

# Nebraska Broadband Office

## Initial Proposal to the National Telecommunications and Information Agency (NTIA)

### Volume 1

CONNECTING  

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NEBRASKA

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## Introduction

The Nebraska Broadband Office (NBO) drafted volume 1 of the Initial Proposal to the National Telecommunications and Information Agency (NTIA), as part of the Broadband Equity Access and Deployment (BEAD) program. The NBO held a public comment period from September 14, 2023, until October 17, 2023, and has incorporated comments where appropriate. More details on the public comments are in section 1.5.

To develop Volume 1, the NBO drew on data compiled in the 5-Year Action Plan, consulted the Nebraska Public Service Commission and the Federal Communication Commission (FCC) National Broadband Map, reviewed asset inventories from the eight regional Economic Development Districts, and accessed data from various government databases and national organizations.

### 1. Existing Broadband Funding (Requirement 3)

Nebraska's funding sources for broadband deployment were published in the Five-Year Action Plan. The upload for response 1.1.1 contains the most recent funding data as of September 30, 2023.

### 2. Unserved and Underserved Locations (Requirement 5)

The NBO updated data for this file as of October 24, 2023. The file will be uploaded to the NTIA grants portal and can be accessed on the Nebraska Broadband website at <https://broadband.nebraska.gov/>.

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### 3. Community Anchor Institutions (Requirement 6)

Based on the statutory definition of "community anchor institution", Nebraska 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.<sup>1</sup>

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<sup>1</sup> 47 U.S.C. § 1702(a)(2)(E)

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

1. **Schools:** K-12 schools to include all K-12 schools participating in the FCC E-Rate program, that have an NCES (National Center for Education Statistics) ID in the categories “public schools” or “private schools”, or members of Network Nebraska.
2. **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) or listed with the Nebraska Library Commission.
3. **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 from the Health Resources and Services Administration (HRSA).
4. **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 Nebraska 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.<sup>2</sup>
5. **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.
6. **Public housing organizations:** Public housing organizations were identified by accessing the database maintained by the U.S. Department of Housing and Urban Development.
7. **Community support organizations:** The NBO included any organizations that facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals.<sup>3</sup> NBO additionally included senior centers, workforce development centers, and job training centers as these locations serve as vital locations for those seeking work and to remain engaged with the community and family in this category. The National Council on Aging (NCOA) and the National Institute of Senior Centers helped identify senior centers. Workforce centers were identified through the American Job Centers and Nebraska Works. The NBO

Additionally consulted with the Regional Economic Development Districts in the state which have conducted asset inventories of community organizations throughout the state as part of the Digital Equity grant.

In each case, the NBO also relied 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. Furthermore, NBO used the Initial Proposal public comment process to ensure that all relevant institutions meeting the CAI criteria were included. One of

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<sup>2</sup> <https://www.fcc.gov/general/9-1-1-master-psap-registry>

<sup>3</sup> To ensure compliance with the BEAD program, the NBO defines “Community Support Organizations” to be a government organization or a recognized 501(c)(3) tax exempt organization.

the public comments requested that the state include villages or community centers on the list of CAIs. However, NBO feels adding these to the list of CAIs is not appropriate as based on the research conducted during the development of the Initial Proposal, no evidence could be found to support this effort. Furthermore, NBO believes these entities do not fit the overall definition of CAI as provided in the IIJA.

The list of CAIs identified by the State of Nebraska can be downloaded from the broadband website at <https://broadband.nebraska.gov/>.

### **3.1 Connectivity Needs of CAIs**

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

1. **Engaged government agencies** – The NBO reached out to all Nebraska agencies to understand what records they have available regarding relevant community anchor institutions 1 Gbps broadband service availability. Specifically, the following agencies and programs were consulted:
  - a. **Network Nebraska** – Provides gigabit internet service to all educational service units in the state (regional support centers for K-12 schools), 99.6% of all public K-12 schools, the University of Nebraska system, all state, community, and tribal colleges, over half of private colleges, 20% of private K-12 schools, and 2% of public libraries.
  - b. **Nebraska Library Commission** – Conducts an annual survey of all libraries in the state including their connectivity, device availability, and internet usage.
  - c. **Nebraska Department of Health and Human Services** -Provided a list of all health centers, rural health clinics, and hospitals.
  - d. **Relevant umbrella organizations and nonprofits** – The NBO engaged with the eight Regional Economic Development Districts that work with community anchor institutions to coordinate and obtain 1 Gbps broadband service availability data. The NBO consulted each of the regional asset inventories and confirmed broadband connectivity where possible.

Using the responses received, NBO then compiled the list of those CAIs that do not have adequate broadband service. This data can be viewed on the Nebraska Broadband Map at <https://broadband.nebraska.gov/broadbandavailabilitymap/>.

## **4. Challenge Process (Requirement 7)**

Nebraska will adopt the model challenge process, as provided by NTIA with minor modifications. Such modifications are explained when they are implemented, such as the modification to extend the Planned Service date to June 20, 2025, or allowing speed tests to move a location from Underserved or Served to Unserved through rigorous speed test data, not just from Served to Underserved. These modifications will accommodate the unique needs of Nebraskans.

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

NBO 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. As described below, such speed tests can be rebutted by the provider during the rebuttal period.

NBO will treat as “unserved” locations that the National Broadband Map shows to be “underserved” or “served” if rigorous speed test methodologies (i.e., methodologies aligned to the BEAD Model Challenge Process Speed Test Module) demonstrate that the “underserved” and “served” locations actually receive service that is materially below 25 Mbps downstream and 3 Mbps upstream. This modification will better reflect the locations eligible for BEAD funding because it will consider the actual speeds of locations. As described below, such speed tests can be rebutted by the provider during the rebuttal period.

## **4.2 Deduplication of Funding**

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

## **4.3 Enforceable Commitments**

NBO 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 Nebraska Broadband Bridge Program and the Capital Projects Fund administered by the U.S. Treasury.
3. State of Nebraska and local data collections of existing enforceable commitments.

NBO 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, NBO will translate polygons or other geographic designations (e.g., a county or utility district) describing the area to a list of Fabric locations. NBO will submit this list, in the format specified by the FCC Broadband Funding Map, to NTIA.

NBO 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 the State of Nebraska or local program did not specify broadband speeds, or when there was reason to believe a provider deployed higher broadband speeds than required, NBO will reach out to the provider to verify the deployment speeds of the binding commitment. NBO will document this process by requiring providers to sign a binding agreement certifying the actual broadband deployment speeds deployed.

NBO drew on these provider agreements, along with its existing database on state and local broadband funding programs' binding agreements, to determine the set of Nebraska and local enforceable commitments.

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

#### **4.4 Permissible Challenges**

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

NBO will only allow challenges on the following grounds:

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

During the BEAD Challenge Process, NBO will only allow challenges from nonprofit organizations, units of local and tribal governments, and broadband service providers. Under Nebraska Revised Statutes 13-903, a unit of local government is defined to include any entity form pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. As a result, and due to their significant contact with Nebraska residents and community anchor institutions, NBO is including the eight regional Economic Development Districts (EDD) as they are units of local government formed under these acts which may submit challenges.

#### **4.5 Challenge Process Overview**

The challenge process conducted by NBO will include four phases, spanning 120 calendar days:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, NBO 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. NBO will tentatively publish the locations eligible for BEAD funding on December 3, 2023.
2. **Challenge Phase:** During the Challenge Phase, the challenger will submit the challenge through the NBO challenge portal. This challenge will be visible to the service provider whose service availability and performance is being challenged. 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, NBO 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. The challenge phase will open on January 3, 2024.
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 substantiated. A provider may also agree with the challenge and thus transition the location to the “substantiated” 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 NBO. The rebuttal period begins once the provider is notified of the challenge, and thus may occur concurrently with the challenge phase.
4. **Final Determination Phase:** During the Final Determination phase, NBO 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, NBO will make a final challenge determination within 30 calendar days of the challenge rebuttal. Reviews will occur on a rolling basis, as challenges and rebuttals are received. The last period in which NBO will make final determinations will be from March 1, 2024, through March 31, 2024.

## 4.6 Evidence & Review Approach

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



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>4</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 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>	<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>
S	Speed	The actual speed of the service tier falls below the unserved or underserved	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>6</sup>

<sup>4</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.”

<sup>6</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.

		thresholds. <sup>5</sup>		
L	Latency	The round-trip latency of the broadband service exceeds 100 ms <sup>7</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>8</sup>
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. <sup>9</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) 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	Enforceable commitment by service provider (e.g., authorization letter). In the	Documentation that the provider has defaulted on the commitment or

<sup>5</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>7</sup> *Performance Measures Order*, including provisions for providers in non-contiguous areas (§21).

<sup>8</sup> *Ibid.*

<sup>9</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.

		will be deployed at this location by the date established in the deployment obligation.	case of Tribal Lands, the challenger must submit 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).	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, 2025, 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 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, 2025.</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.
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	Declaration by service provider subject to the enforceable commitment.	

		NOFO at 36, n. 52.)		
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>10</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.

### 4.6.1 Modified Challenge Types

NBO is modifying challenge type P to June 30, 2025. Generally speaking, service providers will plan and approve projects between 12-to-18 months prior to a project being completed. The 12-to-18-month duration is reflective of the capital budget planning and prioritization process to ensure capital is available for use, developing the business case and obtaining leadership approval, securing, and assigning resources (could include both internal and external engineering and construction personnel or contractors as needed) and then finally starting the project. In addition, Nebraska is unique in that the construction season is truncated due to extremely cold weather and can only take place in a few months out of the year. As such, there is a need in Nebraska for a longer planning cycle to ensure that construction is ready during that shorter period. Construction of small networks (less than 100 locations passed) could be completed in as little as 3 to 4 months, depending upon the density of the subscribers and terrain within the planned service area. Projects exceeding 500 locations passed and low prospective subscriber counts, coupled with rocky terrain, could take well over 8 months just to construct the infrastructure, not counting the planning and engineering time needed to fund and design the network.

It is estimated that Nebraska BEAD Volume II could be approved by March 2024. If the June 30, 2024, date was left as is, Nebraska would only be capturing privately funded projects that were in the last three to four months of construction. Nebraska would not be able to reasonably capture all the other projects that were:

1. Underway with construction but with a completion date beyond June 30, 2024
2. Planned and/or engineered with committed private funds but not yet started with a completion well beyond June 30, 2024

<sup>10</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.

By extending the date to June 30, 2025, it enables the NBO to capture project scope information for most, if not all, privately planned and funded projects in the planning, engineering, and construction pipeline. Once this information is captured, the NBO can then de-duplicate the privately funded / committed locations and reduce the BEAD location enablement obligation. By reducing the BEAD location obligation, it enables the NBO to allocate funds across the remaining unserved and underserved locations more efficiently. This effort will better position Nebraska to provide universal broadband solutions throughout the state in an environment where the NBO is currently estimating that BEAD funding allocation will not be sufficient to enable universal broadband service across the state with reliable broadband technology. The NBO will require an attestation from each provider stating that they commit to build and deliver services in the disclosed areas by June 30, 2025.

NBO 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.

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>11</sup>

NBO 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 calendar days.

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<sup>11</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.

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 Ookla (speedtest.net) or M-Lab (speed.measurementlab.net).

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 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. The NBO is modifying the speed test requirements to allow for locations to be moved to unserved as well as underserved. The NBO will allow speed tests to change a BSL to become identified as served, unserved, or underserved if the rigorous speed test data results in the BSL falling into that tier. This is because there has been credible data received by the office to support the notion that BSLs have been improperly represented by ISPs in the first couple of versions of the BDC.

Nebraska submitted over a million availability challenges to the FCC for this reason, and the NBO suspects that there still may be issues remaining and has data to support that notion as well. For example, following the closure of the January 13, 2023, window to submit availability challenges to the BDC, the NBO was made aware of the fact that a handful of ISPs mistakenly marked locations as served

if they came within a certain distance of their middle mile fiber, even though they were unserved or underserved. Luckily, some of the ISPs in question resolved this issue, with the FCC and the map correctly reflects the situation on the ground. However, the NBO is interested in ensuring that the data properly reflects the situation on the ground to the best of the office's ability, and therefore is making this modification.

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>12</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 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.

## 4.7 Transparency Plan

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, NBO 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. NBO 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. Eligible challengers will be informed by outreach and communication distributed directly to eligible challengers that sign-up for notices at <https://broadband.nebraska.gov> or sent through the eight regional EDDs, the League of Nebraska Municipalities, the Nebraska Association of County Officials, and the Nebraska Library Commission.

Eligible challengers can engage with NBO by a designated email address (NDOT.BroadbandOffice@Nebraska.gov). NBO will collect stakeholder information such as organization name, primary contact person, and email address at physical and virtual town hall meetings to promote the challenge process, webinars to provide overviews and training on the challenge portal, and on the NBO website. NBO will use this information to have transparent communication with all eligible challengers and providers.

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<sup>12</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.

Beyond actively engaging relevant stakeholders, NBO 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.

NBO 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, NBO 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.

NBO 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.

Under Nebraska Revised Statute 87-802 (Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006), Personally Identifiable Information (PII) includes:

1. A Nebraska resident's first name or first initial and last name in combination with any one or more of the following data elements that relate to the resident if either the name or the data elements are not encrypted, redacted, or otherwise altered by any method or technology in such manner that the name or data elements are unreadable:
  - a. Social security number;
  - b. Motor vehicle operator's license number or state identification card number;
  - c. Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account;
  - d. Unique electronic identification number or routing code, in combination with any required security code, access code, or password; or
  - e. Unique biometric data, such as a fingerprint, voice print, or retina or iris image, or other unique physical representation; or
2. A username or email address, in combination with a password or security question and answer, that would permit access to an online account.



NBO will comply with all federal and state laws and regulations related to the protection of PII. The challenge portal and system used for public comment will store data on encrypted servers using 128-bit encryption. Only authorized personnel or contractors will have access to the data.

## 4.8 Public Comment

NBO held a public comment period for volume 1 of the BEAD Initial Proposal from September 14, 2023, until October 17, 2023. During the comment period NBO held eight listening sessions across the state as part of outreach efforts to publicize the comment period. The NBO was pleased that at every physical listening session at least one provider, and often two or three, were in attendance. The NBO also held four targeted virtual webinars for internet service providers, County officials, City officials, and Nonprofits as well as Economic Development Districts.

Public comments were accepted via an online form, email, and via postal mail to the NBO office. Volume 1 received over thirty comments from the website portal alone including from broadband providers, local advocates, and broadband consumers. Many commenters noted that they would have additional and more detailed feedback on volume 2. The NBO classified the public comments according to the theme of the comment including CAI, Challenge Process, and Mapping.

### 4.8.1 Community Anchor Institution

Several commenters requested modifications to the definition of CAI. The NBO declines to modify the NTIA definition as the suggested modifications would have significantly increased the number of locations. The State of Nebraska is already forecasting a substantial shortfall in BEAD funding to reach all unserved and underserved locations, and the additional locations were not locations that meet the NTIA definition of CAI. Furthermore, some of the proposed modifications would have had unintended consequences including excluding some of the locations in most need of broadband. For example, limiting public safety entities to locations with full-time employees reporting to the location would exempt locations such as volunteer fire stations. The NBO clarified that Community Support Organizations must be government agencies or tax-exempt non-profit organizations.

### 4.8.2 Challenge Process

In response to a public comment and a note from NTIA, the NBO has attempted to clarify the timeline for the challenge process in section 1.4.6. A few commenters encouraged dropping the speed test, area, and MDU challenges.

The NBO believes that these are important methods for challenges, and that by removing these optional challenges residents, eligible challengers, and especially providers will be disadvantaged due to the underlying map relying on only Broadband Data Collection reporting

for speed. During the public comment period, a resident submitted a comment noting that the current map shows 1 Gbps service avail at their home, but when they called the provider listed on the Nebraska Broadband Map for their address the provider advised that their address was not served at all by the provider. Therefore, NBO will keep the speed test, area, and MDU challenges and has adopted optional module 3 for map modification.

The NBO declines one suggestion that non-profit challengers be limited by their geographic service region. The NBO believes this is not within the spirit or intent of the NTIA model challenge process. A commenter expressed concern that MDUs are under counted. NBO believes that the data is as correct as it can be without a more uniform method for collecting this type of data. This is something that NBO has no control over. Last, in response to a commenter requesting clarity on providers challenging CAI service availability. The NBO feels that the model challenge process is clear that a provider may challenge a CAI unserved designation if they have the data to support that the CAI can receive 1 Gbps service.

### **4.8.3 Various Comments**

The NBO has updated the existing funding dataset to clarify availability of broadband funding. In response to multiple comments the map has been continuously updated, including making it more mobile friendly. The NBO is developing an update service for stakeholders interested in being notified of any substantial changes and updates to the website. An industry association asked for added layers to be added to the map. This is an ongoing process as data is made available and the map is regularly updated with new data for the various layers used. Any other comments received during the public comment period, NBO feels are already addressed in the volume 1 narrative and attachments.