

**Before the
DEPARTMENT OF COMMERCE
Washington, DC 20230**

Limited General Applicability Nonavailability)	
Waiver of the Buy America Domestic Content)	via email:
Procurement Preference as Applied to)	BABA@ntia.gov
Recipients of Broadband Equity, Access, and)	
Deployment Program)	

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (NTCA),¹ a trade association representing hundreds of providers that for years have been active participants in public-private partnerships to advance rural broadband connectivity, hereby submits comments in the above-captioned proceeding. In accordance with the Build America, Buy America Act (BABAA), the Department of Commerce (DOC) proposes to issue a limited, general applicability waiver of the Buy America Domestic Content Procurement Preference (Buy America Preference) under BABAA to recipients of Federal financial assistance under the National Telecommunications and Information Administration’s (NTIA) Broadband Equity, Access, and Deployment (BEAD) Program.

As potential subrecipients of BEAD funding and current owners and operators of last-mile broadband infrastructure, NTCA’s members are keenly aware of existing domestic supply chain shortages, and they support NTIA’s waiver approach and appreciate the thoughtfulness devoted to crafting it. We offer several recommendations below, however, to improve the

¹ NTCA – The Rural Broadband Association represents approximately 850 community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or themselves are engaged in the provision of such services.

process for identifying the scope of the waiver and thereby offer additional certainty to recipients of BEAD federal funds.

The BABAA imposes strong and permanent domestic sourcing requirements across all federal financial assistance programs, including the BEAD program. NTCA supports the goals of increasing domestic production, as this promises to bring more jobs to Americans and help to secure our nation's communications networks. However, as DOC recognizes, there currently exist gaps in the domestic manufacturing base, which can be observed in the current state of telecommunications and broadband supply chains – undermining the promise of growth in broadband industry jobs and delaying, if not thwarting, the ambitious broadband connectivity goals of the BEAD program. Delays from upstream suppliers, shipping delays, and employee shortages are cited by vendors, but also, certain components are not sourced domestically, and domestic assembly processes will not meet current and expected supply demands for all products. These challenges tend to be amplified for small providers who serve rural areas and have limited access to (or certainly bargaining power with respect to) a multitude of suppliers. Indeed, NTCA member companies have reported repeatedly over the past several years that large orders from large companies are typically fulfilled in advance of those from small companies. Small company lead times are frequently longer and bulk discounts are unavailable to offset inflation on products. With supply chain challenges amplified for small businesses, appropriate waivers to expand, rather than contract, the broadband and telecommunications supply marketplace are essential.

As an initial matter, NTCA supports DOC's proposal to "publish and maintain on the NTIA website a list of manufacturers and that manufacturer's individual products that an officer of the company has certified . . . are compliant with the Buy America Preference" and to require

the certifications annually. Such a list is critical for smaller providers attempting to navigate such new requirements while at the same time seeking to understand the litany of other obligations applicable under the largest broadband funding program in history; even the most sophisticated smaller provider with a well-developed supply chain risk management plan may only have a few dozen employees to run the entire operation, making it all the more important to facilitate compliance by all reasonable means possible. Not only will the list of certified equipment offer transparency as to which products meet the Buy America requirements, it will provide BEAD subrecipients with assurance that equipment they are purchasing and installing in their networks is compliant with the laws and regulations – thereby promoting greater participation in the BEAD program. NTCA urges NTIA to create this list expeditiously so that appropriate planning and pricing of components can take place as providers will begin planning in detail for program participation and applications over the next several months.

However, NTCA suggests that NTIA revise its proposal regarding the term of the waiver. NTIA proposes that the proposed waiver “would be effective for BEAD Program awards obligated after the effective date of the final waiver for a period of five years.” It is unlikely that all BEAD construction will be completed by the time such a 5-year waiver expires, making the term insufficient. While some states may have implementation plans that would have BEAD subrecipients complete construction by 2028, many states will not – and even in the states that act promptly, not all projects will begin and end at the same time due to varying timeframes for processing of applications, the need perhaps to “fill gaps” for locations where no applications have been received, and other factors. The Biden Administration itself has indicated that it does

not expect BEAD-funded deployments to be complete until 2030.² Sub-recipients facing these circumstances would thus run serious risk of having the waiver lapse during their deployments, calling into question their ability to continue and the viability of their projects. For example, if DOC adopts its waiver in early 2024, it would expire in early 2029 – before all BEAD funded networks will be completed.

There are several options to address this that coincide with the Administration’s own acknowledgment of the timeline for BEAD deployments. For example, instead of a waiver valid only for 5 years from the date of the waiver, a waiver could apply to the following, whichever last occurs: (1) through 2030 (which again corresponds directly to the Administration’s prediction for BEAD completion); (2) any project if the funding recipient applied for funding within the 5-year waiver period; or (3) any equipment that is ordered within the initial 5-year timeframe. Through such alternatives, applicants would have certainty when they bid for BEAD funding that compliant components can be acquired throughout the duration of their projects, the waiver standard would be applied equitably across all BEAD recipients (irrespective of the date the state awards BEAD funding), and it would accommodate equipment orders that may require a longer lead time.

As a separate matter, it is appropriate to waive BABAA preference for inputs that cannot be manufactured in the United States in sufficient quantities to meet demand, and to waive electronics in BEAD Program projects, except for certain items specifically identified. Smaller

² See Fact Sheet: Biden-Harris Administration Announces Over \$40 Billion to Connect Everyone in America to Affordable, Reliable, High-Speed Internet (available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/26/fact-sheet-biden-harris-administration-announces-over-40-billion-to-connect-everyone-in-america-to-affordable-reliable-high-speed-internet/>) (“With these allocations and other Biden administration investments, all 50 states, DC, and the territories now have the resources to connect every resident and small business to reliable, affordable high-speed internet by 2030.”) (last visited Aug. 31, 2023).

operators are particularly dependent upon vendors to inform them of the extent to which any particular item is BABAA-compliant, and it has been encouraging to see several manufacturers report generally that the waivers, as applied, should enable them to meet demand.³ NTCA recommends that NTIA indicate that it will also consider future targeted and limited waivers of additional materials where it is later determined that manufacturers cannot meet demand after all under strict application of BABAA requirements. NTIA proposes an annual review of its waiver, but NTIA should also consider whether annual changes could disrupt the manufacturing process and supply chains. There should be an opportunity for manufacturers and subrecipients to comment before any products are removed from the waiver list.

Even if the waiver represents substantial progress toward realizing the goals of BEAD through a thoughtful review of certain kinds of equipment, additional direction regarding application of the waiver specifically for enclosures is required. NTIA proposes a limited waiver of the 55% cost of components requirement but would still require that the manufacturing of the metal or plastic parts and assembly of the parts of the final manufactured product occur entirely within the United States for the waiver to apply. “Enclosures” is an ambiguous and broad term that may be defined differently by different companies and there exist very few manufacturers who could meet the compliance requirements. This introduces supply chain risk. Consistent feedback from manufacturers indicates that, given the breadth of products that may fall into the category of enclosures, it is not possible for manufacturers currently situated in the United States

³ In February 2023, NTCA and Corning, a manufacturer of optical fiber and fiber cable, announced the creation of a Rural Broadband Supply Program to help NTCA members accelerate rural broadband deployments. *See, Announcing the NTCA-Corning Rural Broadband Supply Program*, blog post by Shirley Bloomfield, CEO, NTCA (February 6, 2023). Available at: <https://www.ntca.org/ruraliscool/newsroom/news/announcing-ntca-corning-rural-broadband-supply-program#:~:text=After%20many%20discussions%20with%20our,NTCA%20members%20accelerate%20rural%20broadband>

to assemble enough products to meet demand and that it is not possible for any manufacturer to ramp up production within the United States to meet the BEAD timeline. It is estimated that the proposal would not only increase the manufacturing costs of products at least 30%, it is likely to create substantial delays as current manufacturers strive to build out the capacity, establish production lines, and train the workforce needed. NTCA therefore encourages DOC to narrowly define the category “enclosures” and develop a waiver consistent with how it addressed electronics. DOC should meet and work with the manufacturers to determine which categories of enclosures, if any, can realistically be manufactured within the United States in sufficient quantities to satisfy BEAD build out and to waive the Buy America Preference for others. As currently structured, the overly restrictive enclosure waiver creates a material – but avoidable – risk to the success of the BEAD program.

NTCA looks forward to additional guidance on BABAA and other components of BEAD implementation. And although not a subject on which comment was sought, NTCA encourages NTIA to act quickly to offer clarity on the reporting requirements associated with BABAA requirements. The regulatory and reporting requirements associated with the BEAD program are already substantial. The success of the program is contingent upon participation by broadband providers willing, able, and qualified to build sustainable networks. NTIA should consider the entirety of the burden associated with the BEAD program, both to manufacturers and fund recipients, and specifically how it can minimize the BABAA reporting requirements as it develops its guidelines. For example, providers should have the ability to rely on certifications and contractual assurances from vendors and manufacturers and upstream providers, without providing independent verification of compliance – this is especially true for smaller providers who, as noted earlier, have limited visibility into the manufacturing processes of upstream

suppliers, little bargaining power to demand the ability to do so, and limited capability to audit and monitor manufacturer compliance even if they were given such ability. Moreover, manufacturers should not be required to divulge trade secrets to their buyers so that BEAD subgrantees can comply with BABAA; certifications and contractual assurances should expressly be deemed sufficient.

NTCA also encourages Federal uniform applicability of the Buy America program waivers. The BEAD program is only one of several federal financial assistance programs that require BABAA compliance. Uniform implementation of BABAA waivers will offer some measure of certainty and ease administrative burden for all parties involved in the provision of broadband services to end users.

NTCA and its members appreciate the opportunity to comment on the BABAA waiver process. We are committed to working with DOC and NTIA toward the well-ordered implementation of the BEAD program.

Respectfully submitted,



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