

# Initial Proposal

## Volume I

### Commonwealth of Kentucky

Broadband Equity, Access, and Deployment Program  
(BEAD)

September 2023



OFFICE OF  
BROADBAND DEVELOPMENT

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## Introduction

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The Kentucky Office of Broadband Development (“the Office”) hereby submits to the National Telecommunication and Information Administration (NTIA) this first volume of the BEAD Initial Proposal to propose how the Office will meet NTIA’s BEAD state challenge process guidelines.

This document includes the following requirements of the Initial Proposal outlined in the BEAD Notice of Funding Opportunity (NOFO):

- Requirement 3: The document identifies existing efforts funded administered by the Commonwealth of Kentucky and the federal government to deploy broadband and close the digital divide.
- Requirement 5: The document identifies each unserved location and underserved location in Kentucky, using the Federal Communication Commission’s (FCC) most recently published National Broadband Map as of the date of submission of the Initial Proposal, and identifies the date of publication of the National Broadband Map used to identify these unserved and underserved locations.
- Requirement 6: The document describes how the Office has applied the statutory definition of the term “community anchor institution” (CAI), worked to identify all eligible CAIs in Kentucky, 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 Office 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 Office determined that such category of CAI facilitates greater use of broadband service by vulnerable populations.
- Requirement 7: The document proposes a detailed plan as to how the Office will conduct a challenge process as required by NTIA and consistent with the draft challenge process guidance released by NTIA on June 28, 2023.

The Office will conduct the state challenge process following (1) NTIA approval of this first volume of the Initial Proposal, and (2) the Office submission of the second volume of its Initial Proposal, addressing all remaining requirements of the Initial Proposal as described in NTIA’s BEAD Notice of Funding Opportunity. This will enable the Office to maintain the timeline required by NTIA for the BEAD program.

## Volume I (Requirements 3, 5 - 7)

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### 1.1 Existing Broadband Funding (Requirement 3)

This first volume of Kentucky's BEAD Initial Proposal includes, consistent with NTIA requirements, descriptions of existing funding for broadband in the commonwealth.

Attached in [Existing Broadband Sources.xlsx] is a table that identifies:

1. Sources of funding
2. A brief description of the broadband deployment and other broadband-related activities
3. Total funding
4. Funding amount expended
5. Remaining funding amount available

## **1.2 Unserved and Underserved Locations (Requirement 5)**

Consistent with NTIA requirements, the Office has provided herein a list of all unserved and underserved locations in Kentucky. As defined by the BEAD NOFO, “unserved” means a location that lacks reliable broadband service at a speed of at least 25 Mbps downstream and 3 Mbps upstream and latency levels low enough to support real-time, interactive applications. “Underserved” means locations that lack similar broadband connections, but at speeds of at least 100 Mbps downstream and 20 Mbps upstream.

The data is sourced from the most recent publication of the FCC’s Broadband DATA Map. The publication date of the National Broadband Map does not predate the submission of the Initial Proposal by more than 59 days.

### **1.2.1 Locations IDs of all unserved and underserved locations**

Attached<sup>1</sup> are two CSV files with the location IDs of all unserved and underserved locations, respectively.

[unserved.csv]

[underserved.csv]

### **1.2.2 Publication date of the National Broadband Map**

The unserved and underserved locations identified in this document and its attachments are based on the most recent publication date of the National Broadband Map, consistent with NTIA policy. The publication date of this version of the National Broadband Map does not predate the submission of the Initial Proposal by more than 59 days.

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<sup>1</sup> Lists of unserved and underserved locations will be provided following the public comment period with the final version of this document.

### 1.3 Community Anchor Institutions (Requirement 6)

For the purposes of this first volume of Kentucky's BEAD Initial Proposal, this section will describe how the Office applies the statutory definition of "community anchor institution (CAI)," how the Office will identify CAIs, and how the Office will assess CAIs' connectivity needs, including the types of CAIs intended to be served through this program.

#### 1.3.1 Definition of "Community Anchor Institution"

Based on the statutory definition of "community anchor institution" as defined in 47 USC 702 (a)(2)(E), the Office applied the definition of "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 Tribal housing organization), or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

Based on the statutory definition above, the following criteria were used to determine the inclusion or exclusion of community support organizations not specifically listed in 47 USC 1702(a)(2)(E):

1. Whether the community support organization facilitates greater use of broadband service by vulnerable populations, including, but not limited to, aging individuals, incarcerated or recently incarcerated individuals, individuals with a language barrier, individuals with a disability, low-income households, racial and/or ethnic minorities, rural residents, and veterans.

The following definitions and sources were used to identify the types of community anchor institutions:

- **Schools:** Public and state certified, non-public K-12 schools, including all K-12 schools participating in the FCC E-Rate program. Compiled with information collected from the national Homeland Infrastructure Foundation-Level Data (HIFLD), as well as the Kentucky Department of Education and the Kentucky Non-Public Schools Commission.
- **Libraries:** All public libraries in Kentucky, identified in partnership with the Kentucky Department of Libraries and Archives (KDLA) which facilitates e-Rate in Kentucky and through data available from the Kentucky Geography Network (KyGeoNet).
- **Local Government Facilities:** Municipal buildings and local county office government buildings identified through data collected from the Department for Local Government (DLG) and available from the Kentucky Geography Network (KyGeoNet).

- **Healthcare:** This category includes health clinics, health centers, hospitals, or other medical providers, including public health departments, urgent care facilities, skilled nursing facilities, long term care facilities, and Federally Qualified Health Centers (FQHCs). Hospital, urgent care facilities, public health departments, and long-term care facility data were collected from HIFLD; rural clinics and FQHC data have been collected from the Kentucky Department of Public Health.
- **Public safety entity:** The list includes entities such as fire houses, emergency medical service stations, police stations, emergency operations centers, and public safety answering points (PSAP), based on records maintained by the Commonwealth of Kentucky and units of local government, and HIFLD.
- **Institutions of higher education:** Institutions of higher education include all institutions that have an NCES ID in the category “college”, including junior colleges, community colleges, minority serving institutions, historically black colleges and universities, other universities, or other educational institutions. This information was collected from KyGeoNet and HIFLD.
- **Affordable Housing:** Affordable housing includes local housing authorities, affordable/subsidized rentals identified by Kentucky Housing Corporation<sup>2</sup>, and multi-dwelling units (MDUs) in Kentucky identified by Education Superhighway.
- **Community support organizations:** The Office included any organizations that facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals. The Office includes senior centers, job training centers, area development districts, and community action agencies in this category.

In each case, the Office also drew on state, county, and municipal resources to identify potential additional eligible community anchor institutions that were not contained in the data sources listed above. In addition, the Office will use the Initial Proposal public comment process to ensure that all relevant institutions meeting the CAI criteria are included.

The Office considered whether houses of worship should be included as a category of community anchor institutions but declined to include them since, as part of their mission, they do not involve activities that facilitate greater use of broadband service by vulnerable populations. Thus, while houses of worship are important institutions for our communities, they do not qualify under the existing definition of community anchor institutions. Certified non-public K-12 schools and colleges or universities affiliated with a church or other religious institution are included as CAIs under the applicable category.

To assess the network connectivity needs of the types of eligible community anchor institutions listed above, the Office undertook the following activities:

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<sup>2</sup> <https://www.kyhousing.org/Rental/Pages/default.aspx>

1. Engaged government agencies: The Office contacted relevant state and local government agencies to determine the availability of 1 Gbps broadband service availability at each type of community anchor institution. The Office surveyed county governments to identify availability needs and additional CAIs that were not currently identified. The Kentucky Department of Education confirmed that all K-12 public school districts have sufficient internet capacity. Some individual school facilities provision less than gigabit service because the lower speed tier meets the functional needs and minimizes the expense while preserving performance. However, speeds could be increased if bandwidth needs increased. Other government agencies contacted for information include the Department for Libraries and Archives (KDLA), the Kentucky Communications Network Authority (KCNA), the Cabinet for Health and Family Services, and the Department of Workforce Development.
2. Engaged relevant umbrella organizations and nonprofits. The Office engaged with umbrella and nonprofit organizations that work with community anchor institutions to coordinate and obtain 1 Gbps broadband service availability data. Specifically, the Office requested information related to availability needs from the member organizations across all geographic regions. Organizations contacted include:
  - Kentucky Council of Area Development Districts
  - Kentucky Hospital Association
  - Kentucky League of Cities
  - Kentucky Association of Counties
  - United Way
  - Shaping Our Appalachian Region
  - Center for Rural Development
3. The Office reviewed identified CAIs against existing known broadband availability using CostQuest data, data collected directly from ISPs, and information provided by KCNA to identify CAIs with access to broadband service.

Using the information collected, the Office compiled the list of CAIs lacking adequate broadband service, attached in question 1.3.2.

**1.3.2 CSV file (named cai.csv) listing eligible community anchor institutions that require qualifying broadband service and do not currently have access to such service**

[Attachment: cai.csv] <sup>3</sup>

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<sup>3</sup> CAI list will be provided following the public comment period with the final version of this document.



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## 1.4 Challenge Process (Requirement 7)

### NTIA BEAD Model Challenge Process Adoption

#### 1.4.1 Select if the Eligible Entity plans to adopt the NTIA BEAD Model Challenge Process for Requirement 7.

Yes

Kentucky will adopt the NTIA BEAD Model Challenge Process.

### Modifications to Reflect Data Not Present in the National Broadband Map

#### 1.4.2 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.

Kentucky will adopt the following modules to modify the classification of broadband serviceable locations:

##### **Module 2: DSL Modifications**

Kentucky will treat locations that the National Broadband Map shows to have available qualifying broadband service (i.e., a location that is "served") delivered via DSL as "underserved." This modification will better reflect the locations eligible for BEAD funding because it will facilitate the phase-out of legacy copper facilities and ensure the delivery of "future-proof" broadband service.

##### **Module 3: Speed Test Modifications**

Kentucky will treat as "underserved" locations that the National Broadband Map shows to be "served" if rigorous speed test methodologies (i.e., methodologies aligned to the BEAD Model Challenge Process Speed Test Module) demonstrate that the "served" locations actually receive service that is materially below 100 Mbps downstream and 20 Mbps upstream. This modification will better reflect the locations eligible for BEAD funding because it will consider the actual speeds of locations.

### Deduplication of Funding

#### 1.4.3 Select if the Eligible Entity plans to use the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments.

Yes

Kentucky will use the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments.

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

The Office will identify locations subject to enforceable commitments by using the BEAD Eligible Entity Planning Toolkit, and consult at least the following data sets:

1. The Broadband Funding Map published by the FCC pursuant to IJJA § 60105.<sup>4</sup>
2. Data sets from state broadband deployment programs that rely on funds from the Capital Projects Fund and the State and Local Fiscal Recovery Funds administered by the U.S. Treasury.
3. State and local data collections of existing enforceable commitments.
4. Local data of existing enforceable commitments.

The Office will make a best effort to create a list of BSLs subject to enforceable commitments based on state/territory or local grants or loans. If necessary, the Office will translate polygons or other geographic designations (e.g., a county or utility district) describing the area to a list of Fabric locations. The Office will submit this list, in the format specified by the FCC Broadband Funding Map, to NTIA.<sup>5</sup>

The Office will review its repository of existing state and local broadband grant programs to validate the upload and download speeds of existing binding agreements to deploy broadband infrastructure. In situations in which state or local program did not specify broadband speeds, or when there was reason to believe a provider deployed higher broadband speeds than required, the Office will reach out to the provider to verify the deployment speeds of the binding commitment. The Office will document this process by requiring providers to sign an affidavit certifying the actual broadband speeds deployed.

The Office drew on these 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.

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<sup>4</sup> The broadband funding map published by FCC pursuant to IJJA § 60105 is referred to as the "FCC Broadband Funding Map."

<sup>5</sup> Guidance on the required format for the locations funded by state or territorial and local programs will be specified at a later date, in coordination with FCC.

**1.4.5 List the federal, state, or territorial, and local programs that will be analyzed to remove enforceable commitments from the set of locations eligible for BEAD funding.**

See attachment: BEAD Initial Proposal\_Volume I\_Deduplication of Funding Programs Template.xlsx

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## Challenge Process Design

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

Based on the NTIA BEAD Challenge Process Policy Notice, as well as the Kentucky's understanding of the goals of the BEAD program, the proposal represents a transparent, fair, expeditious and evidence-based challenge process.

### Permissible Challenges

The Office will only allow challenges on the following grounds:

- The identification of eligible community anchor institutions, as defined by the Eligible Entity,
- Community anchor institution BEAD eligibility determinations,
- BEAD eligibility determinations for existing broadband serviceable locations (BSLs),
- Enforceable commitments, or
- Planned service.

### Permissible Challengers

During the BEAD Challenge Process, the Office will only allow challenges from nonprofit organizations, units of local governments<sup>6</sup>, and broadband service providers.

### Challenge Process Overview

The challenge process conducted by the Office will include four phases, spanning 120 days:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, the Office will publish the set of locations eligible for BEAD funding, which consists of the locations resulting from the activities outlined in Sections 5 and 6 of the NTIA BEAD Challenge Process Policy Notice (e.g., administering the deduplication of funding process). The office will also publish locations considered served, as they may be challenged. [Day 0](#).
2. **Challenge Phase:** During the Challenge Phase, the challenger will submit the challenge through the Office challenge portal. This challenge will be visible to

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<sup>6</sup> As defined by KRS 65.200, "Local government" means any city incorporated under the law of this Commonwealth, the offices and agencies thereof, any county government or fiscal court, any special district or special taxing district created or controlled by a local government.

the service provider whose service availability and performance is being contested. The portal will notify the provider of the challenge through an automated email, which will include related information about timing for the provider's response. After this stage, the location will enter the "challenged" state.

- a. **Minimum Level of Evidence Sufficient to Establish a Challenge:** The challenge portal will verify that the address provided can be found in the Fabric and is a BSL. The challenge portal will confirm that the challenged service is listed in the National Broadband Map and meets the definition of reliable broadband service. The challenge will confirm that the email address is reachable by sending a confirmation message to the listed contact email. For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition (OCR). For availability challenges, the Office will manually verify that the evidence submitted falls within the categories stated in the NTIA BEAD Challenge Process Policy Notice and the document is unredacted and dated.
  - b. **Timeline:** Challengers will have 30 calendar days to submit a challenge from the time the initial list of unserved and underserved locations, community anchor institutions, and existing enforceable commitments are posted. [Challenge Process Days 1-30](#)
3. **Rebuttal Phase:** Only the challenged service provider may rebut the reclassification of a location or area with evidence, causing the location or locations to enter the "disputed" state. If a challenge that meets the minimum level of evidence is not rebutted, the challenge is sustained. A provider may also agree with the challenge and thus transition the location to the "sustained" state. Providers must regularly check the challenge portal notification method (e.g., email) for notifications of submitted challenges.
    - a. **Timeline:** Providers will have 30 business days from notification of a challenge to provide rebuttal information to the Office. [Challenge Process Days 31-60](#).
  4. **Final Determination Phase:** During the Final Determination phase, the Office will make the final determination of the classification of the location, either declaring the challenge "sustained" or "rejected."
    - a. **Timeline:** Following intake of challenge rebuttals, the Office will make a final challenge determination within 60 calendar days of the challenge rebuttal. Reviews will occur on a rolling basis, as challenges and rebuttals are received. [Challenge Process Days 61-120](#).

### **Evidence & Review Approach**

To ensure that each challenge is reviewed and adjudicated based on fairness for all participants and relevant stakeholders, the Office will review all applicable challenge

and rebuttal information in detail without bias, before deciding to sustain or reject a challenge. The Office will document the standards of review to be applied in a Standard Operating Procedure and will require reviewers to document their justification for each determination. The Office plans to ensure reviewers have sufficient training to apply the standards of review uniformly to all challenges submitted. The Office will also require that all reviewers submit affidavits to ensure that there is no conflict of interest in making challenge determinations.

| Code | Challenge Type | Description  | Specific Examples   | Permissible rebuttals   |
|------|----------------|--|---|---|
| A    | Availability   | The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU). | <ul style="list-style-type: none"> <li>• Screenshot of provider webpage.</li> <li>• A service request was refused within the last 180 days (e.g., an email or letter from provider).</li> <li>• Lack of suitable infrastructure (e.g., no fiber on pole).</li> <li>• 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</li> </ul> | <ul style="list-style-type: none"> <li>• Provider shows that the location subscribes or has subscribed within the last 12 months, e.g., with a copy of a customer bill.</li> <li>• If the evidence was a screenshot and believed to be in error, a screenshot that shows service availability.</li> <li>• The provider submits evidence that service is now available as a standard installation, e.g., via a copy of an offer sent to the location.</li> </ul> |

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|   |       |  | <p>request.<sup>7</sup></p> <ul style="list-style-type: none"> <li>• 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 in excess of the provider's standard installation charge in order to connect service at the location.</li> </ul> |  |
| S | Speed | The actual speed of the service tier falls below the unserved or underserved thresholds. | Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests.   | Provider has countervailing speed test evidence showing sufficient speed, e.g., from their own network |

<sup>7</sup> 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.”



|   |            |  |  |   |
|---|------------|--|--|---|
|   |            |  |  | management system. <sup>8</sup>   |
| L | Latency    | The round-trip latency of the broadband service exceeds 100 ms <sup>9</sup> .  | Speed test by subscriber, showing the excessive latency.   | Provider has countervailing speed test evidence showing latency at or below 100 ms, e.g., from their own network management system or the CAF performance measurements. <sup>10</sup> |
| D | Data cap   | The only service plans marketed to consumers impose an unreasonable capacity allowance ("data cap") on the consumer. <sup>11</sup> | <ul style="list-style-type: none"> <li>• Screenshot of provider webpage.</li> <li>• Service description provided to consumer.</li> </ul> | Provider has terms of service showing that it does not impose an unreasonable data cap or offers another plan at the location without an unreasonable cap.                            |
| T | Technology | The technology indicated for this location is incorrect.   | Manufacturer and model number of residential gateway (CPE)   | Provider has countervailing evidence from their network management  |

<sup>8</sup> 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*, 33 FCC Rcd at 6528, para. 51. See BEAD NOFO at 65, n. 80, Section IV.C.2.a.

<sup>9</sup> *Performance Measures Order*, including provisions for providers in non-contiguous areas (§21).

<sup>10</sup> *Ibid.*

<sup>11</sup> An unreasonable capacity allowance is defined as a data cap that falls below the monthly capacity allowance of 600 GB listed in the FCC 2023 Urban Rate Survey (FCC Public Notice DA 22-1338, December 16, 2022).

Alternative plans without unreasonable data caps cannot be business-oriented plans not commonly sold to residential locations. A successful challenge may not change the status of the location to unserved or underserved if the same provider offers a service plan without an unreasonable capacity allowance or if another provider offers reliable broadband service at that location.

|   |                        |  |  |   |
|---|------------------------|--|--|---|
|   |                        |  | that demonstrates the service is delivered via a specific technology.  | system showing an appropriate residential gateway that matches the provided service.  |
| B | Business service only  | The location is residential, but the service offered is marketed or available only to businesses.  | Screenshot of provider webpage.  | Provider documentation that the service listed in the BDC is available at the location and is marketed to consumers.  |
| E | Enforceable Commitment | The challenger has knowledge that broadband will be deployed at this location by the date established in the deployment obligation.  | Enforceable commitment by service provider (e.g., authorization letter).   | Documentation that the provider has defaulted on the commitment or is otherwise unable to meet the commitment (e.g., is no longer a going concern).   |
| P | Planned service        | 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. | <ul style="list-style-type: none"> <li>• Construction contracts or similar evidence of on-going deployment, along with evidence that all necessary permits have been applied for or obtained.</li> <li>• Contracts or a similar binding agreement</li> </ul> | Documentation showing that the provider is no longer able to meet the commitment (e.g., is no longer a going concern) or that the planned deployment does not meet the required technology or performance requirements. |

|   |                                     |   |   |  |
|---|-------------------------------------|---|---|--|
|   |                                     |   | <p>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>i.e.</i>, a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024.</p> |  |
| N | Not part of enforceable commitment. | This location is in an area that is subject to an enforceable commitment to less than 100% of locations and the location is not covered by that commitment. | Declaration by service provider subject to the enforceable commitment.  |  |

|   |                       |  |  |  |
|---|-----------------------|--|--|--|
| C | Location is a CAI     | The location should be classified as a CAI.  | Evidence that the location falls within the definitions of CAIs set by the Eligible Entity. <sup>12</sup>                        | Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation. |
| R | Location is not a CAI | The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation. | Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation. | Evidence that the location falls within the definitions of CAIs set by the Eligible Entity or is still operational.              |

### Area and MDU Challenge

The Office will administer area and MDU challenges for challenge types A, S, L, D, and T. An area 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, have been submitted for a provider. Thus, the provider receiving an area challenge or MDU must demonstrate that they are indeed meeting the availability, speed, latency, data cap and technology requirement, respectively, for all (served) locations within the area or all units within an MDU. The provider can use any of the permissible rebuttals listed above.

An area challenge is triggered if 6 or more broadband serviceable locations using a particular technology and a single provider within a census block group are challenged.

An MDU challenge requires challenges by at least 3 units or 10% of the unit count listed in the Fabric within the same broadband serviceable location, whichever is larger.

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<sup>12</sup> 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.

Each type of challenge and each technology and provider is 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 is 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 has to demonstrate service availability and speed (e.g., with a mobile test unit).<sup>13</sup>

### **Speed Test Requirements**

The Office 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 can take four forms:

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

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).

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<sup>13</sup> A mobile test unit is a testing apparatus that can be easily moved, which simulates the equipment and installation (antenna, antenna mast, subscriber equipment, etc.) that would be used in a typical deployment of fixed wireless access service by the provider.

- An agreement, using an online form provided by the Eligible Entity, that grants access to these information elements to the Eligible Entity, any contractors supporting the challenge process, and the service provider.

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

Each location must conduct three speed tests on three different days; the days do not have to be adjacent. The median of the three tests (i.e., the second highest (or lowest) speed) is used to trigger a speed-based (S) challenge, for either upload or download. For example, if a location claims a broadband speed of 100 Mbps/25 Mbps and the three speed tests result in download speed measurements of 105, 102 and 98 Mbps, and three upload speed measurements of 18, 26 and 17 Mbps, the speed tests qualify the location for a challenge, since the measured upload speed marks the location as underserved.

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.

Subscribers submitting a speed test must indicate the speed tier they are subscribing to. If the household subscribes to a speed tier of between 25/3 Mbps and 100/20 Mbps and the speed test results in a speed below 25/3 Mbps, this broadband service will not be considered to determine the status of the location. If the household subscribes to a speed tier of 100/20 Mbps or higher and the speed test yields a speed below 100/20 Mbps, this service offering will not count towards the location being considered served or underserved. 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 location is served by 100 Mbps licensed fixed wireless and 500 Mbps fiber, conducting a speed test on the fixed wireless network that shows an effective speed of 70 Mbps does not change the status of the location from served to underserved.

A service provider may rebut an area speed test challenge by providing speed tests, in the manner described above, for at least 10% of the customers in the challenged area. The customers must be randomly selected. Providers must apply the 80/80 rule<sup>14</sup>, i.e., 80% of these locations must experience a speed that equals or exceeds 80% of the speed threshold. For example, 80% of these locations must have 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 and must have a download speed

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<sup>14</sup> The 80/80 threshold is drawn from the requirements in the CAF-II and RDOF measurements. See BEAD NOFO at 65, n. 80, Section IV.C.2.a.

of at least 80 Mbps and an upload speed of 16 Mbps to be meet the 100/20 Mbps speed tier. Only speed tests conducted by the provider between the hours of 7 pm and 11 pm local time will be considered as evidence for a challenge rebuttal.

## **Transparency Plan**

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, the Office will, upon approval from NTIA, publicly post an overview of the challenge process phases, challenge timelines, and instructions on how to submit and rebut a challenge. This documentation will be posted publicly for at least a week prior to opening the challenge submission window. The Office also plans to actively inform all units of local government of its challenge process and set up regular touchpoints to address any comments, questions, or concerns from local governments, nonprofit organizations, and Internet service providers. Relevant stakeholders can sign up on the Office website ([broadband.ky.gov](http://broadband.ky.gov)) to receive challenge process updates and newsletters. They can engage with the Office by a designated email address ([broadband@ky.gov](mailto:broadband@ky.gov)). The Office will inform providers of challenges through email.

Beyond actively engaging relevant stakeholders, the Office will also post all submitted challenges and rebuttals before final challenge determinations are made, including:

- the provider, nonprofit, or unit of local government that submitted the challenge,
- the census block group containing the challenged broadband serviceable location,
- 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.

The Office will not publicly post any personally identifiable information (PII) or proprietary information, including subscriber names and customer IP addresses. To ensure all PII is protected, the Office will review the basis and summary of all challenges and rebuttals to ensure PII is removed prior to posting them on the website. Additionally, guidance will be provided to all challengers as to which information they submit may be posted publicly.

The Office will treat information submitted by an existing broadband service provider designated as proprietary and confidential consistent with applicable state and federal laws. If any of these responses do contain information or data that the submitter deems to be confidential commercial information that should be exempt from disclosure under Kentucky Open Records laws or is protected under applicable

state privacy laws, that information should be identified as privileged or confidential by the submitter. Otherwise, the responses will be made publicly available.

Additionally, the Office shall comply with the [Commonwealth Office of Technology's Enterprise Privacy Policy](#) regarding collection, use, and maintenance of personal information (PI) as well as the [Commonwealth's Privacy Policy](#).

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