

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

BUSINESS DATA SERVICES ACCESS SERVICE

TARIFF F.C.C. No. 6

TRANSMITTAL NO. 1636

JUNE 16, 2021

DESCRIPTION AND JUSTIFICATION

I. INTRODUCTION

The National Exchange Carrier Association, Inc. (NECA) hereby files its 2021 annual tariff revisions to Tariff F.C.C. No. 6 for the 2021/2022 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, 2021.¹

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 Universal Service Fund (USF) support to move certain of their business data services to incentive regulation.² While electing carriers are required to remove

¹ The Commission has established July 1, 2021 as the effective date for Annual Access Tariff filings made on 15 days' notice. *See July 1, 2021 Annual Access Charge Tariff Filings*, WC Docket No. 21-148, Order, DA 21-433 (rel. Apr. 16, 2021) (*2021 Procedures Order*).

² *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*).

their BDS and other special 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. 6.³

The RoR BDS Order granted 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, 2020.⁴ On June 17, 2019, NECA filed Transmittal No. 1580 containing BDS rates for carriers that elected in 2019.⁵ An update to some ex ante rates, to account for final exogenous cost factors, was filed September 16, 2019 via Transmittal No. 1587.⁶ 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. 6.⁷

To implement the second round of BDS elections, on June 16, 2020 NECA filed Transmittal No. 1608 containing BDS rates for carriers that elected to move their BDS offerings to incentive regulation in 2020.⁸

³ *Id.* ¶¶ 29, 34, n. 91.

⁴ *Id.* ¶ 23.

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

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

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

⁸ National Exchange Carrier Association, Inc., Tariff F.C.C. No. 6, Transmittal No. 1608 (filed June 16, 2020).

An update to some ex ante rates to account for final exogenous cost factors was filed September 16, 2020 via Transmittal No. 1615.⁹ In addition, Transmittal No. 1623 was filed December 17, 2020 to implement one carrier's name change.¹⁰

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 or July 2020 have been developed according to the rules set forth in the Commission's *RoR BDS Order* as described herein.¹¹

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 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*,¹² as well as information on exogenous cost recovery, and non-ex ante rates filed on behalf of companies electing to include such rates in this filing.

⁹ National Exchange Carrier Association, Inc., Tariff F.C.C. No. 6, Transmittal No. 1615 (filed September 16, 2020) (*2020 BDS Exogenous Cost Filing*).

¹⁰ National Exchange Carrier Association, Inc., Tariff F.C.C. No. 6, Transmittal No. 1623 (filed December 17, 2020).

¹¹ See *RoR BDS Order* ¶ 33 et. seq.

¹² *Id.* ¶¶ 82-93.

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 were required to elect incentive regulation at the holding company level for study areas in all states where that carrier receives fixed support.¹³ Electing carriers are prohibited from returning their BDS offerings in those study areas to RoR regulation.¹⁴ 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*.¹⁵

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.¹⁶

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

¹³ *Id.* ¶ 22.

¹⁴ *Id.* ¶ 25.

¹⁵ *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 Inter-carrier 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).

¹⁶ *RoR BDS Order* ¶ 29.

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.¹⁷

Those methods are described in Section V.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. 6.¹⁸ 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.

¹⁷ This approach mirrors the option for model companies to tariff common line rate elements with NECA after exiting the Common Line (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 Red. 3087 (2016).

¹⁸ 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-six 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. One 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 Time Division Multiplexing (TDM) (greater than DS3) and packet-based BDS, as permitted by the *RoR BDS Order* during the transition period.¹⁹ One 2019 study area, Cass Telephone Company (Study Area Code 340984), that had previously elected to list its non-ex ante rates in the tariff has chosen to detariff those services with this filing.

Table 1 – Electing in 2019

| 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

¹⁹ *RoR BDS Order* ¶¶ 142-143.

Table 2 – Electing in 2020

| Study Area Code | Study Area Name | Study Area Code | Study Area Name |
|------------------------|------------------------|------------------------|------------------------|
| 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 | NORTH STATE TEL* |
| 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. 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.²⁰ 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.²¹

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

V. LOWER SPEED SERVICES SUBJECT TO EX ANTE PRICING

BDS rates for lower speed TDM transport and end user channel termination services are set so the actual price index calculated pursuant to section 61.46 does not exceed the price cap index (PCI), and so the service band indexes (SBI) 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.²²

²⁰ *Id.* ¶ 77.

²¹ *Id.*

²² *Id.*

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 2020 base period. Current PCI and SBI values were adjusted by applying the X-factor (2.0%), inflation factor (GDP-PI), and any required exogenous cost changes²³, described in Section V.C below, to produce test period PCI and SBI limits for each company as detailed in NECA's filed Tariff Review Plan (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.²⁴ 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.²⁵ In those study areas deemed competitive, ex ante pricing

²³ *Id.*

²⁴ *Id.* ¶¶ 78, 105.

²⁵ 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 *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*

regulation is removed for specified lower speed TDM end user channel terminations.²⁶ 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 study areas deemed competitive by the Wireline Competition Bureau's competitive market test, listed in Table 3. Both carriers chose to continue 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

| Study Area Code | Study Area Name |
|------------------------|------------------------|
| 230491 | NORTH STATE TEL |
| 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, 2021.²⁷ 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 2021/2022 test period become available. In preparation for that filing,

Tests for Business Data Services, WC Docket Nos. 17-144, 16-143, 05-25, RM 10593, Public Notice, 35 FCC Rcd. 131 (2020).

²⁶ *RoR BDS Order* ¶ 79.

²⁷ *Material to be Filed in Support of 2021 Annual Access Tariff Filings*, WC Docket No. 21-148, Order, DA 21-568 (rel. May 14, 2021) ¶ 40.

carriers will have the opportunity to select adjusted rates to recover the appropriate amount of exogenous costs through their lower speed BDS rates.

The *2020 BDS Exogenous Cost Filing* was filed for effect October 1, 2020 to account for exogenous cost effects for the entire 2020/2021 test period. That filing included gross up calculations to recover twelve months of adjustments over the remaining nine months of the 2020/2021 test period. In this filing, those gross up calculations have been backed out of the calculations underlying ex ante rate development for the upcoming 2021/2022 test period.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.

VI. 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.²⁹

²⁸ *Id.* ¶ 40.

²⁹ *RoR BDS Order* ¶ 106.

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. No study areas electing incentive regulation 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 2021. The twenty-two remaining study areas in the non-ex ante portion of 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*. These carriers input their desired rates for packet-based and higher speed TDM services in an online system for tariffing.

B. FOR CARRIERS ELECTING BDS FOR JULY 1, 2019

As mentioned above, one study area electing incentive regulation for July 2019 and participating in NECA Tariff No. 6 opted to detariff its packet-based and higher speed TDM services greater than DS3 for effect July 1, 2021. One remaining study area in the non-ex ante portion of Tariff No. 6, Campti-Pleasant Hill Telephone Company (Study Area Code 270426), opted to continue tariffing these rates at this time, as permitted during the transition period established in the *RoR BDS Order*. That carrier input its desired rates for packet-based and higher speed TDM services in an online system for tariffing.

VII. CONCLUSION

The rates proposed in 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, 2021, the date established by the *2021 Procedures Order*.