Utah's Initial Proposal

Volume 1

Introduction

The relationship between broadband and other priorities for Utahns — such as employment, education, health, civic engagement, technology innovation, and entrepreneurship— is and will become increasingly important. Broadband infrastructure deployment and adoption is a key component in accomplishing economic growth, increasing educational innovation, expanding access to health care, and increasing personal connection.

The State of Utah wants to ensure every resident has access to reliable and affordable broadband internet to enhance their quality of life.The Broadband Equity, Access, and Deployment (BEAD) program, established by the Infrastructure Investment and Jobs Act, allocated more than $317 million to Utah. Our goal as a state is to strategically use these funds in conjunction with other state, federal, educational or non-profit programs to narrow and close the remaining digital divides among our population.

The purpose of this Initial Proposal (IP) is to outline the process of the Utah Broadband Center (UBC) for:

- Identifying all unserved and underserved locations and Community Anchor Institutions (CAIs) eligible for BEAD-funded projects[1]
- Accepting, reviewing, and awarding BEAD grants to eligible applicants
- Plans to adhere to all additional requirements for the BEAD program

The following sections meet the requirements for BEAD-IP Volume 1:

- Identification of existing broadband efforts and funding
- Identification of existing unserved and underserved locations
- Identification and application of CAIs
- Detailed challenge process plan
- Information for the Volume 1 public comment period and a high-level summary of comments received

BEAD-IP Volume 2 will include the remaining sections to complete the BEAD-IP requirements.

For the purposes of this proposal, “Eligible Entity” refers to the State of Utah and Utah Broadband Center (UBC).

1. Existing Broadband Funding (Requirement 3)

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

UBC has a long history of administering programs focused on statewide broadband deployment, including the state’s Broadband Access Grant which is funded with federal dollars. Additional federal funds for broadband infrastructure have been awarded to other key state agencies.

[1] The Infrastructure Investment and Jobs Act (IIJA) defines an “unserved” location as one without any broadband service at all or with internet service offering speeds below 25/3 Mbps. It defines an “underserved” location as one without broadband service offering speeds of 100/20 Mbps.

These programs and grant processes are documented in the state's recently published five-year Digital Connectivity Plan (DCP) located here:

https://www.connectingutah.com/digital-connectivity-plan

Existing broadband efforts for broadband infrastructure deployment as well as access, affordability, and adoption are presented in Table 1. Broadband funding available in Utah is a reference file titled "Appendix A - Existing Broadband Funding Sources" which is located here:

https://www.connectingutah.com/initial-proposal

Table 1. Current Activities that UBC Conducts

Activity Name	Description	Intended Outcomes
Broadband Access Grant	Utah State Code 34N-17-301 - State-administered broadband infrastructure grant program	To extend broadband service to individuals and businesses in an unserved area or an underserved area by providing last mile connections to end-users that would not otherwise obtain it due to economics, rurality, ROI, geography, or other obstacles.
Utah Broadband Alliance	Alliance of organizations, businesses, public and private, nonprofits, ISPs	Collaborative group of industry representatives working to bring high-speed access to households and businesses across the state by providing input, networking, and exploring best practices.

Activity Name	Description	Intended Outcomes
Utah Broadband Center Advisory Commission	Advisory board that consists of nine voting members (four legislators and five public servants) and the Utah Broadband Center Director - Utah State Code 36-29-109	The commission shall: (a) make recommendations to the center with respect to: (i) strategic plan development; and (ii) the application for and use of broadband infrastructure funds; (b) solicit input from relevant stakeholders, including: (i) public and private entities who may assist in developing and implementing the strategic plan; and (ii) public and private entities whom the strategic plan may impact; (c) provide recommendations for strategic plan development and implementation based on the input described in Subsection (9)(b); (d) review strategic plan drafts; and (e) recommend changes.
Utah Residential Availability Map	State map showing ISP-submitted service coverage data of residential broadband availability, technology, and speeds.	Resource showing available broadband coverage to Utah households.
Utah Economic Development Map	State map showing economic development resources including utilities, commercial broadband availability, transportation, schools, hospitals, outdoor recreation, economic incentives, etc.	Businesses interested in relocating or expanding in Utah can use the map to identify areas with robust commercial broadband as well as other resources.
Connecting Utah Initiative	Connecting Utah Virtual Monthly Call	Provide updates, share resources, and receive feedback from attendees regarding broadband and digital access.
Utah Internet Speed Test	Crowdsourced speed test hosted by UBC	Collect and map all areas of the state with crowdsourced speed test data to help identify unserved locations.

2. Unserved and Underserved Locations (Requirement 5)

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

Under the BEAD program, locations without access to internet speeds at or below 25/3 Mbps are considered unserved and locations without access to internet speeds at or below 100/20 Mbps but above 25/3 Mbps are considered underserved. The two associated reference files titled “Appendix B - Unserved” and “Appendix C - Underserved” listing unserved and underserved location IDs are available for download at the following link:

https://www.connectingutah.com/initial-proposal

The data was sourced on September 8, 2023, by UBC from the August 29, 2023, version of the FCC Broadband Data Collection; which can be found here:

https://broadbandmap.fcc.gov/home

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

[Note: UBC will update these datasets after public comment and prior to submission of the Initial Proposal with the latest data set from NTIA]

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

UBC is statutorily required to identify any CAIs lacking broadband service with speeds of at least 1 Gigabyte per second (1 Gbps). UBC applied the statutory definition of the term “community anchor institution” when identifying all eligible CAIs in its jurisdiction and in tribal lands cited as a type of CAI per the statutory definition 47 USC 1702 (a)(2)(E).

> The term “community anchor institution" means an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals.

The following sources were used by UBC to identify CAIs:

- Schools: K-12 schools include those that participate in the FCC's E-Rate program or have a National Center for Education Statistics (NCES) ID in the categories of "public schools" or "private schools." Data for these locations was obtained from the Utah Education and Telehealth Network (UETN).

- Libraries: Libraries include those that participate in the FCC's E-Rate program, are American Library Association (ALA) member libraries and their branches, and those on record with the State Librarian. Data for these locations was obtained from the Utah Education and Telehealth Network (UETN).

- Health clinic, health center, hospital, or other medical providers (Health care facilities): The list includes institutions that have a Centers for Medicare and Medicaid Services (CMS) identifier, such as health clinics, health centers, hospitals, and other medical providers. Data for these locations was obtained from the Utah Education and Telehealth Network (UETN).

- Public safety entity: The list includes entities based on records maintained by the state and local units of government, such as fire houses, emergency medical service stations, police stations, and public safety answering points (PSAP). Data for these locations were obtained from the Utah Geospatial Resource Center (UGRC):

  Fire Stations Map – https://opendata.gis.utah.gov/datasets/utah-fire-stations/explore?location=40.195430%2C-111.583711%2C-1.00

  Law Enforcement Map – https://opendata.gis.utah.gov/datasets/utah-law-enforcement/explore?location=40.540661%2C-111.779216%2C-1.00

- Institutions of higher education: Institutions of higher education include those that have a NCES ID in the category of "college," including junior colleges, community colleges, minority serving institutions, other universities, and other educational institutions. Data for these locations was obtained from the Utah Education and Telehealth Network (UETN).

- Public housing organizations: Public housing organizations were identified from the U.S. Department of Housing and Urban Development.

- Community support organizations: UBC includes any organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals. The following organizations are being categorized as community support organizations with explanations of how they serve vulnerable populations with broadband services:

    - Community action agencies – The Community Action Partnership of Utah is a statewide association of community action agencies that provide resources for low-income families, including basic needs support, case management, and financial and employment education resources. UBC recognizes this as a community anchor institution that serves covered populations. A map of these agencies' coverage areas can be found at this link – https://caputah.org/who-we-are/our-network-providers.html

- Senior centers – Senior centers are key locations for providing services for seniors including minorities, low-income, disabled, or digital immigrants. Centers are an anchor for facilitating health services, tax preparation, online training, digital navigation, affordable devices, information regarding affordable programs, and social connections. The Utah Department of Health and Human Services helped identify senior centers. – https://daas.utah.gov/locations/

- Local, state, federal or tribal government buildings: UBC used the U.S. General Services Administration's (GSA) "Inventory of GSA Owned and Leased Properties" to identify federal buildings in Utah. State, local, and tribal government buildings were identified by consulting state, territorial, and tribal records.If you are part of the public, you can access online meetings, forms, pay taxes, or apply for business licenses through these meetings. These buildings also support staff with various needs to provide current online information to citizens of all populations regarding emergency services, utilities, and current events.

- Employment Centers – Employment Centers provide resources for job seekers in the state, including online job searching and applications. These employment centers are located around the state and serve many members of different covered populations, including veterans. A list of employment centers was identified from the Utah Department of Workforce Services website: https://jobs.utah.gov/jsp/officesearch/#/map

- Faith-Based Organizations – Faith-based organizations support online resources, functions, and classes for vulnerable populations. Many of these organizations offer some form of programs open to the public including preschool, family history, self-reliance, English as a second language courses, mobile food pantries, finance classes, etc. Many are in rural communities where this is the only anchor institution. UGRC supplied the list of churches in Utah.

UBC encourages feedback regarding any CAIs that are missing from the list provided in Appendix D and do not have at least 1 Gigabit of service to their facility or that should be included per UBC's definition of CAI. Following the public comment period, UBC will review all comments related to CAIs and update the CAI list as needed. One .csv file detailing all CAIs identified by UBC is available for download titled "Appendix D - Community Anchor Institutions" here:

https://www.connectingutah.com/initial-proposal

4. Challenge Process (Requirement 7)

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

Utah will adopt the model challenge process as provided by NTIA.

Modifications to Reflect Data Not Present in the National Broadband Map

UBC will utilize Optional Module 2: DSL Modifications and Optional Module 3: Speed Test Modifications

Optional Module 2: DSL Modifications

UBC 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.

Optional Module 3: Speed Test Modifications

The broadband office 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

The BEAD Eligible Entity Planning Toolkit is a collection of NTIA-developed technology tools that, among other things, overlay multiple data sources to capture federal, state, and local enforceable commitments. Eligible Entities adopting the Model must indicate their plan to use the BEAD Eligible Entity Planning Toolkit by selecting "Yes."

☒ Yes, UBC intends to use the BEAD Eligible Entity Planning Toolkit

☐ No

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

In order to ensure that federal funds are used as efficiently as possible, UBC will utilize the BEAD Eligible Entity Planning Toolkit as well as additional data sources to identify locations already subject to enforceable commitments. These locations will not be eligible for BEAD-funded projects. Additional data sets that will be utilized in the deduplication of funding process include:

- The FCC Broadband DATA Map
- Data from broadband deployment programs that meet BEAD qualifying speeds (i.e., programs funded through Capital Projects Fund (CPF) and Coronavirus State and Local Fiscal Recovery Funds (SLFRF)
- Data of existing enforceable commitments regarding broadband deployment projects

The broadband 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 broadband 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 broadband office will submit this list, in the format specified by the FCC Broadband Funding Map, to NTIA.[1]

The broadband 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 the state or local program did not specify

broadband speeds, or when there was reason to believe a provider deployed higher broadband speeds than required, the broadband office will reach out to the provider to verify the deployment speeds of the binding commitment. The broadband office will document this process by requiring providers to sign a binding agreement certifying the actual broadband deployment speeds deployed.

The broadband 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.

The associated reference file titled "Appendix E - Deduplication of Funding" is available for download at the following link:

https://www.connectingutah.com/initial-proposal

Challenge Process Design

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

Permissible Challenges

UBC will only allow challenges on the following grounds:

- The identification of eligible CAIs, as defined by the Eligible Entity,
- CAI BEAD eligibility determinations,
- BEAD eligibility determinations for existing BSLs ***including challenging availability, speeds, latency, data caps, technology type, service type whether residential or business,***
- Enforceable commitments, or
- Planned service

Permissible Challengers

During the BEAD challenge process, UBC will only allow challenges from nonprofit organizations, units of local or tribal governments, or broadband service providers.

Challenge Process Overview

The challenge process conducted by UBC will include four phases, spanning up to 90 days:

1. **Publication of Eligible Locations**: Prior to beginning the Challenge Phase, UBC 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). UBC will also publish locations considered served, as they may be challenged. Publication is tentatively scheduled for January 2024.
2. **Challenge Phase**: During the Challenge Phase, the challenger will submit their challenge through the UBC challenge portal. This challenge will be visible to the service provider whose service availability and performance are being contested. The portal will notify the provider of the challenge through an automated email which will include

related information about timing for the provider's response. After this stage, the location will then enter the "challenged" state.

   a. **Minimum Level of Evidence Sufficient to Establish a Challenge**: UBC 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 portal will be used to confirm that a verifiable email address is being used. For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition (OCR). For availability challenges, UBC 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, CAIs, and existing enforceable commitments are posted. The challenge phase is tentatively scheduled to begin in January 2024.

3. **Rebuttal Phase**: Only the challenged ISP 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 UBC. The rebuttal phase will end 30 days from the last date challenge submissions are accepted.

4. **Final Determination Phase**: During the final determination phase, UBC will make the final determination of the classification of a location, either declaring the challenge "sustained" or "rejected."

   a. **Timeline**: Following intake of challenge rebuttals, UBC 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 final determination phase will end 30 days after the final date to submit rebuttals.

Evidence & Review Approach

To ensure that each challenge is reviewed and fairly adjudicated, UBC will review all applicable challenge and rebuttal information in detail without bias, before deciding to sustain or reject a challenge. UBC will document the standards of review to be applied in a standard operating procedure manual and will require reviewers to document their justification for each determination. Reviewers will have sufficient training to uniformly apply the standards of review to all properly submitted challenges. Reviewers will be required to submit affidavits to ensure there are no conflicts of interest in making challenge determinations. A list of challenge types with specific examples is provided below in Table 2.

Table 2. Challenge Types with Examples

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).	• Screenshot of provider webpage indicating service is unavailable to a location. • A service request was refused within the last 180 days (e.g., an email or letter from provider). • Lack of suitable infrastructure (e.g., no fiber on pole). • 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.[2] • 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.	• Provider shows that the location subscribes or has subscribed within the last 12 months, e.g., with a copy of a customer bill. • If the evidence was a screenshot and believed to be in error, a screenshot that shows service availability. • 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. • Provider supplies proof of denied Request of Entry (if service has been built to property) • Provider submits plant map including or emphasizing area of challenge, proving availability

[2] 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."

Code	Challenge Type	Description	Specific Examples	Permissible Rebuttals
S	Speed	The actual speed of the service tier falls below the unserved or underserved thresholds.[3]	• 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.[4]
L	Latency	The round-trip latency of the broadband service exceeds 100 ms[5].	• 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.[6]
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance ("data cap") on the consumer.[7]	• Screenshot of provider webpage. • Service description provided to consumer.	• 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.

[3] 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.

[4] 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.

[5] *Performance Measures Order*, including provisions for providers in non-contiguous areas (33 FCC Rcd at 6528, §21).

[6] *Ibid*.

[7]. 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.

Code	Challenge Type	Description	Specific Examples	Permissible Rebuttals
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.	• Evidence of 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 and the service provider for the location(s) at issue (see Section 6.2 above). • Bill of Ladings demonstrating purchases/delivery of equipment/assets. • Engineering design/plant design demonstrating commitment (.shp file, .kmz/.kml, Geo JSON file, etc)	• 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).

Code	Challenge Type	Description	Specific Examples	Permissible Rebuttals
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.	• Construction contracts or similar evidence of on-going deployment, along with evidence that all necessary permits have been applied for or obtained. • Contracts or a similar binding agreement between the Eligible Entity and the provider committing that planned service will meet the BEAD definition and requirements of reliable and qualifying broadband even if not required by its funding source (i.e., a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024. • Engineering design/plant design complete with Bill of Ladings demonstrating purchases/delivery of equipment/assets demonstrating commitment including the expected date deployment will be completed, which must be on or before June 30, 2024.	• 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.

Code	Challenge Type	Description	Specific Examples	Permissible Rebuttals
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.)	• Evidence the location will not be covered by the enforceable 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.[8]	• 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 Multiple Dwelling Units (MDU) Challenge

UBC will administer area and MDU challenges for challenge types A, S, L, D, and T (referenced in Table 2 above). 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 or MDU challenge must demonstrate that they are indeed meeting the availability, speed, latency, data cap and technology requirements for all served locations within the area or the units within an MDU. The provider can use any of the permissible rebuttals listed above. An area challenge is triggered if six or more broadband serviceable locations using a particular technology within a census block group and a single provider are challenged.

An MDU challenge requires challenges by at least three units or 10% of the unit count listed in the Fabric within the same BSL, whichever is larger. Each type of challenge, technology, and provider will be 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 technology will be treated separately since one will likely have

[8] 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.

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 Hybrid Fiber Coax [HFC] infrastructure or customer subscribers). For fixed wireless service, the challenge system will offer a representative random sample of the area in contention, with no fewer than 10 locations, where the provider demonstrates service availability and speed. For example, a mobile test unit is a testing apparatus that can be easily moved, which simulates the equipment and installation (e.g., antenna, antenna mast, subscriber equipment) that would be used in a typical deployment of fixed wireless access service by the provider.

Speed Test Requirements

UBC 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 an Ookla speed test (https://www.speedtest.net/) or the Utah Broadband Center Speed Test (https://business.utah.gov/broadband/speed-test/#test)

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, 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[9], 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.

Transparency Plan

To ensure the challenge process is transparent and open to public and stakeholder scrutiny, UBC 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. UBC 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 ISPs. Relevant stakeholders can sign up for challenge process updates on broadband.utah.gov or by emailing broadbandcenter@utah.gov.

UBC 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 BSL,
- The provider being challenged,
- The type of challenge (e.g., availability or speed), and
- A summary of the challenge, including whether a provider submitted a rebuttal.

UBC will not publicly post any personally identifiable information (PII) or proprietary information, including subscriber names, street addresses or customer IP addresses. To ensure all PII is

[9] 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.

protected, UBC 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.

UBC will treat information submitted by an existing broadband service provider designated as proprietary and confidential consistent with applicable federal and state law. If any of these responses do contain information or data 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 to the extent allowed pursuant to Utah Open Records Act. If information is identified by the entity as privileged or confidential, the entity must submit a letter requesting such exemption to broadbandcenter@utah.gov. Otherwise, the responses will be made publicly available. All exempted information will be securely maintained and accessed by UBC and confidential contractors only.

5. Volume I Public Comment

A copy of this draft document will be available for public comment from September 14, 2023 to October 14, 2023. A summary of comments received will be included here in the final document.

Appendices are subject to change and will be updated before final submission to NTIA.