



USET

SOVEREIGNTY PROTECTION FUND

Washington, DC Office
1730 Rhode Island Ave., NW, Suite 406
Washington, DC 20036

Nashville, TN Office
711 Stewarts Ferry Pike, Suite 100
Nashville, TN 37214
P: 615-872-7900 | F: 615-872-7417

*Transmitted Electronically
To tbcprnofo2@ntia.gov*

October 15, 2024

Director Jennifer Duane
Grants Management, Administration and Compliance
Office of Internet Connectivity and Growth
National Telecommunications and Information Administration
Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

Dear Director Duane,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the National Telecommunications and Information Administration's (NTIA) Notice and Request for Comments on a Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference (Buy America Waiver) for recipients of the Tribal Broadband Connectivity Program (TBCP) second Notice of Funding Opportunity (Second NOFO). USET SPF appreciates NTIA's efforts to conduct market research to determine the availability of U.S.-produced construction materials and manufactured products required for broadband infrastructure deployment under the TBCP Second NOFO, which is subject to the Buy America procurement preference of the Build America, Buy America Act (BABAA). Through this research, as well as consultation with Tribal Nations, NTIA has determined that there are certain materials and products necessary for the construction of broadband infrastructure that have limited production or availability in the United States. While USET SPF supports the adoption of a Buy America Waiver, we have concerns regarding some of the categories only partially covered by the Waiver. In addition, USET SPF asserts that a Buy America Waiver must be adopted indefinitely for all NTIA programs due to the persistent failure of the federal government to uphold trust and treaty obligations to fully fund Tribal infrastructure projects necessary for Nation rebuilding efforts.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Support for Adoption of the Buy America Waiver but with Concerns Regarding its Partial Application and Adherence to the Directives of EO 14112

USET SPF supports the adoption of NTIA's proposed Buy America Waiver. However, we have concerns regarding the partial application of the Waiver to certain materials and products. In its Notice and Request for Comments, NTIA has stated that the Buy America Waiver for manufactured products of electronics in TBCP projects would not apply fully to: 1) optical line terminals and remote optical line terminals (OLTs/ rOLTs); 2) OLT line cards; 3) optic pluggables; and 4) standalone optical network terminals and optical network units (ONTs/ONUs). NTIA has stated that it will waive only 55 percent of the cost of components requirement for manufactured products in these four categories of electronics.

While USET SPF is not concerned regarding the availability and potential costs of categories 3 and 4, we are concerned regarding the potential availability and costs associated with categories 1 and 2. Category 1, dealing with OLTs and rOLTs, are essential components for broadband deployment with OLTs being necessary for delivery of fiber to the home (FTTH) and fiber to the premises (FTTP) service and rOLTs being essential for expanding FTTH network delivery to remote locations and over broad geographic areas. We can assume that the use of rOLTs will be necessary to expand delivery of FTTH services to remote locations with sparse population densities, which would include many areas of rural Tribal Lands. Further, category 2 is an essential component for OLTs as they are high-capacity access nodes for delivery of multi-gigabit bandwidth speeds. For these reasons, we recommend that if NTIA is approached by a Tribal Nation regarding the cost prohibitive nature or limited availability of categories 1 and 2, then at a minimum, these should be seriously considered and reviewed on a case-by-case basis with NTIA granting a full Buy America waiver in the event that these products contribute to high broadband deployment and interconnection costs. This will be necessary to achieve the goals, objectives, and purpose of the TBCP, which is to deploy new broadband infrastructure, replace antiquated infrastructure, or upgrade or extend existing broadband infrastructure on Tribal Lands.

Further, in its Notice and Request for Comments, NTIA has asserted that the adoption of the Buy America Waiver adheres to [Executive Order \(EO\) 14112](#), "Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination." Specifically, NTIA references Section 5 of EO 14112, which directs federal agencies to increase the accessibility, equity, flexibility, and utility of federal funding and support programs for Tribal Nations. Section 5 directs agencies to provide waivers for federal funding programs for Tribal Nations to: 1) take into account the unique needs, limited capacity, or significant barriers faced by Tribal Nations by providing reasonable and appropriate exceptions or accommodations where necessary; and 2) increase the flexibility of funding for Tribal Nations by removing, where feasible, unnecessary limitations on Tribal spending. USET SPF applauds NTIA's consideration of EO 14112 in its decision to propose the Buy America Waiver. However, we remind NTIA that Section 5 of EO 14112 must apply to the aforementioned categories 1 and 2, if a Tribal Nation informs NTIA that these products are in limited supply and/or cost prohibitive for broadband deployment and adoption activities.

In addition, we remind NTIA that the directives of EO 14112 extend beyond the programmatic lifespan of the TBCP. Rather, EO 14112 applies to all NTIA programs focused on the deployment and adoption of broadband services on Tribal Lands and for Tribal citizens. Upholding and implementing the directives of EO 14112 must apply to all NTIA programs and funding opportunities—not just the TBCP Second NOFO—to fully adhere to its trust and treaty obligations to Tribal Nations and support our pursuit of Nation rebuilding. USET SPF strongly emphasizes this to NTIA, especially since it has indicated that the proposed Buy America Waiver would be reviewed annually to assess whether it remains necessary for the implementation of the TBCP.

Support for the Buy America Waiver for Unrepeated Submarine Cables

USET SPF supports NTIA's proposal to apply the Buy America Waiver to unrepeated submarine cables, which can provide cost savings for the deployment or upgrade of broadband infrastructure for Tribal coastal communities, including such infrastructure that crosses large lakes and rivers. Unrepeated submarine cables can provide lower cost deployment of middle mile or last mile networks, as well as interconnection services, for communities located near bodies of water with high population densities or difficult/challenging geographic terrain that would contribute to high-cost terrestrial broadband deployment. These cables offer a cost-effective alternative to ensure that TBCP funds are appropriately dedicated to achieving new broadband deployment and/or the upgrade of existing infrastructure on or near Tribal Lands. Unrepeated submarine cables also offer an alternative to point-to-point radio transmission systems since these fiber optics can achieve higher bandwidth speeds over a distance of almost 200 miles/nautical miles. The proposal to apply the Buy America Waiver to unrepeated submarine cables would also support the construction of carrier-neutral submarine cable landing stations, which were eligible project proposals for the TBCP Second NOFO.

NTIA Must Provide the Necessary Technical Assistance and Guidance to Appropriately Implement the Buy America Waiver

USET SPF has repeatedly opposed the imposition of the requirements of the BABAA on Tribal projects, as these purchasing requirements are likely to undermine the overall goals of advancing Tribal Nation sovereignty, self-determination, and infrastructure deployment on our lands. While Tribal Nations may purchase a product or supply consistent with the requirements of BABAA if they are widely available and affordable, USET SPF has consistently asserted that Tribal Nations must not be subject to these requirements if they would delay an infrastructure project or exceed approved budgets for a project. Many Tribal Nations contend with limited personnel and burdensome administrative requirements to complete projects. This issue can be further exacerbated if an approved project budget must be amended in the instance a project is delayed or goes over budget due to external circumstances, such as dealing with vendors for the purchase of materials and products. Tribal Nations already have limited access to a wide variety of products, supplies, and personnel, and enforcing BABAA purchasing requirements would further exacerbate this issue.

For these reasons, we strongly urge NTIA to provide the necessary technical assistance to support Tribal recipients of TBCP funds. This assistance will also be necessary in navigating the Buy America Waiver proposed by NTIA to determine what materials and products it applies to, though we reiterate that NTIA must adhere to the directives of Section 5 of EO 14112 as aforementioned in our comments. NTIA must identify and make available the necessary personnel required to assist Tribal Nations in utilizing TBCP funds for broadband deployment and adoption, as well as assist Tribal Nations in identifying cost-effective materials and products that would support appropriate use of TBCP funds. In addition, USET SPF recommends that NTIA develop standalone guidance/Frequently Asked Questions (FAQ) documents regarding the scope of the Buy America Waiver to inform TBCP recipients and subrecipients of how it applies to the various types of construction materials and manufactured products mentioned throughout NTIA's Notice and Request for Comments.

Conclusion


For too long the federal government has failed to uphold its trust and treaty obligations and fully fund the construction, maintenance, and renovation of critical infrastructure to support our communities. As a matter of Nation rebuilding, Tribal Nations must not be subject to restrictive purchasing requirements for infrastructure materials and products under the BABAA, especially if the costs of such significantly exceed market value or are simply not produced—or produced in low quantities—in the United States. As the U.S.

continues to contend with the economic stress of inflation, Tribal Nations must have the flexibility to purchase infrastructure materials and products outside of the BABAA requirements so that we may effectively and efficiently pursue efforts in Nation rebuilding and appropriately dedicate federal dollars to accomplishing this goal. USET SPF supports the proposed Buy America Waiver for the TBCP Second NOFO. However, we reiterate that such a waiver must be adopted indefinitely for all NTIA programs dedicated to broadband deployment and adoption on Tribal Lands and for Tribal citizens. This action is necessary to uphold NTIA's trust and treaty obligations to Tribal Nations and citizens, as well as adhere to the directives of EO 14112. We look forward to continued engagement with NTIA on this critically important matter and emphasize a general waiver of BABAA requirements for Tribal Nations across NTIA's programs and services. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director