

**Before the
U.S. DEPARTMENT OF COMMERCE
Washington, D.C. 20230**

In the Matter of)
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BEAD Program Nonavailability Waiver)
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COMMENTS OF THE WIRELESS INFRASTRUCTURE ASSOCIATION

I. INTRODUCTION AND SUMMARY

The Wireless Infrastructure Association (“WIA”)¹ respectfully submits these comments in response to the Department of Commerce’s (“DOC” or “Department”) Request for Comments on its Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband Equity, Access, and Deployment (“BEAD”) Program (“Notice of Proposed Waiver”).² WIA appreciates the Department giving due consideration to this important issue. As enacted in the Infrastructure Investment and Jobs Act (“IIJA”), the Buy American Preference to the BEAD Program is intended to spur domestic manufacturing. However, as noted by the Department, the supply chains for communications equipment currently span the globe; and the first goal of the BEAD Program is to ensure broadband

¹ WIA is the principal organization representing companies that build, design, own, and manage telecommunications facilities throughout the world. Its members include infrastructure providers, telecommunications carriers, and professional services firms.

² Notice, Request for Comments, *Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband Equity, Access, and Deployment Program*, DEP’T. OF Commerce (rel. Aug. 22, 2023), <https://www.commerce.gov/sites/default/files/2023-08/BEAD%20Waiver.pdf> [hereinafter *Proposed Nonavailability Waiver*].

connectivity to all Americans.³ This goal, whether achieved by wireless or wireline solutions, will require equipment and components not currently produced in the United States. Accordingly, Nonavailability Waivers like those proposed by the DOC are needed to ensure that BEAD funds can be deployed quickly and enable the purchase of needed components created outside the United States while domestic supply chains are being improved.

In order to ensure the success of the BEAD program, WIA generally supports the DOC adopting the Proposed Waiver. Indeed, the Proposed Waiver’s inclusion of wireless equipment inherently recognizes that Fixed Wireless Access (“FWA”) broadband will play an important role in the BEAD program, and for good reason. Consumers are flocking to new FWA technologies for their home broadband, making it the most popular new technology.⁴

Still, additional clarification is needed to ensure a workable compliance regime and allow for the efficient allocation of funds for broadband projects. First, while WIA supports DOC waiving the 55 percent component test for Equipment Cabinets,⁵ requiring these components to be both composed of domestic material and assembled in the U.S. will present significant hurdles to service providers. Second, the Department’s proposal to not allow components covered by the Nonavailability Waiver to be included in the *de minimis* exception will take away needed flexibility from service providers. Further, WIA encourages DOC to limit what items must be tracked for the *de minimis* waiver to those that can be precisely accounted for. Additionally, while the waiver is likely appropriately scoped for electronic equipment, there is additional non-electronic products

³ Infrastructure Investment and Jobs Act, Pub. Law No. 117-58, div. F (2021) [“IIJA”]. See also, *Proposed Nonavailability Waiver* at 3 (“The BEAD Program’s principal focus is deploying broadband service to unserved . . . and underserved locations.”).

⁴ Press Release, *About 3,500,000 Added Broadband From top Providers in 2022*, LIECHTMAN RESEARCH GROUP (Mar. 2, 2023), <https://www.leichtmanresearch.com/about-3500000-added-broadband-from-top-providers-in-2022/> (“Top broadband providers added about 3.5 million subscribers in 2022. Fixed wireless services accounted for 90% of the net broadband additions in 2022, compared to 20% of the net adds in 2021.”).

⁵ *Proposed Nonavailability Waiver* at 8.

related to FWA, such as passive antennas and radio frequency conditioning equipment, that may also fall outside the *de minimis* waiver. DOC should ensure that all necessary equipment can be acquired and used to deploy quality broadband networks. With these minor modifications, the DOC can successfully balance the needs of enabling broadband expansion while bolstering domestic manufacturing.

II. ADDITIONAL CLARIFICATIONS FOR COMPLIANCE WITH THE LIMITED NONAVAILABILITY WAIVER ARE NECESSARY TO ENSURE THE SUCCESS OF THE BEAD PROGRAM.

Delivering on the historic promise of universal connectivity provided for by Congress in the BEAD Program will require carefully crafted rules to ensure service providers can quickly deploy infrastructure associated with these funds. While the Proposed Nonavailability Waiver is a good first step towards this goal, additional clarifications are needed to ensure rules related to the Buy America preference do not become unnecessary barriers to deployment. Accordingly, WIA requests that the following changes and clarifications be made to the proposal to provide a workable framework.

a. DOC SHOULD CLARIFY THAT ENCLOSURE MANUFACTURERS MAY SATISFY BABA REQUIREMENTS BY EITHER USING DOMESTIC MANUFACTURING OR ASSEMBLY.

Enclosures, as defined in the Proposed Waiver, are a broad category of components that house network equipment such as active electronics, terminals, and fiber distribution frames.⁶ These enclosures are a critical part of networks, shielding sensitive equipment from interference from outside forces including weather, animals, and human activity. As providers work to extend networks to remote and rural areas that have been traditionally unserved, it is critical that equipment is adequately protected to provide reliable connectivity. While the Proposed Waiver

⁶ *Proposed Nonavailability Waiver* at 5.

removes the “55 percent cost of components” test,⁷ the requirement of both metal or plastic manufacturing and assembly being conducted within the United States⁸ presents an undue burden to broadband deployment.

WIA members report that the current common practice for enclosure manufacturing is to use domestically produced materials and components that are assembled in other countries. This has enabled vendors to ensure quality materials are being used while utilizing existing manufacturing infrastructure that is lacking in the U.S. and is unlikely to be onshored in the short term. Requiring enclosures to be both manufactured and assembled in the U.S. would take away this existing efficiency and will add additional cost and delay to BEAD funded networks. Accordingly, WIA recommends that NTIA require that enclosures only be either manufactured with domestic metal or plastic parts or assembled in the United States to satisfy BABA requirements. WIA believes this minor change will further the Administration’s goal of investing in American products while ensuring needed equipment is available.

b. DOC SHOULD ALLOW PRODUCTS COVERED BY THE NONAVAILABILITY WAIVER TO BE COUNTED IN *DE MINIMIS* AS NEEDED.

As noted in the De Minimis Waiver, waivers are not an alternative to increasing domestic production, but are “valuable tools to promote investment in our domestic manufacturing base in the long term by allowing recipients to continue to make major improvements in infrastructure.”⁹ A blanket removal of this *de minimis* waiver for enclosures will not significantly increase domestic production, but will likely limit flexibility needed by providers to procure specific equipment

⁷ *Id.* at 8.

⁸ *Id.*

⁹ Notice of Final Waiver, *Department-wide Public Interest Waivers for De Minimis Infrastructure Project Purchases, Small Grants, and Minor Components within Iron and Steel Products*, DEP’T. OF COMMERCE (rel. May 17, 2023), <https://www.commerce.gov/sites/default/files/2023-05/De%20Minimis%20Waiver.pdf> [hereinafter *De Minimis Waiver*].

where it is needed and not currently produced in compliance with the Build America requirements. Rather, providers should be able to include items covered by the Nonavailability Waiver in its *de minimis* expenditures where providers determine the needed equipment cannot be feasibly procured within the rules of the Build America requirement.

While the Nonavailability Waiver provides for broad categories of exempt equipment, it is incumbent on the DOC to ensure its rules are sufficiently flexible to allow for responses to an ever-changing supply chain landscape. Supply chain disruptions have increasingly become expected across industries. From lumber to baby formula, unforeseen circumstances can quickly make acquiring products more expensive, or even impossible.¹⁰ Outside of disruptions, allowing components covered by the Nonavailability Waiver to be included in *de minimis* waiver vests flexibility in service providers to invest in innovative solutions or procure specific equipment that may be needed for a deployment but is not produced domestically.

Finally, in accounting for *de minimis* costs, WIA encourages the DOC to not require recipients to track minor expenditures that may be disproportionately difficult to account for. Small, ubiquitous expenses, such as those for nuts, bolts, and other construction adhesives should be exempt from the *de minimis* accounting process. Currently, the DOC would require BEAD recipients to account for any component purchased in deploying broadband. However, it is not general industry practice to track these items and would require creating new systems that would add delay to projects. Further, this requirement can quickly become excessively burdensome if not reasonably limited and would likely have an outsized effect on smaller, competitive providers.

¹⁰ See, e.g., Virginia McDaniel, *How the Pandemic Drove up the Cost of Wood Products*, U.S. FOREST SERVICE (May 13, 2022), <https://www.fs.usda.gov/features/how-pandemic-drove-cost-wood-products> (providing how outside forces can significantly disrupt supply chains); Arohi Pathak ET AL, *The National Baby Formula Shortage and the Inequitable U.S. Food System*, CTR. FOR AM. PROG. (June 17, 2023), <https://www.americanprogress.org/article/the-national-baby-formula-shortage-and-the-inequitable-u-s-food-system/> (demonstrating how removing a singular American manufacturer can have long standing effects across the country).

Finally, the nominal cost of these components, even if tracked on a project-wide basis, would be unlikely to have a significant effect on domestic manufacturing. Rather, WIA recommends DOC create a reasonable minimum threshold for purchases to have to be evaluated for BABA compliance.

c. NON-ELECTRONIC PRODUCTS RELATED TO FIXED WIRELESS ACCESS SHOULD BE EXPLICITLY COVERED BY THE PROPOSED WAIVER.

While WIA believes the proposed waiver is appropriately scoped for electronic products related to Fixed Wireless Access, there are non-electronic products that should be further examined by NTIA to ensure there is adequate U.S. supply. Moreover, some non-electronic products may fall outside of the five percent threshold of the *de minimis* waiver for a given project. For example, certain passive antennas, radio frequency conditioning equipment (e.g., thermal dissipation materials), and power solutions may fall outside the scope of the *de minimis* waiver. As such, we encourage NTIA to re-examine its analysis of non-electronic products for Fixed Wireless Access deployments and to adjust the proposed waiver where necessary to account for non-electronic products used at a cellular site, while excluding ground and tower mount equipment, which is manufactured in the U.S. in sufficient quantities.

III. CONCLUSION

WIA appreciates the Departments' efforts on these important issues. It is critical that the Administration takes steps to bolster domestic manufacturing. However, it is also of great import that all Americans have the opportunity to connect to high-speed broadband. As DOC recognized in the Proposed Waiver, many of the needed components for these networks are not sufficiently produced domestically. Nonavailability Waivers of the Build America requirement are needed to ensure a sufficient supply of equipment while efforts to bring more of this manufacturing back onto our shores are underway. While the Proposed Waiver will generally provide the needed

flexibility to achieve the goals of the BEAD program, WIA believes additional clarifications are needed to ensure an effective and workable framework. Accordingly, WIA recommends DOC clarify that Enclosures are compliant with Build America requirements if they are either comprised of metal or plastic manufactured in the United States or if final assemblage takes place within the United States. Further, WIA encourages DOC to allow components covered by the Nonavailability Waiver to also be eligible as *de minimis* expenses when service providers determine it is needed.

Respectfully submitted,

/s/

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