

September 30, 2024

Shailen P. Bhatt
Administrator
Federal Highway Administration
U.S. Department of Transportation
725 17th Street, NW
Washington, D.C. 20590

Re: Notice and Request for Comment on Buy America Requirements for
Manufactured Products (Docket No. FHWA-2023-0037)

Dear Administrator Bhatt:

On September 23, 2024, the undersigned of USTelecom – The Broadband Association¹ (USTelecom) met with Jennifer Outhouse, Brian Hogge, Edwin Okonkwo, David Mraz, and David Serody of the FHWA to discuss the above-referenced proceeding. Consistent with USTelecom’s comments in this proceeding, USTelecom reiterated the importance of ensuring quick and efficient deployment funds from the Infrastructure Investment and Jobs Act of 2021 (Infrastructure Act). A key to that goal is ensuring that telecommunications providers can efficiently complete any relocation required as part of an FHWA project.

As an initial matter, neither any existing infrastructure already in place nor telecommunications relocation required as part of an FHWA project is subject to BABA requirements because the telecommunications relocation is ancillary to the infrastructure project (the highway development) funded by the Infrastructure Act. This is true regardless of whether the relocation is funded by federal monies.

Should the FHWA nonetheless conclude that federally funded telecommunications relocations are subject to BABA, USTelecom urges FHWA to maintain its waiver for the telecommunications industry. Without the waiver, existing and future highway projects will face significant delays, including projects funded by the Infrastructure Act. Telecommunications providers’ network facilities are deployed in the public rights-of-way, which fall along roadsides. Thus, FHWA-funded projects, such as highways, may require telecommunications providers to relocate their facilities. Telecommunications networks are comprised of dozens of different components that vary depending on the type of network. Relocation often involves a new network configuration, requiring providers to use new network components. Such components may include specialized cabinets, cross boxes, fiber distribution panels, fiber-fed terminals,

¹ USTelecom is the premier trade association representing service providers and suppliers for the communications industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks. Its diverse membership ranges from publicly traded corporations to local and regional companies and cooperatives, serving consumers and businesses across the country.

remote voice switches, and specialized products like hubs and splitters. Many of these products are not currently produced in the United States and onshoring will take years.² As a result, to complete the mandated relocation, the provider must purchase or use its existing inventory of manufactured products that are not made in the United States. Consequently, providers have historically relied on the FHWA's waiver.

Indeed, as evidenced by NTIA's recent waiver of the BABA rules for the BEAD Program, there is virtually no network equipment (other than fiber) which is "manufactured in the United States" and for which "the cost of the product's components mined, produced or manufactured in the United States exceeds 55 percent of the total cost of the product's components."³ All other network equipment, like most electronics and all passive optical equipment, were waived entirely, or the BABA standards were modified to allow those materials to be considered compliant, such as for certain active optical equipment and enclosures.⁴ Thus, waivers will be necessary for telecommunications facilities relocations. And the realities of the telecommunications industry supply chain are such that requiring individual waivers to be filed for the same equipment for every project makes little sense and will only serve to sow uncertainty, delay infrastructure builds, and increase costs by, among other things, stretching already limited resources for both government and providers.⁵ Maintaining the waiver for the telecommunications industry thus serves the public interest and its absence would significantly impede infrastructure projects.

USTelecom and its members stand ready to work with the FHWA and all government stakeholders to continue advancing infrastructure deployment across the United States. Please do not hesitate to contact us if you have questions or we can be of assistance.

Respectfully,

/s/ Diana Eisner

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² Dept. of Commerce, Nat'l Telecomm. and Info. Admin., *Limited Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband Equity, Access, and Deployment Program*, Notice of Final Waiver, p. 7 (Feb. 22, 2024) (BEAD Waiver), available at <https://www.commerce.gov/sites/default/files/2024-02/BABA%20Waiver%20Signed.pdf>; see also Dept. of Commerce, Nat'l Telecomm. and Info. Admin., *Limited Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Middle Mile Grant Program Awards*, Notice of Final Waiver, p. 7 (Apr. 5, 2023), available at <https://www.commerce.gov/sites/default/files/2022-09/NTIA%20Middle%20Mile%20BABA%20Waiver.pdf>

³ See generally BEAD Waiver.

⁴ See generally *id.*

⁵ See generally *id.*