
BEAD Challenge Process

State of Montana

Montana Broadband Office
Montana Department of Administration



Montana Broadband Office
BEAD Challenge Process



Table of Contents

1	Volume I (Requirements 3, 5 – 7)	1
1.1	<i>Existing Broadband Funding (Requirement 3)</i>	1
1.2	<i>Unserved and Underserved Locations (Requirement 5)</i>	2
1.3	<i>Community Anchor Institutions (Requirement 6)</i>	3
1.4	<i>Challenge Process (Requirement 7)</i>	6



1 Volume I (Requirements 3, 5 – 7)

1.1 Existing Broadband Funding (Requirement 3)

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

DOCUMENT INTENDED TO PROVIDE INSIGHT BASED ON CURRENTLY AVAILABLE INFORMATION FOR
CONSIDERATION AND NOT PRESCRIBE SPECIFIC ACTION



1.2 Unserved and Underserved Locations (Requirement 5)

1.2.1 [underserved.csv](#); [unserved.csv](#)

1.2.2 June 15, 2023

DOCUMENT INTENDED TO PROVIDE INSIGHT BASED ON CURRENTLY AVAILABLE INFORMATION FOR
CONSIDERATION AND NOT PRESCRIBE SPECIFIC ACTION



1.3 Community Anchor Institutions (Requirement 6)

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

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

1. Whether the community support organization facilitates greater use of broadband service by vulnerable populations, including, but not limited to, 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 Eligible Entity 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 \(fcc.gov\)](https://www.fcc.gov/911/master-psap-registry)].
- **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 or territory enumerated by the U.S. Department of Housing and Urban Development.¹ The

¹ [PHA Contact Information - HUD | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](https://www.hud.gov/pha/contact-information)



nonprofit organizations Public and Affordable Housing Research Corporation (PAHRC) and National Low-Income Housing Coalition maintain a database of nationwide public housing units at the National Housing Preservation Database (NHPD).

- **Community support organizations:** The Eligible Entity included any organizations that facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals. The Eligible Entity included senior centers and job training centers in this category. 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 Finder². The National Council on Aging (NCOA) helped identify senior centers³.

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

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.”⁴ 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.⁵ American Job Centers were identified in the Department of Labor database of American Job Centers.⁶

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

- **Engaged government agencies.** The broadband office reached out to all state agencies to understand what records they have available regarding relevant community anchor institutions 1 Gbps 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 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

² <https://www.careeronestop.org/localhelp/americanjobcenters/find-american-job-centers.aspx>

³ National Institute of Senior Centers

⁴ Homeland Infrastructure Foundation-Level Data, <https://hifld-geoplatform.opendata.arcgis.com/>

⁵ FCC PSAP Registry, <https://opendata.fcc.gov/widgets/dpq5-taqj>

⁶ American Job Center Finder, Department of Labor, <https://www.careeronestop.org/localhelp/americanjobcenters/find-american-job-centers.aspx>

DOCUMENT INTENDED TO PROVIDE INSIGHT BASED ON CURRENTLY AVAILABLE INFORMATION FOR
CONSIDERATION AND NOT PRESCRIBE SPECIFIC ACTION



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 broadband office 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; for larger districts, 2 Mbps per user. Additionally, the broadband office cross-referenced the Eligible Entity's 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 broadband office 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 broadband office 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 broadband office engaged with umbrella and nonprofit organizations that work with community anchor institutions to coordinate and obtain 1 Gbps broadband service availability data. Specifically, the broadband office 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.

Using the responses received, the broadband office then compiled the list of those CAIs that do not have adequate broadband service, attached in question 1.3.2.

1.3.2 [cai.csv](#)



1.4 Challenge Process (Requirement 7)

NTIA BEAD Model Challenge Process Adoption

1.4.1 Yes

No

Modifications to Reflect Data Not Present in the National Broadband Map

1.4.2 The broadband office 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.

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

1.4.3 Yes

No

1.4.4 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 § 60105.⁷
2. Data sets from state broadband deployment programs that rely on funds from the Capital Projects Fund and the State and Local Fiscal Recovery Funds administered by the U.S. Treasury.
3. State and local data collections of existing enforceable commitments.

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

⁷ The broadband funding map published by FCC pursuant to IIJA § 60105 is referred to as the “FCC Broadband Funding Map.”



will submit this list, in the format specified by the FCC Broadband Funding Map, to NTIA.⁸

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.

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

⁸ Guidance on the required format for the locations funded by state or territorial and local programs will be specified at a later date, in coordination with FCC.



Challenge Process Design

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

Permissible Challenges

The broadband office will only allow challenges on the following grounds:

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

Permissible Challengers

During the BEAD Challenge Process, the broadband office 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 broadband office will include four phases, spanning 120 days⁹:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, the broadband office will publish the set of locations eligible for BEAD funding, which consists of the locations resulting from the activities outlined in Sections 5 and 6 of the NTIA BEAD Challenge Process Policy Notice (e.g., administering the deduplication of funding process). The office will also publish locations considered served, as they may be challenged. Eligible locations will be published on January 2, 2024.
2. **Challenge Phase:** During the Challenge Phase, the challenger will submit the challenge through the broadband office 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

⁹ 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.



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 broadband office will manually verify that the evidence submitted falls within the categories stated in the NTIA BEAD Challenge Process Policy Notice and the document is unredacted and dated.

- b. **Timeline:** Challengers will have 30 calendar days to submit a challenge from the time the initial list of unserved and underserved locations, community anchor institutions, and existing enforceable commitments are posted. The Challenge Phase will begin on January 9, 2024 and conclude on February 7, 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 sustained. A provider may also agree with the challenge and thus transition the location to the “sustained” state. Providers must regularly check the challenge portal notification method (e.g., email) for notifications of submitted challenges.
- a. **Timeline:** Providers will have 30 business days from notification of a challenge to provide rebuttal information to the broadband office. The Rebuttal Phase will begin on February 8, 2024 and conclude on March 21, 2024.
4. **Final Determination Phase:** During the Final Determination phase, the broadband office will make the final determination of the classification of the location, either declaring the challenge “sustained” or “rejected.”
- a. **Timeline:** Following intake of challenge rebuttals, the broadband office will make a final challenge determination within 41 calendar days of the challenge rebuttal. Reviews will occur on a rolling basis, as challenges and rebuttals are received. The Final Determination Phase will begin on March 22, 2024 and conclude on May 1, 2024.

Evidence & Review Approach

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



Code	Challenge Type	Description	Specific Examples	Permissible rebuttals
A	Availability	The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU).	<ul style="list-style-type: none"> Screenshot of provider webpage. 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.¹⁰ A letter or email dated within the last 365 days indicating that a provider requested more than the standard installation fee to connect 	<ul style="list-style-type: none"> 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.

¹⁰ 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.”

DOCUMENT INTENDED TO PROVIDE INSIGHT BASED ON CURRENTLY AVAILABLE INFORMATION FOR
CONSIDERATION AND NOT PRESCRIBE SPECIFIC ACTION



			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. ¹¹	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. ¹²
L	Latency	The round-trip latency of the broadband service exceeds 100 ms ¹³ .	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. ¹⁴
D	Data cap	The only service plans marketed to	• Screenshot of provider	Provider has terms of service

¹¹ 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.

¹² 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.*

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

¹⁴ *Ibid.*



		consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. ¹⁵	<ul style="list-style-type: none"> • 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).

¹⁵. 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.

DOCUMENT INTENDED TO PROVIDE INSIGHT BASED ON CURRENTLY AVAILABLE INFORMATION FOR CONSIDERATION AND NOT PRESCRIBE SPECIFIC ACTION



			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"> 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>i.e.</i>, a separate federal grant program), including the expected date deployment will be completed, which must be on or 	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.

DOCUMENT INTENDED TO PROVIDE INSIGHT BASED ON CURRENTLY AVAILABLE INFORMATION FOR CONSIDERATION AND NOT PRESCRIBE SPECIFIC ACTION



			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 Eligible Entity. ¹⁶	Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation.
R	Location is not a CAI	The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation.	Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation.	Evidence that the location falls within the definitions of CAIs set by the Eligible Entity or is still operational.

Area and MDU Challenge

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

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

¹⁶ 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 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).¹⁷

Speed Test Requirements

The SBO 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 a commonly used speed test application.

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.

¹⁷ 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 rule¹⁸, 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 broadband office will, upon approval from NTIA, publicly post an overview of the challenge process phases, challenge timelines, and instructions on how to submit and rebut a challenge. This documentation will be posted publicly for at least a week prior to opening the challenge submission window. The broadband office also plans to actively inform all units of local government of its challenge process and set up regular

¹⁸ 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.



touchpoints to address any comments, questions, or concerns from local governments, nonprofit organizations, and Internet service providers. Relevant stakeholders can sign up on the broadband office website (<https://connectmt.mt.gov/>) for challenge process updates and newsletters. They can engage with the broadband office by a designated email address (connectmt@mt.gov).

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 broadband office will also post all submitted challenges and rebuttals before final challenge determinations are made, including:

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

The broadband office 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 broadband office will review the basis and summary of all challenges and rebuttals to ensure PII is removed prior to posting them on the website. Additionally, guidance will be provided to all challengers as to which information they submit may be posted publicly.

The broadband office 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)¹⁹, 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.

1.4.7 N/A

¹⁹ MT Code Ann. § 2-6-15 (2021), https://leg.mt.gov/bills/mca/title_0020/chapter_0060/part_0150/sections_index.html

