL COOP
371562	CONSOLIDATED TELECOM	361476	SACRED HEART TEL CO
371536	CURTIS TEL CO	361487	STARBUCK TEL CO
351156	EAST BUCHANAN COOP	300658	SYCAMORE TEL CO
351149	FARMERS (DEFIANCE)	300659	TELEPHONE SERVICE
351235	FARMERS (MANILLA)	351334	WESTERN IOWA ASSN
351168	FARMERS MUTUAL COOP	361515	ZUMBROTA TEL CO

\* Non-ex ante

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<sup>16</sup> *RoR BDS Order* ¶¶ 142-143.

**Table 2**

<b>Study Area Code</b>	<b>Study Area Name</b>	<b>Study Area Code</b>	<b>Study Area Name</b>
462178	AGATE MUTUAL TEL CO	200259	HARDY TELECOM*
340978	ALHAMBRA-GRANTFORK*	462190	HAXTUN TEL CO
310542	ALLBAND COMM COOP	330892	HILLSBORO TEL CO
391642	ALLIANCE-BALTIC*	371563	HOOPER TEL CO
351405	ALLIANCE-HILLS IA*	391654	INTERSTATE TELECOMM.
361405	ALLIANCE-HILLS MN*	361654	INTERSTATE TELECOMM.
391405	ALLIANCE-HILLS SD*	361419	LISMORE COOP TEL CO
391657	ALLIANCE-SPLITROCK*	351237	MARNE & ELK HORN TEL
673900	AMERICAN SAMOA*	341048	MCNABB TEL CO*
351110	BERNARD TEL CO INC	391670	MIDSTATE COMM., INC.
330850	BLOOMER TEL CO	351242	MILES COOP TEL ASSN
351113	BROOKLYN MUTUAL TEL	411807	MOKAN DIAL INC-KS
330855	BRUCE TEL CO, INC	421807	MOKAN DIAL INC-MO
351115	BUTLER-BREMER MUTUAL	532385	MONROE TELEPHONE CO.*
421864	CHARITON VALLEY TEL	230491	N.ST. dba N. ST.COMM*
421893	CHOCTAW TELEPHONE CO	210335	NORTHEAST FLORIDA
351129	CITIZENS MUTUAL TEL	371576	NORTHEAST NEBRASKA
190225	CITIZENS TEL COOP	421935	OREGON FARMERS MUT
351130	CLARENCE TEL CO	351187	PARTNER COMM. COOP.
442057	COLEMAN COUNTY CO-OP*	361451	PAUL BUNYAN RURAL
351262	COMM 1 NETWORK	462196	PEETZ COOP TEL CO*
351139	COOPERATIVE TEL CO	532393	PIONEER CONNECT
421874	ELLINGTON TEL CO	170200	PYMATUNING IND TEL
351160	F&B COMMUNICATIONS	381631	RED RIVER COMM.
351169	FARMERS MUTUAL COOP	462201	RICO TEL CO
462188	FARMERS TEL CO - CO	462202	ROGGEN TEL COOP CO
421882	FIDELITY TEL LLC	432022	SALINA-SPAVINAW TEL
361395	GARDEN VALLEY TECH	371590	SODTOWN TEL CO
361396	GARDONVILLE COOP TEL	300644	THE NOVA TEL CO
391659	GOLDEN WEST TELECOM*	330960	TRI-COUNTY COMM COOP
391640	GOLDEN WEST-ARMOUR*	391669	TRIOTEL COMM
391667	GOLDEN WEST-KADOKA*	330966	VERNON COMM. COOP.
391677	GOLDEN WEST-SIOUX VY*	401729	WALNUT HILL TEL CO
391684	GOLDEN WEST-UNION*	351326	WALNUT TEL CO, INC
391686	GOLDEN WEST-VIVIAN*	351328	WEBSTER-CALHOUN COOP
341020	GRAFTON TEL CO*	351331	WEST IOWA TEL CO
421890	GREEN HILLS TEL CORP*	330973	WITTENBERG TEL CO
371555	HAMILTON TEL CO*		

\* Non-ex ante

#### **IV. SEPARATIONS CATEGORY RELATIONSHIPS**

The *RoR BDS Order* permits electing carriers to unfreeze and update their category relationships in conjunction with setting their initial rates.<sup>17</sup> No carriers participating in NECA Tariff F.C.C. No. 6 had frozen category relationships.

#### **V. PRICING FLEXIBILITY**

The *RoR BDS Order* grants pricing flexibility (contract tariff pricing and volume and term discounts) to electing carriers for their lower speed TDM transport and end user channel termination services similar to the pricing flexibility the Commission granted to price cap carriers' lower speed TDM end user channel terminations in areas deemed non-competitive.<sup>18</sup> This is conditioned on the requirement that electing carriers remove contract tariff demand from the relevant incentive regulation basket for purposes of determining their price cap indexes and actual price indexes.<sup>19</sup>

Rates included in this filing are based upon demand that does not include contract tariff demand.

#### **VI. LOWER SPEED SERVICES SUBJECT TO EX ANTE PRICING**

RoR carriers participating in the NECA Tariff F.C.C. No. 5 and traffic sensitive pool that elected incentive regulation effective July 2020 are required to develop initial BDS rate levels for lower speed TDM transport and end user channel termination services by first using NECA

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<sup>17</sup> *Id.* ¶ 50.

<sup>18</sup> *Id.* ¶ 77.

<sup>19</sup> *Id.*

traffic sensitive special access pool rates in effect as of January 1, 2020.<sup>20</sup> These rates are then adjusted by a net contribution or net recipient factor calculated using special access revenue requirements calculated at 10.25% rate of return factor<sup>21</sup> and revenues settlement data reported to the NECA pool from the last six months of 2019,<sup>22</sup> reflecting the fact that carriers who are net contributors to the pool have rates that are higher than costs, while net recipients have rates below costs. The initial Price Cap Index (PCI) and Service Band Indices (SBI) were set at 100 to represent initial BDS rate levels.

Then, for all BDS carriers, rates are set so the actual price index calculated pursuant to section 61.46 does not exceed the price cap index, and so the service band indexes for each service category or subcategory calculated pursuant to section 61.47 do not exceed the pricing band limits for each category or subcategory. The following paragraphs explain how rates filed in this tariff comply with the *RoR BDS Order* and rule requirements.<sup>23</sup>

#### **A. INCENTIVE PRICING MODEL**

NECA developed an online Incentive Pricing Model to collect input data from participating companies and to enable them to set BDS rates that ensure compliance with the *RoR BDS Order's* requirements.

Companies electing to use NECA's Incentive Pricing Model used an online system to provide demand at the rate element level for the 2019 base period. Initial PCI and SBI values for July 2020 BDS electors and current PCI and SBI values for July 2019 BDS electors were

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<sup>20</sup> *Id.* ¶¶ 33, 38.

<sup>21</sup> *Id.* ¶ 39.

<sup>22</sup> *Id.* ¶¶ 33, 38.

<sup>23</sup> *Id.*



adjusted by applying the X-factor (2.0%), inflation factor (GDP-PI), and any required exogenous cost changes<sup>24</sup> to produce test period PCI and SBI limits for each company as detailed in NECA's filed TRP. Companies used the online model to select their test period rates subject to these constraints, in compliance with FCC rules and the *RoR BDS Order's* requirements.

## **B. LOWER SPEED TDM BDS OFFERINGS IN COMPETITIVE MARKETS**

The Commission's *RoR BDS Order* removes ex ante pricing regulation for lower speed (DS3 or below) TDM end user channel termination services when carriers face competition or potential competition in their study area as determined by a competitive market test.<sup>25</sup> A study area is deemed competitive if the Form 477 data demonstrates that a cable operator not affiliated with the rate-of-return carrier offers a minimum 10 Mbps download/1 Mbps upload broadband service in 75% of census blocks.<sup>26</sup> In those study areas deemed competitive, *ex ante* pricing regulation is removed for specified lower speed TDM end user channel terminations.<sup>27</sup> Lower capacity TDM transport and end user channel termination services in areas deemed noncompetitive are subject to incentive regulation and pricing flexibility.

In this filing there are two new study areas deemed competitive by the Wireline Competition Bureau's competitive market test, listed in Table 3. Both carriers chose to continue

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* ¶¶ 78, 105.

<sup>26</sup> See *Wireline Competition Bureau Publicly Releases List of Study Areas Deemed Competitive if Rate-of-Return Carriers Elect Incentive Regulation for Those Areas*, Public Notice, WC Docket Nos. 17-144, 16-143, 05-25, 33 FCC Rcd. 10169 (2018); and see *Wireline Competition Bureau Releases Supplemental Lists of Counties Served by Price Cap Carriers and Rate-of-Return Study Areas Newly Deemed Competitive Pursuant to Competitive Market Tests for Business Data Services*, WC Docket Nos. 17-144, 16-143, 05-25, RM 10593, Public Notice, 35 FCC Rcd. 131 (2020).

<sup>27</sup> *RoR BDS Order* ¶ 79.

tariffing their End User Channel Terminations. The rates for those services are treated as non-ex ante as permitted by the *RoR BDS Order* and are separately identified in Tariff F.C.C. No. 6.

**Table 3**

<b>Study Area Code</b>	<b>Study Area Name</b>
230491	N.ST. dba N. ST.COMM
170200	PYMATUNING IND TEL

### **C. EXOGENOUS COST ADJUSTMENTS**

Exogenous cost factors for FCC regulatory fees, fees associated with Telecommunications Relay Service (TRS), and North American Numbering Plan Administration (NANPA) expenses, are set at the factors in effect as of May 1, 2020.<sup>28</sup> Since updated factors will not be available until after this filing, the PCI does not include any exogenous cost impacts to reflect prospective exogenous cost factors. A subsequent filing may be made once revised factors affecting the 2020/2021 test period become available. In preparation for that filing, carriers will have the opportunity to select adjusted rates to recover the appropriate amount of exogenous costs through their lower speed BDS rates.

The *2019 BDS Exogenous Cost Filing* was filed for effect October 1, 2019 to account for exogenous cost effects for the entire 2019/2020 test period. That filing included gross up calculations to recover twelve months of adjustments over the remaining nine months of the 2019/2020 test period. In this filing, those gross up calculations have been backed out of the calculations underlying ex ante rate development for the upcoming 2020/2021 test period.<sup>29</sup>

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<sup>28</sup> *Material to be Filed in Support of 2020 Annual Access Tariff Filings*, WC Docket No. 20-55, Order, DA 20-502 (rel. May 12, 2019) ¶ 27.

<sup>29</sup> *Id.* ¶ 28.

#### **D. TRP FILING**

Data, calculations and demonstrations of compliance with BDS incentive pricing rules underlying the development of these rates are detailed in NECA's filed TRP.

### **VII. PACKET-BASED AND HIGHER SPEED TDM SERVICES**

Under the *RoR BDS Order*, electing carriers' packet-based and higher capacity TDM services greater than DS3 (including both higher speed TDM end user channel terminations and transport, and the end user channel terminations of carriers deemed competitive) are no longer subject to ex ante pricing regulation, and electing carriers are required to detariff these services within 36 months of the effective date associated with electing BDS pricing.<sup>30</sup> To allow small businesses and other customers time to adjust to the Commission's new regulatory framework, newly electing carriers are required to freeze currently tariffed rates for such BDS services for a six-month period, beginning on the effective date associated with adopting BDS regulation.<sup>31</sup>

#### **A. FOR CARRIERS ELECTING BDS FOR JULY 1, 2020**

NECA developed a data collection to gather tariffing information from its NECA Tariff No. 6 participants. Fifty-three of the seventy-five study areas electing for July 1, 2020 and participating in NECA Tariff No. 6 opted to detariff their packet-based and higher speed TDM services greater than DS3 for effect July 2020. These rates are no longer subject to *ex ante* pricing regulation concurrent with the effective date of this filing. Twenty-two of the seventy-five study areas in Tariff No. 6 opted to continue to tariff these rates at this time, as permitted during the transition period established in the *RoR BDS Order*. The rates for packet-based and

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<sup>30</sup> *RoR BDS Order* ¶ 106.

<sup>31</sup> *Id.* ¶ 141.

higher speed TDM services are the January 1, 2020 rates that were previously tariffed in NECA Tariff F.C.C. No. 5 as required by the *RoR BDS Order*. These rates are unadjusted for price cap indexes and net contribution or recipient factors and will remain frozen for six-months.

**B. FOR CARRIERS ELECTING BDS FOR JULY 1, 2019**

One study area participating in NECA Tariff No. 6 opted to detariff its packet-based and higher speed TDM services greater than DS3 for effect July 1, 2020. Two study areas in Tariff No. 6 opted to continue tariffing these rates at this time, as permitted during the transition period established in the *RoR BDS Order*. Each carrier input its desired rates for packet-based and higher speed TDM services in an online system for tariffing.

**VIII. CONCLUSION**

The rates proposed in new NECA Tariff F.C.C. No. 6 are filed in compliance with the Commission's rules and requirements of the *RoR BDS Order* and should be allowed to become effective on July 1, 2020, the date established by the *2020 Procedures Order*.