



June 3, 2009

The Honorable Gary Locke, Secretary
U.S. Department of Commerce
1401 Constitution Avenue
Washington, DC 20230

The Honorable Tom Vilsack, Secretary
U.S. Department of Agriculture
1400 Independence Avenue
Washington, DC 20250

Re: Buy American

Dear Secretaries Locke and Vilsack:

I am writing to encourage you to issue a public interest waiver of the application of the American Recovery and Reinvestment Act's (ARRA) Buy American provision¹ to broadband equipment purchases by governmental participants in the Broadband Technologies Opportunities Program (BTOP) or RUS's broadband grant, loan, and loan guarantee program. A waiver serves the public interest by providing for the timely participation by governmental entities in these important stimulus programs, ensures governmental entities can compete effectively in the application process with the private sector, and will ensure that governmental applicants can help create broadband-related construction jobs to help promote economic recovery.

Broadband equipment is manufactured globally, both in terms of end-product manufacturing and equipment component sourcing. Requiring governmental entities to account for broadband equipment manufacturing in order to participate in BTOP and RUS's broadband stimulus program threatens to undermine their expeditious participation in these programs, which seek to spur immediate economic growth. Governmental entities have a vital leadership role to play in these programs – certainly as partners with private sector applicants, but also as network providers themselves – and Buy American regulation will only undermine their ability to participate in broadband stimulus programs in a timely fashion.

¹ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, § 1605 (2009) (ARRA).

Secretaries Locke and Vilsack
June 3, 2009
Page Two

The Office of Management and Budget has appropriately interpreted ARRA's Buy American provision as not applying to private sector participants in ARRA grant programs.² It is in the public interest to ensure that governmental entities in need of the very same broadband equipment for their own BTOP and RUS applications not be denied access to the same range of products – in terms of quality, capability and price - available to private sector participants. This is particularly the case, given that BTOP and RUS's program are expected to include an extremely competitive application process. Lower quality, lower capability, and higher cost equipment available to governmental entities as a consequence of Buy American regulation will only undermine the ability of governmental applications to compete effectively against those submitted by private sector applicants.

Finally, and as has been noted in various filings submitted to NTIA and RUS, the overwhelming benefit of BTOP and RUS's broadband program in the context of job creation arises through network construction, not broadband equipment procurement itself. Requiring governmental entities to comply with Buy American requirements for broadband equipment cannot serve the public interest, when such regulation threatens to reduce job growth otherwise created through shovel-ready broadband construction projects sponsored by governmental entities.

I respectfully urge both NTIA and RUS to carefully consider the consequences of the application of Buy American regulation to the global broadband equipment market, the resulting negative impact on governmental participation in BTOP and RUS's broadband program, and issue a public interest waiver of Section 1605's application to broadband equipment.

Sincerely,



Wes Rosenbalm
President and CEO

cc: Mark Seiffert, NTIA
John Morabito, NTIA
Kenneth Kuchno, RUS

² Memorandum For The Heads Of Departments And Agencies, Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, Office of Management and Budget, Appendix 9 (April 3, 2009).