

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

BUSINESS DATA SERVICES ACCESS SERVICE

TARIFF F.C.C. No. 6

TRANSMITTAL NO. 1722

JUNE 17, 2024

DESCRIPTION AND JUSTIFICATION

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | INTRODUCTION | 1 |
| II. | TARIFF 6 PARTICIPANTS | 4 |
| III. | SEPARATIONS CATEGORY RELATIONSHIPS | 8 |
| IV. | PRICING FLEXIBILITY | 8 |
| V. | LOWER SPEED SERVICES SUBJECT TO EX ANTE PRICING | 8 |
| | A. Initial BDS Rates for New Electors | 8 |
| | B. Incentive Pricing Model | 9 |
| | C. Lower Speed TDM BDS Offerings in Competitive Markets | 10 |
| | D. Exogenous Cost Adjustments | 11 |
| | E. TRP Filing | 12 |
| VI. | PACKET-BASED AND HIGHER SPEED TDM SERVICES | 12 |
| VII. | CONCLUSION | 13 |

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

BUSINESS DATA SERVICES ACCESS SERVICE

TARIFF F.C.C. No. 6

TRANSMITTAL NO. 1722

JUNE 17, 2024

DESCRIPTION AND JUSTIFICATION

I. INTRODUCTION

The National Exchange Carrier Association, Inc. (NECA) hereby files its 2024 annual tariff revisions to NECA Tariff F.C.C. No. 6 for the 2024/2025 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 10 of the accompanying tariff effective July 2, 2024.¹ NECA seeks confidential treatment of the data contained in this filing pursuant to the *2024 Protective Order* designated for use in the 2024 Annual Access Charge Tariff Filings proceeding.²

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 Commission orders allowing rate-of-return (RoR) carriers receiving model-based or other fixed

¹ The Commission has established July 2, 2024 as the effective date for Annual Access Tariff filings made on 15 days' notice. *See July 1, 2024 Annual Access Charge Tariff Filings*, WC Docket No. 24-41, Order, DA 24-294 (rel. Mar. 27, 2024) (*2024 Procedures Order*).

² *See Procedures for Obtaining Confidential Information from 2024 Annual Access Charge Tariff Filings*, Public Notice, WC Docket No. 24-41, DA 24-509 (rel. May 31, 2024) (*2024 Protective Order*).

high-cost Universal Service Fund (USF) support to move certain BDS to incentive regulation. The Commission's *RoR BDS Order* provided two separate opportunities for RoR carriers to do so in 2019 and 2020.³ An additional opportunity was provided via the *Enhanced ACAM Order* in 2024.⁴

While electing carriers are required to remove their BDS and other special access services from NECA Tariff F.C.C. No. 5, and the associated costs and revenues from the traffic sensitive (TS) pool, they may continue to participate in a joint tariff for such services.⁵ A number of carriers have elected to list their rates in NECA Tariff F.C.C. No. 6 as described in Section II below. In addition, the *RoR BDS Order* permits companies electing the BDS framework to participate in the switched access portions of NECA Tariff F.C.C. No. 5 and NECA's TS pool.⁶

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 have been

³ *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*).

⁴ *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Telecommunications Carriers Eligible to Receive Universal Service Support*, WC Docket No. 09-197, *Connect America Fund – Alaska Plan*, WC Docket No. 16-271, *Expanding Broadband Service Through the ACAM Program*, RM-11868, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60 (rel. July 24, 2023) ¶ 91 (*Enhanced ACAM Order*). See also *Wireline Competition Bureau Announces Enhanced Alternative Connect America Cost Model Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-779 (rel. Aug. 30, 2023).

⁵ *RoR BDS Order* ¶¶ 29, 34, n. 91.

⁶ *Id.* ¶ 29.

developed according to the rules set forth in the Commission's *RoR BDS Order* as described herein.⁷

Section III below discusses the ability for new BDS incentive regulation electors to unfreeze category relationships, while Section IV discusses the pricing flexibility granted to electors.

Section V explains the methods used to determine rate levels for lower speed BDS 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.⁸

Information is provided in Section V.C on the treatment of rate elements in areas deemed competitive under the competitive market tests adopted in the *RoR BDS Order*.⁹ Section V.D contains information on exogenous cost recovery.

Under the *RoR BDS Order*, electing carriers' packet-based and higher capacity Time Division Multiplexing (TDM) services greater than DS3, as well as end user channel terminations (EUCTs) of carriers deemed competitive, are no longer subject to ex ante pricing regulation. Electing carriers are required to detariff these higher speed BDS and competitive EUCTs within 36 months of the effective date associated with electing BDS pricing.¹⁰ Therefore, those services for carriers that had elected BDS incentive regulation pricing in 2019 or 2020 have already been detariffed. Carriers electing BDS incentive regulation pricing in 2024

⁷ See *id.* ¶ 33 et seq.

⁸ See 47 C.F.R. §§ 61.42–61.50.

⁹ *RoR BDS Order* ¶¶ 82-93.

¹⁰ *Id.* ¶ 106.

now had the opportunity either to leave these services as tariffed, or to detariff them within 36 months, by July 2027.

Carriers also have the option for NECA to file their rates for higher speed competitive BDS in NECA Tariff F.C.C. No. 6.¹¹ These rates are not subject to ex ante pricing regulation and several carriers elected to do so, as discussed in Section VI below.

II. TARIFF 6 PARTICIPANTS

The three tables below display study areas opting to have NECA tariff their lower speed BDS rates subject to ex ante pricing. Table 1 displays 27 study areas that elected BDS incentive regulation in 2019. Table 2 displays 69 study areas that elected BDS incentive regulation in 2020. Table 3 displays 35 study areas that elected BDS regulation for effect July 2024. In addition, 11 of the study areas electing in 2024 (identified with an asterisk in Table 3) have chosen to also tariff in NECA F.C.C. Tariff No. 6 their rates for higher speed TDM (greater than DS3) and packet-based BDS, as permitted by the *RoR BDS Order* during the maximum 36-month transition period.¹²

¹¹ Companies electing to have NECA file BDS tariffs on their behalf do not participate in the NECA TS 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.

¹² *RoR BDS Order* ¶¶ 142-143.

Table 1 – Electing in 2019

| Study Area Code | Study Area Name | Study Area Code | Study Area Name |
|------------------------|------------------------|------------------------|------------------------|
| 270426 | CAMPTI-PLEASANT HILL | 351168 | FARMERS MUTUAL COOP |
| 300604 | HANSON COMM OH-COL | 351235 | FARMERS (MANILLA) |
| 300618 | HANSON COMM OH-GER | 351261 | NORTHWEST COMM COOP |
| 300633 | MIDDLE POINT HOME | 351334 | WESTERN IOWA ASSN |
| 300649 | HANSON COMM OH-ORW | 361370 | CLARA CITY TEL EXCH |
| 300658 | SYCAMORE TEL CO | 361476 | SACRED HEART TEL CO |
| 300659 | TELEPHONE SERVICE | 361487 | STARBUCK TEL CO |
| 340984 | CASS TEL CO | 361515 | ZUMBROTA TEL CO |
| 341016 | GENESEO TEL CO | 371530 | CONSOLIDATED TELCO |
| 341029 | HENRY COUNTY TEL CO | 371532 | CONSOLIDATED TEL CO |
| 351105 | AYRSHIRE FARMERS MUT | 371536 | CURTIS TEL CO |
| 351149 | FARMERS (DEFIANCE) | 371562 | CONSOLIDATED TELECOM |
| 351156 | EAST BUCHANAN COOP | 371574 | NEBRASKA CENTRAL TEL |
| | | 391660 | FT RANDALL-MT RUSHMR |

Table 2 – Electing in 2020

| Study Area Code | Study Area Name | Study Area Code | Study Area Name |
|------------------------|------------------------|------------------------|------------------------|
| 170200 | PYMATUNING IND TEL | 371563 | HOOPER TEL CO |
| 190225 | CITIZENS TEL COOP | 371576 | NORTHEAST NEBRASKA |
| 210335 | NORTHEAST FLORIDA | 371590 | SODTOWN COMM. |
| 230491 | NORTH STATE TEL | 381631 | RED RIVER COMM. |
| 290565 | HIGHLAND TEL COOP-TN | 391405 | ALLIANCE-HILLS SD |
| 300644 | THE NOVA TEL CO | 391640 | GOLDEN WEST-ARMOUR |
| 310542 | ALLBAND COMM COOP | 391642 | ALLIANCE-BALTIC |
| 330850 | BLOOMER TEL CO | 391654 | INTERSTATE TELECOMM. |
| 330855 | BRUCE TEL CO, INC | 391657 | ALLIANCE-SPLITROCK |
| 330892 | HILLSBORO TEL CO | 391659 | GOLDEN WEST TELECOM |
| 330960 | TRI-COUNTY COMM COOP | 391667 | GOLDEN WEST-KADOKA |
| 330966 | VERNON COMM. COOP. | 391669 | TRIOTEL COMM. |
| 330973 | WITTENBERG TEL CO | 391670 | MIDSTATE COMM., INC. |
| 340978 | ALHAMBRA-GRANTFORK | 391677 | GOLDEN WEST-SIOUX VY |
| 341020 | GRAFTON TEL CO | 391684 | GOLDEN WEST-UNION |
| 341048 | MCNABB TEL CO | 391686 | GOLDEN WEST-VIVIAN |

Table 2 – Electing in 2020 - continued

| Study Area Code | Study Area Name | Study Area Code | Study Area Name |
|------------------------|------------------------|------------------------|------------------------|
| 351110 | BERNARD TEL CO INC | 401729 | WALNUT HILL TEL CO |
| 351113 | BROOKLYN MUTUAL TEL | 411807 | MOKAN DIAL INC-KS |
| 351115 | BUTLER-BREMER MUTUAL | 421807 | MOKAN DIAL INC-MO |
| 351139 | COOPERATIVE TEL CO | 421864 | CHARITON VALLEY TEL |
| 351160 | F&B COMMUNICATIONS | 421874 | ELLINGTON TEL CO |
| 351169 | FARMERS MUTUAL COOP | 421890 | GREEN HILLS TEL CORP |
| 351187 | PARTNER COMM. COOP. | 421893 | CHOCTAW TELEPHONE CO |
| 351237 | MARNE & ELK HORN TEL | 421935 | OREGON FARMERS MUT |
| 351242 | MILES COOP TEL ASSN | 432022 | SALINA-SPAVINAW TEL |
| 351262 | COMM 1 NETWORK | 462178 | AGATE MUTUAL TEL CO |
| 351331 | WEST IOWA TEL CO | 462188 | FARMERS TEL CO - CO |
| 351405 | ALLIANCE-HILLS IA | 462190 | HAXTUN TEL CO |
| 361395 | GARDEN VALLEY TECH | 462196 | PEETZ COOP TEL CO |
| 361396 | GARDONVILLE COOP TEL | 462201 | RICO TEL CO |
| 361405 | ALLIANCE-HILLS MN | 462202 | ROGGEN TEL COOP CO |
| 361419 | LISMORE COOP TEL CO | 532385 | MONROE TELEPHONE CO. |
| 361451 | PAUL BUNYAN RURAL | 532393 | PIONEER CONNECT |
| 361654 | INTERSTATE TELECOMM. | 673900 | AMERICAN SAMOA |
| 371555 | HAMILTON TEL CO | | |

Table 3 – Electing in 2024

| Study Area Code | Study Area Name | Study Area Code | Study Area Name |
|------------------------|------------------------|------------------------|------------------------|
| 190244 | PEOPLES MUTUAL TEL * | 351158 | MINBURN TELECOMM. |
| 230469 | BARNARDSVILLE TEL CO* | 351174 | FARMERS MUTUAL TEL |
| 230478 | ELLERBE TEL CO* | 351188 | GOLDFIELD TEL CO |
| 230498 | SALUDA MOUNTAIN TEL * | 351245 | MINBURN TEL CO |
| 230500 | SERVICE TEL CO* | 351251 | MEDIAPOLIS TEL CO |
| 230505 | RIVERSTREET-TCTMC* | 361347 | ALBANY MUTUAL ASSN |
| 230510 | RIVERSTREET-WTMC* | 361373 | CONSOLIDATED TEL CO |
| 250290 | FARMERS TELECOM COOP* | 361387 | EMILY COOP TEL CO |
| 260415 | PEOPLES RURAL COOP* | 361412 | KASSON & MANTORVILLE |
| 270435 | NORTHEAST LOUISIANA* | 371540 | DILLER TEL CO |
| 300586 | THE ARTHUR MUTUAL | 371557 | HARTMAN TEL EXCH INC |

Table 3 – Electing in 2024 - continued

| Study Area Code | Study Area Name | Study Area Code | Study Area Name |
|------------------------|------------------------|------------------------|------------------------|
| 300591 | BUCKLAND TEL. CO. | 371565 | K & M TEL CO, INC |
| 300606 | CONNEAUT TEL CO | 371591 | SE NEBRASKA COMM INC |
| 310683 | CARR TEL CO* | 371597 | WAUNETA TEL CO |
| 330902 | LAKELAND COMM. | 372455 | BENKELMAN TEL CO |
| 330918 | NELSON COMM COOP | 472220 | FILER MUT-ID/TRULEAP |
| 330949 | SIREN TEL CO, INC | 500758 | DIRECTCOMM-CEDAR VAL |
| | | 552220 | FILER MUT-NV/TRULEAP |

* Also tariffing their higher speed services in Tariff 6

III. SEPARATIONS CATEGORY RELATIONSHIPS

The *RoR BDS Order* permits electing carriers to unfreeze and update their category relationships in conjunction with the setting of their initial rates.¹³ No carriers electing BDS incentive regulation in 2024 and participating in NECA Tariff F.C.C. No. 6 elected to unfreeze category relationships.

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 EUCT services similar to the pricing flexibility the Commission granted to price cap carriers' lower speed TDM EUCTs in areas deemed non-competitive.¹⁴ 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.¹⁵

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

A. INITIAL BDS RATES FOR NEW ELECTORS

RoR carriers participating in NECA Tariff F.C.C. No. 5 and the TS pool that elected BDS incentive regulation effective July 2024 are required to develop initial BDS rate levels for lower

¹³ *Id.* ¶ 50.

¹⁴ *Id.* ¶ 77.

¹⁵ *Id.*

speed TDM transport and EUCT services by first starting with the NECA TS special access pool rates in effect as of January 1, 2024.¹⁶ These rates are then adjusted by a net contribution or net recipient factor calculated using special access revenue requirements calculated at 9.75 percent rate of return factor¹⁷ and revenues settlement data reported to the NECA pool from the last six months of 2023.¹⁸ The use of this factor reflects that carriers who are net contributors to the pool have rates that are higher than costs, while net recipients have rates below costs.

The Price Cap Index (PCI) and Service Band Indexes (SBI) are initially set to 100 for study areas electing BDS incentive regulation in 2024, or for any holding company in which the existing study areas under BDS incentive regulation and/or new study areas electing BDS incentive regulation merged into a combined TRP for the first time in 2024, to represent initial BDS rate levels.

B. INCENTIVE PRICING MODEL

NECA developed an online Incentive Pricing Model to collect data from participating companies and enable them to set BDS rates that ensure compliance with Commission rules and the *RoR BDS Order* requirements.¹⁹ Companies participating in NECA Tariff F.C.C. No. 6 used the online system to provide demand at the rate element level for the 2023 base period.

Initial PCI and SBI values for 2024 incentive regulation electors, and current PCI and SBI values for earlier electors, were adjusted by applying the X-factor (2.0 percent), inflation

¹⁶ *Id.* ¶¶ 33, 38.

¹⁷ *Id.* ¶ 39.

¹⁸ *Id.* ¶¶ 33, 38.

¹⁹ *Id.*

factor (GDP-PI), and any required exogenous cost changes,²⁰ to produce test period PCI and SBI limits for each company as detailed in NECA's filed Tariff Review Plans (TRPs). Companies used the online Incentive Pricing Model to then select rates such that the actual price index, calculated pursuant to section 61.46 of Commission rules, does not exceed the PCI; and such that the SBI for each service category or subcategory calculated pursuant to section 61.47 of Commission rules does not exceed the pricing band limits for each category or subcategory.

C. 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 EUCT services when carriers face competition or potential competition in their study area as determined by a competitive market test.²¹ 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 percent of census blocks.²² In those study areas deemed competitive, ex ante pricing regulation is removed for specified lower speed TDM EUCTs.²³ Lower capacity TDM transport and EUCT services in areas deemed noncompetitive are subject to incentive regulation and pricing flexibility.

²⁰ *Id.*

²¹ *Id.* ¶¶ 78, 105.

²² 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); *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); and *Wireline Competition Bureau Releases Results of Tests Required by Sections 61.50(j) and 69.803(c) of the Commission's Rules*, WC Docket Nos. 21-17 and 17-144, Public Notice, 38 FCC Rcd. 457 (2023).

²³ *RoR BDS Order* ¶ 79.

In this filing there are no study areas electing BDS incentive regulation in 2024 that have been deemed competitive by the Wireline Competition Bureau's competitive market tests. The rates for lower speed TDM EUCTs of study areas electing BDS incentive regulation in 2019 or 2020, and deemed competitive, have since been detariffed.

D. 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, 2024.²⁴ Since updated factors will not be available in time for use in this filing, the PCI does not include any exogenous cost impacts to reflect prospective exogenous cost factors. A subsequent filing will be made when revised factors affecting the 2024/2025 test period are available. In preparation for that filing, carriers will have the opportunity to select adjusted rates to recover the appropriate amount of incremental exogenous costs through their lower speed BDS rates.

The *2023 BDS Exogenous Cost Filing*²⁵ was filed for effect October 3, 2023 to account for exogenous cost effects for the entire 2023/2024 test period for carriers participating in NECA Tariff F.C.C. No. 6. That filing included gross up calculations to recover twelve months of adjustments over the remaining nine months of the 2023/2024 test period, where applicable. In this filing, those gross up calculations have been backed out of the calculations underlying ex ante rate development for the upcoming 2024/2025 test period.²⁶

²⁴ *July 1, 2024 Annual Access Charge Tariff Filings*, WC Docket No. 24-41, Order, DA 24-434 (rel. May 10, 2024) ¶ 41 (*2024 TRP Order*).

²⁵ National Exchange Carrier Association, Inc., Tariff F.C.C. No. 5, Transmittal No. 1702 (filed Sept. 18, 2023) (*2023 BDS Exogenous Cost Filing*).

²⁶ *2024 TRP Order* ¶ 45.

E. 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 TRPs.

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 EUCTs and transport, and any EUCTs of carriers deemed competitive) are no longer subject to ex ante pricing regulation. Electing carriers are required to detariff these services within 36 months of the effective date associated with electing BDS incentive regulation pricing.²⁷ To allow small businesses and other customers time to adjust to the new regulatory framework, newly electing carriers are required to freeze currently tariffed rates for such BDS for a six-month period, beginning on the effective date associated with adopting BDS regulation.²⁸

NECA developed a data collection to gather tariffing information from its NECA Tariff No. 6 participants. The results showed 24 of the 35 study areas electing incentive regulation in 2024 and participating in NECA Tariff F.C.C. No. 6 are opting to detariff their packet-based and higher speed TDM services greater than DS3 effective July 2024. Eleven of the 35 study areas in 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*, and are designated by an asterisk after their study area name in Table 3 above.

²⁷ *RoR BDS Order* ¶ 106.

²⁸ *Id.* ¶ 141.

The initial rate levels for packet-based and higher speed TDM services for these carriers are the current tariffed rates as required by the *RoR BDS Order*.²⁹ These rates are unadjusted for price cap indexes and net contribution or recipient factors, and will remain frozen for six-months.

VII. CONCLUSION

The rates proposed in NECA Tariff F.C.C. No. 6 are filed in compliance with the Commission's rules and the requirements of the *RoR BDS Order* and *Enhanced ACAM Order* and should be allowed to become effective on July 2, 2024, the date established by the *2024 Procedures Order*.

²⁹ *Id.*