

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Telecommunications Carriers Eligible to Receive Universal Service Support	)	WC Docket No. 09-197
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

**Reply Comments of  
The National Tribal Telecommunications Association**

The National Tribal Telecommunications Association (NTTA) files these reply comments in response to the Wireline Competition Bureau’s Public Notice seeking comment on a petition filed by Siyeh Communications (*SiyCom*) requesting Eligible Telecommunications Carrier (ETC) designation from the Federal Communications Commission (*FCC or Commission*), and a joint petition filed by SiyCom and 3 Rivers Telephone Cooperative (*3 Rivers*) to waive the definition of study area.<sup>1</sup>

NTTA consists of Tribally-owned communications companies and broadband providers including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila

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<sup>1</sup> *Wireline Competition Bureau Seeks Comment on Siyeh Communications Petition for Designation as an Eligible Telecommunications Carrier and the Joint Petition of Siyeh Communications and 3 Rivers Telephone Cooperative, Inc. to Waive the Definition of “Study Area” Contained in Part 36 of the Commission’s Rules*, Public Notice DA 20-381, released April 3, 2020 (*Public Notice*)

River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O'odham Utility Authority, and Warm Springs Telecom, as well as associate members Nez Perce Tribe, Sacred Wind Communications, and Spokane Tribe Telecom Exchange. NTTA's mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

SiyCom makes a compelling case in both petitions that it should receive ETC designation in order to receive federal universal service support and fully participate in those programs<sup>2</sup>, and that the Commission should grant a waiver of the "study area" definition to allow it to operate the Browning, Montana exchange.<sup>3</sup> SiyCom is 100% owned by and operates largely on the Blackfeet Reservation. If successful, SiyCom would take over the ownership and operation of the exchange, which is currently operated by 3 Rivers. By taking over operation of the Browning exchange, SiyCom would bring the expertise, resources, and most importantly, the motivation necessary to bring state-of-the-art services to residents of the Blackfeet Reservation. By these facts alone, the Commission should grant SiyCom's application for ETC designation and the joint petition for waiver of the definition of "study area." NTTA therefore agrees with Alexicon's comments, the only party to file comments on SiyCom's petitions, in that "SiyCom has clearly

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<sup>2</sup> Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 514€ of the Act, filed March 24, 2020 (*ETC Petition*)

<sup>3</sup> Joint Petition for Waiver of the Definition of Study Area with Respect to the Transfer of the Browning, Montana Exchange, filed March 24, 2020 (*Study Area Waiver Petition*)

met the standards for both receiving ETC designation and having the definition of study area waived” and “the Commission should move expeditiously to approve both petitions.”<sup>4</sup>

## I. TRIBAL SOVEREIGNTY

SiyCom has established that it is a Tribally-owned carrier and not under the jurisdiction of the Montana Public Service Commission.<sup>5</sup> As such, the *ETC Petition* is properly filed with the Commission.<sup>6</sup> This is a vital part of NTTA’s support of the petitions, as it has been clearly and repeatedly established that those living in Tribal areas in the United States are on the wrong side of the digital divide. SiyCom is 100% owned by the Blackfeet Tribe and is dedicated to providing quality communications services to that area.<sup>7</sup> SiyCom, being 100% Tribally-owned, is subject to the jurisdiction of the Blackfeet Tribe, which in turn, as a sovereign entity, has a government-to-government relationship with the United States and the FCC:

“The Commission recognizes the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions. As domestic dependent nations, Indian Tribes exercise inherent sovereign powers over their members and territory...the Commission recognizes that the federal government has a longstanding policy of promoting tribal self-sufficiency and economic development as embodied in various federal statutes.”<sup>8</sup>

In recognition of this unique legal relationship, the Commission must recognize that SiyCom, as a 100% owned communications company operating on the Blackfeet Reservation,

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<sup>4</sup> Comments of Alexicon Telecommunications Consulting, CC Docket No. 96-45, et. al., filed May 5, 2020 (*Alexicon Comments*)

<sup>5</sup> *ETC Petition* at 5-12

<sup>6</sup> See 47 USC § 214(e)(6)

<sup>7</sup> *ETC Petition* at 1-2

<sup>8</sup> *In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement (FCC 00-207), at p. 3-4

should be afforded treatment under the Commission's policy statement. This entails, among other things, that the Commission "will endeavor to streamline its administrative process and procedures to remove undue burdens that its decisions and actions place on Indian tribes"<sup>9</sup> and "will assist Indian Tribes in complying with Federal communications statutes and regulations."<sup>10</sup> In order to best accomplish this, the Commission should expeditiously approve the ETC application and grant the study area waiver petition.

## II. PUBLIC INTEREST

SiyCom provides ample evidence in both the *ETC Petition*<sup>11</sup> and the *Study Area Waiver Petition*<sup>12</sup> that the public interest will be served by granting the requests. SiyCom will provide the services supported by the federal universal service programs using its own facilities, will remain functional in an emergency, will satisfy consumer protection and service quality standards, and will advertise its universal service offering.<sup>13</sup> All of these factors contribute towards SiyCom's service to the Browning exchange, as a federally-designated ETC, being in the public interest.

SiyCom's plan is to aggressively build-out the Browning exchange, replacing the current copper-based network with a state-of-the-art fiber to the premises network.<sup>14</sup> This will allow the residents of the Browning exchange, contained in the Blackfeet Reservation, to finally have access to a broadband network capable of 25/3 Mbps, the current standard, speeds – and indeed

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<sup>9</sup> *Id.*, at p.5

<sup>10</sup> *Id.*

<sup>11</sup> *ETC Petition* at 19

<sup>12</sup> *Study Area Waiver Petition* at 3

<sup>13</sup> 47 C.F.R. § 54.202

<sup>14</sup> *ETC Petition* at 15

speeds much greater than that.<sup>15</sup> By this fact alone, the public interest requires and demands that SiyCom be rapidly provided all the necessary regulatory approval so it can begin building this network and providing high speed services to a bandwidth-starved populace.

SiyCom, as a Tribally-owned carrier, will also be able to comprehensively and immediately comply with the Commission's Tribal engagement rules.<sup>16</sup> These rules require ETCs serving Tribal lands to have discussion with Tribal governments that, at a minimum, include:

- A needs assessment and deployment planning with a focus on Tribal community anchor institutions;
- Feasibility and sustainability planning;
- Marketing services in a culturally sensitive manner;
- Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and
- Compliance with Tribal business and licensing requirements. Tribal business and licensing requirements include business practice licenses that Tribal and non-Tribal business entities, whether located on or off Tribal lands, must obtain upon application to the relevant Tribal government office or division to conduct any business or trade, or deliver any goods or services to the Tribes, Tribal members, or Tribal lands. These include certificates of public convenience and necessity, Tribal business licenses, master licenses, and other related forms of Tribal government licensure.

The Consumer and Governmental Affairs Bureau recently requested comment on the effectiveness on the Tribal Engagement guidance it had issued in 2012 to provide assistance to

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<sup>15</sup> NTTA notes that, according to SiyCom, approximately 46% of the homes in the Browning exchange have access to 25/3 Mbps service (*ETC Petition* at 20). This places the Browning exchange squarely on the wrong side of the digital divide, where nationally 45.1% of rural Tribal areas in the lower 48 states have access to 25/3 Mbps fixed broadband and 5/1 Mbps mobile broadband (*2019 Broadband Progress Report, figure 9*)

<sup>16</sup> 47 C.F.R. § 54.313(a)(5)

ETCs in complying with the Tribal Engagement rules.<sup>17</sup> One of the reasons for the request for comments given was “the Commission has heard from many Tribes that the current engagement process is lacking in a number of respects...”<sup>18</sup>

NTTA has been a consistent proponent of the Tribal Engagement rules, and is aware that in many cases, ETC engagement with Tribal authorities, of for many reasons, is insufficient and even non-existent. In response to the *Tribal Engagement Public Notice*, NTTA stated “the reason the Commission initially adopted the Tribal engagement rules – to address the digital divide that exists between Tribal areas and the rest of the United States – continues to be important and necessary”<sup>19</sup> and “there clearly is a problem with carriers committing to deploy and following through on deploying broadband capable networks in Tribal areas, especially those in rural Tribal areas located in the lower 48 states. This digital divide – between rural Tribal areas and the rest of the country - has existed for years and continues to exist, and this stubborn fact demands a considered, but urgent, response.”<sup>20</sup>

By providing SiyCom with the necessary regulatory approvals to begin providing service in the Browning exchange, the Commission can be confident that the company, being owned by the Blackfeet Tribe, will be an exemplar of Tribal engagement. This can only accrue to the benefit of the residents of Browning, Montana and the Blackfeet Reservation in general.

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<sup>17</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on Effectiveness of its Tribal Engagement Guidance and to Refresh the Record on Related Petitions for Reconsideration*, Public Notice, WC Docket No. 10-90, rel. October 21, 2019 (DA 19-1055) (*Tribal Engagement Public Notice*)

<sup>18</sup> *Id.*, at 2

<sup>19</sup> NTTA Comments, WC Docket No. 10-90, filed December 5, 2019, at 4

<sup>20</sup> *Id.*, at 5

### III. FEDERAL UNIVERSAL SERVICE SUPPORT

SiyCom assumes it will receive approximately \$2 million in annual support based on operation of the FCC's rule governing the calculation of Connect America Fund Broadband Loop Support for transferred exchanges.<sup>21</sup> This support is based on the latest offer of model-based support for the Browning exchange, which equates to a portion of the ACAM II offer of support that 3 Rivers did not accept.

SiyCom will build a fiber to the premises (FTTP) network capable of 25/3 Mbps and much greater speeds in the Browning exchange.<sup>22</sup> This is vital, as the telecommunications plant in the Browning exchange is "largely limited to copper-based telephone service"<sup>23</sup> and only 46% of the homes in the Browning exchange have access to fixed broadband service at speeds of 25/3 Mbps.<sup>24</sup> However, in order to deploy the FTTP network, as well as operating and maintaining the network and providing service, SiyCom will likely require federal support in excess of that generated by the latest ACAM offer related to the Browning exchange.

The Commission recognized, correctly, in the National Broadband Plan that "Tribes will need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding."<sup>25</sup> 3 Rivers receives approximately \$26.4 million of high cost loop support (HCLS) and CAF BLS, according to USAC's most recent USF

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<sup>21</sup> *Study Area Waiver Petition* at 3-4, citing 47 C.F.R. § 54.902(c)

<sup>22</sup> *ETC Petition* at 20

<sup>23</sup> *Id.*, at 4

<sup>24</sup> *Id.*, at 20

<sup>25</sup> *Connecting America: The National Broadband Plan*, at p.152, Box 8—4 (2010)

filing (3Q2020). The Browning exchange would be assigned HCLS and CAF BLS in the range of \$2.2 million to \$2.9 million in annual support.<sup>26</sup> Even using the lower end of this range, SiyCom is potentially going to receive less support than what could be currently allocated to the Browning exchange. To date, 3 Rivers has deployed a largely copper-based network and can provide approximately 46% of the households in Browning with 25/3 Mbps broadband service. In order for SiyCom to reasonably be able to deploy its FTTP network, which is clearly in the public interest, more support will likely be necessary.

NTTA recommends the Commission consider providing federal support to SiyCom in an amount greater than what is called for in section 54.902(c) of the Commission's rules. NTTA has long advocated for an additive to federal USF support for all Tribal areas served by rate-of-return regulated carriers.<sup>27</sup> The FCC adopted a "Tribal Broadband Factor" of sorts in regards to the ACAM II offers<sup>28</sup> and for the offers related to the upcoming Rural Digital Opportunity Fund (RDOF) auction.<sup>29</sup> And while the ACAM II offer relied upon by SiyCom in its petition was determined, in part, by using the "TBF" modifier for the support threshold and cap, it still generates less support than what 3 Rivers is estimated to be receiving today in HCLS and CAF BLS. As a result, the FCC should consider increasing SiyCom's ACAM II offer-derived support by, for example, 25% or another factor as determined to be reasonable in order to allow SiyCom to bring FTTP-based services to the residents of Browning, Montana, all of which is located on the Blackfeet Reservation.

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<sup>26</sup> Based on independent NTTA-calculated estimates.

<sup>27</sup> See e.g., Comments of the National Tribal Telecommunications Association, filed March 8, 2019, WC Docket No. 10-90, et. al.

<sup>28</sup> *In the Matter of Connect America Fund*, Report and Order, WC Docket No. 10-90 (FCC 18-176, rel. December 13, 2018) at 34

<sup>29</sup> *In the Matter of Rural Digital Opportunity Fund*, Report and Order (FCC 20-5, rel. February 7, 2020) at 16

**CONCLUSION**

NTTA joins with Alexicon in fully supporting the *ETC Petition* and the *Study Area Waiver Petition* filed by SiyCom.<sup>30</sup> NTTA's members have all successfully taken the steps similar to SiyCom's and have proven that allowing Tribally-owned providers to serve Tribal lands is not only the public interest, it is an imperative in reaching the goal of universal broadband service to all Americans. SiyCom, throughout its petitions, has demonstrated that it is ready, willing, and able to take on the role and responsibility of the ETC serving Browning, Montana and the Blackfeet Reservation. Therefore, NTTA urges the Commission to grant the petitions on an expeditious basis. The Commission should also consider providing SiyCom with additional federal USF support over and above that determined by the section 54.902(c) of the FCC's rules.

Respectfully Submitted,

*Godfrey Enjady*  
President  
National Tribal Telecommunications Association

May 20, 2020

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<sup>30</sup> *Alexicon Comments* at 5