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# BEAD Challenge Process

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State of Montana

Montana Broadband Office  
Montana Department of Administration



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# **1 Volume I (Requirements 3, 5 – 7)**

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## **1.1 Existing Broadband Funding (Requirement 3)**

The MBO has developed a list of funding available to support broadband deployment, including the purpose of the funding, total amount, amount expended, and amount remaining. See the attachment referenced below for details.

[BEAD Initial Proposal Volume I Existing Broadband Funding Sources.xlsx](#)



## 1.2 Unserved and Underserved Locations (Requirement 5)

The MBO has identified the current list of unserved and underserved broadband serviceable locations as per the FCC's National Broadband Map and downloaded from NTIA's Eligible Entity Planning Toolkit. The Broadband Data Collection (BDC) fabric used was released on 31 December 2022, while the service availability was last updated on 9 August 2023. This list of unserved and underserved locations includes those with enforceable commitments to provide broadband. Before the MBO conducts its Challenge Process, it will conduct a deduplication of other state and federal funding to ensure BEAD funding only goes to locations that have not already received funding from another source. See the attachments referenced below for all unserved and underserved FCC Location IDs.

[underserved.csv](#)

[unserved.csv](#)



### 1.3 Community Anchor Institutions (Requirement 6)

#### 1.3.1 CAI Definition and Identification

Based on the statutory definition of “community anchor institution” as defined in 47 USC 1702 (a)(2)(E), the MBO 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, low- income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

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

- **Schools:** K-12 schools include all K-12 schools participating in the FCC E-Rate program or that have an NCES (National Center for Education Statistics) ID in the categories “public schools” or “private schools”.
- **Libraries:** Including all libraries participating in the FCC E-Rate program as well as all member libraries, and their branches, of the American Library Association (ALA).
- **Health clinic, health center, hospital, or other medical providers:** The list of health clinics, health centers, hospitals and other medical providers includes all institutions that have a Centers for Medicare and Medicaid Services (CMS) identifier.
- **Public safety entity:** The list includes entities such as fire houses, emergency medical service stations, police stations, and public safety answering points (PSAP), based on records maintained by the State of Montana and units of local government. The list of public safety answering points (PSAPs) includes all PSAPs in the FCC PSAP registry [[911 Master PSAP Registry | Federal Communications Commission \(fcc.gov\)](#)].
- **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.
- **Public housing organizations:** Public housing organizations were identified by contacting the Public Housing Agencies (PHAs) for the state enumerated by the U.S. Department of Housing and Urban Development.<sup>1</sup>
- **Community support organizations:** The MBO included job training centers in this category, which facilitate the use of broadband by vulnerable populations, including low-income individuals, veterans, and unemployed individuals. The Department of Labor maintains a database of “American Job Training” training centers, established as part of the Workforce Investment Act, and reauthorized in the Workforce Innovation and Opportunities Act of 2014. The database can be accessed at the American Job Center Finder.<sup>2</sup>

<sup>1</sup> PHA Contact Information - HUD | [HUD.gov](#) / U.S. Department of Housing and Urban Development (HUD)

<sup>2</sup> American Job Center Finder. Career One Stop. <https://www.careeronestop.org/localhelp/americanjobcenters/find-american-job-centers.aspx>



To further ensure that all potential CAIs were identified for consideration, Montana obtained Homeland Infrastructure Foundation-Level Data (HIFLD), which provides “geospatial data within the open public domain that can be useful to support community preparedness, resiliency, research, and more.”<sup>3</sup> The data sets were used to identify CAIs in the following categories: schools, libraries, health care institutions, and public safety institutions. The State identified PSAPs in the FCC PSAP registry.<sup>4</sup> American Job Centers were identified in the Department of Labor database of American Job Centers.<sup>5</sup> The MBO utilized the PHA contact information for Montana to develop the list of housing authorities included in its CAI inventory. These data sets yielded more than 2,000 CAIs, including some located on Tribal lands (e.g., Northern Cheyenne Tribal School, Blackfeet Tribal Law Enforcement, Blackfeet Tribal Health Program). The MBO will also use the State Challenge Process to identify additional Community Anchor Institutions, including those located on Tribal lands.

The MBO also drew on state, territorial, tribal, county and municipal resources to identify additional eligible community anchor institutions that were not contained in the data sources listed above. For example, at one meeting of the State’s Communications Advisory Commission, ranger stations and local pubs were presented for consideration as community anchor institutions because in some Montana localities, these are the only locations that have internet access. While ranger stations are already covered under Public Safety Entities, pubs were ultimately not included because of barriers associated with collecting necessary data from such locations. While the MBO does not currently have data regarding locations of ranger stations, the State Challenge Process will be used to identify any such locations to be treated as CAIs.

In addition, the MBO used the Initial Proposal public comment process to ensure that all relevant institutions meeting the CAI criteria are included. Public comments were collected from August 2<sup>nd</sup> to September 2<sup>nd</sup> and were assessed to determine if proposed edits or suggestions were applicable and appropriate for the Initial Proposal Volume I. Some relevant comments (e.g., text edits or requests for clarification), were directly incorporated into the text and noted accordingly. Several suggestions (e.g., recommendations for additional stakeholders to include in the outreach process), were noted by the MBO for future follow up.

To assess the network connectivity needs of the types of eligible community anchor institutions listed above, the MBO:

- **Applied a universal CAI target of 1/1 Gbps:** Given the NTIA’s target of providing 1 Gbps symmetrical broadband service to all CAIs, the MBO applied a universal need of 1 Gbps to all of the CAIs included in its inventory. During the outreach process to government agencies, relevant umbrella organizations, and nonprofits further detailed below, the MBO also asked for information regarding the broadband need. However, all entities that responded were comfortable with the 1/1 Gbps target speed, in alignment with the BEAD NOFO.
- **Mapped to FCC Location IDs.** Using the GPS coordinates of each CAI, the MBO mapped to the nearest Broadband Serviceable Location within 0.5 miles and assigned the fastest mass-market broadband speed available to the CAI as an estimate.
- **Engaged government agencies.** The MBO reached out to all state agencies to understand what records they have available regarding relevant community anchor institutions broadband service availability. The State reached out to the Department of Health and Human Services, the Montana State Library, the Montana Department of Commerce Board of Housing, the Housing Authority of

<sup>3</sup> Homeland Infrastructure Foundation-Level Data, <https://hifld-geoplatform.opendata.arcgis.com/>

<sup>4</sup> FCC PSAP Registry, <https://opendata.fcc.gov/widgets/dpq5-ta0j>

<sup>5</sup> American Job Center Finder, Department of Labor, <https://www.careeronestop.org/localhelp/americanjobcenters/find-american-job-centers.aspx>



the City of Anaconda, the Housing Authority of Butte, the Housing Authority of Glasgow, the Dawson County Housing Authority, the Great Falls Housing Authority, the Helena Housing Authority, the Missoula Housing Authority, the City of Ronan Housing Authority, the Richland County Housing Authority, the Whitefish Housing Authority, the Office of Public Instruction, the Montana Board of Public Education, the Office of the Commissioner of Higher Education, the Montana Department of Natural Resources and Conservation, the Montana Highway Patrol, the Montana Board of Crime Control, the Montana Department of Justice, the Montana Judicial Branch, the United States Postal Service, the Montana Department of Labor and Industry, and the Montana Chamber of Commerce. Ultimately, the MBO coordinated with the Department of Education to determine which schools and libraries do not currently have access to 1 Gbps symmetrical broadband service or the minimum recommended by the State Educational Technology Directors Association (SETDA) in their Broadband Imperative III document: For districts with 1,000 or fewer students, 2.8 Mbps per user (student, teachers and educational staff); for districts with between 1,000 and 10,000 students, 2 Mbps per user; for larger districts, 1.4 Mbps per user. Additionally, the MBO cross-referenced the Montana Department of Health and Department of Human Services' records to determine which community anchor institutions (e.g., state-run health clinics) lack 1 Gbps symmetrical broadband service. Further, the MBO reached out to all primary and secondary Public Safety Answering Points (PSAP) based on the FCC 911 Master PSAP Registry to obtain 1 Gbps broadband service availability data. Lastly, the MBO also reached out to the relevant office leading the goods and services procurement efforts to obtain availability and network connectivity needs based on existing records of procured broadband service for state-affiliated community anchor institutions.

- **Engaged relevant umbrella organizations and nonprofits.** The MBO engaged with umbrella and nonprofit organizations that work with community anchor institutions to coordinate and obtain 1 Gbps broadband service availability data. Specifically, the MBO requested information related to availability needs from the member organizations across all geographic regions. The State reached out to the Montana Hospital Association, HomeFront, the Montana Sheriffs and Peace Officers Association, the Montana League of Cities and Towns, and the Montana Association of Counties.
- **Solicited feedback.** As noted above, the MBO shared its CAI inventory—in the spreadsheet format designed by the NTIA—with government agencies, as well as relevant umbrella organizations and nonprofits, to solicit feedback and provide an opportunity to add, remove, or edit entries either partially or in full.
- **Reviewed and incorporated feedback.** Limited input was submitted from the entities that were contacted—no entries were edited, and while several organizations shared lists that included libraries, fire departments, and American Job Centers, nearly all were already included in the MBO's CAI inventory. Those that were not previously included were added to the inventory. Using the responses received, the MBO then compiled the list of those CAIs that do not have adequate broadband service, attached in question 1.3.2. Further, CMS certification numbers were obtained directly from the Center for Medicare and Medicaid Services website and supplemented with information from the American Hospital Directory. As noted in the corresponding .csv file, CAIs of type C were included because these locations will be instrumental in support of veteran populations. The State already plans to utilize these job service centers to administer career support services to veterans, and will thus serve as an established location through which to increase access to broadband services.

While the MBO has compiled a lengthy list of CAIs, it acknowledges its significant anticipated funding shortfall to connect all unserved and underserved locations with fiber. Given this shortfall, the MBO does not anticipate having funds remaining to serve any CAIs, per the requirements of the BEAD NOFO. In the



event that funds remain after the State serves all unserved and underserved locations, it will reassess its approach and determine which CAIs can be served.

### 1.3.2 CAI List

The MBO compiled the list of eligible Community Anchor Institutions using the definitions and process outlined above. See attachment referenced below for the complete list. Additional CAIs may be added to this list via the Challenge Process.

[cai.csv](#)





## 1.4 Challenge Process (Requirement 7)

### 1.4.1 NTIA BEAD Model Challenge Process Adoption

- Yes  
 No

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

#### Digital Subscriber Line (DSL) Modifications

The MBO 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.

Based on its initial analysis, the MBO anticipates that approximately ~20 locations will be impacted by this modification.

### 1.4.3 Deduplication of Funding

The MBO plans to use the Eligible Entity Planning Toolkit to identify locations with existing federal enforceable commitments as indicated by checking Yes below.

- Yes  
 No

### 1.4.4 Process to identify enforceable commitments

The broadband office will enumerate 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 IIJA § 60105.
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.

If necessary, the MBO will translate polygons or other geographic designations (e.g., a county or utility district) describing the area to a list of Fabric locations. These locations will be based on federal funding programs as there are no additional state funded programs with enforceable commitments.

### 1.4.5 Programs with enforceable commitments

The MBO has identified the list of programs that will be analyzed to identify locations that have enforceable commitments to deploy broadband. This list is based on federal funding programs as there are no additional state funded programs with enforceable commitments. See attachment referenced below for the list of programs.

[BEAD Initial Proposal Volume I Deduplication of Funding Programs.xlsx](#)



#### 1.4.6 Challenge Process Design

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

#### Permissible Challenges

The MBO will only allow challenges on the following grounds:

- The identification of eligible community anchor institutions, as defined by the MBO,
- 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 MBO will only allow challenges from nonprofit organizations, units of local and tribal governments, and broadband service providers.

#### Challenge Process Overview

The challenge process conducted by the MBO will include four phases, spanning 100 calendar days following the publication of eligible locations:<sup>6</sup>

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, the MBO 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. Eligible locations will tentatively be published on December 22, 2023, though the exact date is subject to change.
2. **Challenge Phase:** During the Challenge Phase, the challenger will submit the challenge through the MBO challenge portal. This challenge will be visible to 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 MBO 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

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<sup>6</sup> The NTIA BEAD Challenge Process Policy Notice allows *up to* 120 days. Broadband offices may modify the model challenge process to span up to 120 days, as long as the timeframes for each phase meet the requirements outlined in the NTIA BEAD Challenge Process Policy Notice.



institutions, and existing enforceable commitments are posted. The Challenge Phase will tentatively begin on January 2, 2024 and conclude on January 31, 2024, though the exact dates are subject to change.

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 calendar days from notification of a challenge to provide rebuttal information to the MBO. The Rebuttal Phase will overlap with the beginning of the Challenge Phase, but will last 60 days total to account for challenges submitted at the end of the Challenge Phase. The Rebuttal Phase will tentatively begin on January 2, 2024 and conclude on March 1, 2024, though the exact dates are subject to change.
4. **Final Determination Phase:** During the Final Determination phase, the MBO 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 MBO will make a final challenge determination within 30 calendar days of the challenge rebuttal. Reviews will occur on a rolling basis, as rebuttals to challenges are received. The Final Determination Phase will begin on January 2, 2024 and conclude on March 31, 2024.

## Evidence & Review Approach

To ensure that each challenge is reviewed and adjudicated based on fairness for all participants and relevant stakeholders, the MBO will review all applicable challenge and rebuttal information in detail without bias, before deciding to sustain or reject a challenge. The MBO 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 MBO plans to ensure reviewers have sufficient training to apply the standards of review uniformly to all challenges submitted. The MBO will also require that all reviewers submit affidavits to ensure that there is no conflict of interest in making challenge determinations.

The MBO will use a preponderance of the evidence standard when reviewing challenges. Challenges will be reviewed by a third-party engineering firm. In cases where the evidence provided does not allow for a clear decision, the MBO and third-party partners will work to gather further evidence. Further efforts may include reaching out to involved parties for further information, gathering information from third party sources, or sending third-party engineering resources to do a site check and gather evidence when necessary. For Serviceable Locations requiring additional validation via engineering site check, appropriately trained outside plant engineers will conduct in-person field inspections to verify service availability claims or other evidence. For each such Serviceable Location, an outside plant engineer will physically inspect the premises and assess adjacent rights-of-way. During the field inspection, the outside plant engineer will document any existing broadband infrastructure (or lack thereof). The physical inspection of broadband infrastructure will not outright identify the available broadband service speeds. However, it will provide a reasonable determination of the maximum broadband speeds available to a given Serviceable Location. This will provide another valuable data point to consider, when considering challenges. Documentation from each site visit will include a detailed breakdown of what types of infrastructure was observed (cable television, fiber optic cable, etc.) with corresponding photographs. The documentation will be captured via GPS-enabled devices allowing for the findings to be geolocated and compared to data provided in the state broadband map.



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 request.<sup>10</sup></li> <li>• A letter or email dated within the last 365 days indicating that a provider requested more than the standard installation fee to connect</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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<sup>10</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.”



			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.	
S	Speed	The actual speed of the service tier falls below the unserved or underserved thresholds. <sup>11</sup>	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 management system. <sup>12</sup>
L	Latency	The round-trip latency of the broadband service exceeds 100 ms <sup>13</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>14</sup>
D	Data cap	The only service plans marketed to	<ul style="list-style-type: none"> <li>• Screenshot of provider</li> </ul>	Provider has terms of service

<sup>11</sup> The challenge portal has to gather information on the subscription tier of the household submitting the challenge. Only locations with a subscribed-to service of 100/20 Mbps or above can challenge locations as underserved, while only locations with a service of 25/3 Mbps or above can challenge locations as unserved. Speed challenges that do not change the status of a location do not need to be considered. For example, a challenge that shows that a location only receives 250 Mbps download speed even though the household has subscribed to gigabit service can be disregarded since it will not change the status of the location to unserved or underserved.

<sup>12</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>13</sup> *Performance Measures Order*, including provisions for providers in non-contiguous areas (§21).

<sup>14</sup> *Ibid.*



		consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. <sup>15</sup>	webpage. • Service description provided to consumer.	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) that demonstrates the service is delivered via a specific technology.	Provider has countervailing evidence from their network management 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). In the case of Tribal Lands, the challenger must submit the requisite legally binding agreement between the relevant Tribal Government	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).

<sup>15</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.



			and the service provider for the location(s) at issue (see Section 6.2 above).	
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 between the MBO 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</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.



			before June 30, 2024.	
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. (See BEAD NOFO at 36, n. 52.)	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 MBO. <sup>7</sup>	Evidence that the location does not fall within the definitions of CAIs set by the MBO 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 MBO or is no longer in operation.	Evidence that the location falls within the definitions of CAIs set by the MBO or is still operational.

**Area and MDU Challenge**

The MBO 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.

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<sup>7</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.





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.

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 BSLs 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>8</sup>

### Speed Test Requirements

The MBO 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), 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 one of the following commonly used speed test applications, or similarly tested products.
  - Ookla speedtest.net
  - M-lab Speed Test by Measurement Lab
  - Cloudflare Internet Speed Test - Measure Network Performance | Cloudflare
  - Netflix Fast.com

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

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<sup>8</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.



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>9</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 of at least 80 Mbps and an upload speed of 16 Mbps to 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 MBO 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 MBO 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. The MBO maintains a list serv of stakeholders interested in broadband and will inform relevant parties using this channel, in addition to website updates. Relevant stakeholders can sign up on the MBO website (<https://connectmt.mt.gov/>) for challenge process updates and newsletters. They can engage with the MBO by a designated email address ([connectmt@mt.gov](mailto:connectmt@mt.gov)). The MBO will also

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<sup>9</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.



inform the Montana Association of Counties to ensure that all relevant representatives are reached. Additionally, the MBO will work closely with the Governor's Tribal Liaison to ensure that Tribal Governments are consistently aware of the challenge process and able to provide comments or ask questions as necessary. The MBO also plans to conduct Technical Assistance to ensure all relevant parties are prepared to participate in the Challenge Process.

Challenges will be submitted through a portal, which will automatically produce and send a notification outlining the challenge to the relevant service provider.

Beyond actively engaging relevant stakeholders, the MBO 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 MBO will not publicly post any personally identifiable information (PII) or proprietary information, including subscriber names, street addresses and customer IP addresses. To ensure all PII is protected, the MBO 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 MBO will treat information submitted by an existing broadband service provider designated as proprietary and confidential consistent with applicable federal law. 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 state open records laws or is protected under applicable state privacy laws, that information should be identified as privileged or confidential. Otherwise, the responses will be made publicly available.

The State of Montana will adhere to MT Code Ann. § 2-6-15 (2021),<sup>10</sup> the relevant state guidance regarding State agency protection of personal information. Together, the statutes (i.e., 2-6-1501, 2-6-1502, 2-6-1503) provide definitions of PII, detail the approach to protecting personal information, and provide a process to provide notifications of breach of security of data systems.

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<sup>10</sup> MT Code Ann. § 2-6-15 (2021), [https://leg.mt.gov/bills/mca/title\\_0020/chapter\\_0060/part\\_0150/sections\\_index.html](https://leg.mt.gov/bills/mca/title_0020/chapter_0060/part_0150/sections_index.html)  
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## 1.5 Volume 1 Public Comment

### 1.5.1 Summary of Public Comment Process

The MBO implemented a robust process to ensure a broad range of stakeholders had an opportunity to participate in the Volume 1 Public Comment Process. The MBO first began public dialogue on Volume 1 during the June 12 Communications Advisory Commission (CAC) meeting and conducted additional public discussions during the July 12 and August 8<sup>th</sup> CAC meetings. CAC meetings were open to the public and were attended by CAC members, internet providers, local government officials, and nonprofits, among others. Materials were published publicly two weeks before every CAC meeting to allow all stakeholders sufficient time to review in advance. Following extensive discussions during the CAC meetings in June and July, the MBO published its draft Initial Proposal Volume 1 on August 2<sup>nd</sup>, 2023. The Public Comment period remained open until September 2<sup>nd</sup>, 2023 (a total of 32 days). Key stakeholders were encouraged to submit their feedback throughout the public comment period. A high-level summary of feedback provided during the public comment period is provided below:

- Appreciation for all of the effort the MBO has put into expanding broadband access in Montana
- Support for the MBO's decision to treat locations that the FCC's National Broadband Map shows to have available qualifying broadband service (*i.e.*, a location that is "served") delivered exclusively via DSL as "underserved."
- Recommendation to use the most recent version of the National Broadband Map at the start of the Challenge Process, which aligns with the MBO's planned approach as per the model challenge process
- Recommendation to conduct a robust deduplication process, which also aligns with the MBO's planned approach as per the model challenge process
- Request to consider a 120-day challenge process. While the MBO appreciates the desire for a longer challenge process, due to the overall time constraints from NTIA on running the subgrantee process, the MBO has opted for a 90-day challenge process.
- Request to clarify the types of speed tests that will be allowed, which the MBO has clarified in this final draft
- Question regarding treatment of locations covered by Enhanced-ACAM, which will be treated as served if there is an enforceable commitment to deploy broadband as per the BEAD NOFO
- Recommendation to include additional data on MDUs, which could be incorporated into the National Broadband Map via the FCC Challenge Process
- Recommendation to exclude speed tests and area/MDU challenges, which MBO has considered but ultimately decided to include
- Recommendation to make targeted changes to the evidentiary review process, which MBO has considered but ultimately decided not to change
- Recommendation to treat locations served exclusively by licensed fixed wireless as underserved, which MBO has considered but has not incorporated given that licensed fixed wireless meets NTIA's definition of reliable broadband
- Recommendation to include a post-application verification process, which MBO may take into account internally as it reviews applications