



Via E-mail

May 4, 2009

Mr. Mark Seifert
Senior Advisor to the Assistant Secretary
Broadband Technologies Opportunities Program
National Telecommunications and Information Administration
U.S. Department of Commerce
Room 4812
1401 Constitution Avenue N.W.
Washington, D.C. 200230

**Ex Parte Notice. American Recovery and Reinvestment Act of 2009 –
Broadband Initiatives. Docket No. 090309298-9299-1.**

Dear Mr. Seifert:

On May 1, 2009, Mr. Mark Seifert, Senior Advisor to the Assistant Secretary with responsibility for the Broadband Technologies Opportunities Program, and I discussed the Buy America provisions of the American Recovery and Reinvestment Act (ARRA) as they relate to the broadband initiatives.

In our discussion, I raised these issues of interest and concern to CWA:

- The Communications Workers of America (CWA) strongly supports Buy America provisions, in ARRA and elsewhere, and opposes a blanket waiver for broadband equipment.
- CWA represents more than 700,000 employees, half of whom work in the communications industry.
- CWA worked tirelessly to support passage of the American Recovery and Reinvestment Act (ARRA), particularly the \$7.2 billion broadband stimulus provisions. We fully support the purpose of the ARRA – and its broadband component – to create and retain good jobs and promote economic recovery while investing in our nation’s long-term economic growth and prosperity.
- With 13.5 million Americans now officially counted as unemployed, it is more important than ever to maintain a laser focus on the job-creating

purpose of the ARRA to ensure that President Obama's goal of 3.5 million jobs will result from stimulus funding.

- To ensure that ARRA money is used to create *American* jobs, Congress enacted Section 1605 of the ARRA, the Buy America provisions. Section 1605 requires that all manufactured goods used for the construction, alteration, maintenance, or repair of a public building or public works funded by the Act must be produced in the United States.¹
- CWA strongly supports Buy America provisions, in ARRA and elsewhere, and opposes a blanket waiver for broadband equipment. In recent years, American manufacturers of broadband and telecommunications equipment have closed plants in the United States and moved offshore, eliminating tens of thousands of middle-class American jobs. Last year, for example, Alcatel-Lucent closed two facilities – one in the Merrimack Valley in Massachusetts and the other in Columbus, Ohio – facilities that formerly employed thousands of union members. Next month, Alcatel-Lucent plans to close a CWA-represented facility in Charlotte, North Carolina.
- Manufacturers should not be rewarded for creating a global supply chain that excludes American workers. As Congress made clear, stimulus funding is designed to create jobs for American workers, not profits for companies that have outsourced American jobs.
- In Section 1605 of the ARRA, Congress laid out a road map for granting limited exemptions to the Buy America provisions. The head of the federal agency or department may waive the Buy America provisions upon a finding that 1) the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality (a “non-availability” exemption); 2) the manufactured goods produced in the United States would increase the cost of the overall project by more than 25 percent; or 3) the Buy America provision would be inconsistent with the public interest.²

¹ Section 1605(a) of the ARRA reads: “Buy American. Use of American Iron, Steel, and Manufactured Goods. (a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.”

² ARRA, Section 1605(b).

- Several broadband equipment manufacturers have urged the NTIA and RUS to issue a blanket public interest waiver of the Buy America provisions of the ARRA for broadband equipment. They argue that many of the most important components of broadband networks are not produced at all or in sufficient quantity in the United States, and that there would be no cost-effective way to modify their practices to reflect Buy America provisions.³
- CWA opposes such a blanket public interest exemption from the Buy America provisions. For one thing, it is unclear why a nonavailability exception is not sufficient to meet the needs of the equipment manufacturers. The companies have not provided substantiated evidence to back up their assertion that these products are not built in the United States in sufficient quantity or quality. In fact, the request for a public interest exemption attempts to evade this question, as well as a granular description of the specific categories of equipment for which the exemption is sought, as well as what percent of that equipment is not considered domestic. (The Office of Management and Budget (OMB) in its Interim Final Guidance for implementation of ARRA Section 1605 notes that there are 51 foreign countries that should be considered as “domestic” in accordance with international agreements.)⁴ For which products would it increase the cost of the overall project by more than 25 percent to modify their practices to qualify for Buy America provisions? The manufacturers must make their case *for each category of equipment*; otherwise the agencies cannot meet their statutory obligation to provide information as to the reason for an

³ See for example, the Comments of Alcatel-Lucent and Cisco Systems, Inc., In the Matter of American Recovery and Reinvestment Act of 2009 Broadband Initiatives, Docket No. 090309298-9299-01, April 13, 2009.

⁴ “The international agreements that obligate recipients that are covered under an international agreement to treat the goods and services of a Party the same as domestic goods and services and the respective Parties to the agreements are: the World Trade Organization Government Procurement Agreement (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom); Dominican Republic-Central America-U.S. Free Trade Agreement (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua), North American Free Trade Agreement (Canada and Mexico); United State-Australia Free Trade Agreement; United States-Bahrain Free Trade Agreement ; United States-Chile Free Trade Agreement; United States-Israel Free Trade Agreement; United States-Morocco Free Trade Agreement; United State-Oman Free Trade Agreement; United States-Peru Trade Promotion Agreement; and United States-Singapore Free Trade Agreement; and United States-European Communities Exchange of Letters (May 15, 1995).” See Office of Management and Budget, Interim Final Guidance for Federal Financial Assistance, Issued April 3, 2009.

exemption. As we have learned through painful precedent, “trust me” is not acceptable evidence.⁵

- CWA is mindful of the need to move broadband stimulus funding as quickly as possible in order to have the maximum stimulative effect on the economy and jobs. Moreover, we are hopeful that CWA-represented technicians will build, operate, and service many of the projects built with this funding. With this goal in mind, CWA entered into discussions with Alcatel-Lucent and Cisco in an attempt to reach agreement on an expedited process to implement the Buy America provisions. We were unable to reach agreement on a compromise process that balances the need to distribute funds quickly but that also creates and retains American jobs. We continue to be open to further discussion.
- CWA believes that the streamlined process we outline below will create and retain American jobs, ensure compliance with ARRA Buy America requirements, and facilitate expeditious funding for broadband projects.

CWA Recommendation for Streamlined Process to Ensure Compliance with ARRA Buy America Provisions

CWA proposes that the NTIA and RUS adopt the following streamlined procedure to ensure compliance with the ARRA Section 1605 Buy America requirements. This procedure should be published in the Notice of Funds Availability (NOFA). It is our understanding that this process is consistent with the process of self-certification used by the USDA Rural Utilities Service Rural Development Telecommunications Programs for which Buy America requirements apply.⁶

⁵ According to a report by the U.S. Business and Industry Council, the only publicly available study that CWA has identified, 53.68 percent of “telephone switch apparatus,” 48.57 percent of “electric computers,” 47.26 percent of “radio and TV broadcasting and wireless equipment,” and 52.38 percent of “semiconductors and related devices” purchased in this country are made in the United States. While we acknowledge that these categories are not granular enough for our purposes, it is the responsibility of the equipment manufacturers to provide the granular evidence to substantiate their request for a blanket broadband equipment exemption.

⁶ The RUS Buy America provisions operate under the statutory provisions of the 1936 Rural Electrification Act. The only trade agreement countries considered as “domestic” in this program are Canada, Mexico, and Israel. The “List of Materials Acceptable for Use on Systems of USDA Rural Development Telecommunications Borrowers” includes fiber-to-the-home access equipment, multi-service access equipment, digital switching equipment, softswitch equipment, wireless network equipment, among other categories. Unless otherwise specified, the listed equipment meets Buy America provisions.

Mr. Mark Seifert
May 4, 2009
Page 5

1. In the application for broadband stimulus funds, those applicants that are subject to Buy America requirements shall include a list of the broadband equipment that the applicant anticipates using in the project. For each piece of equipment or for each systems solution, the applicant shall certify whether 1) it meets the Buy America provisions; or 2) it qualifies for a Buy America exemption based on unavailability, cost, or other public interest reasons.
2. Upon receipt of a grant, grantees will finalize contracts for the broadband equipment necessary to build the project. At this point, the grantee will certify whether the equipment or systems solution 1) meets the Buy America provisions; or 2) qualifies for a Buy America exemption based on unavailability, cost, or other public interest reasons.
3. Self-certification shall be subject to challenge. Upon challenge, a federal agency with expertise in Buy America provisions shall conduct an investigation and reach a determination within a one-month time frame. Applicants that have not been truthful shall be subject to a fine and shall lose grant funding.
4. The NTIA and RUS shall consider all equipment that the RUS has already listed in its publication "List of Materials Acceptable for Use on Systems of USDA Rural Development Telecommunications Borrowers" that meet Buy America requirements as acceptable for Buy America purposes.
5. The NTIA shall consider as domestic all equipment made in any of the 51 countries listed in the OMB Interim Final Guidance dated April 3, 2009, or any subsequent update. This shall apply to state and local government public works projects.

CWA remains open to discussion of our proposal, consistent with the goals of the ARRA and Buy America provisions to create and retain good jobs for Americans.

Sincerely,



Debbie Goldman
Telecommunications Policy Director
Communications Workers of America