

**Before the
DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION**

In the Matter of:

Limited Applicability Nonavailability Waiver
of the Buy America Domestic Content
Procurement Preference as Applied to
Recipients of Middle Mile Grant Program
Awards

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

NTCA – The Rural Broadband Association (“NTCA”) hereby submits these comments in response to the above-captioned Request for Comments. NTCA supports National Telecommunications and Information Administration’s (“NTIA’s”) proposal of a limited applicability nonavailability waiver, providing recipients of federal financial assistance under NTIA’s Middle Mile Grant Program (“MMG Program”) a limited exemption from application of the Buy America Preference as applied to limited classes of manufactured products and construction materials.

NTCA represents about 850 providers of voice and broadband services. As “telecommunications companies,” “telecommunications cooperatives,” and in some cases local governmental or Tribal entities, NTCA’s members are eligible to apply for funds made available by the Infrastructure Investment and Jobs Act of 2021,¹ including the MMG. Slightly less than half of NTCA’s member companies are telecommunications cooperatives, while most of the rest are commercially-owned telecommunications providers. Some member companies are tribally owned or operated as units of the

¹ The Infrastructure Investment and Jobs Act of 2021, Division F, Title IV, § 60401, Public Law 117-58, 135 Stat. 429 (Nov, 15, 2021). (“IIJA”)

municipalities in which they are based. All member companies utilize manufactured products and construction materials in deploying their networks and offering services in rural America.

I. NTCA SUPPORTS THE PROPOSED NONAVAILABILITY WAIVER

The Build America, Buy America Act (“BABA”)² includes strong and permanent domestic sourcing requirements across all Federal financial assistance programs, including the MMG program. While NTCA supports the goals of increasing domestic production, as NTIA recognizes, there currently exist gaps in the domestic manufacturing base and, as discussed below, these can be seen in the current state of telecommunications and broadband supply chains. The MMG Program applications were due September 30, 2022, and awards may be announced as early as spring of 2023. Given limited supply availability, application of the BABAA without a waiver is likely to delay, if not thwart, the goals of the MMG Program.

NTIA’s own assessment of supply chain delays found that many of the manufactured products and some of the construction materials required for broadband infrastructure deployment, including middle mile networks, are not available in the quantity or quality needed or according to the timeframes established. While NTCA’s assessment of its members’ supply chain challenges largely echo those of NTIA, challenges tend to be amplified for small providers who serve rural areas. Member companies report that large orders from large companies are typically fulfilled in advance of those of from small companies. Small company lead times are frequently longer and

² IIJA §§ 70901-70952.

bulk discounts are unavailable to help offset significant inflation in these products over the past few years.

NTCA members report widespread delays in obtaining communications equipment of all kinds, which extends not only to electronics, but also fiber. The delays appear to have begun soon after the onset of the COVID-19 pandemic and have escalated since then, and costs continue to rise. Eight in 10 NTCA members surveyed reported that they are experiencing an inability or delay in procuring supplies needed for network deployment. More than half indicated that delays in securing equipment are 9 months or more, sometimes as much as two years, and continuing to increase. Even without BABAA requirements, fiber must be ordered more than a year in advance, projects are being delayed, and equipment is being rationed.

Delays from upstream suppliers, shipping delays, and employee shortages are cited by vendors as reasons for delays, but the most common reason offered is manufacturing delays and shortages. The delays impact nearly every finished product and component needed for the provision of broadband services, including middle mile deployment. NTCA has been in contact with various equipment manufacturers, including fiber producers, and understands and appreciates that efforts are underway to increase domestic manufacturing, but the ramp-up of domestic manufacturing will take time and the goals of the IJJA are too important to hang upon pledges and hopes that the market will turn in time.

NTIA appears to have developed a fairly comprehensive list of manufactured products that should be subject to waiver and indicates that it will review the waiver no less than every six months to assess whether it remains necessary or should be

terminated, shortened, or narrowed. However, NTIA should examine not just whether it should narrow the waiver scope, but also whether it should expand it. It is logical that as deployment increases, additional supplies or equipment thought to be in ample supply could experience shortages. The waiver process should be flexible to respond to evolving market conditions “in both directions,” and ultimately the same approach and analysis should be applied to all projects that sit under the umbrella of the IJA.

II. THE PROPOSED WAIVER WILL HELP CORRECT AN INEQUITY BETWEEN PROVIDERS APPLYING FOR MIDDLE MILE FUNDING

Both “for-profit organizations” and “non-Federal entities” are eligible to apply to participate in the MMG program. However, it appears based upon both the IJA³ and ensuing guidance from the Office of Management and Budget (“OMB”)⁴ that only non-Federal entities are required to comply with BABAA. Non-Federal entities include “States, local governments, territories, Indian tribes, Institutions of Higher Education, and nonprofit organizations.” NTCA represents for-profit commercial telecommunications providers, non-profit community-based telecommunications cooperatives, and tribally-owned and municipally-operated companies. All of our member companies are similarly situated and offer similar services. Application of BABAA without a waiver would thus impose disparate harm, offering a significant advantage to private entities over non-profit and tribally owned companies. Congress clearly intended to place applicants on a level playing field in designating a wide array of providers that could apply to the MMG

³ IJA § 70912(4)(B).

⁴ See, *Memorandum for Heads of Executive Departments and Agencies, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance for Programs for Infrastructure*, Executive Office of the President, Office of Management and Budget, at p. 3 (April 18, 2022).

Program without specific distinction or preference. NTIA should score projects based on criteria related to their ability to deliver quality and timely service and not dismiss projects only because a certain kind of provider is subject to and cannot comply with BABAA because of domestic supply shortages while other providers are not governed by the same framework. The proposed waiver helps correct an inequity in the application process – and, moreover, the waiver is necessary as an absolute matter given the current state of the telecommunications and broadband supply chain.

NTCA looks forward to continuing to work with NTIA as it implements the IJA and considers the waiver process.

Respectfully submitted,

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