

2023

BROADBAND EQUITY ACCESS AND DEPLOYMENT

Initial Proposal - Volume 1

FINAL SUBMISSION

(does not include de-duplication
results)



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Existing Broadband Funding (Requirement 3)

Identify existing efforts funded by the federal government or an Eligible Entity within the jurisdiction of the Eligible Entity to deploy broadband and close the digital divide, including in Tribal Lands.

1.1.1 Attachment: As a required attachment, submit the file identifying sources of funding, a brief description of the broadband deployment and other broadband-related activities, the total funding, the funding amount expended, and the remaining funding amount available. Eligible Entities may copy directly from their Five-Year Action Plans.

BEAD Initial Proposal Volume 1 Existing Broadband Funding Sources.csv

Unserved and Underserved Locations (Requirement 5)

Identify each unserved location and underserved location under the jurisdiction of the Eligible Entity, including unserved and underserved locations in applicable Tribal Lands, using the most recently published Broadband DATA Maps as of the date of submission of the Initial Proposal, and identify the date of publication of the Broadband DATA Maps used for such identification.

1.2.1 Attachment: As a required attachment, submit one CSV file with the location IDs of each unserved location including unserved locations in applicable Tribal Lands.

See the “unserved .csv” attachment in the Initial Proposal Volume 1 section on the following web page: <https://www.kansascommerce.gov/officeofbroadbanddevelopment/broadband-equity-access-and-deployment/>

1.2.2 Attachment: As a required attachment, submit one CSV file with the location IDs of each underserved location including underserved locations in applicable Tribal Lands.

See the “underserved .csv” attachment in the Initial Proposal Volume 1 section on the following web page: <https://www.kansascommerce.gov/officeofbroadbanddevelopment/broadband-equity-access-and-deployment/>

1.2.3 Date Selection: Identify the publication date of the National Broadband Map that was used to identify the unserved and underserved locations.

The data was sourced on June 1, 2023, by KOBD from the May 30, 2023, version of the FCC Broadband DATA Map, which can be found here:

<https://broadbandmap.fcc.gov/home>

In accordance with the NTIA guidelines of BEAD, locations served exclusively by satellite, unlicensed spectrum, or a technology not specified by the FCC for purposes of the Broadband DATA Maps will not meet the criteria for reliable broadband service and will be considered “unserved.”

Community Anchor Institutions (Requirement 6)

Describe how the Eligible Entity applied the statutory definition of the term “community anchor institution,” identified all eligible CAIs in its jurisdiction, identified all eligible CAIs in applicable Tribal Lands, and assessed the needs of eligible CAIs, including what types of CAIs it intends to serve; which institutions, if any, it considered but declined to classify as CAIs; and, if the Eligible Entity proposes service to one or more CAIs in a category not explicitly cited as a type of CAI in Section 60102(a)(2)(E) of the Infrastructure Act, the basis on which the Eligible Entity determined that such category of CAI facilitates greater use of broadband service by vulnerable populations.

1.3.1 Text Box: Describe how the statutory definition of “community anchor institution” (e.g., schools, libraries, health clinics) was applied, how eligible CAIs were identified, and how network connectivity needs were assessed, including the types of CAIs that the Eligible Entity intends to serve.

Based on the statutory definition of “community anchor institution” from 47 USC 1702 (a)(2)(E), KOBD defines “community anchor institution” to mean a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization (including any public housing agency, HUD-assisted housing organization, or Sovereign Nation Tribal housing organization), or community support organization that facilitates greater use of broadband service for covered populations including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals..

The following definitions and sources were used by KOBD to identify the types of CAIs:

The following sources were used by KOBD to identify CAIs:

- **Schools:** K-12 schools include those that participate in the FCC’s E-Rate program or have a National Center for Education Statistics (NCES) ID in the categories of “public schools” or “private schools.”
- **Libraries:** Libraries include those that participate in the FCC’s E-Rate program, are American Library Association (ALA) member libraries and their branches, and those on record with the State Librarian.

Local, state, federal or tribal government building listings: KOBD used the U.S. General Services Administration’s (GSA) “Inventory of GSA Owned and Leased Properties” to identify federal buildings in Kansas. State, local, and Sovereign Tribal Nation government buildings were identified by consulting state, territorial, and tribal records.

- **Health clinic, health center, hospital, or other medical providers:** The list includes institutions that have a Centers for Medicare and Medicaid Services (CMS) identifier, such as health clinics, health centers, hospitals, and other medical providers like optometrists, ophthalmologists, and other practitioners, regardless of size (single practitioners were included as well as medical clinics with multiple practitioners.) Retail locations that may provide medical supplies were not included as CAIs.
- **Public safety entity:** The list includes entities based on records maintained by the state and local units of government, such as fire houses, emergency medical service stations, police stations, and public safety answering points (PSAP). The list of PSAPs also includes those in the FCC PSAP registry.
- **Institutions of higher education:** Institutions of higher education include those that have a NCES ID in the category of “college,” including junior colleges, community colleges, minority serving institutions, historically black colleges and universities, universities, and other educational institutions.

- **Public housing organizations:** Public housing organizations were identified by contacting the Public Housing Agencies (PHA) for the state or territory enumerated by the U.S. Department of Housing and Urban Development. The nonprofit organizations, the Public and Affordable Housing Research Corporation (PAHRC), and the National Low-Income Housing Coalition maintain a database of nationwide public housing units at the National Housing Preservation Database (NHPD). The housing units were not included as CAIs, but the organizations that manage and support them in the public interest were included.
- **Community support organizations:** KOBD drew on interviews, focus meetings, and research from state, territorial, Sovereign Tribal Nations, county, and community resources to identify any organization that facilitates greater use and public availability of broadband service by covered populations. Senior and job training centers were also included, where KOBD utilized The National Council on Aging (NCOA) to help identify senior centers. “American Job Training” training centers were identified using the Department of Labor’s database which can be accessed at the American Job Center Finder.

To assess the network connectivity of the types of community anchor institutions listed above, KOBD performed the following activities:

- a. **Engaged government agencies.** KOBD engaged state departments and agencies to understand what available records they maintain regarding community anchor institutions and their broadband service availability. KOBD coordinated with the Kansas Department of Education to determine which schools and libraries do not currently have access to subscribe to 1 Gbps symmetrical broadband service and to better understand what the State Educational Technology Directors Association (SETDA) recommended for school districts in their Broadband Imperative III document. Additionally, KOBD cross-referenced the Department of Health and Department of Human Services’ records to determine which community anchor institutions (e.g., state-run health clinics) lack access to subscribe to 1 Gbps symmetrical broadband service. Further, KOBD reached out to all primary and secondary Public Safety Answering Points (PSAP) based on the FCC 911 Master PSAP Registry to obtain broadband service availability data. Then, KOBD engaged Kansas Department of Administration which leads procurement of goods and services to obtain availability and network connectivity needs based on existing records of procured broadband service for community anchor institutions.

A list of engaged state agencies and sub-agencies is listed below:

- Kansas Department for Aging and Disability Services
- Kansas Department of Corrections
- Kansas Department of Health and Environment
- Kansas Department of Administration
- State of Kansas Executive Branch Information Technology
 - Office of Information Technology Services
 - Kansas Information Security Office
- Kansas Department of Agriculture
- Kansas Department for Children and Families
- Kansas Department of Labor
- Kansas Adjutant General’s Department: Kansas Homeland Security
 - Emergency Medical Services
 - Fire Marshall
 - Highway Patrol
 - Kansas Bureau of Investigation
 - Statewide Interoperability Coordinator

- 911 Coordinating Council
- Kansas Board of Regents (Higher Education)
- Kansas Department of Education (Pre-school - 12)
- Secretary of State
- State Library of Kansas
- Kansas Department of Transportation
- Commission on Veteran Affairs Office
- Kansas Department of Wildlife and Parks
- Kansas Housing Resource Corporation (not state agency; administrator of federal housing for State of Kansas)
- Information Network of Kansas
- Information Technology Advisory Board
- Lt Governor/ Kansas Department of Commerce
- Office of the Governor
 - Kansas African American Affairs Commission
 - Kansas Corporation Commission
 - Kansas Hispanic and Latino American Affairs Commission
 - Kansas Native American Affairs Commission

b. **Engaged community-based and nonprofit organizations.** KOBD engaged community-based and nonprofit organizations to coordinate and obtain 1 Gbps broadband service availability data for community anchor institutions. Specifically, KOBD requested information related to broadband availability needs from the member organizations across all geographic regions.

A list of those organizations is below:

- AARP
- Central Kansas Library System
- Central Plains Area Agency on Aging
- East Central Kansas Area Agency on Aging
- Farm Bureau
- Haskell Indian Nations University
- Jayhawk Area Agency on Aging
- Johnson County Area Agency on Aging
- KanREN
- All Kansas Regional Economic Development groups
- Kansas Association of Community Action Programs
- Kansas Association of Community College Trustees
- Kansas Association of Counties
- Kansas Association of Technical Colleges
- Kansas Health Foundation
- Kansas Hospital Association
- Kansas Independent College Association
- Kansas Library Association
- Kansas State University Kansas State University Extension Offices
- League of Kansas Municipalities
- Mid-America Regional Council
- NAACP
- North Central-Flint Hills Area Agency on Aging, Inc.

- North Central Kansas Library System
- Northeast Kansas Library System
- Northwest Kansas Library System
- South Central Kansas Area Agency on Aging
- South Central Kansas Library System
- Southeast Kansas Library System
- Southern Christian Leadership Conference
- Southwest Kansas Area Agency on Aging
- Southwest Kansas Library System
- University of Kansas Institute for Policy and Social Research
 - Kansas State Data Center
- United Methodist Health Ministry Fund
- United School Administrators of Kansas
- University of Kansas
- Wichita State University
- Wyandotte / Leavenworth Area Agency on Aging

- c. **KOBD reviewed locations** to identify state, county, local and federally leased spaces that house one or more essential services due to their role in advancing access to broadband and for facilitating greater use of broadband services by vulnerable populations including low-income individuals, unemployed individuals, aged individuals, and non-English speaking individuals. These locations are critical for Kansas' covered populations as these buildings often house childcare and financial assistance, housing assistance, food benefits (SNAP, WIC, etc.), translation services, and immigration or probation services. This effort was to ensure that the universal service plan accommodates the broadband needed to support those they serve with essential services. KOBD excluded government buildings it could identify that do not directly facilitate greater broadband use by covered populations including, but not limited to, federally owned buildings, transportation equipment hubs, municipal or private airports, and military facilities. Local city, town, and county government offices are the most common government buildings of the 344 government buildings listed as CAIs.

Additionally, each Internet Service Provider (ISP) was asked to provide the highest broadband service speed available to each CAI. Given the timing of this request and the comment period for BEAD-IP Volume 1, the providers were encouraged (during the bi-weekly industry roundtable meetings) to use the public comment process to populate available service speeds for CAI locations. In addition, KOBD reviewed all publicly available information to determine service speed availability and service plans used for CAIs to understand the plans required to fully serve all CAIs.

The service provider(s) who did not populate the service availability for every CAI location during the public comment period nor in response to initial requests made prior to public comment are being contacted via an email campaign to complete the process. Additionally, KOBD is contacting all CAIs to verify their need and desire for 1Gbps symmetrical service. These contacts are being conducted via an additional email campaign. This survey of all CAIs to confirm their need for 1Gbps symmetrical service and the capture of available service plans will be complete prior to the final submission for the Initial Proposal. While it is outside the Initial Proposal, KOBD has also required that each subgrantee applicant must include their service availability for each CAI location in any BEAD proposal (Volume 2; Requirement 8.)

During the public comment period additional CAI locations were offered and after reviewing the submissions to verify their qualifications under CAI guidelines, they were added to the KOBD inventory. There were no recommended deletions.

1.3.2 Attachment: As a required attachment, submit the CSV file (named “cai.csv”) that lists eligible community anchor institutions that require qualifying broadband service and do not currently have access to such service, to the best of the Eligible Entity’s knowledge.

See the “cai.csv” attachment in the Initial Proposal Volume 1 section on the following web page:
<https://www.kansascommerce.gov/officeofbroadbanddevelopment/broadband-equity-access-and-deployment/>

Challenge Process (Requirement 7)

Include a detailed plan to conduct a challenge process as described in Section IV.B.6.

1.4.1 Yes/No Box: Select if the Eligible Entity plans to adopt the NTIA BEAD Model Challenge Process for Requirement 7.

Kansas will adopt the NTIA BEAD Model Challenge Process.

Y

1.4.2 Text Box: If applicable, describe any modifications to classification of broadband serviceable locations in the Eligible Entity’s jurisdiction as “served,” “underserved,” or “unserved,” and provide justification for each modification.

Module 2: Pre-Challenge DSL Modifications

Kansas will make Digital Subscriber Line (DSL) modifications by ensuring all BSL locations that have DSL as their highest and best speed service available are reflected as “underserved” per NTIA guidance. A subscriber who is only buying DSL service, but has higher speeds available, will not justify an “underserved” designation. This modification will better reflect BSLs eligible for BEAD funding as it will facilitate the phase-out of legacy copper facilities and ensure the delivery of “future-proof” broadband service.

Module 3: Pre-Challenge Speed Test Modifications

KOBD will reclassify BSLs the National Broadband Map shows to be “served” to “underserved” or those that show “underserved” as “unserved” if acceptable speed tests (i.e., that align to the BEAD Model Challenge Process Speed Test Module) demonstrate the “served” or “underserved” locations receive service that is materially below 100 Mbps downstream and 20 Mbps upstream as required by BEAD. Additionally, should the results of these same tests indicate service below 25 Mbps downstream and 3 Mbps upstream, the location will be modified to “unserved.” These modifications will better reflect BSLs eligible for BEAD funding because it will consider the actual and validated speeds of specific locations. Acceptable speed test methodologies are described below in accordance with NTIA guidelines.

Speed Test Requirements (Pre-Challenge Process)

KOBD will capture speed tests prior to the challenge process to facilitate the pre-challenge modifications, consistent with BEAD NOFO guidance. Pre-challenge modification speed tests will follow the NTIA guidelines for the challenge process to ensure evaluations for possible BSL status updates are documented using fair and transparent evaluations. Upon public notice of the Pre-Challenge Speed Tests Process, KOBD will publish a list of all BSLs to include their “served,” “underserved,” and “unserved” status as a basis for public information. The Pre-Challenge Speed Test Process instructions will detail the guidelines, timeline, and possible outcomes based on the results achieved during the tests.

Only speed tests conducted via the broadbandks.com site will be considered for pre-challenge modifications. These speed tests apply performance evaluations from OOKLA, M-Lab, and Cloudflare (i.e., approved NTIA speed tests). Acceptable speed tests must be conducted on three different days that do not need to be consecutive. To be considered for the pre-challenge modification process, speed tests must be captured between October 6, 2023, at 7:00 pm CT until November 5, 2023, at 7:00 pm CT. Final dates to be confirmed via a public notice at least three calendar days prior to commencement.

Each acceptable speed test must include:

- The time and date the speed test was conducted.
- The provider-assigned internet protocol (IP) address, either version 4 or version 6, that identifies the residential gateway conducting the test.

Each group of three speed tests must include:

- The name and street address of the customer conducting the speed test.
- A certification of the speed tier or service plan to which the customer subscribes (e.g., a copy of the customer's last invoice).
- An agreement, using an online acknowledgement contained within the speed test, that grants access to informational elements like the internet protocol (IP) address and speed test results to any contractors supporting the challenge process, and the service provider if needed for challenge or eventual rebuttal.

The subscriber's name, street address, and IP address are considered personally identifiable information (PII) and will not be disclosed to the public (e.g., as part of a challenge dashboard or open data portal).

Once at least three speed tests are collected, the median will trigger consideration for a speed-based (S) challenge, for either upload or download speeds. For example, if a "served" location claims a broadband speed of 100 Mbps/20 Mbps and three speed tests result in download speed measurements of 105, 102, and 98 Mbps, and upload speed measurements of 18, 26, and 17 Mbps, a challenge will be validated, since the median of the measured upload speed marks the location as underserved (<20 Mbps).

Subscribers who submit a speed test must certify the speed tier or service plan to which they subscribe. To qualify for a challenge consideration, the subscribed service plan must meet or exceed the BEAD standard of 100/20 Mbps for "served" or 25/3 Mbps for "underserved." For example, if the certified service plan is 100/20 Mbps or greater and the median of the measured tests demonstrate less service, the location would be reclassified to "underserved." If the certified service plan is 25/3 Mbps or greater and the median of the measured tests demonstrate less service, the location would be reclassified to "unserved." However, even if a particular service offering is not meeting the speed threshold, the eligibility status of the location may not change. For example, if a BSLs is served by 100 Mbps licensed fixed wireless and 500 Mbps through fiber, conducting a speed test on the fixed wireless network that shows a speed of, for example, 70 Mbps, will not change the status of the location.

Notwithstanding the above, if a particular service offering does not meet the speed threshold, the eligibility status of that location may not qualify for a changed status under the Pre-Challenge Speed Test Modification. If multiple service providers are available in an area, failure by one provider does not indicate failure for all. Moreover, if advertised speeds are available from alternative providers, the test is considered invalid.

The Pre-Modification Speed Test Challenge is to establish services not provided at 100/20 Mbps or above, if they are adequately contracted, and to appropriately reclassify BSLs. All speed tests will be reviewed by KOBD and compiled into a reclassification list of addressable locations for the BEAD Challenge Process. This reclassification list, inclusive of all de-duplications, will be shared with all providers no less than 14 days prior to the beginning of the Challenge Process. Any exceptions to these reclassified addresses will be handled as a defensive challenge by the providers during the normal challenge process; meaning it will not

face rebuttal but will be directed to KOBD to provide the available documentation and perform adjudication as required.

1.4.3 Yes/No Box: Select if the Eligible Entity plans to use the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments.

Kansas plans to use the NTIA Eligible Entity Planning Toolkit.

Y

1.4.4 Text Box: Describe the process that will be used to identify and remove locations subject to enforceable commitments.

KOBD will enumerate locations subject to enforceable commitments by using the BEAD Eligible Entity Planning Toolkit, and consult the following data sets:

1. The Broadband Funding Map published by the FCC pursuant to IIJA § 60105.
2. Data sets from state broadband deployment programs from the U.S. Treasury’s ARPA programs (i.e., the Capital Projects Fund and the State and Local Fiscal Recovery Funds).
3. State and local data collections of existing enforceable commitments.

KOBD will create a list of BSLs subject to enforceable commitments based on state, territory, or local grants or loans. KOBD will draw on provider agreements, along with its existing database on state and local broadband funding programs’ binding agreements, to determine the set of state and local enforceable commitments. If necessary, KOBD will translate polygons or other geographic designations (e.g., a county or utility district) describing the area to a list of Fabric locations. This list will be submitted to the NTIA, in the format specified by the FCC Broadband Funding Map.

KOBD will review existing state and local broadband grant programs to validate the committed upload and download speeds of existing binding agreements. In situations in which the state or local program did not specify broadband speeds, or when there was reason to believe a provider deployed higher broadband speeds than required, KOBD will reach out to the provider to verify the deployment speeds of the project area within the enforceable commitment. KOBD will document this process by requiring providers to certify through a signed binding agreement the actual broadband speeds deployed.

1.4.5 Attachment: As a required attachment, submit the list of the federal, state/territorial, and local programs that will be analyzed to remove enforceable commitments from the set of locations eligible for BEAD funding.

See the “BEAD Initial Proposal Volume 1 Existing Broadband Funding Sources.csv” attachment in the Initial Proposal Volume 1 section on the following web page:

<https://www.kansascommerce.gov/officeofbroadbanddevelopment/broadband-equity-access-and-deployment/>

1.4.6 Text Box: Describe the plan to conduct an evidence-based, fair, transparent, and expeditious challenge process.

Based on the NTIA BEAD Challenge Process Policy Notice (Policy Notice), the following represents a transparent, fair, expeditious, and evidence-based challenge process.

Permissible Challenges

KOBD will only allow challenges on the following grounds:

- The identification of eligible CAIs, as defined by the Eligible Entity
- CAI BEAD eligibility determinations
- BEAD eligibility determinations for existing BSLs
- Enforceable commitments
- Planned service

Permissible Challengers

KOBD will only allow challenges from nonprofit organizations, units of local or tribal governments, or broadband service providers.

Challenge Process Overview

Administered by KOBD, the challenge process will include four phases conducted over no more than 120 days:

1. **Publication of Eligible Locations:** KOBD will publish the set of BSLs eligible for BEAD funding, which will consist of the locations resulting from the activities outlined in Sections 5 and 6 of the Policy Notice (e.g., administering the deduplication of funding process). Publication is tentatively scheduled for November 25, 2023, immediately following approval of BEAD-IP Volume 1 and the submission of BEAD-IP Volume 2.
2. **Challenge Phase:** A challenger will submit their challenge through the KOBD portal. It will be visible to the ISP whose service availability and performance are being contested. The portal will notify the provider of the challenge through an automated email, which will include related information about the timing for the provider's response. The location will then be considered "challenged."
 - a. **Minimum Level of Evidence Sufficient to Establish a Challenge:** The KOBD challenge portal will verify the "challenged" address can be found in the Fabric and is a BSL. The portal will confirm the challenged location is listed in the Broadband DATA Map, meets the definition of reliable broadband service, and a verifiable email address is being used. For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition (OCR). For availability challenges, KOBD will manually verify the evidence submitted falls within the categories stated in the Policy Notice and the documents provided are unredacted and dated.
 - b. **Timeline:** A challenge must be submitted within 30 calendar days from the time the initial list of unserved and underserved locations, CAIs and existing enforceable commitments are posted with notice of the challenge portal opening. The challenge phase is tentatively scheduled from December 4, 2023, to January 3, 2024.
3. **Rebuttal Phase:** Only a challenged ISP may rebut the reclassification of a location or area, and if properly rebutted, it would cause the location or locations to be considered "disputed." If a proper challenge (i.e., one that meets the minimum level of evidence) is not rebutted, the challenge is "substantiated." If the provider agrees with the challenge, the location is then considered "sustained."
 - a. **Timeline:** ISPs will have 14 calendar days to file their rebuttal, from the notice given by KOBD of the challenge filed against them. Challenged ISPs will be notified as challenges are filed and can file a rebuttal any time during the 14-day rebuttal period. The rebuttal phase is tentatively scheduled from December 5, 2023, to January 17, 2024, but is limited to any 14-day period after the notice of challenge is provided by KOBD.
4. **Final Determination Phase:** KOBD will make final determinations on the classification of a location, by declaring the challenge "sustained" or "rejected."

- a. **Timeline:** KOBD will make a final challenge determination within 30 calendar days of a challenge’s rebuttal. Reviews will occur on a rolling basis. The final determination phase is tentatively scheduled from December 5, 2023, to February 16, 2024.

Evidence & Review Approach

To ensure that each challenge is reviewed and adjudicated based on fairness for all participants and relevant stakeholders, KOBD will review all applicable challenge and rebuttal information without bias, before a final determination is made. KOBD will create and provide a standard of review to be applied by reviewers and will require each reviewer to document their justification for each final determination. Reviewers will be sufficiently trained to apply the standard of review uniformly and must submit affidavits stating no conflict of interest exists to allow for fair final determinations.

A list of challenge types with specific examples is provided in Table 2.

Table 2: Challenge Types with Examples

Code: A
 Challenge Type: Availability
 Description: The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU).
 Specific Examples: 1. Screenshot of provider webpage
 2. A service request refused within the last 180 days (e.g., an email or letter from provider)
 3. Lack of suitable infrastructure (e.g., no fiber on pole)
 4. A letter or email dated within the last 365 days that a provider failed to schedule a service installation or offer an installation date within 10 business days of a request¹
 5. A letter or email dated within the last 365 days indicating that a provider requested more than the standard installation fee to connect this location or that a provider quoted an amount more than the provider’s standard installation charge to connect service at the location
 Permissible Rebuttals: 1. Provider shows that the location subscribes or has subscribed within 12 months, e.g., with a copy of a customer bill
 2. Provider submits evidence that service is now available as a standard installation, e.g., via a copy of an offer sent to the location

Code: S
 Challenge Type: Speed
 Description: The actual speed of the fastest available service tier falls below the unserved or underserved thresholds.
 Specific Examples: Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests
 Permissible Rebuttals: Provider has countervailing speed test evidence showing sufficient speed (e.g., from their own network management system)²

Code: L

¹ A standard broadband installation is defined in the Broadband DATA Act (47 U.S.C. § 641(14)) as “[t]he initiation by a provider of fixed broadband internet access service [within 10 business days of a request] in an area in which the provider has not previously offered that service, with no charges or delays attributable to the extension of the network of the provider.”

² As described in the NOFO, a provider’s countervailing speed test should show that 80 percent of a provider’s download and upload measurements are at or above 80 percent of the required speed. See *Performance Measures Order*, 34 FCC Rcd at 6528, para. 51. See BEAD NOFO at 65, n. 80, Section IV.C.2.a.

Challenge Type: Latency
Description: The round-trip latency of the broadband service exceeds 100 ms.
Specific Examples: Speed test by subscriber, showing the excessive latency
Permissible Rebuttals: Provider’s countervailing speed test evidence showing latency at or below 100 ms (e.g., from the provider’s network management system)³

Code: D
Challenge Type: Data cap
Description: The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer
Specific Examples: 1. Screenshot of provider webpage
2. Service description provided to consumer
Permissible Rebuttals: Provider’s terms of service showing that the provider does not impose a data cap

Code: T
Challenge Type: Technology
Description: The technology indicated for this location is incorrect.
Specific Examples: Manufacturer and model number of residential gateway that demonstrates the service is delivered via a specific technology.
Permissible Rebuttals: Provider’s countervailing evidence from their network management system showing an appropriate residential gateway that matches the provided service

Code: B
Challenge Type: Business service only
Description: The location is residential, but the service offered is marketed or available only to businesses.
Specific Examples: Screenshot of provider webpage
Permissible Rebuttals: Provider documentation that the service listed in the BDC is available at the location and is marketed to consumers

Code: E
Challenge Type: Enforceable Commitment
Description: The challenger has knowledge that broadband will be deployed at this location by the date established in the deployment obligation.
Specific Examples: 1. Enforceable commitment by service provider (e.g., authorization letter)
2. In the case of Sovereign Tribal Nation lands, submission of the requisite legally binding agreement between the relevant Tribal Government and the service provider for the location(s) at issue (see Section 6.2 above)
Permissible Rebuttals: Documentation that the provider has defaulted on the commitment or is otherwise unable to meet the commitment (e.g., is no longer an ongoing concern)

Code: P
Challenge Type: Planned service
Description: The challenger has knowledge that broadband will be deployed at this location by June 30, 2024, without an enforceable commitment or a provider is building out broadband offering performance beyond the requirements of an enforceable commitment.

³ *Ibid.*

Specific Examples: 1. Construction contracts or similar evidence of ongoing deployment, along with evidence that all necessary permits have been applied for or obtained.
2. Contracts or a similar binding agreement between the Eligible Entity and the provider committing that planned service will meet the BEAD definition and requirements of reliable and qualifying broadband even if not required by its funding source (i.e., a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024

Permissible Rebuttals: Documentation showing that the provider is no longer able to meet the commitment (e.g., is no longer an ongoing concern) or that the planned deployment does not meet the required technology or performance requirements

Code: N

Challenge Type: Not part of enforceable commitment

Description: This location is in an area that is subject to an enforceable commitment. Previous awards did not cover 100% of BSLF locations. Enforceable commitment must be expanded or BSLF declared eligible for BEAD funding. (See BEAD NOFO at 36, n. 52.)

Specific Examples: Declaration by service provider to expand enforceable commitment

Permissible Rebuttals: Service provider to provide KMZ and timeline demonstrating planned coverage

Code: C

Challenge Type: Location is a CAI

Description: The location should be classified as a CAI.

Specific Examples: Evidence that the location falls within the definitions of CAIs set by the Eligible Entity⁴

Permissible Rebuttals: Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation

Code: R

Challenge Type: Location is not a CAI

Description: The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation

Specific Examples: Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation

Permissible Rebuttals: Evidence that the location falls within the definitions of CAIs set by the Eligible Entity or is still operational

Area and Multiple Dwelling Units (MDU) Challenge

KOBD will administer area and MDU challenges for challenge types A, S, L, D, and T. An “area challenge” is triggered if six or more challenges are filed to BSLs, within a census block group, that use a particular technology and have a single provider. An “MDU challenge” requires challenges by at least three units or 10% of the unit count listed in the Fabric within the same broadband serviceable location, whichever is larger.

An area or MDU challenge reverses the burden of proof for availability, speed, latency, data caps and technology if a defined number of challenges for a particular category, across all challengers, are submitted

⁴ For example, eligibility for FCC e-Rate or Rural Health Care program funding or registration with an appropriate regulatory agency may constitute such evidence, but the Eligible Entity may rely on other reliable evidence that is verifiable by a third party.

for a provider. Thus, the provider that receives an area or MDU challenge must demonstrate they are meeting the availability, speed, latency, data cap or technology requirement, respectively, for the “served” locations within the area (or all units within the MDU). The provider may use any of the permissible rebuttals listed above.

A provider may rebut an area challenge by providing acceptable speed tests for at least 10% of the customers, conducted by the provider between 7:00 pm and 11:00 pm local time, for a valid rebuttal in the challenged area. The customers must be randomly selected, and the rebuttal must apply the 80/80 rule (i.e., 80% of the BSLs must experience a speed that equals or exceeds 80% of the speed threshold). For example, 80% of BSLs in an area challenge must demonstrate a download speed of at least 20 Mbps (that is, 80% of 25 Mbps) and an upload speed of at least 2.4 Mbps to meet the 25/3 Mbps threshold. Similarly, 80% of BSLs in an area challenge must demonstrate a download speed of at least 80 Mbps and an upload speed of 16 Mbps to meet the 100/20 Mbps threshold.

Each type of challenge, technology, and provider are considered separately, (i.e., an availability challenge (A) does not count towards reaching the area threshold for a speed (S) challenge). If a provider offers multiple technologies, such as DSL and fiber, each will be treated separately since they are likely to have different availability and performance.

Area challenges for availability need to be rebutted with evidence that service is available for all BSL within the census block group (e.g., by network diagrams that show fiber or HFC infrastructure or customer subscribers). For fixed wireless service, the challenge system will offer representative random, sample of the area in contention, but no fewer than 10, where the provider must demonstrate service availability and speed (e.g., with a mobile test unit).

Speed Test Requirements

KOBD will accept speed tests as evidence for substantiating challenges and rebuttals. Each speed test consists of three measurements, taken on different days. Speed tests cannot predate the beginning of the challenge period by more than 60 days. Speed tests may be conducted by subscribers, but speed test challenges must be gathered and submitted by units of local government, nonprofit organizations, or a broadband service provider.

Speed tests may take four forms:

1. A reading of the physical line speed provided by the residential gateway (i.e., DSL modem, cable modem for HFC, ONT for FTTH, or fixed wireless subscriber module).
2. A reading of the speed test available from within the residential gateway web interface.
3. A reading of the speed test found on the service provider’s web page.
4. A speed test performed on a laptop or desktop computer within immediate proximity of the residential gateway, using OOKLA, M-Lab, or Cloudflare speed test applications approved by KOBD.

Each speed test measurement must include:

- The time and date the speed test was conducted
- The provider-assigned internet protocol (IP) address, either version 4 or version 6, identifying the residential gateway conducting the test

Each group of three speed tests must include:

- The name and street address of the customer conducting the speed test
- A certification of the speed tier the customer subscribes to (e.g., a copy of the customer's last invoice)

Each acceptable speed test must include:

- The time and date the speed test was conducted.

- The provider-assigned internet protocol (IP) address, either version 4 or version 6, that identifies the residential gateway conducting the test.

Each group of three speed tests must include:

- The name and street address of the customer conducting the speed test.
- A certification of the speed tier or service plan to which the customer subscribes (e.g., a copy of the customer's last invoice).
- An agreement, using an online acknowledgement contained within broadbandks.com, that grants access to informational elements such as the internet protocol address (IP) and the speed test result, to any contractors supporting the challenge process, and the service provider as needed for challenge or rebuttal.

The subscriber's name, street address, and IP address are considered personally identifiable information (PII) and will not be disclosed to the public (e.g., as part of a challenge dashboard or open data portal).

Once at least three speed tests are collected, the median will trigger consideration for a speed-based (S) challenge, for either upload or download speeds. For example, if a "served" location claims a broadband speed of 100 Mbps/20 Mbps and three speed tests result in download speed measurements of 105, 102, and 98 Mbps, and upload speed measurements of 18, 26, and 17 Mbps, a challenge will be validated, since the median of the measured upload speed marks the location as underserved (<20 Mbps).

Subscribers who submit a speed test must certify the speed tier or service plan to which they subscribe. To qualify for a validated challenge, the subscribed service plan must meet or exceed the BEAD standard of 100/20 Mbps for "served" or 25/3 Mbps for "underserved." For example, if the certified service plan is 100/20 Mbps or greater and the median of the measured tests demonstrate less service, the location would be reclassified to "underserved." If the certified service plan is 25/3 Mbps or greater and the median of the measured tests demonstrate less service, the location would be reclassified to "unserved." However, even if a particular service offering is not meeting the speed threshold, the eligibility status of the location may not change. For example, if a BSLs is served by 100 Mbps licensed fixed wireless and 500 Mbps through fiber, conducting a speed test on the fixed wireless network that shows a speed of, for example, 70 Mbps, will not change the status of the location.

Transparency Plan

To ensure the challenge process is transparent, KOBD will, upon approval from NTIA, publicly post an overview of the challenge process, phase timelines, and instructions on how to submit and rebut a challenge. This documentation will be publicly posted prior to opening the challenge submission window. KOBD plans to inform all units of local government, nonprofit organizations, and ISPs of the challenge process via a series of webinars held prior to the challenge submission process opening. KOBD will also post all instructions on the KOBD website (kdc_broadband@ks.gov) where all relevant stakeholders may also sign up for the KOBD newsletter for ongoing challenge process updates and newsletters. All submitted challenges and rebuttals will be posted publicly, before final challenge determinations are made, with the following information:

- The provider, nonprofit, or unit of local government that submitted the challenge,
- The census block group containing the challenged BSL,
- The provider being challenged,
- The type of challenge (e.g., availability or speed), and
- A summary of the challenge, including whether a provider submitted a rebuttal.

KOBD will not publicly post any personally identifiable information (PII) or proprietary information, including subscriber names, street addresses or customer IP addresses. To ensure all PII is protected, KOBD will remove any PII from all challenges and rebuttals prior to posting. Also, guidance will be provided to all challengers on which information may be posted publicly.

KOBD will treat information submitted by an existing broadband service provider designated as proprietary and confidential consistent with applicable federal and state law. If any of the submitted materials do contain information or data the submitter deems to be confidential that should be exempt from disclosure under state open records laws or is protected under applicable state privacy laws, that information should be identified as privileged or confidential to the extent allowed pursuant to Kansas Open Records Act (KORA) K.S.A 45-221 (1,12,20,30,32 and 45). If information is identified by the entity as privileged or confidential, the entity must submit a letter requesting such exemption to mailto:kdc_broadband@ks.gov. All exempted information will be securely maintained and accessed by KOBD and confidential contractors only. Otherwise, responses will be made publicly available.

1.4.6 Optional Attachment: As a required attachment only if the Eligible Entity is not using the NTIA BEAD Model Challenge Process, outline the proposed sources and requirements that will be considered acceptable evidence.

Not applicable; see 1.4.1

Initial Proposal, Volume I Public Comment

1.5.1 Text Box: Describe the public comment period and provide a high-level summary of the comments received during the Volume I public comment period and how they were addressed by the Eligible Entity. The response must demonstrate:

- a. The public comment period was no less than 30 days; and
- b. Outreach and engagement activities were conducted to encourage feedback during the public comment period.

1.5.1.a.

The public comment period was open for 36 calendar days. KOBD opened public comment on August 1, 2023, accepting submissions through September 5, 2023. KOBD received 33 comments from individuals, ISPs, local governments, and not-for-profit organizations. Comments included additions and deletions to the definition of Community Anchor Institutions, comments on the challenge process, comments on the availability of broadband, comments on the classification of unserved, underserved, and served locations, and comments on 1Gbps broadband availability to Community Anchor Institutions.

1.5.1.b.

KOBD actively solicited comments, provided reference to the comment window, and requested participation by a wide range of stakeholders. KOBD promoted the comment period through multiple channels. The monthly KOBD newsletter, sent to the registered distribution list, includes eligible entities for challenges including local governments, ISPs, and not-for-profit organizations. Multiple industry meetings took place during the public comment period and KOBD encouraged participation at these meetings. Also, e-mails were sent on August 4, 2023, and August 31, 2023, to local governments, ISPs, and not-for-profit organizations to encourage their participation. KOBD's partners, the League of Kansas Municipalities, and the Kansas Association of Counties assisted with distribution to their members. In addition, KOBD and KOBD staff posted notices on their LinkedIn social media pages.