

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

In the Matter of	)	
	)	
3 Rivers Telephone Cooperative, Inc., and Siyeh	)	WC Docket No. 20-85
Communications Application for Transfer of	)	
Assets Pursuant to Section 214 of the	)	
Communications Act of 1934, as Amended	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Developing a Unified Intercarrier Compensation	)	CC Docket No. 96-45
Regime	)	

**ORDER**

**Adopted: November 16, 2020**

**Released: November 16, 2020**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. Today, we take further action to facilitate the expansion of broadband service to residents of the Blackfeet Reservation who receive telecommunications services through the Browning Exchange in Montana. Last week, in the *3 Rivers SiyCom Section 214 Public Notice*, we approved the transfer of substantially all of the assets of 3 Rivers Telephone Cooperative, Inc. (3 Rivers) in the Browning Exchange, including, but not limited to, its telecommunications facilities, customer databases, and associated contracts, from 3 Rivers to Siyeh Communications (SiyCom).<sup>1</sup> In so doing, we found that granting the 214 Transfer Application would serve the public interest, and is consistent with the efficient use of limited Universal Service Fund (USF) resources.<sup>2</sup>

2. In this Order, we grant the Petition filed by 3 Rivers and SiyCom (collectively Petitioners) seeking a waiver of the Federal Communications Commission's (Commission) rules to the extent necessary to apportion 3 Rivers' current Connect America Fund Intercarrier Compensation (CAF ICC) Base Period Revenues (BPR) between 3 Rivers and SiyCom, to initialize SiyCom's tariffed rates at 3 Rivers' current rates, and to permit SiyCom to immediately join the National Exchange Carrier

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<sup>1</sup> *Application Granted for the Acquisition of Certain Assets of 3 Rivers Telephone Cooperative, Inc. by Siyeh Communications; Joint Petition Granted for Waiver of the Definition of Study Area with Respect to the Transfer of the Browning, Montana Exchange* WC Docket Nos. 20-85, 10-90; CC Docket No. 96-45, Public Notice, DA 20-1347 at 2 (WCB Nov. 13, 2020) (*3 Rivers SiyCom Section 214 Public Notice*).

<sup>2</sup> *3 Rivers SiyCom Section 214 Public Notice* at 2. We also released an order granting SiyCom's Eligible Telecommunications Carrier (ETC) Petition making it eligible, conditioned upon approval of its 214 Transfer Application, to receive universal service support as the incumbent LEC serving the Browning Exchange, including federal high-cost and Lifeline support. See *Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket No. 09-197; WC Docket No. 10-90, Order, DA 20-1353 (WCB Nov. 16, 2020) (*SiyCom ETC Order*).

Association (NECA) and NECA's traffic-sensitive tariff.<sup>3</sup> We find that granting these waivers, which will allow 3 Rivers and SiyCom to implement their transaction without imposing additional burdens on the Universal Service Fund or raising rates, is in the public interest.

## II. BACKGROUND

3. *The Petitioners.* SiyCom, a Montana non-profit corporation, is wholly owned and chartered by Siyeh Corporation, a federally chartered for-profit corporation of the Blackfoot Tribe of the Blackfoot Indian Reservation (Blackfoot Tribe).<sup>4</sup> SiyCom is authorized by the Blackfoot Tribe to provide communication and information services within the Blackfoot Indian Reservation (Reservation) as a matter of public convenience and necessity.<sup>5</sup> The Browning Exchange is mostly comprised of Tribal lands within the Reservation, with a de minimis portion extending outside the Reservation boundary on lands ceded by the Blackfoot Tribe to the United States.<sup>6</sup> According to SiyCom, "all customers and facilities of the Browning Exchange are exclusively within the Blackfoot Reservation."<sup>7</sup> 3 Rivers, a Montana cooperative, is a rate-of-return carrier that serves as the incumbent local exchange carrier (LEC) for 26 exchanges in Montana, including the Browning Exchange.<sup>8</sup> 3 Rivers, an incumbent rate-of-return carrier, has received universal service support to serve the study area that included the Browning Exchange.<sup>9</sup>

4. *3 Rivers SiyCom Section 214 Public Notice.* In the *3 Rivers SiyCom Section 214 Public Notice*, we conditionally authorized 3 Rivers to transfer substantially all of the assets it held in the Browning Exchange in Montana to SiyCom.<sup>10</sup> We also waived the Commission's study area boundary freeze to permit 3 Rivers to remove the Browning Exchange from the boundaries of its existing Study Area No. 482255 and transfer it to a new SiyCom study area.<sup>11</sup> As a result, upon consummation of the transaction, which Petitioners expect to occur at the end of 2020, SiyCom will be a successor or assign of 3 Rivers pursuant to section 251(h)(1)(B)(ii) of the Act.<sup>12</sup>

5. We approved the asset transfer predicated in part on SiyCom's representation that it intends to extend fiber to all locations within the Browning Exchange to improve service to residential

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<sup>3</sup> Letter from Gregory J. Vogt, Counsel for Siyeh Communications, and Michael Bennet, Counsel for 3 Rivers Telephone Cooperative, Inc., to Kris Monteith, Chief, Wireline Competition Bureau, FCC, WC Docket No. 20-85 (filed Oct. 26, 2020) (Petition). NECA manages a significant number of rural telecommunications providers' revenue streams through a pooling process. Membership in NECA is limited to incumbent LECs. Members can also join a NECA tariff rather than creating and maintaining their own, individual tariffs. See NECA, About Us, <https://www.neca.org/about-us> (last visited Nov. 12, 2020).

<sup>4</sup> See *SiyCom ETC Order* at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *3 Rivers SiyCom Section 214 Public Notice* at 2. 3 Rivers did not elect to receive Alternative Connect America Cost Allocation Model II support and currently receives high-cost USF support based on its costs of providing service. *Id.* at 3-4.

<sup>9</sup> See *id.* at 5.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 6-8.

<sup>12</sup> 47 U.S.C. § 251(h)(1)(B)(ii) (defining incumbent LEC).

and business customers.<sup>13</sup> According to SiyCom, its deployment plans, which will include providing service through fixed wireless facilities in certain locations on an interim basis while it deploys fiber, will result in many customers on the Blackfeet Reservation having broadband service available to them for the first time.<sup>14</sup> To prevent the transaction from adversely impacting the high cost program of the Universal Service Fund, we conditioned the transaction approval on the Petitioners' agreement to cap the high cost universal service support received by 3 Rivers and by setting a fixed amount of A-CAM II support for SiyCom.<sup>15</sup>

6. *Intercarrier Compensation Requirements Applicable to Rate-of-Return Carriers.* In the *USF/ICC Transformation Order*,<sup>16</sup> the Commission capped reciprocal compensation and interstate switched access rates, and most intrastate switched access rates, of rate-of-return carriers at the rates in effect on December 29, 2011.<sup>17</sup> The Commission adopted a multi-year transition process reducing most terminating switched access rates to bill-and-keep.<sup>18</sup> As a result of these reforms, most switched access rates and all reciprocal compensation rates are no longer based on a rate-of-return carrier's costs. The Commission also adopted a transitional revenue recovery mechanism that allows rate-of-return LECs to recover a portion of the intercarrier compensation revenues lost due to the Commission's reforms, up to an amount defined for each year of the rate-of-return LEC's transition.<sup>19</sup> These defined amounts are referred to as "Eligible Recovery."<sup>20</sup> A rate-of-return LEC may recover its Eligible Recovery each year from its end users through an Access Recovery Charge (ARC), subject to an annual cap.<sup>21</sup> If the projected revenues that a carrier is permitted to recover through the ARC are not sufficient to cover the entire Eligible Recovery amount, the rate-of-return carrier may elect to collect the remainder in CAF ICC support.<sup>22</sup>

7. The calculation of a rate-of-return LEC's Eligible Recovery begins with its Base Period Revenue (BPR).<sup>23</sup> A rate-of-return carrier's BPR is the sum of certain intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during Fiscal Year (FY) 2011,<sup>24</sup> and the projected revenue requirement for interstate switched access services for

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<sup>13</sup> *3 Rivers SiyCom Section 214 Public Notice* at 2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 5-6.

<sup>16</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*) *aff'd*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>17</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801. *See* 47 CFR § 51.909(a). Originating intrastate switched access rates for rate-of-return carriers were exempt from the rate cap.

<sup>18</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801.

<sup>19</sup> *Id.* at 17956, para. 847.

<sup>20</sup> *Id.* at 17957, para. 850.

<sup>21</sup> *Id.* at 17958-61, para. 852; 47 CFR §§ 51.917(e), 51.917(d).

<sup>22</sup> CAF ICC support, for carriers that are eligible and elect to receive it, is explicit universal service support equal to the remainder of Eligible Recovery not recovered through ARCs. *USF/ICC Transformation Order*, 26 FCC Rcd at 17994-95, para. 918, n.1818.

<sup>23</sup> *See* 47 CFR § 51.917(b)(7).

<sup>24</sup> For purposes of the recovery mechanism, FY 2011 is defined as Oct. 1, 2010 through Sept. 30, 2011. *See* 47 CFR § 51.903(e).

the 2011-2012 tariff period.<sup>25</sup> The BPR for rate-of-return carriers is calculated only once, but is used during each step of the intercarrier compensation recovery mechanism calculations for each year of the transition.<sup>26</sup> The BPR for rate-of-return carriers was reduced by 5% initially, and is reduced by an additional 5% in each year of the transition.<sup>27</sup> A rate-of-return LEC's Eligible Recovery is equal to the adjusted BPR for the year in question less, for each relevant year of the transition, the sum of (1) projected intrastate switched access revenue; (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue for each year of the transition.<sup>28</sup> To avoid double recovery by a carrier, the Commission required a carrier to reduce its Eligible Recovery by the amount of any costs or revenues it received from another source if those amounts were already being recovered through the ARC or CAF ICC.<sup>29</sup>

8. Rate-of-return incumbent LECs still maintain tariffs for switched access and certain business data services, among other things. Section 61.38 of the Commission's rules requires that rate-of-return incumbent LECs offering new tariffed services provide cost support to establish their initial rates.<sup>30</sup> Among other support, a carrier must submit a cost study containing a projection of costs for a representative 12 month period.<sup>31</sup> In addition, section 69.3(e) of the Commission's rules requires that a carrier exiting NECA's tariff provide notice of its intent to NECA by March 1 in the year of the annual access tariff filing.<sup>32</sup> The Wireline Competition Bureau (Bureau) has interpreted sections 69.3(e)(6) and 69.3(e)(11) to require a carrier joining NECA's pooling process and tariffs to similarly notify NECA of its intent by March 1.<sup>33</sup> Thus, absent a waiver of these rules, a company that is a successor incumbent LEC would be subject to these same tariff requirements.

9. As a rate-of-return carrier, pursuant to the modifications to the intercarrier compensation system made by the Commission in the *USF/ICC Transformation Order*, 3 Rivers' reciprocal compensation and interstate switched access rates, and most intrastate switched access rates, are capped at the rates in effect on December 29, 2011. Some of 3 Rivers' terminating intercarrier rates are now subject to bill-and-keep under the multi-year transition established for rate-of-return carriers.<sup>34</sup> 3 Rivers' BPR for tariff year 2020/2021 is \$2,161,740.<sup>35</sup>

10. *Alternative Connect America Cost Allocation Model Carriers*. In the 2016 *Rate-of-*

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<sup>25</sup> See 47 CFR § 51.917(b)(7). The 2011-2012 tariff period was July 1, 2011 through June 30, 2012.

<sup>26</sup> *Id.*

<sup>27</sup> See 47 CFR § 51.917(b)(3).

<sup>28</sup> The carrier would reflect forward any required true ups resulting from the operation of the pre-mergers study areas in the proper year for the merged study area. 47 CFR § 51.917(d).

<sup>29</sup> 47 CFR § 51.917(d)(1)(vii).

<sup>30</sup> 47 CFR § 61.38.

<sup>31</sup> *Id.*

<sup>32</sup> 47 CFR § 69.3.

<sup>33</sup> *Sacred Wind Communications, Inc. and Qwest Corporation Joint Petition for Waiver of Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules; Sacred Wind Communications, Inc. Related Waivers of Parts 36, 54, and 69 of the Communication's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 9227, 9238, para. 24 (WCB 2006) (*Sacred Wind Order*).

<sup>34</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801.

<sup>35</sup> Petition at 3-4 ("The result would allocate approximately \$175,000 as SiyCom's BPR and \$1,986,740 as 3 Rivers' BPR for Tariff Year 2020/2021.").

*Return Reform Order*, the Commission adopted significant reforms to the rules governing the provision of universal service support to rate-of-return LECs.<sup>36</sup> The Commission adopted a voluntary path under which rate-of-return carriers may elect model-based support, known as A-CAM, for a term of 10 years in exchange for meeting defined build-out obligations of voice and broadband services.<sup>37</sup> The Commission also determined that if an entity other than a rate-of-return carrier acquires exchanges from a rate-of-return carrier, that entity will receive A-CAM support.<sup>38</sup> For carriers not electing A-CAM support, the Commission modernized the existing interstate common line support for rate-of-return carriers' broadband-capable network loop costs, without regard to whether the loops are used to provide voice or stand-alone broadband services.<sup>39</sup> This revised form of support is known as Connect America Fund Broadband Loop Support. To implement these reforms, the Commission, among other things, revised certain cost allocation and tariffing rules for carriers to introduce supported Consumer Broadband-Only Loop services.<sup>40</sup>

11. The Commission determined that the Common Line, *e.g.*, Subscriber Line Charge and Consumer Broadband-Only Loop, charges of carriers receiving model-based support should be removed from rate-of-return regulation and imposed rate caps on those charges.<sup>41</sup> As a result, the Commission decided that such carriers would not be eligible to participate in the NECA Common Line pooling mechanism, but that NECA could continue to tariff the services on behalf of the carriers.<sup>42</sup> Additionally, the Commission required rate-of-return LECs to impute an amount equal to the ARC they assess on voice/broadband lines to their supported Consumer Broadband-Only Loop lines.<sup>43</sup> Under the Commission's rules, rate-of-return LECs electing model-based support that participate in the NECA traffic-sensitive tariff do not have the option of changing their participation in the traffic-sensitive tariff outside the regular election process.<sup>44</sup>

12. *Commission Precedent Related to Modified Study Area Boundaries.* In prior cases involving the merging or restructuring of study areas, the Bureau granted waivers of sections 51.917(b)(1) and 51.917(b)(7) of the rules.<sup>45</sup> These waivers allowed carriers to amend their BPR amounts to reflect the revised study area boundaries. In cases where study areas were merging, the Bureau allowed carriers to add together the relevant interstate revenues from FY 2011 of the merging study areas and the 2011-2012

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<sup>36</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3089, para. 1 (2016) (*Rate-of-Return Reform Order*) (describing the new and reformed support mechanisms in areas served by rate-of-return LECs).

<sup>37</sup> *Id.* at 3094-117, paras. 17-79.

<sup>38</sup> 47 CFR § 54.902(c).

<sup>39</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3117-57, paras. 80-187.

<sup>40</sup> *Id.* at 3157-62, paras. 188-204.

<sup>41</sup> *Id.* at 3159-60, paras. 193-96. Business data services are the only services subject to rate-of-return regulation for A-CAM carriers.

<sup>42</sup> *Id.* at 3160, paras. 195-96.

<sup>43</sup> *Id.* at 3161-62, para. 203.

<sup>44</sup> 47 CFR § 69.3(e)(6).

<sup>45</sup> 47 CFR §§ 51.917(b)(1) (defining 2011 interstate switched access revenue requirement) and 51.917(b)(7) (defining 2011 rate-of-return carrier BPR).

interstate revenue requirement of the merging study areas.<sup>46</sup> In cases where a study area was being transferred or restructured, the carriers were permitted to adjust their BPR amounts based on the relative number of access lines being transferred to reflect the revised study areas.<sup>47</sup> In each case, the Bureau found that such approach would create an appropriate revised BPR to serve as the baseline for calculating the Eligible Recovery of the redefined study areas going forward.<sup>48</sup>

13. *Waiver Request.* On October 26, 2020, the Petitioners filed a petition requesting an expedited waiver of certain intercarrier compensation and tariffing provisions of the Commission's rules to allow 3 Rivers and SiyCom to implement the transaction approved in the *3 Rivers SiyCom Section 214 Public Notice*.<sup>49</sup> Petitioners seek to allocate BPR to reflect relative current switching costs.<sup>50</sup> SiyCom proposes to initialize rates for its new study area at 3 Rivers' existing capped rate levels for Common Line services, Consumer Broadband-Only Lines, and switched access service.<sup>51</sup> It also proposes to use 3 Rivers' current business data service rates to initialize its rates for those services.<sup>52</sup> Finally, SiyCom seeks approval to join NECA immediately.<sup>53</sup>

### III. DISCUSSION

14. Generally, the Commission's rules may be waived for good cause shown.<sup>54</sup> The Commission may exercise its discretion to waive a rule where the specific facts make strict compliance

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<sup>46</sup> See *Connect America Fund; Developing a Unified Intercarrier Compensation Regime; Petition of Butler-Bremer Mutual Telephone Company, Inc. for a Waiver of Sections 51.909(a), 51.917(b)(1), 51.917(b)(2), and 51.917(b)(7) of the Commission's Rules to Modify Access Rate Bands and Charges, and 2011 Switched Access Revenue in Connection with Merger of Affiliated Study Areas in Iowa; Petition of Panora Communications Cooperative and Prairie Telephone Company, Inc. for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to Modify Access Rate Bands and Charges, and 2011 Switched Access Revenue Requirement and 2011 Base Period Revenue in Connection with Study Area Waivers in Iowa*, WC Docket Nos. 10-90, 15-118, 15-166; CC Docket No. 01-92, Order, 33 FCC Rcd 1152, at 1157-58, paras. 15-16 (WCB 2018) (*Butler-Panora Order*) (outlining and applying relevant Commission precedent to approve the merger of two rate-of-return study area waiver petitions); *Connect America Fund; Developing a Unified Intercarrier Compensation Regime; Telapex, Inc. Petition for Waiver of Sections 51.909(a), 51.917(b)(1), and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in Mississippi; Venture Communications Cooperative Petition for Waiver of Sections 51.909(a), 51.917(b)(1), and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in South Dakota*, WC Docket Nos. 10-90, 17-252, 17-323; CC Docket No. 01-92, Order, 33 FCC Rcd 11764 (WCB 2018) (*Telapex-Venture Order*).

<sup>47</sup> See, e.g., *Connect America Fund; Federal-State Joint Board on Universal Service; Joint Petition for Waiver of the Definition of "Study Area" or the Appendix-Glossary of Part 36 of the Commission's Rules filed by Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications; Winnebago Cooperative Telecom Association*, WC Docket No. 10-90, CC Docket No. 96-45, Order, 31 FCC Rcd 10683 at 10691, para. 27 (WCB 2016) (*Winnebago Cooperative Telecom Association*) (approving allocating BPR amounts using a simple average of the access line count for FY 2011 when only a portion of a study area is involved).

<sup>48</sup> See *Butler-Panora Order*, 33 FCC Rcd at 1157, para. 15.

<sup>49</sup> Petition at 1.

<sup>50</sup> *Id.* at 1-4.

<sup>51</sup> *Id.* at 5-6.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 6.

<sup>54</sup> 47 CFR § 1.3.

inconsistent with the public interest.<sup>55</sup> The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy.<sup>56</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>57</sup>

15. In this case, as in other transactions involving rate-of-return carriers since the adoption of the *USF/ICC Transformation Order*, we find that strict compliance with the Commission's intercarrier compensation and tariffing rules would be inconsistent with the public interest because the rules do not provide for allocation of BPR between entities to a transaction nor clarify how transactions impact the rates of the changed entities.<sup>58</sup> In these instances, we have, therefore, waived the rules to allocate existing BPRs between parties to a transaction and to allow buyers to charge tariffed rates that are in line with what the selling party was charging.<sup>59</sup>

16. Here, the circumstances are particularly compelling because SiyCom will be newly focused on ensuring that unserved or underserved Tribal members living on or near the Reservation have access to advanced telecommunications and broadband services.<sup>60</sup> SiyCom has committed to offering advanced services throughout the Browning Exchange at competitive prices and to investing in significant new telecommunications middle and last mile fiber deployment.<sup>61</sup> Because SiyCom is Tribally-controlled and operated, the grant of this waiver will foster Tribal economic and cultural development on the

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<sup>55</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>56</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>57</sup> *See id.*

<sup>58</sup> *See generally, Butler-Panora Order; Connect America Fund; Developing a Unified Intercarrier Compensation Regime; Titonka Telephone Company and The Burt Telephone Company Petition for Waiver of Sections 51.917(b)(1) and 51.917(b)(7) of the Communications Rules to modify 2011 Base Period Revenue in connection with the merger of affiliated study areas in Iowa; Interstate Telecommunications Cooperative, Inc., Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in South Dakota; Northeast Nebraska Telephone Company Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in Nebraska*, WC Docket Nos. 10-90, 18-69, 18-331, and 19-31; CC Docket No. 01-92, Order, 34 FCC Rcd 4777 (WCB 2019) (*Titonka-ITC-Northeast Order*); *Winnebago Cooperative Telecom Association*, 31 FCC Rcd at 10691, para. 27 (approving the allocation of BPR amounts using a simple average of the access line count for FY 2011 when only a portion of a study area is involved).

<sup>59</sup> *See e.g., Butler-Panora Order*, 33 FCC Rcd at 1158-59, para. 16; *Connect America Fund; Developing a Unified Intercarrier Compensation Regime; TrioTel Communications, Inc. Petition for Waiver of Sections 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify the 2011 Base Period Revenue in connection with the merger of affiliated study areas in South Dakota; Farmers Mutual Telephone Company of Stanton, Iowa, Inc. Petition for Waiver of Sections 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify the 2011 Base Period Revenue in connection with the merger of affiliated study areas in Iowa; Inter-Community Telephone Company, L.L.C. Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in North Dakota*, WC Docket Nos. 10-90, 19-283, 19-324, 19-332, CC Docket No. 01-92, DA 20-217, at 5-7, paras. 10-14 (WCB Mar. 3, 2020).

<sup>60</sup> *SiyCom ETC Order* at 7 & n.54 (emphasizing that "only approximately 46 percent of homes in the Browning Exchange are passed with broadband facilities capable of delivering 25/3 Mbps broadband service," and explaining plans to make such broadband service available to all customers within the Browning Exchange).

<sup>61</sup> *Id.* at 7.

Reservation, consistent with the Commission's long-standing policies.<sup>62</sup> Given SiyCom's commitments and representations in the various filings associated with this transaction, we conclude that granting this Petition will help ensure increased consumer choice, affordability, and improved quality of service on the Reservation.

17. For example, in the *3 Rivers SiyCom Section 214 Public Notice*, we found that allowing the transaction was in the public interest because: (1) SiyCom's plans to extend fiber to all locations within the Browning Exchange will enable SiyCom to deliver high quality voice and broadband services to residential and business customers, including broadband services at speeds of at least 25/3 Mbps; (2) deployment of fiber to all locations in the Browning Exchange would result in more deployment than required under the SiyCom A-CAM II offer; and (3) as conditioned, the total amount of support received by the Petitioners will remain stable.<sup>63</sup> Here, we further find that those benefits can only be fully realized if the requested waivers are granted. Without such waivers, the Petitioners will be unable to implement the transaction and expand fiber deployment and broadband services to currently unserved residents and businesses of the Blackfeet Nation. Moreover, in granting these waivers, we protect the limited resources of the Universal Service Fund by allocating 3 Rivers' existing BPR between the Petitioners and protect rate payers from unexpected rate hikes by allowing SiyCom to use 3 Rivers' rates as its initial rates. We, therefore, find the requested waivers to be in the public interest and grant the waivers to the extent described herein.

18. *Base Period Revenue Reallocation and Switched Access Rates.* We waive sections 51.917(b)(1), 51.917(b)(7), and, as necessary, 51.917(d)-(f) to allow Petitioners to use "non-2011 data in determining their BPR."<sup>64</sup> Petitioners' proposed approach will allow 3 Rivers to reduce its BPR to reflect the sale of the Browning Exchange and will establish SiyCom's BPR using a forecast of switching costs that SiyCom expects to incur in 2021 and beyond.<sup>65</sup> Petitioners explain that this allocation reflects the divergence between the relative switched access costs and relative access line relationships of 3 Rivers and SiyCom.<sup>66</sup> This divergence occurs because SiyCom will purchase switching services on a contractual basis at costs that are much lower than the per-line allocation based on 2011 access lines would produce.<sup>67</sup>

19. Petitioners also explain that 3 Rivers has consolidated its switching infrastructure since the adoption of the *USF/ICC Transformation Order*, which resulted in a double recovery reduction of 3 Rivers' Eligible Recovery by a corresponding amount on an annual basis.<sup>68</sup> 3 Rivers would retain all of the double recovery adjustment resulting from the consolidation of its network.<sup>69</sup> The assignment of the double recovery adjustment entirely to 3 Rivers affects the net amount of CAF ICC each carrier will receive. A per-line allocation of BPR based on access lines would overstate the BPR that is now

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<sup>62</sup> *Id.*

<sup>63</sup> See generally *3 Rivers SiyCom Section 214 Public Notice*.

<sup>64</sup> Petition at 1. 47 CFR §§ 51.917(b)(1) (defining 2011 interstate switched access revenue requirement), 51.917(b)(7) (defining 2011 rate-of-return carrier BPR), and 51.917(d)-(f) (detailing the steps for implementing the recovery process).

<sup>65</sup> Petition at 3-4.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 3. 3 Rivers calculated its double recovery for all its operations as \$517,125 for Tariff Year 2020/2021, all of which would remain with 3 Rivers. *Id.* at 4.

<sup>69</sup> *Id.* at 3-4.

associated with the Browning Exchange.<sup>70</sup> We agree with Petitioners that their BPR allocation proposal will allow SiyCom to receive appropriate amounts of CAF ICC, will allow it to meet the needs of its future customers, and will “promote investment in efficient broadband and telecommunications services on the [Blackfeet] Reservation.”<sup>71</sup> As Petitioners explain, under their proposal, the 2020/2021 BPR for 3 Rivers is \$2,161,740, of which \$175,000 will be allocated to SiyCom, with 3 Rivers retaining \$1,986,740.<sup>72</sup> Reporting of Tariff Year 2020/2021 BPR and revenues will need to be adjusted by the carriers to reflect the portion of the year for which 3 Rivers is responsible for the Browning Exchange.<sup>73</sup> Each carrier will then reduce its respective BPR by 5% each year beginning in Tariff Year 2021/2022, consistent with the Commission’s rules.<sup>74</sup> We agree that this approach reflects a more reasonable allocation basis for BPR in the present circumstances than allocation based on relative 2011 line counts, the approach the Commission has taken in the past, and will result in accurate and appropriate BPRs.<sup>75</sup>

20. Our decision to grant this portion of the waiver request is also based on SiyCom’s representation that it will initialize its switched access rates in the Browning Exchange at the rates currently charged by 3 Rivers.<sup>76</sup> We find that this will result in SiyCom charging access rates that are just and reasonable, as required by the Act.<sup>77</sup> In addition, SiyCom’s decision to adopt the existing 3 Rivers’ switched access rates ensures that the transaction will have no significant impact on CAF ICC. This is because the total amount of CAF ICC support distributed to the Petitioners separately after the transaction, assuming the likely continuation of projected growth trends, will be no higher than the total amount that 3 Rivers would have otherwise received under the existing rules, absent the transaction.<sup>78</sup> Likewise, there will be no change in the next six months in the tariffed rates that 3 Rivers and SiyCom will charge their customers as a result of the transaction.<sup>79</sup>

21. *Common Line and Consumer Broadband-Only Loop Rates.* We agree with SiyCom that it should initialize its Common Line and Consumer Broadband-Only Loop rates at 3 Rivers’ Common Line and Consumer Broadband-Only Loop rate caps.<sup>80</sup> As a carrier receiving A-CAM support, SiyCom’s

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 3.

<sup>72</sup> *Id.* at 4. BPR has both intrastate and interstate components. Petitioners indicate that “the \$175,000 will be allocated as follows: 2011 Interstate Switched Access Revenue Requirement -- \$112,975; FY 2011 Intrastate Terminating Switched Access Revenues -- \$53,175; FY 2011 Net Reciprocal Compensation Revenues -- \$8,850.” *Id.* at 4, n.6.

<sup>73</sup> *Id.* at 4.

<sup>74</sup> *Id.* at 4. See 47 CFR § 51.917(b)(3).

<sup>75</sup> See e.g., *Butler-Panora Order*, 33 FCC Rcd at 1157, para. 15; *Titonka-ITC-Northeast Order*, 34 FCC Rcd at 4782, para. 11; see also *Winnebago Cooperative Telecom Association*, 31 FCC Rcd at 10691, para. 27.

<sup>76</sup> Petition at 5. We interpret SiyCom’s adoption of 3 Rivers’ current switched access rates to include the ARC currently being assessed. SiyCom will be required to revise these charges in the future, consistent with Commission rules.

<sup>77</sup> See 47 U.S.C. § 201(b).

<sup>78</sup> Petition at 4.

<sup>79</sup> *Id.*

<sup>80</sup> “SiyCom expects to initially continue to charge rates equal to 3 Rivers’ current access rates for switched and business data services until the next full tariffing year that will begin on July 1, 2021. This relatively brief transitional period will provide SiyCom with actual experience that it can use to develop business data service rates based on its own costs and demand figures.” *Id.* at 5.

Common Line and Consumer Broadband-Only Loop rates are not subject to rate-of-return regulation, but are subject to rate caps.<sup>81</sup> We find it appropriate that SiyCom, as a successor to 3 Rivers, charge Common Line and Consumer Broadband-Only Loop rates consistent with the Commission's rate cap rules and that using these Common Line and Consumer Broadband-Only Loop rates will result in rates that are just and reasonable.

22. *Business Data Services Rates.* We also grant SiyCom a waiver of section 61.38 of the Commission's rules, to the extent necessary, to allow it to charge rates equal to 3 Rivers' current rates for business data services from the close of the transaction until July 1, 2021,<sup>82</sup> in lieu of having to provide cost support materials to justify its rates for these services during the transitional period.<sup>83</sup> The existing 3 Rivers rates reflect the combined operating costs of 3 Rivers and SiyCom as filed in support of the 2020/2021 annual access tariff.<sup>84</sup> These rates therefore provide an adequate basis for rates that we find will be just and reasonable for the remainder of the current Tariff Year for the Browning Exchange. Relying on 3 Rivers' rates means that SiyCom will not have to incur the substantial expense of projecting costs for the abbreviated six-month period. In addition, allowing SiyCom to maintain 3 Rivers' rates for business data services will benefit customers in the Browning Exchange by keeping prices stable during the transition from 3 Rivers to SiyCom.<sup>85</sup> For the 2021 annual access tariff filing, SiyCom will have to develop its own cost study and participate in the rate development process for NECA's interstate business data services rates.<sup>86</sup>

23. *Waiver of Notice Period to NECA.* Finally, SiyCom requests a waiver of sections 69.3(e)(6) and (11) "to permit it to immediately become a member of NECA's traffic sensitive pool and join NECA tariffs."<sup>87</sup> The Bureau has interpreted sections 69.3(e)(6) and 69.3(e)(11) to require a carrier joining NECA's pooling process and tariffs to notify NECA of its intent by March 1 with an effective date of July 1.<sup>88</sup> We agree with SiyCom that because it will have a small number of customers this year,<sup>89</sup> the costs of preparing company-specific tariffs for the short period of time between the transaction's

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<sup>81</sup> 47 CFR §§ 69.104(s) (capping the End User Common Line charges at the rates in effect on the last day of the month preceding provision of service subject to A-CAM), 69.115(f) (capping the Special Access Surcharge at the rate in effect on the last day of the month preceding provision of service subject to A-CAM), 69.130(b) (capping the Line Port Cost in Excess of Basic Analog Service at the rates in effect on the last day of the month preceding provision of service subject to A-CAM), 69.132(d) (capping the Consumer Broadband-Only Loop rate at \$42).

<sup>82</sup> "SiyCom expects to initially continue to charge rates equal to 3 Rivers' current access rates for switched and business data services until the next full tariffing year that will begin on July 1, 2021. This relatively brief transitional period will provide SiyCom with actual experience that it can use to develop business data service rates based on its own costs and demand figures." Petition at 5.

<sup>83</sup> 47 CFR § 61.38(b)(2) ("For a tariff filing offering a new service, the issuing carrier must submit the following, including complete explanations of the bases for the estimates: (i) A study containing a projection of costs for a representative 12 month period; and (ii) Estimates of the effect of the new matter on the traffic and revenues from the service to which the new matter applies, the issuing carrier's other service classifications, and the issuing carrier's overall traffic and revenues. These estimates must include the projected effects on the traffic and revenues for the same representative 12 month period used in paragraph (b)(2)(i) of this section.").

<sup>84</sup> Petition at 4.

<sup>85</sup> *Id.* at 5.

<sup>86</sup> *Id.* at 5-6.

<sup>87</sup> *Id.* at 6.

<sup>88</sup> *Sacred Wind Order*, 21 FCC Rcd at 9238, para. 24. Petition at 6.

<sup>89</sup> SiyCom will initially have only approximately 2,290 telephone subscribers. Petition at 6.

approval and July 1, 2021 would be “excessive.”<sup>90</sup> SiyCom also explains that, its rates for business data services will likely be prohibitively high if it cannot participate in the cost averaging that occurs in NECA’s traffic sensitive pool.<sup>91</sup> The requested waivers will permit SiyCom to participate immediately in NECA’s processes, subject to the limitations on its ability to pool costs for Common Line and Consumer Broadband-Only line services, and will facilitate SiyCom’s ability to provide service under its own name. Allowing SiyCom to join NECA immediately will reduce the initial regulatory burdens associated with developing and filing a stand-alone tariff. And, it will have little impact on NECA’s operations because no rate changes will occur before the annual interstate access tariff filing, which will take effect on July 1, 2021.<sup>92</sup> For these reasons, we find that waiver of these rules is in the public interest.<sup>93</sup>

#### IV. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 5, and 201-203, 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-203, and 251, and sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the Petition for Waiver filed by 3 Rivers Telephone Cooperative, Inc. and Siyeh Communications IS GRANTED to the extent indicated.

25. IT IS FURTHER ORDERED that pursuant to section 1.102(b)(1) of the Commission’s rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 4.

<sup>93</sup> Petitioners must notify the Commission if they do not close the approved transaction as expected by year-end 2020 or otherwise materially change the timing of SiyCom’s operational plans to serve the Browning Exchange.