

# Initial Proposal, Volume I

(REQUIREMENTS 3, 5-7)

# Broadband Equity, Access, and Deployment (BEAD) Program

DRAFT FOR PUBLIC COMMENT



ConnectALL Office  
Empire State Development  
State of New York



This document is a draft of Volume I of the Broadband Equity, Access, and Deployment (BEAD) Initial Proposal and is being released for public comment in advance of its submission by New York State’s ConnectALL Office (CAO) to the National Telecommunications and Information Administration (NTIA).

All are welcome to submit comments regarding the draft document. Comments regarding the draft should be submitted via <http://bit.ly/nys-bead> by 5:00pm EST on December 6, 2023.

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## Acronym Guide

Acronyms referenced more than once in this Proposal are defined below.

**BEAD:** NTIA’s Broadband Equity, Access, and Deployment Program, which will provide \$42.45B nationally for broadband infrastructure planning and implementation.

**BSL:** Broadband Serviceable Location, defined by the FCC as “a business or residential location...at which mass-market fixed broadband Internet access service is, or can be, installed.”

**CAF:** The Connect America Fund, administered by the FCC, which provides funds to subsidize the delivery of voice and broadband service across rural America.

**CAI:** Community Anchor Institution, defined by NTIA in the BEAD NOFO as “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.” See Section 3 for details on how CAO has applied this definition for New York State.

**CAO:** The ConnectALL Office, a division of Empire State Development, and New York State’s designated entity for receiving and administering BEAD Program funds.

**DSL:** Digital Subscriber Line, a family of technologies used to transmit data over telephone lines.

**FCC:** The Federal Communications Commission, responsible for regulating interstate and international communications by radio, television, wire, satellite, and cable across the United States; administrator of the ACP and developer of the National Broadband Map.

**GIS:** Geographic Information System, a system that creates, manages, analyzes, and maps different types of data.

**HFC:** Hybrid Fiber Coaxial, a broadband transmission technology combining optical fiber and coaxial cable.

**IP address:** A unique numerical label used to identify devices using Internet Protocol (IP) to communicate over a network.

**ISP:** Internet Service Provider.

**MDU:** Multi-dwelling Unit, multiple separate residential units within a single or several buildings.

**NCES:** The National Center for Education Statistics, part of the U.S. Department of Education’s Institute of Education Sciences, that collects, analyzes, and publishes statistics on education in the U.S.

**NOFO:** Notice of Funding Opportunity; specifically, NTIA's Notice of Funding Opportunity for the BEAD Program.

**NTIA:** The National Telecommunications and Information Administration, administrator of the BEAD Program.

**PII:** Personally identifiable information, data that, when used alone or with other relevant data, can identify an individual.

**PSAP:** Public Safety Answering Point, an entity responsible for receiving and processing emergency (9-1-1) calls.

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# Introduction

## Introduction

The State of New York’s ConnectALL Office (CAO) hereby submits to the National Telecommunications and Information Administration (NTIA) the first volume of its Broadband, Equity, Access, and Deployment (BEAD) Initial Proposal.

This document represents one of four separate reports that CAO is preparing for NTIA in compliance with the BEAD Notice of Funding Opportunity (NOFO). The other documents include New York’s Five-Year Action Plan (submitted to NTIA on August 28, 2023), Initial Proposal Volume II, and Final Proposal.

This document addresses the following requirements outlined in the BEAD NOFO:

1. The document identifies existing efforts funded by the federal government or the State of New York within the jurisdiction of the State of New York to deploy broadband and close the digital divide, including in Tribal Lands (Initial Proposal Requirement 3).
2. The document identifies each unserved location and underserved location within New York, including unserved and underserved locations in applicable Tribal Lands, using the most recently published National Broadband Map<sup>1</sup> as of the date of submission of the Initial Proposal, and identifies the date of publication of the National Broadband Map used for such identification (Initial Proposal Requirement 5).
3. The document describes how CAO has applied the statutory definition of the term “Community Anchor Institution” (CAI), 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 CAO 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 CAO determined that such category of CAI facilitates greater use of broadband service by vulnerable populations (Initial Proposal Requirement 6).
4. The document proposes a detailed plan as to how CAO will conduct a Challenge Process as described in Section IV.B.6 of the BEAD NOFO (Initial Proposal Requirement 7).

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<sup>1</sup> The National Broadband Map, referred to as the Broadband DATA Map in the BEAD NOFO, is the fixed broadband availability map created by the Federal Communications Commission under Section 802(c)(1) of the Communications Act of 1934 (47 U.S.C. § 642(c)(1)).

CAO intends to run its Challenge Process after (1) NTIA approves this first volume of the Initial Proposal, and (2) CAO submits the second volume of its Initial Proposal, addressing all remaining requirements for the Initial Proposal as described in NTIA's BEAD NOFO. This will enable CAO to maintain the timeline required by NTIA for the BEAD Program—including the development of a Final Proposal. (For more details, see NTIA's BEAD Program timeline at their site: <https://broadbandusa.ntia.doc.gov/funding-programs/broadband-equity-access-and-deployment-bead-program/timeline.>)



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# Existing Broadband Funding (REQUIREMENT 3)

# 1 Existing Broadband Funding (Requirement 3)

This first volume of New York State’s BEAD Initial Proposal includes, consistent with NTIA requirements, descriptions of existing funding available for broadband in New York.

Attached as Appendix 1 is a file that identifies:

1. Sources of funding
2. For each source:
  - a. A brief description of the broadband deployment and other broadband-related activities
  - b. Total funding
  - c. Funding amount expended
  - d. Remaining funding amount available

# Unserved and Underserved Locations (REQUIREMENT 5)

## 2 Unserved and Underserved Locations (Requirement 5)

This first volume of New York State’s BEAD Initial Proposal includes, consistent with NTIA requirements, a list of all unserved and underserved locations in New York, including in applicable Tribal lands.

### 2.1 Location IDs of All Unserved and Underserved Locations

CAO has used the data provided by the Federal Communications Commission (FCC), as required by NTIA, to identify initial lists of all unserved and underserved locations. The lists show 149,343 unserved locations and 36,635 underserved locations. The lists of the FCC Location IDs for unserved and underserved locations are included as Appendices 2 and 3, respectively.

### 2.2 Publication Date of the National Broadband Map Used to Identify Unserved and Underserved Locations

The unserved and underserved locations identified in this document and its attachments are based on the October 10, 2023 publication of the National Broadband Map. Consistent with NTIA guidance, New York’s actual Challenge Process will use the most current available version of the National Broadband Map as of the time of initiation of the Challenge Process.

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# Community Anchor Institutions

**(REQUIREMENT 6)**

## 3 Community Anchor Institutions (Requirement 6)

CAO has defined “Community Anchor Institution” (CAI) for its Initial Proposal in a manner consistent with the requirements of the BEAD Program, the conditions in New York State, and the State’s vision and goals.

### 3.1 Definition of “Community Anchor Institution”

*Blue text indicates deviations from NTIA model language.*

Based on the statutory definition of “Community Anchor Institution” as defined in 47 USC 1702 (a)(2)(E), CAO 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 was used to determine the inclusion or exclusion of community support organizations not specifically listed in 47 USC 1702(a)(2)(E): *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 CAIs:

- 1. Schools:** K-12 schools include all K-12 schools participating in the FCC E-Rate Program or that have a National Center for Education Statistics (NCES) ID in the categories “public schools” or “private schools.”
- 2. Libraries:** Including all [libraries identified by the New York State Library](#); libraries participating in the FCC E-Rate Program; and all member libraries, and their branches, of the American Library Association (ALA).
- 3. Health clinic, health center, hospital, or other medical providers:** Health clinics, health centers, hospitals and other medical providers include all institutions that have a Centers for Medicare and Medicaid Services (CMS) certification number (CCN).
- 4. Public safety entity:** The list includes entities such as fire houses, emergency medical service stations, police stations, and public safety answering points (PSAPs), based on records maintained by the State of New York and units of local government. The list of PSAPs includes all PSAPs in the FCC PSAP registry.

5. **Institutions of higher education:** Institutions of higher education include all institutions that are part of NYSErNet (a nonprofit network service provider in New York offering advanced network and technology services to nonprofit, education, and research institutions<sup>2</sup>) and institutions that have an NCES ID in the category “college,” including junior colleges, community colleges, minority serving institutions, historically Black colleges and universities, other universities, or other educational institutions.
6. **Public housing organizations:** Public housing organizations were identified by reviewing the Public Housing Agencies in New York State enumerated by the U.S. Department of Housing and Urban Development. The 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), which CAO also consulted.
7. **Community support organizations:** CAO included any organizations that facilitate greater use of broadband services by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals. CAO 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. This database was accessed via the American Job Center Finder. The National Council on Aging helped identify senior centers.
8. **Other sources of data:** In each case, CAO also drew on State, Tribal, county, and municipal resources to identify additional eligible CAIs that were not contained in the data sources listed above. In addition, CAO will use the Initial Proposal public comment process to ensure that all relevant institutions meeting the CAI criteria are included.

## 3.2 Connectivity Needs of Defined Community Anchor Institutions

*Blue text indicates deviations from NTIA model language.*

To assess the network connectivity needs of the types of eligible CAIs listed in Section 3.1 above, CAO:

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<sup>2</sup> For more information, see <https://www.nysernet.org>.

1. **Engaged government agencies.** CAO reached out to State agencies to understand what records they have available regarding relevant CAIs' 1 Gbps broadband service availability. **Specifically, CAO contacted the following agencies:**
  - a. **Education:** CAO contacted the Education Department 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 in their Broadband Imperative III document: For districts with 1,000 or fewer students, 2.8 Mbps per user (student, teachers and educational staff); 2 Mbps per user for districts with between 1,000 and 10,000 students; and for larger districts, 1.4 Mbps per user. CAO has also reviewed NYSERNet data to determine the broadband availability for educational institutions. CAO has determined that only some of these CAIs have the symmetrical Gigabit broadband speeds required by the BEAD NOFO. CAO preliminarily presumes as unserved any CAI in this category that is located in a census block that does not have access to Gigabit (or greater) symmetrical service; CAO conducted geographic information system (GIS) analysis to identify such locations.
  - b. **Healthcare:** CAO reached out to the Department of Health and cross-referenced Department of Health records to determine which CAIs (e.g., State-run health clinics) lack 1 Gbps symmetrical broadband service. CAO has determined that only some of these CAIs have the symmetrical Gigabit broadband speeds required by the BEAD NOFO. CAO preliminarily presumes as unserved any CAI in this category that is located in a census block that does not have access to Gigabit (or greater) symmetrical service; CAO conducted GIS analysis to identify such locations.
  - c. **Libraries:** CAO coordinated with New York State Library (part of the Education Department) to determine which libraries lack 1 Gbps symmetrical broadband service. CAO has determined that only some of these CAIs have the symmetrical Gigabit broadband speeds required by the BEAD NOFO. CAO preliminarily presumes as unserved any CAI in this category that is located in a census block that does not have access to Gigabit (or greater) symmetrical service; CAO conducted GIS analysis to identify such locations.
  - d. **Public safety:** CAO reviewed all primary and secondary PSAPs based on the FCC 911 Master PSAP Registry to obtain 1 Gbps broadband service availability data. CAO has determined that these CAIs have the requisite symmetrical Gigabit broadband speeds as identified by the BEAD NOFO.
  - e. **Other agencies:** CAO additionally contacted the Department of Civil Service, Department of Financial Assistance, Department of Financial Services, Department of Labor, Department of Public Service, Department of State, Council on Children and Families, Office for the Aging, Office of Child and



Family Services, Office for People with Developmental Disabilities, Office of Temporary and Disability Assistance, and Homes and Community Renewal for input when developing its CAI list.

- 2. Engaged Tribal Nations.** CAO engaged with representatives of the Cayuga Nation, Oneida Indian Nation, Onondaga Nation, Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Band of Seneca, Tuscarora Nation, and Unkechaug Nation to coordinate and obtain symmetrical 1Gbps broadband service availability data. CAO has determined that only some of the Tribal CAIs have the requisite symmetrical Gigabit broadband speeds as identified by the BEAD NOFO. CAO preliminarily presumes as unserved any CAI in this category that is located in a census block that is 50% or more unserved on the New York State Department of Public Service broadband map.<sup>3</sup>
- 3. Engaged relevant umbrella organizations and State agencies contracting with nonprofits.** CAO engaged with the NYS Community Action Association, Older Adults Technology Services from AARP, NYSERNet, and State agency members of the State’s Digital Equity Task Force to coordinate and obtain 1 Gbps broadband service availability data. These entities represent organizations across the state, many of them CAIs, that serve vulnerable populations.
- 4. Compiled list of CAIs that do not have adequate broadband service.** Using the responses received through the activities described above, CAO then compiled the list of those CAIs that do not have adequate broadband service, attached as Appendix 4.

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<sup>3</sup> Publicly available at <https://mapmybroadband.dps.ny.gov/explore>.

# Challenge Process

**(REQUIREMENT 7)**

## 4 Challenge Process (Requirement 7)

This first volume of New York State’s BEAD Initial Proposal includes, consistent with NTIA requirements, a proposed Challenge Process for development of the map under which BEAD grants will be evaluated and awarded by CAO. The proposed Challenge Process, including all required elements, is described in detail below.

### 4.1 Adoption of NTIA Challenge Model

Yes

No

CAO plans to adopt the NTIA BEAD Model Challenge Process with modifications. CAO has designed the process to satisfy Requirement 7—as informed by NTIA’s Model Challenge Process and other NTIA guidance and with input from a wide range of stakeholders. New York will also adopt the NTIA BEAD Eligible Entity Planning Toolkit (“NTIA Toolkit”). The NTIA Toolkit contains information and data to inform CAO’s BEAD plans. CAO is using the NTIA Toolkit’s list of unserved and underserved locations, as well as the list of federal funding programs with enforceable commitments.

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

CAO plans to make the following modifications to the National Broadband Map to arrive at the final set of locations for New York State’s BEAD Challenge Process and CAO’s BEAD grantmaking.

#### 4.2.1 DSL Modification

CAO will treat locations that the National Broadband Map shows to have available qualifying broadband service (i.e., a location that is “served”) delivered via digital subscriber line (DSL) technology 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.

### 4.3 Deduplication of Funding: Use of BEAD Planning Toolkit for Identifying Enforceable Commitments

Yes

No

CAO will use the NTIA Toolkit to identify existing federal enforceable commitments.

## 4.4 Deduplication Process

CAO will enumerate locations subject to enforceable commitments by using the NTIA Toolkit, and consult at least the following data sets:

- The Broadband Funding Map published by the FCC pursuant to IIJA § 60105;<sup>4</sup>
- Datasets 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. Department of the Treasury; and
- New York State and local data collections of existing enforceable commitments.

CAO will make a best effort to create a list of broadband serviceable locations (BSLs) subject to enforceable commitments based on State or local grants or loans. If necessary, CAO will translate polygons or other geographic designations (e.g., a county or utility district) describing the area to a list of Fabric locations. CAO will submit this list, in the format specified by the FCC Broadband Funding Map, to NTIA.

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

CAO will draw on these provider agreements, along with its existing database of State and local broadband funding programs' binding agreements, to determine the set of State and local enforceable commitments.

## 4.5 List of Programs That Will Be Analyzed for Enforceable Commitments

Attached as Appendix 5 is a file with the relevant list of the federal, State, and local programs that will be analyzed to remove enforceable commitments from the set of locations eligible for BEAD funding.

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<sup>4</sup> The broadband funding map published by FCC pursuant to IIJA § 60105 is referred to as the "FCC Broadband Funding Map."

## 4.6 Challenge Process Design

This CAO plan is largely based on the NTIA BEAD Challenge Process Policy Notice and CAO's understanding of the goals of the BEAD Program. The full process is designed to ensure a transparent, fair, expeditious, and evidence-based challenge process.

### 4.6.1 Permissible Challenges

*Blue text indicates deviations from NTIA model language.*

CAO will only allow challenges on the following grounds:

- The identification of **new** eligible CAIs, as defined by CAO;
- **Challenges to CAO's** CAI BEAD eligibility determinations;
- BEAD eligibility determinations (i.e., whether a BSL is served, unserved, or underserved) for existing BSLs **included in the FCC's National Broadband Map**;
- **Existing** enforceable commitments **that will change a location's service status**;
- Planned service **deployments, not as part of an enforceable commitment, that will change a location's service status**; or
- **Speed test data, subject to the conditions specified in Section 4.6.7**

### 4.6.2 Permissible Challengers

During the BEAD Challenge Process, CAO will only allow challenges from nonprofit organizations, units of local and Tribal governments, and broadband service providers.

### 4.6.3 Challenge Process Overview

*Blue text indicates deviations from NTIA model language.*

The challenge process conducted by CAO will include four phases, spanning 90 days:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, CAO 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). CAO will also publish locations considered served, as they may be challenged. **CAO tentatively plans to publish eligible locations by February 1, 2024.**
2. **Challenge Phase:** During the Challenge Phase, **challengers** will submit **challenges** through CAO's challenge portal. **All challenges** will be visible to the service **providers** 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 enter the "challenged" state.

- a. **Minimum Level of Evidence Sufficient to Establish a Challenge:** The challenge portal will verify that:
    - i. The address provided in the challenge can be found in the Fabric and is a BSL;
    - ii. The challenged service is listed in the National Broadband Map and meets the definition of reliable broadband service;
    - iii. The email address [from which the challenge was sent](#) is [valid and reachable](#) by sending a confirmation message to the listed contact email; and
    - iv. For scanned images, whether the quality is sufficient to enable optical character recognition (OCR).
  - b. For availability challenges, CAO [will 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.
  - c. **Timeline:** Challengers will have 30 calendar days to submit a challenge from the time the initial lists of unserved and underserved locations, CAIs, and existing enforceable commitments are posted. [Based on a tentative publication date of February 1, 2024, challenges will be due by March 2, 2024.](#)
3. **Rebuttal Phase:** Only the challenged service provider may rebut the reclassification of a location or area.
- a. **Service Provider Options:** [Challenged service providers will have the following options for action at this time:](#)
    - i. **Rebut:** [Rebuttals must be provided](#) with evidence, causing the location or locations to enter the "disputed" state.
    - ii. **Leave Unrebutted:** If a challenge that meets the minimum level of evidence is not rebutted, the challenge will be considered conceded and sustained. [This will result in transition of the challenged location\(s\) to the "sustained" state.](#)
    - iii. **Concede the Challenge:** A provider may also agree with the challenge and thus transition the location(s) to the "sustained" state.
  - b. **Timeline:** Providers must regularly check [email](#) for notifications of submitted challenges. Providers will have 30 calendar days from notification of a challenge to provide rebuttal information to CAO, [and thus may do so](#)

concurrently with the challenge phase. Based on a tentative challenge submission deadline of March 2, 2024, rebuttals will be due by April 1, 2024.

4. **Final Determination Phase:** During the Final Determination phase, CAO will make the final determination of the classification of the location(s) that remain in the disputed state, either declaring the challenges “sustained” or “rejected.”
  - a. **Timeline:** Following receipt of challenge rebuttals, CAO 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. Based on a tentative rebuttal due date of April 1, 2024, final determinations will be made by May 1, 2024.

#### **4.6.4 Evidence and Review Approach**

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

### 4.6.5 Table of Challenge Types, Evidence Examples, and Permissible Rebuttals

*Blue text indicates deviations from NTIA model language.*

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
A	Availability	The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU).	<ul style="list-style-type: none"> <li>• Screenshot of provider webpage.</li> <li>• A service request was refused within the last 180 days (e.g., an email or letter from provider).</li> <li>• <i>A photograph or other documentation that demonstrates the absence</i> of suitable infrastructure (e.g., no fiber on pole).</li> <li>• A letter or email dated within the last 365 days that a provider failed to schedule a service installation or offer an installation date within 10</li> </ul>	<ul style="list-style-type: none"> <li>• Provider shows that the location subscribes or has subscribed within the past 12 months (e.g., with a copy of a customer bill).</li> <li>• If the evidence was a screenshot and believed to be in error, a screenshot that shows service availability.</li> <li>• The provider submits evidence that service is now available as a standard installation (e.g., via a copy of an offer sent to the location).</li> </ul>



Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
			<p>business days of a request.<sup>5</sup></p> <ul style="list-style-type: none"> <li>• A letter or email dated within the last 365 days indicating that a provider requested more than the standard installation fee to connect this location or that a provider quoted an amount in excess of the provider’s standard installation charge in order to connect service at the location.</li> </ul>	
<b>S</b>	Speed	The actual speed of the service tier falls below the	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

<sup>5</sup> A standard broadband installation is defined in the Broadband DATA Act (47 U.S.C. § 641(14)) as “[t]he initiation by a provider of fixed broadband internet access service [within 10 business days of a request] in an area in which the provider has not previously offered that service, with no charges or delays attributable to the extension of the network of the provider.”

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
		unserved or underserved thresholds. <sup>6</sup>		network management system). <sup>7</sup>
<b>L</b>	Latency	The round-trip latency of the broadband service exceeds 100 ms. <sup>8</sup>	Speed test by subscriber, showing the excessive latency.	Provider has countervailing speed test evidence showing latency at or below 100 ms (e.g., from their own network management system or the Connect America Fund (CAF) performance measurements). <sup>9</sup>

<sup>6</sup> Only locations with a subscribed-to service of 100/20 Mbps or above can challenge locations as underserved, while only locations with a subscribed-to service of 25/3 Mbps or above can challenge locations as unserved. Speed challenges that do not change the status of a location do not need to be considered. For example, a challenge that shows that a location only receives 250 Mbps download speed even though the household has subscribed to gigabit service can be disregarded since it will not change the status of the location to unserved or underserved.

<sup>7</sup> As described in the NOFO, a provider’s countervailing speed test should show that 80% of a provider’s download and upload measurements are at or above 80% of the required speed. See Performance Measures Order, 33 FCC Rcd at 6528, para. 51. See BEAD NOFO at 65, n. 80, Section IV.C.2.a.

<sup>8</sup> Performance Measures Order, including provisions for providers in non-contiguous areas (§21).

<sup>9</sup> Id.

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. <sup>10</sup>	<ul style="list-style-type: none"> <li>• Screenshot of provider webpage.</li> <li>• Service description provided to consumer.</li> </ul>	Provider has terms of service showing that it does not impose an unreasonable data cap or offers another plan at the location without an unreasonable cap.
T	Technology	The technology indicated for this location is incorrect.	Manufacturer and model number of residential gateway (CPE) that demonstrates the service is delivered via a specific technology.	Provider has countervailing evidence from its network management system showing an appropriate residential gateway that matches the provided service.

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<sup>10</sup> 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). 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 of required evidence	Permissible rebuttals
<b>B</b>	Business service only	The location is residential, but the service offered is marketed or available only to businesses.	Screenshot of provider webpage <a href="#">or correspondence with provider indicating availability of business service only.</a>	Provider has documentation that the service listed in the BDC is available at the location and is marketed to consumers.
<b>E</b>	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 and the service provider for the location(s) at issue.	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).
<b>P</b>	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	<ul style="list-style-type: none"> <li>Construction contracts or similar evidence of ongoing deployment, along with evidence that all necessary permits have been applied for or obtained. <a href="#">If permits have been applied for but not yet obtained, provide a</a></li> </ul>	Documentation showing that the provider is no longer able to meet the commitment (e.g., is no longer a going concern) or that the planned deployment does not meet

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
		<p>an enforceable commitment.</p>	<p>letter from county or municipal government or pole owner indicating that such permits are under review and noting the timeline for construction.</p> <ul style="list-style-type: none"> <li>• Contracts or a similar binding agreement between the State 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.</li> <li>• Letter from county or local government office confirming that construction has begun.</li> </ul>	<p>the required technology or performance requirements.</p>

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
<b>N</b>	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.	
<b>C</b>	Location is a CAI.	The location should be classified as a CAI.	Evidence that the location falls within the definitions of CAIs set by CAO. <sup>11</sup>	Evidence that the location does not fall within the definitions of CAIs set by CAO or is no longer in operation.
<b>R</b>	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 CAO or is no longer in operation.	Evidence that the location falls within the definitions of CAIs set by CAO or is still operational.

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<sup>11</sup> For example, eligibility for FCC E-rate or Rural Health Care Program funding or registration with an appropriate regulatory agency may constitute such evidence, but the State may rely on other reliable evidence that is verifiable by a third party.

#### 4.6.6 Area and Multiple Dwelling Unit (MDU) Challenges

*Blue text indicates deviations from NTIA model language.*

CAO will administer area and MDU challenge 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 or MDU challenge must demonstrate that they are indeed meeting the availability, speed, latency, data cap and technology requirements, respectively, for all (served) locations within the area or all units within an MDU. The provider can use any of the permissible rebuttals listed in [Section 4.6.5](#) above.

An area challenge is triggered if six or more BSLs 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 BSL, whichever is larger.

Each type of challenge and each 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 will be treated separately since they are likely to have different availability and performance.

Area challenges for availability need to be rebutted with evidence that service is available for all BSLs within the census block group (e.g., by network diagrams that show fiber or hybrid fiber-coaxial (HFC) infrastructure or customer subscribers). *If an ISP serves only part of the census block group, it may submit a rebuttal explaining such and providing rebuttal evidence with respect to all of its locations in the challenged blocks. CAO will resolve each challenge on a location-by-location basis.* For fixed wireless service, the challenge system will offer a representative, random sample of *no fewer than 10 locations* in the area in contention, where the provider has to demonstrate service availability and speed (e.g., with a mobile test unit).<sup>12</sup>

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<sup>12</sup> A mobile test unit is a testing apparatus that can be easily moved, which simulates the equipment and installation (antenna, antenna mast, subscriber equipment, etc.) that would be used in a typical deployment of fixed wireless access service by the provider.

### 4.6.7 Speed Test Requirements

*Blue text indicates deviations from NTIA model language.*

CAO will accept speed tests as evidence for substantiating challenges and rebuttals. Each speed test consists of three measurements, taken on different days. Speed tests cannot predate the beginning of the challenge period by more than 60 calendar days.

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), optical network terminal (for fiber-to-the-home), 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; or
4. A speed test performed on a laptop or desktop computer within immediate proximity of the residential gateway, using [speedtest.net](#) or other front ends powered by [Ookla](#) or [M-Lab](#).

Each speed test measurement must include:

- The time and date the speed test was conducted; and
- 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); and
- An agreement, using an online form provided by CAO, that grants access to these information elements to CAO, 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 will not be 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 median 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. Since the speed tests can only be used to change the state of locations from “served to “underserved,” only speed tests of subscribers that subscribe to tiers of at least 100/20 Mbps and above are considered. 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. However, even if a particular service offering is not meeting the speed threshold, the eligibility status of the location may not change. For example, if a location is served by 100 Mbps licensed fixed wireless and 500 Mbps fiber, conducting a speed test on the fixed wireless network that shows an effective speed of 70 Mbps does not change the status of the location from served to underserved.

A service provider may rebut an area speed test challenge by providing speed tests, in the manner described above, for at least 10% of the customers in the challenged area. The customers must be randomly selected. Providers must apply the 80/80 rule<sup>13</sup>, i.e., 80% of these locations must experience a speed that equals or exceeds 80% of the speed threshold. For example, 80% of these locations must have a download speed of at least 20 Mbps (that is, 80% of 25 Mbps) and an upload speed of at least 2.4 Mbps to meet the 25/3 Mbps threshold and must have a download speed of at least 80 Mbps and an upload speed of 16 Mbps to be meet the 100/20 Mbps speed tier. Only speed tests conducted by the provider between the hours of 7 p.m. and 11 p.m. local time will be considered as evidence for a challenge rebuttal.

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<sup>13</sup> The 80/80 threshold is drawn from the requirements in the CAF-II and RDOF measurements. See BEAD NOFO at 65, n. 80, Section IV.C.2.a.

### 4.6.8 Transparency Plan

*Blue text indicates deviations from NTIA model language.*

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, CAO 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. CAO also plans to actively inform units of local government of its challenge process and set up [office hours sessions and other](#) regular touchpoints to address any comments, questions, or concerns from local governments, nonprofit organizations, and ISPs. [CAO will reach local governments through direct outreach to county planners, members of the New York State Association of Regional Councils, leadership of Tribal Nations, Empire State Development's Regional Directors, the New York State Association of Counties, Association of Towns of the State of New York, and New York Conference of Mayors, among other entities. CAO will reach nonprofit entities through outreach to State agencies, public and nonprofit members of the Digital Equity Task Force, Digital Equity Coalitions, and intermediaries such as the New York State Community Action Association. CAO will inform ISPs of the challenge process through outreach to CAO's dozens of existing ISP contacts, as well as promotion through industry groups such as the New York State Telecommunications Association. Relevant stakeholders can visit CAO's website for challenge process updates or sign up to receive informational email updates from CAO at <http://broadband.ny.gov>. They can engage with CAO through a designated email address: \[ConnectALL@broadband.ny.gov\]\(mailto:ConnectALL@broadband.ny.gov\). \[Service providers will be notified of challenges via email.\]\(#\)](#)

Beyond actively engaging relevant stakeholders, CAO 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.

CAO 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, CAO 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.

CAO 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.

# Appendix 1: Descriptions of Existing Funding for Broadband in New York

This appendix is presented as a separate file.

## Appendix 2: Location IDs of All Unserved Locations

This appendix is presented as a separate file.

## Appendix 3: Location IDs of All Underserved Locations

This appendix is presented as a separate file.

## Appendix 4: List of Eligible CAIs That Do Not Currently Have Qualifying Broadband Service (1/1 Gbps)

This appendix is presented as a separate file.

## Appendix 5: List of Federal and State Programs to Be Analyzed for Enforceable Commitments

This appendix is presented as a separate file.