

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

BUSINESS DATA SERVICES ACCESS SERVICE

TARIFF F.C.C. No. 6

TRANSMITTAL NO. 1666

JUNE 16, 2022

DESCRIPTION AND JUSTIFICATION

I. INTRODUCTION

The National Exchange Carrier Association, Inc. (NECA) hereby files its 2022 annual tariff revisions to NECA Tariff F.C.C. No. 6 for the 2022/2023 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, 2022.¹

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, 2022 as the effective date for Annual Access Tariff filings made on 15 days' notice. *See July 1, 2022 Annual Access Charge Tariff Filings*, WC Docket No. 22-108, Order, DA 22-407 (rel. Apr. 15, 2022) (*2022 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

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.⁴

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*,⁵ 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.

³ *Id.* ¶¶ 29, 34, n. 91.

⁴ *See RoR BDS Order* ¶ 33 et seq.

⁵ *Id.* ¶¶ 82-93.

II. BACKGROUND

The *RoR BDS Order* granted 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 – one effective as of July 1, 2019, and a second effective as of July 1, 2020.⁶ On June 17, 2019, NECA filed Transmittal No. 1580 containing BDS rates for carriers that elected in 2019.⁷ An update to some ex ante rates, to account for final exogenous cost factors, was filed September 16, 2019 via Transmittal No. 1587.⁸

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 2020.⁹ An update to some ex ante rates to account for final exogenous cost factors was filed September 16, 2020 via Transmittal No. 1615.¹⁰

On June 16, 2021, NECA filed Transmittal No. 1636 to revise ex ante and non-ex ante rates based on updated inputs and tariff participation elections for the 2021/2022 test period.¹¹ An update to some ex ante rates to account for final exogenous cost factors was filed September 16, 2021 via Transmittal No. 1643.¹²

⁶ *Id.* ¶ 23.

⁷ National Exchange Carrier Association, Inc., Tariff F.C.C. No. 5, Transmittal No. 1580 (filed June 17, 2019).

⁸ National Exchange Carrier Association, Inc., Tariff F.C.C. No. 5, Transmittal No. 1587 (filed Sept. 16, 2019).

⁹ National Exchange Carrier Association, Inc., Tariff F.C.C. No. 6, Transmittal No. 1608 (filed June 16, 2020).

¹⁰ National Exchange Carrier Association, Inc., Tariff F.C.C. No. 6, Transmittal No. 1615 (filed Sept. 16, 2020).

¹¹ National Exchange Carrier Association, Inc., Tariff F.C.C. No. 6, Transmittal No. 1636 (filed June 16, 2021).

¹² National Exchange Carrier Association, Inc., Tariff F.C.C. No. 6, Transmittal No. 1643 (filed Sept. 16, 2021).

In addition to each June's annual filing and corresponding exogenous cost update filings, NECA also makes periodic filings to implement companies' decisions to detariff non-ex ante rate elements, or to reflect mergers and acquisitions affecting the tariff.¹³

Carriers were required to elect incentive regulation at the holding company level for study areas in all states where that carrier receives fixed support.¹⁴ Electing carriers are prohibited from returning their BDS offerings in those study areas to RoR regulation.¹⁵ 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*.¹⁶

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 NECA Tariff F.C.C. No. 5 for switched access services and participate in the switched access portion of the traffic sensitive pool.¹⁷

Following the 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

¹³ See, for example, National Exchange Carrier Association, Inc., Tariff F.C.C. No. 6, Transmittal No. 1659 (filed Mar. 31, 2022). This filing added Hanson Communications of Ohio, LLC (study areas 300604, 300618 and 300649) to NECA's Tariff F.C.C. No. 6 title pages, table of contents and Section 7 (Rates and Charges) due to an acquisition.

¹⁴ *RoR BDS Order* ¶ 22.

¹⁵ *Id.* ¶ 25.

¹⁶ *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).

¹⁷ *RoR BDS Order* ¶ 29.

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.¹⁸ 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. 6.¹⁹ NECA's tariff election system and pooling procedures permit companies electing the BDS framework to participate in both the switched access portion of NECA Tariff F.C.C. No. 5 and NECA's traffic sensitive pool.

¹⁸ 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 Rcd. 3087 (2016).

¹⁹ 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-seven 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. Twenty-one of the 2020 electing study areas (identified with an asterisk in Table 2) have also chosen to tariff in NECA Tariff F.C.C. 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.²⁰ One 2019 study area, Campti-Pleasant Hill Telephone Company (Study Area Code 270426) 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
351105	AYRSHIRE FARMERS MUT
270426	CAMPTI-PLEASANT HILL
340984	CASS TEL CO
361370	CLARA CITY TEL EXCH
371532	CONSOLIDATED TEL CO
371530	CONSOLIDATED TELCO
371562	CONSOLIDATED TELECOM
371536	CURTIS TEL CO
351156	EAST BUCHANAN COOP
351149	FARMERS (DEFIANCE)
351235	FARMERS (MANILLA)
351168	FARMERS MUTUAL COOP
391660	FT RANDALL-MT RUSHMR
341016	GENESEO TEL CO

Study Area Code	Study Area Name
300604	HANSON COMM OH-COL
300618	HANSON COMM OH-GER
300649	HANSON COMM OH-ORW
341029	HENRY COUNTY TEL CO
300633	MIDDLE POINT HOME
371574	NEBRASKA CENTRAL TEL
351261	NORTHWEST COMM COOP
361476	SACRED HEART TEL CO
361487	STARBUCK TEL CO
300658	SYCAMORE TEL CO
300659	TELEPHONE SERVICE
351334	WESTERN IOWA ASSN
361515	ZUMBROTA TEL CO

²⁰ *RoR BDS Order* ¶¶ 142-143.

Table 2 – Electing in 2020

Study Area Code	Study Area Name
462178	AGATE MUTUAL TEL CO
340978	ALHAMBRA-GRANTFORK*
310542	ALLBAND COMM COOP
391642	ALLIANCE-BALTIC*
351405	ALLIANCE-HILLS IA*
361405	ALLIANCE-HILLS MN*
391405	ALLIANCE-HILLS SD*
391657	ALLIANCE-SPLITROCK*
673900	AMERICAN SAMOA*
351110	BERNARD TEL CO INC
330850	BLOOMER TEL CO
351113	BROOKLYN MUTUAL TEL
330855	BRUCE TEL CO, INC
351115	BUTLER-BREMER MUTUAL
421864	CHARITON VALLEY TEL
421893	CHOCTAW TELEPHONE CO
351129	CITIZENS MUTUAL TEL
190225	CITIZENS TEL COOP
351130	CLARENCE TEL CO
442057	COLEMAN COUNTY CO-OP*
351262	COMM 1 NETWORK
351139	COOPERATIVE TEL CO
421874	ELLINGTON TEL CO
351160	F&B COMMUNICATIONS
351169	FARMERS MUTUAL COOP
462188	FARMERS TEL CO - CO
421882	FIDELITY TEL LLC
361395	GARDEN VALLEY TECH
361396	GARDONVILLE COOP TEL
391659	GOLDEN WEST TELECOM*
391640	GOLDEN WEST-ARMOUR*
391667	GOLDEN WEST-KADOKA*
391677	GOLDEN WEST-SIOUX VY*
391684	GOLDEN WEST-UNION*
391686	GOLDEN WEST-VIVIAN*
341020	GRAFTON TEL CO*
421890	GREEN HILLS TEL CORP*
371555	HAMILTON TEL CO*

Study Area Code	Study Area Name
200259	HARDY TELECOM*
462190	HAXTUN TEL CO
290565	HIGHLAND TEL COOP-TN
330892	HILLSBORO TEL CO
371563	HOOPER TEL CO
361654	INTERSTATE TELECOMM.
391654	INTERSTATE TELECOMM.
361419	LISMORE COOP TEL CO
351237	MARNE & ELK HORN TEL
341048	MCNABB TEL CO*
391670	MIDSTATE COMM., INC.
351242	MILES COOP TEL ASSN
411807	MOKAN DIAL INC-KS
421807	MOKAN DIAL INC-MO
532385	MONROE TELEPHONE CO.*
230491	NORTH STATE TEL*
210335	NORTHEAST FLORIDA
371576	NORTHEAST NEBRASKA
421935	OREGON FARMERS MUT
351187	PARTNER COMM. COOP.
361451	PAUL BUNYAN RURAL
462196	PEETZ COOP TEL CO
532393	PIONEER CONNECT
170200	PYMATUNING IND TEL
381631	RED RIVER COMM.
462201	RICO TEL CO
462202	ROGGEN TEL COOP CO
432022	SALINA-SPAVINAW TEL
371590	SODTOWN COMM.
300644	THE NOVA TEL CO
330960	TRI-COUNTY COMM COOP
391669	TRIOTEL COMM
330966	VERNON COMM. COOP.
401729	WALNUT HILL TEL CO
351328	WEBSTER-CALHOUN COOP
351331	WEST IOWA TEL CO
330973	WITTENBERG 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.²¹ 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.²²

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.²³

²¹ *Id.* ¶ 77.

²² *Id.*

²³ *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 2021 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 changes,²⁴ 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.²⁵ 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.²⁶ In those study areas deemed competitive, ex ante pricing

²⁴ *Id.*

²⁵ *Id.* ¶¶ 78, 105.

²⁶ 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.²⁷ 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 NECA 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, 2022.²⁸ 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 2022/2023 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).

²⁷ *RoR BDS Order* ¶ 79.

²⁸ *July 1, 2022 Annual Access Charge Tariff Filings*, WC Docket No. 22-108, Order, DA 22-494 (rel. May 9, 2022) ¶ 41 (*2022 TRP Order*).

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

The *2021 BDS Exogenous Cost Filing* was filed for effect October 1, 2021 to account for exogenous cost effects for the entire 2021/2022 test period.²⁹ That filing included gross up calculations to recover twelve months of adjustments over the remaining nine months of the 2021/2022 test period. In this filing, those gross up calculations have been backed out of the calculations underlying ex ante rate development for the upcoming 2022/2023 test period.³⁰

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.³¹

²⁹ National Exchange Carrier Association, Inc., Tariff F.C.C. No. 5, Transmittal No. 1643 (filed Sept. 16, 2021) (*2021 BDS Exogenous Cost Filing*).

³⁰ *2022 TRP Order* ¶ 41.

³¹ *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 F.C.C. No. 6 participants. No study areas electing incentive regulation for July 1, 2020 and participating in NECA Tariff F.C.C. No. 6 opted to detariff their packet-based and higher speed TDM services greater than DS3 for effect July 2022. The twenty-two study areas in the non-ex ante portion of NECA Tariff F.C.C. 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

One study area, Campti-Pleasant Hill Telephone Company (Study Area Code 270426), electing incentive regulation for July 2019 and participating in NECA Tariff F.C.C. No. 6, is required to detariff its packet-based and higher speed TDM services greater than DS3 for effect July 1, 2022. This study area's non-ex ante rates have been removed from the proposed tariff pages.

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, 2022, the date established by the *2022 Procedures Order*.