



USTELECOM THE BROADBAND ASSOCIATION

January 31, 2022

Dear Secretary Raimondo, Secretary Buttigieg, and Secretary Vilsack:

We, the undersigned groups, support the vital investments in American infrastructure outlined in the Infrastructure Investment and Jobs Act (IIJA). We also appreciate that NTIA's Request for Comment asked questions about the impact Buy American requirements could have on the speed with which the United States can reach the goal of 100 percent broadband connectivity.¹ As you draft rules that will implement this important legislation, we urge you to consider a waiver for information and communication technology (ICT) products from the "Buy American" provisions of the law. We believe that **a limited, programmatic waiver is a necessary precondition to effective and efficient investment in broadband** and will help ensure that every American has access to the digital infrastructure of the future consistent with the ultimate objectives of the IIJA.

We appreciate the need for more production in the United States, and we are willing partners to work toward that goal. But in the timeframe for deploying broadband under the IIJA, we are concerned about the negative impacts on companies already employing thousands of American workers if a waiver is not granted. As currently scoped, the 55 percent U.S. content threshold laid out in Title IX of the IIJA does not reflect the realities of the global ICT supply chain. A broadband network contains dozens of network elements including but not limited to switching, routing, transport, access, operations systems, and customer premises/end user equipment and devices. Devices used in each of these network elements in turn include hundreds of components – each with their own complex supply chains – sourced from around the world from trusted vendors and suppliers. Even network products that are assembled in the United States by U.S. companies rely on foreign inputs from their global partners. While a few individual network elements might meet the 55% domestic content threshold they are extremely limited in number, and it appears that no combination of network products would meet the IIJA's content requirements from end-to-end.

A waiver for broadband infrastructure programs would be consistent with the provisions of the IIJA, as well as past government practice with respect to investment in connected infrastructure. Section 70914 of the IIJA notes that agencies may waive the application of a preference if it is "inconsistent with the public interest," if there are not "sufficient and reasonably available quantities," or if a domestic content requirement "will increase the cost of the overall project by more than 25 percent." Broadband

¹ <https://www.ntia.doc.gov/files/ntia/publications/fr-iija-broadband-rfc.pdf>

equipment satisfies these conditions, as the federal government has found in the past. Although the 2009 American Recovery and Reinvestment Act (ARRA) imposed identical requirements, NTIA² and the Department of Agriculture's Rural Utilities Service³ determined that a waiver for broadband equipment was necessary to effectively implement the legislation. Importantly, these waivers also recognized and excluded the limited number of product categories that are manufactured in the United States. Similarly, Congress has codified into law a waiver for the "Buy American" provisions of the Federal Acquisition Regulations (FAR) that exempts government purchases of commercially available IT equipment from domestic content requirements to ensure government access to high-quality technology products.

We urge the Administration to act now to institute a limited, programmatic waiver for broadband equipment in line with the 2009 ARRA waiver from NTIA. This approach acknowledges what can be done in the U.S. while facilitating the effective deployment of connected infrastructure as sought by the IJA, ensuring the government's fiduciary duty to U.S. taxpayers by promoting cost effective solutions, and remaining consistent with U.S. national security objectives. Americans without access to broadband cannot wait for a domestic supply chain to be developed out of whole cloth, and the federal government has a clear path forward to ensure the success of the President's infrastructure agenda by instituting a waiver.

Signed,

Competitive Carriers Association (CCA)

Cellular Telecommunications Industry Association (CTIA)

NCTA – The Internet & Television Association

NTCA - The Rural Broadband Association

TechNet

Telecommunications Industry Association (TIA)

USTelecom – The Broadband Association

CC:

Alan Davidson, Assistant Secretary of Commerce for Communications and Information

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Jessica Rosenworcel, Chairwoman, Federal Communications Commission

Shalanda Young, Acting Director of the Office of Management and Budget

² <https://www.govinfo.gov/app/details/FR-2009-07-01/E9-15514>

³ <https://www.federalregister.gov/documents/2009/07/01/E9-15511/notice-of-limited-waiver-of-section-1605-buy-american-requirement-of-the-american-recovery-and>