2023
BROADBAND EQUITY ACCESS AND DEPLOYMENT

Initial Proposal - Volume 1
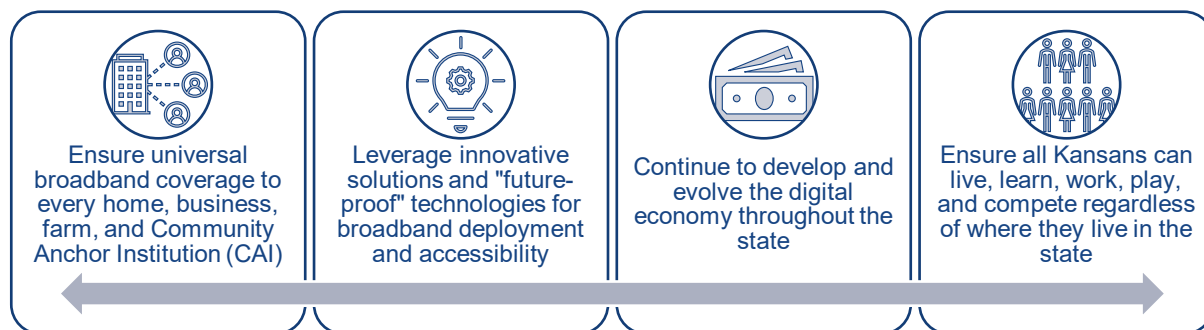
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Updated August 31, 2023

Kansas
Office of Broadband Development

KANSAS BROADBAND PLANNING

A Message from the Director

Fellow Kansans,

The Kansas Office of Broadband Development (KOBD) is pleased to present the first of two volumes of the Broadband Equity, Access, and Deployment Program (BEAD) Initial Proposal (BEAD-IP) for public comment. The BEAD program, established by the Infrastructure Investment and Jobs Act, allocated more than $451 million to Kansas for the development of broadband networks to help achieve Governor Laura Kelly's broadband vision to:

| Ensure universal broadband coverage to every home, business, farm, and Community Anchor Institution (CAI) | Leverage innovative solutions and "future-proof" technologies for broadband deployment and accessibility | Continue to develop and evolve the digital economy throughout the state | Ensure all Kansans can live, learn, work, play, and compete regardless of where they live in the state |

To achieve these lofty objectives, your partnership and input is invaluable.

We invite you, a Kansan stakeholder, to review this BEAD-IP, Volume 1, using the online feedback form at
https://kansasdeptofcommercebroadband.submittable.com/submit/268780/bead-volume-1

The public comment period was originally open for thirty (30) days and has been extended. The deadline for comment is 5:00 p.m. (CT) September 5, 2023.

KOBD will use your input to update the BEAD-IP, Volume 1, which focuses on existing funding, unserved and underserved locations, community anchor institutions (CAI), and a challenge process that will follow the approval of this plan. A second volume of the BEAD-IP will be released at a later date to address other NTIA requirements such as the subgrantee selection process. You can learn more from this Notice of Funding Opportunity.

Please contact kdc_broadband@ks.gov if you have any questions or need clarification.

Sincerely,

Jade Piros de Carvalho
Director of the Kansas Office of Broadband Development

Introduction

KOBD drafted the following sections to meet the requirements for BEAD-IP Volume 1:

- Identification of existing broadband efforts
- Identification of existing unserved and underserved locations
- Identification and application of community anchor institutions
- Detailed challenge process plan

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 Kansas and KOBD.

1.1 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.

1.1.1 Existing Broadband Funding Sources and Information and CSV File

Since its inception, KOBD has administered state and federal grant programs focused on broadband deployment throughout the state, which are documented in the Five-Year Action Plan (FYAP). An update of existing efforts to address broadband infrastructure deployment, access, affordability, and adoption and their funding is presented in Table 1.

Table 1. Existing Broadband Efforts				
Source	**Purpose**	**Total**	**Expended**	**Available**
Capital Projects Fund (CPF) Program – American Rescue Plan Act (ARPA). Awarding Agency: U.S. Department of Treasury	The CPF program provided funding to deploy broadband infrastructure that delivers 100/100 Mbps to unserved and critical areas of the state that lacked access. CPF is intended to address the following priorities: • Broadband infrastructure deployment designed to directly enable work, education, and healthcare monitoring. • A critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency. • A critical need of the community to be served.	$83,460,391 with $41,883,267 in matching funds for a total of $125,343,657 invested	$7,964,076 Disbursed to Awardees	$75,496,315 To be Disbursed to Awardees
Broadband Equity, Access, and Deployment Program (BEAD). Awarding Agency: NTIA	BEAD will provide $42.45 billion nationally to bring universal broadband access to all Americans. Kansas' allocation is $451.7 million.	$451,725,998	$0	$451,725,998

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Table 1. Existing Broadband Efforts				
Source	**Purpose**	**Total**	**Expended**	**Available**
BEAD Initial Planning Grant. Awarding Agency: NTIA	The BEAD Initial Planning Grant provides funds for the creation of the FYAP.	$4,999,943	$871,599	$4,128,344
State Digital Equity Planning Grant Program (DEA). Awarding Agency: NTIA	The Digital Equity Act (DEA) supports the creation of a digital equity plan. The goal of the DEA program is to promote the meaningful adoption and use of broadband services across covered populations. KOBD created a Digital Equity Advisory Council and completed robust outreach to covered populations.	$692,644	$199,291	$493,353
Enabling Middle Mile Broadband Infrastructure (EMMBI). Awarding Agency: NTIA	The state applied for NTIA's competitive EMMBI program focused on the construction, improvement, or acquisition of middle-mile broadband infrastructure. KOBD partnered with the Kansas Department of Transportation, the Kansas Research and Education Network (KanREN), and private providers, with input from the Kansas Department of Agriculture and the Kansas Division of Emergency Management, to submit a middle mile application in September 2022. On June 16, 2023, KOBD and our partners, were awarded $42.5 million.	$42,514,219	$0	$42,514,219
Capital Projects Fund Digital Connectivity Technology (CPF-DCT). Awarding Agency: U.S. Department of Treasury	In February 2023, Kansas was the first state to be awarded $15.5 million of DCT funds. The CPF-DCT program will support equal access to high-speed internet and provide devices to unserved and underserved Kansans. The program will be competitively allocated to eligible entities to bring free devices to income-qualifying households, free Wi-Fi to CAIs, and free Wi-Fi to low-income multi-dwelling units (MDU).	$15,500,000	Program in design; expected in 4Q23	Program in design; expected in 4Q23

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Table 1. Existing Broadband Efforts				
Source	**Purpose**	**Total**	**Expended**	**Available**
Lasting Infrastructure and Network Connectivity Program (LINC). Awarding Agency: Kansas Department of Commerce	Kansas allocated $30 million in ARPA State Fiscal Recovery Funds (SFRF) to LINC for broadband infrastructure expansion. LINC is a multi-faceted effort to improve broadband infrastructure, middle mile connectivity, and Internet Exchange Point capabilities throughout Kansas.	$30,000,000	Applications closed; applications currently under review: 100% expected to be allocated	$0
Broadband Acceleration Grant (BAG). Awarding Agency: Kansas Department of Transportation (KDOT)	In 2020, KDOT, through its Eisenhower Legacy Transportation Program (IKE), partnered with KOBD to fund BAG. The program will invest $85 million over 10 years toward bridging the digital divide in Kansas. BAG will invest $5 million per year in grant awards for years one (1) through three (3), and $10 million per year in grant awards for years four (4) through ten (10). BAG prioritizes access to unserved and underserved areas through the construction of broadband infrastructure across Kansas. Total investment, including matching funds, over the first two years exceeded $20 million and broadband access was brought to more than 5,700 locations. The third funding year process launched July 2023.	$85,000,000	$10,000,000 awarded in years 1 and 2	$75,000,000 available for future disbursements through year 10. Currently reviewing Year 3 applications for award by EOY23;
ReConnect. Awarding Agency: U.S. Department of Agriculture (USDA)	ReConnect offers loans, grants, and a loan-grant combination to facilitate broadband deployment in rural areas. Since 2020, Kansas providers received three (3) awards for broadband infrastructure at or above 100/20 Mbps. The total of the three (3) awards is $61.5 million, with the most recent award on June 12, 2023, for $49.9 million.	$61,500,000	Most recent awards announced by USDA	Monitoring Progress
Universal Service Fund (USF) Program for Schools & Libraries (E-rate). Awarding Agency: FCC	The E-rate program helps schools and libraries to obtain affordable broadband service. The E-rate program in Kansas is managed by the Kansas Corporation Commission, which distributed $30.6M in FY 2022.	$19,085,247	$19,085,247	Ongoing process administered by FCC; KOBD monitoring for awards and bandwidth availability for CAIs.

Table 1. Existing Broadband Efforts				
Source	**Purpose**	**Total**	**Expended**	**Available**
Rural Health Care (RHC) Program. Awarding Agency: FCC	This program provides funding to eligible healthcare providers for telecommunications and broadband services. The program's goal is to improve the quality of health care available to patients in rural communities. To date, 331 rural healthcare entities in Kansas utilize the RHC subsidy. Funding numbers are for 2022.	$6,729,375	$6,729,375	Program administered by FCC; KOBD is monitoring for bandwidth availability to recipients that are CAIs.
Tribal Broadband Connectivity Program (TBCP). Awarding Agency: NTIA	This program directs funding to Sovereign Nation Tribal governments for broadband deployment, telehealth, distance learning, broadband affordability, and digital inclusion. Three Sovereign Nation Tribes that reside in Kansas received TBCP grants: (1) The Kickapoo Tribe of Kansas received $3,710,576 to 146 unserved households, two businesses, 10 tribal government facilities, and 15 CAIs at 1Gbps symmetrical; and (2) The Prairie Band Potawatomi Nation received $499,741 to assist in future fiber development. (3) The Iowa Tribe of Kansas and Nebraska received $498,000 to assist in future fiber development and digital inclusion efforts.	$4,708,317	In Process (Controlled by Sovereign Nation Tribal governments)	Monitoring Progress
Alternate Connect America Cost Model (ACAM). Awarding Agency: FCC	ACAM II provides funding to rate-of-return carriers that voluntarily elect to transition to a new cost model for calculating high-cost support in exchange for meeting defined broadband build-out obligations. Those that elect to participate receive predictable monthly payments of up to $200, based on support, for each funded location over the program's ten (10) year support term (2017-2026). In Kansas, five (5) companies receive ACAM II funding covering over 14,000 locations. Funding numbers are for 2022.	$19,119,450	$19,119,450	KOBD monitoring EACAM (Enhanced ACAM) program updates. Providers decisions due by October 1, 2023. Decisions will be incorporated into BEAD deduplication process.

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Table 1. Existing Broadband Efforts				
Source	**Purpose**	**Total**	**Expended**	**Available**
Connect America Fund (Auction 903). Awarding Agency: FCC	The federal universal service high-cost program (also known as the Connect America Fund) is designed to ensure consumers in rural, insular, and high-cost areas have access to modern communications networks capable of providing voice and broadband service, both fixed and mobile, at rates that are reasonably comparable to those in urban areas.	$4,679,866	In Process	In Process
Connecting Minority Communities (CMC) Pilot Program. Awarding Agency: NTIA	This is a $268M grant program to Historically Black Colleges and Universities (HBCU), Tribal Colleges and Universities (TCU), and Minority-Serving Institutions (MSI) for the purchase of broadband service and eligible equipment. To date, no Kansas entities have applied for funds under this program.	No Current Applications	$0	$0
Affordable Connectivity Program (ACP). Awarding Agency: FCC	ACP is a federal affordability program for broadband subscription. For eligible households, ACP provides a discount of up to $30 per month toward internet service and up to $75 per month for households on qualifying Sovereign Tribal Nation lands. Eligible households can also receive a one-time discount of up to $100 for the purchase of a laptop, desktop computer, or tablet. KOBD partners with Education Superhighway to promote ACP. Education Superhighway provided training and resources to community partners, local governments, and ISPs. As a result, 69 organizations and 4 representatives have signed up to provide training on how to enroll interested households. As of May 2023, Kansas has 105,575 ACP subscribers in Kansas. Funding numbers are for 2022.	$23,218,466	$23,218,466	Continuing process (ACP is awarded based on direct applications from eligible subscribers to their service providers.)

Table 1. Existing Broadband Efforts				
Source	**Purpose**	**Total**	**Expended**	**Available**
Affordable Connectivity Outreach Grant Program. Awarding Agency: Federal Communications Commission (FCC)	The ACP Outreach Grant Program provides funding and resources to promote ACP and increase enrollment. Activities to promote ACP include a robust marketing and advertising campaign, social media, traditional media, flyers, infographics, standing banners, mailers, a video, and community education events in partnership with the FCC.	$1,000,000 (3 awards: City of Topeka, $90,200; Wichita State University, $409,800; and Kansas City Digital Divide, $500,000	$0	$1,000,000
Distance Learning and Telemedicine Grants. Awarding Agency: USDA	This competitive program helps rural communities use advanced telecommunications technology to connect to each other and the world, overcoming the effects of remoteness and low population density. To date, Kansas has 173 distance learning projects and 108 telemedicine projects. This grant is administered by the USDA directly to eligible entities (state and local governments, Sovereign Tribal Nations, not for profit organizations, incorporated for-profit businesses in populations with 20,000 or fewer).	$64,000,000 for Federal Fiscal Year (FFY) 2023. Applications closed January 30, 2023	Unknown, awards not posted. Likely posted in FFY 2023 Q4	Unknown
Broadband Technical Assistance (BTA) Grant. Awarding Agency: USDA	BTA provides funds to receive or provide broadband technical assistance and training, while also supporting the development and expansion of broadband cooperatives. On June 20, 2023, Kansas submitted a BTA application to provide broadband technical assistance to six of the most rural and economically distressed counties in the state. The counties covered are Linn, Kiowa, Gove, Wilson, Kearny, and Rawlins.	Pending application for $1,000,000	$0	$0
Emergency Broadband Benefit (EBB). Awarding Agency: FCC	ACP replaced EBB. EBB was a program to help families and households struggling to afford internet service during the COVID-19 pandemic.	$10,480,106	$10,480,106	Discontinued

Table 1. Existing Broadband Efforts				
Source	**Purpose**	**Total**	**Expended**	**Available**
Community Connect Grants Awarding Agency: USDA	This program provides financial assistance to provide broadband service in rural, economically distressed communities where service does not exist. To date, no Kansas communities nor ISPs have applied for funds under this program.	No Current Applications	$0	$0
Affordable Connectivity Outreach Grant Program. Awarding Agency: Federal Communications Commission (FCC)	The ACP Outreach Grant Program provides funding and resources to promote ACP and increase enrollment. Activities to promote ACP include a robust marketing and advertising campaign, social media, traditional media, flyers, infographics, standing banners, mailers, a video, and community education events in partnership with the FCC.	$1,000,000 (3 awards: City of Topeka, $90,200; Wichita State University, $409,800; and Kansas City Digital Divide, $500,000	$0	$1,000,000

One .csv file detailing all Existing Funding Efforts identified by KOBD is available for download titled "BEAD Initial Proposal Volume 1 Existing Broadband Funding Sources.csv" here:

https://www.kansascommerce.gov/officeofbroadbanddevelopment/broadband-equity-access-and-deployment/

1.2 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.

1.2.1 BEAD Unserved and Underserved Locations CSV files

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 "BEAD Unserved Locations.csv" and "BEAD Underserved Locations.csv" listing unserved and underserved location IDs are available for download at the following link:

https://www.kansascommerce.gov/officeofbroadbanddevelopment/broadband-equity-access-and-deployment/

1.2.2 Publication Date of the National Broadband Map

The data was sourced on June 1, 2023, by KOBD from the May 30, 2023, version of the FCC Broadband DATA Map; which can be found here:

https://broadbandmap.fcc.gov/home

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In accordance with the NTIA guidelines of 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."

1.3 Community Anchor Institutions (Requirement 6)

Describe how the Eligible Entity applied the statutory definition of the term "community anchor institution," identified all eligible CAIs in its jurisdiction, identified all eligible CAIs in applicable Tribal Lands, and assessed the needs of eligible CAIs, including what types of CAIs it intends to serve; which institutions, if any, it considered but declined to classify as CAIs; and, if the Eligible Entity proposes service to one or more CAIs in a category not explicitly cited as a type of CAI in Section 60102(a)(2)(E) of the Infrastructure Act, the basis on which the Eligible Entity determined that such category of CAI facilitates greater use of broadband service by vulnerable populations.

1.3.1 Identification of CAIs

Based on the statutory definition of "community anchor institution" from 47 USC 1702 (a)(2)(E), KOBD defines "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 Sovereign Nation Tribal housing organization), or community support organization that facilitates greater use of broadband service for vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

The following sources were used by KOBD 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."

- **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.

- **Local, state, federal or tribal government building listings**: KOBD used the U.S. General Services Administration's (GSA) "Inventory of GSA Owned and Leased Properties" to identify federal buildings in Kansas. State, local, and tribal government buildings were identified by consulting state, territorial, and tribal records. Local, state, federal or tribal government buildings serve as hubs for residences and businesses and often house multiple community facing institutions in the same location. The ability for residences and businesses to connect with government services for essential services is critical to all Kansans.

- **Health clinic, health center, hospital, or other medical providers**: 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.

- **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). The list of PSAPs also includes those in the FCC PSAP registry.

- **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, historically black colleges and universities, other universities, and other educational institutions.

- **Public housing organizations**: Public housing organizations were identified by contacting the Public Housing Agencies (PHA) for the state or territory enumerated by the U.S. Department of Housing and Urban Development. The nonprofit organizations, the Public and Affordable Housing Research Corporation (PAHRC), and the National Low-Income Housing Coalition maintain a database of nationwide public housing units at the National Housing Preservation Database (NHPD).

- **Community support organizations:** KOBD drew on interviews, focus meetings, and research from state, territorial, tribal, county and community resources to identify any organization that facilitates greater use and public availability of broadband service by vulnerable populations, including low-income individuals, racial or ethnic minorities, unemployed individuals, the incarcerated, non-English speakers, rural inhabitants, and older adults. Senior centers and job training centers were also included due to their support of these populations and their communities in general. "American Job Training" training centers were identified using the Department of Labor's database which can be accessed at the American Job Center Finder. KOBD also utilized The National Council on Aging (NCOA) to help identify senior centers.

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

- **Engaged government agencies.** The broadband office reached out to all Kansas agencies to understand what records they have available regarding relevant community anchor institutions broadband service availability. Ultimately, the broadband office coordinated with the Kansas 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 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 Kansas affiliated community anchor institutions. A list of engaged state agencies and sub-agencies is below:
    - Department for Aging and Disability Services
    - Department of Corrections
    - Department of Health and Environment
    - Department of Agriculture
    - Department for Children and Families

- Department of Labor
- Department of Homeland Security
  - Emergency Medical Services
  - Fire Marshall
  - Highway Patrol
  - Kansas Bureau of Investigation
  - Statewide Interoperability Coordinator
  - 911 Coordinating Council
- Board of Regents (Higher Education)
- Kansas Department of Education (Pre-school - 12)
  - KanREN
- Secretary of State
- State Library of Kansas
- Department of Transportation
- Commission on Veteran Affairs Office
- Department of Wildlife, Park, and Tourism
- Housing Resource Corp
- Information Network of Kansas
- Information Technology Advisory Board
- Lt Governor/Department of Commerce
- Governor
  - Kansas African American Affairs Commission
  - Kansas Corporation Commission
  - Kansas Hispanic and Latino American Affairs Commission
  - Kansas Native American Affairs Commission

- **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. A list of those organizations is below:

  - AARP
  - Central Kansas Library System
  - Central Plains Area Agency on Aging
  - East Central Kansas Area Agency on Aging
  - Haskell Indian Nations University
  - Jayhawk Area Agency on Aging
  - Johnson County Area Agency on Aging
  - Kansas Association of Community Action Programs
  - Kansas Association of Community College Trustees
  - Kansas Association of Counties
  - Kansas Association of Technical Colleges
  - Kansas Health Foundation
  - Kansas Hospital Association
  - Kansas Independent College Association
  - Kansas Libraries Association

- Kansas State University
- League of Kansas Municipalities
- NAACP
- North Central Flint Hills Area Agency on Aging
- North Central Kansas Library System
- Northeast Kansas Library System
- Northwest Kansas Library System
- South Central Kansas Area Agency on Aging
- South Central Kansas Library System
- Southeast Kansas Library System
- Southern Christian Leadership Conference
- Southwest Kansas Area Agency on Aging
- Southwest Kansas Library System
- United Methodist Health Ministry Fund
- University of Kansas
- Wichita State University
- Wyandotte / Leavenworth Area Agency on Aging

Additionally, each Internet Service Provider (ISP) has been asked to provide the highest broadband service speed available to each CAI. Given the timing of this request and the Initial Proposal Volume 1 comment period, the providers were encouraged to also use the public comment process to populate available service speeds. Any CAI locations that do not have service availability populated will be reviewed after the public comment period and KOBD will directly inquire to service providers to complete the process.

Other information received during the public comment period may be in the form of additional CAI locations, recommended deletions, or a confirmation from CAIs if they desire 1Gbps symmetrical service. Any entries requiring clarification or detail will be pursued by KOBD following the public comment period for updates prior to the submission of Volume 1 to include validations that 1Gbps service is required at each CAI location.

1.3.2 Community Anchor Institution CSV File
One .csv file detailing all CAIs identified by KOBD is available for download titled "BEAD-CAI.csv" here:

https://www.kansascommerce.gov/officeofbroadbanddevelopment/broadband-equity-access-and-deployment/

1.4 Challenge Process (Requirement 7)

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

1.4.1 NTIA BEAD Model Challenge Process Adoption

Kansas will adopt the NTIA BEAD Model Challenge Process for Requirement 7.

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

Module 2: DSL Modifications

Kansas will make Digital Subscriber Line (DSL) modifications by ensuring that all BSL locations that have DSL as their highest speed service available today are corrected to be reflected as "underserved" locations per NTIA guidance. It should be noted that a subscriber who is only buying DSL service but has higher speeds available, does not justify an "underserved" status. Locations will only be modified where DSL is the best available service. This modification will better reflect the locations eligible for BEAD funding because it will facilitate the phase-out of legacy copper facilities and ensure the delivery of "future-proof" broadband service.

Module 3: Speed Test Modifications

The broadband office will treat locations that the National Broadband Map shows to be "served" as "underserved" if rigorous speed test methodologies (i.e., methodologies aligned to the BEAD Model Challenge Process Speed Test Module) demonstrate that the "served" locations receive service that is materially below 100 Mbps downstream and 20 Mbps upstream. Additionally, should the results of these same tests indicate service that is below 25 Mbps downstream and 3 Mbps upstream, the location will be modified to be reflected as "unserved". These modifications will better reflect the locations eligible for BEAD funding because it will consider the actual speeds of specific locations as validated via the prescribed test methodology set by NTIA. Acceptable speed test methodologies are described below in accordance with NTIA guidelines.

Deduplication of Funding

1.4.3 BEAD Eligible Entity Planning Toolkit Decision

KOBD plans to use the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments.

1.4.4 Process to Identify and Remove Locations Subject to Enforceable Commitments

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

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

KOBD 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.

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 List of Programs Analyzed to Remove Enforceable Commitments
A list of all federal, state, and local programs that will be analyzed to remove enforceable commitments from the set of locations eligible for BEAD funding is available in this download titled "BEAD Initial Proposal Volume 1 Existing Broadband Funding Sources.csv" here:
https://www.kansascommerce.gov/officeofbroadbanddevelopment/broadband-equity-access-and-deployment/

Challenge Process Design

1.4.6 Plan to Conduct an Evidence-Based, Fair, Transparent, and Expeditious Challenge Process.
Based on the NTIA BEAD Challenge Process Policy Notice (Policy Notice) and KOBD's understanding of the goals of the BEAD program, the proposal represents a transparent, fair, expeditious and evidence-based challenge process.

Permissible Challenges
KOBD 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,
- Enforceable commitments, or
- Planned service.

Permissible Challengers
KOBD 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 KOBD will include four phases, spanning up to 120 days:

1. **Publication of Eligible Locations**: KOBD will publish the set of BSLs eligible for BEAD funding, which will consist of the locations resulting from the activities outlined in Sections 5 and 6 of the Policy Notice (e.g., administering the deduplication of funding process). Publication is tentatively scheduled for November 25, 2023, immediately following approval of BEAD-IP Volume 1 and the submission of BEAD-IP Volume 2.

2. **Challenge Phase**: During the challenge phase, a challenger will submit their challenge through the KOBD portal. It will be visible to the ISP 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. The location will then be considered "challenged."

   a. **Minimum Level of Evidence Sufficient to Establish a Challenge:** The KOBD challenge portal will verify the address provided can be found in the Fabric and is a BSL. The portal will confirm the challenged location is listed in the Broadband DATA Map, meets the definition of reliable broadband service, and 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, KOBD will manually verify the evidence submitted falls within the categories stated in the 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 from December 4, 2023, to January 3, 2024.

3. **Rebuttal Phase**: Only a challenged ISP may rebut the reclassification of a location or area, and if properly rebutted, it would cause the location or locations to be considered "disputed." If a proper challenge (i.e., one that meets the minimum level of evidence) is not rebutted, the challenge is "substantiated." A provider may also agree with the challenge and then the location is considered "sustained."

   a. **Timeline**: ISPs that have challenges filed will have 14 calendar days following the notice given by KOBD of a challenge filed to file their rebuttal. Challenged ISPs will be notified as Challenges are filed and can file a Rebuttal any time during
   the 14-day Rebuttal period. The rebuttal phase is tentatively scheduled from December 5, 2023, to January 17, 2024, but is limited to any 14-day period after notice of Challenge is provided by KOBD.

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

   a. **Timeline**: KOBD will make a final challenge determination within 30 calendar days of a challenge's rebuttal. Reviews will occur on a rolling basis. The final determination phase is tentatively scheduled from December 5, 2023, to February 16, 2024.

Evidence & Review Approach

To ensure that each challenge is reviewed and adjudicated based on fairness for all participants and relevant stakeholders, KOBD, or its contractors, 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. KOBD plans to ensure reviewers have sufficient training to apply the standards of review uniformly to all challenges submitted. KOBD will also require that all reviewers submit affidavits to ensure that there is no conflict of interest in making challenge determinations.

A list of challenge types with specific examples is provided 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 - A service request 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[1] - 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 more than the provider's standard installation charge to connect service at the location	- Provider shows that the location subscribes or has subscribed within 12 months, e.g., with a copy of a customer bill - Provider submits evidence that service is now available as a standard installation, e.g., via a copy of an offer sent to the location
S	Speed	The actual speed of the fastest available service tier falls below the unserved or underserved thresholds.	Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests	Provider has countervailing speed test evidence showing sufficient speed (e.g., from their own network management system[2])

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[1] 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."

[2] 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*, 34 FCC Rcd at 6528, para. 51. *See* BEAD NOFO at 65, n. 80, Section IV.C.2.a.

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		Table 2: Challenge Types with Examples		
Code	Challenge Type	Description	Specific Examples	Permissible rebuttals
L	Latency	The round-trip latency of the broadband service exceeds 100 ms.	Speed test by subscriber, showing the excessive latency	Provider's countervailing speed test evidence showing latency at or below 100 ms (e.g., from the provider's network management system[3])
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance ("data cap") on the consumer. [4]	• Screenshot of provider webpage • Service description provided to consumer	Provider's terms of service showing that the provider does not impose a data cap
T	Technology	The technology indicated for this location is incorrect.	• Manufacturer and model number of residential gateway that demonstrates the service is delivered via a specific technology.	Provider's 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, submission of 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)	Documentation that the provider has defaulted on the commitment or is otherwise unable to meet the commitment (e.g., is no longer an ongoing concern)

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[3] *Ibid.*

[4] For example, this excludes business-oriented plans not commonly sold to residential locations. An unreasonable capacity allowance is defined as a data cap that falls below the capacity allowance of 600 GB listed in the FCC 2023 Urban Rate Survey (FCC Public Notice DA 22-1338, December 16, 2022).

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Table 2: Challenge Types with Examples				
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 ongoing 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	Documentation showing that the provider is no longer able to meet the commitment (e.g., is no longer an ongoing 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. Previous awards did not cover 100% of BSLF locations. Enforceable commitment must be expanded or BSLF declared eligible for BEAD funding. (See BEAD NOFO at 36, n. 52.)	• Declaration by service provider to expand enforceable commitment	Service provider to provide KMZ and timeline demonstrating planned coverage
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[5]	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

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[5] 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.

Area and Multiple Dwelling Units (MDU) Challenge

KOBD 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 six 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 three 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 must demonstrate service availability and speed (e.g., with a mobile test unit).

Speed Test Requirements

KOBD 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 OOKLA, M-Lab, or Cloudfare commonly used speed test applications approved by KOBD.

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. 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 (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 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, KOBD 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. KOBD also plans to actively inform all units of local government through government associations including the Kansas Association of Counties, League of Kansas Municipalities, Kansas Association of City/County Management, and the Kansas Department of Commerce – Economic Development 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 by emailing kdc_broadband@ks.gov for challenge process updates and newsletters. KOBD 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.

KOBD 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 protected, KOBD 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.

KOBD 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 Kansas Open Records Act (KORA) K.S.A 45-221 (1,12,20,30,32 and 45). If information is identified by the entity as privileged or confidential, the entity must submit a letter requesting such exemption to kdc_broadband@ks.gov. All exempted information will be securely maintained and accessed by KOBD and confidential contractors only. Otherwise, the responses will be made publicly available.