

# Commonwealth Connect

Broadband Equity, Access and Deployment Program

## Initial Proposal Volume 1



commonwealth  
connect

## Overview

The Commonwealth of Virginia has published following sections of the Initial Proposal, as required under the Broadband Equity, Access, and Deployment Program (BEAD). These sections serve as Volume 1 of the Initial Proposal.

**This document reflects the version as submitted to the National Telecommunications and Information Association (NTIA) for consideration after the public comment period. This document does not reflect the final version, which may include additional edits as requested by NTIA to be in compliance with the BEAD Program.**

For more information about how the Initial Proposal, as well as other documents under the BEAD program align with closing the digital divide, we recommend reviewing the resources at [Virginia Telecommunication Initiative \(VATI\) | DHCD](#)

The section numbers below correspond with the according sections of the BEAD Notice of Funding Opportunity 3, 5, 6 and 7.

**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**

The Commonwealth of Virginia has experienced multiple rounds of state and federal investment to address the digital divide. These funding programs to address broadband access, affordability, and adoption are discussed in the table below (Req. 1.1.1).

Source	Purpose	Total	Expended (Allocated to Projects)	Available
Virginia Telecommunication Initiative	The Virginia Telecommunication Initiative (VATI) extends broadband service to currently unserved areas. VATI prepares communities to build, utilize, and capitalize on telecommunications infrastructure with the goal of creating strong, competitive communities. This includes \$698,812,354 in funds under the American Rescue Plan Act.	\$875,546,490	\$825,846,490	\$49.7million in state general funds in both FY23 and FY24
Line Extension Customer Assistance Program	The Line Extension Customer Assistance Program is designed to support the extension of existing broadband networks to low-to-moderate income residents.	\$16,000,000	\$987,526.45	\$15,012,474
ACAM	Provide financial support to rate-of-return providers for the extension of broadband networks to rural areas.	Unknown	Unknown	\$ 0
Connect America Fund II	Provide funding to providers to subsidize extension of broadband networks.	\$ 108,923,613	\$108,923,613	\$ 0
Rural Digital Opportunity Fund	Reverse auction that provides funds to providers to extend broadband networks to specific census blocks.	\$ 238,644,934 (Prior to Defaults)	\$ 238,644,934 (Prior to Defaults)	\$ 0

USDA ReConnect	Program furnishing loans to providers to support the construction, improvement, or acquisition of facilities and equipment to provide service in rural areas.	\$42.4 million (Approximation)	\$42.4 million (Approximation)	\$ 0
Coronavirus Aid, Recovery, and Economic Security (CARES) Act	Federal funding for short-term implementation projects around broadband infrastructure.	\$30 million	\$30 million	\$0
Tobacco Region Revitalization Commission	State funding to deploy broadband networks to unserved areas in Southside and Southwest Virginia	Unknown	Unknown	Unknown
Regional Digital Opportunity Planning Grant Program (Digital Equity Act Planning Grant subgrant program)	Subgrant program enabling Community Action Agencies to undergo planning efforts to study the digital divide in their communities and identify solutions to address it, funded under Virginia's Digital Equity Act Planning Grant.	\$500,000	\$500,000	\$0
Digital Opportunity Case Study Pilot Program (Digital Equity Act Planning Grant subgrant program)	Subgrant program enabling eligible organizations with digital opportunity-related programs to develop case studies for inclusion in the Virginia Digital Opportunity Plan, funded under Virginia's Digital Equity Act Planning Grant.	\$100,000	\$100,000	\$0
Local Government Broadband Affordability and Adoption Planning Grants	Enable localities to develop plans to utilize federal funding to address the affordability and adoption of broadband using BEAD Planning Grant funds.	\$3,125,000	\$0	\$3,125,000
Tribal Broadband Connectivity Program	Program for Tribal governments to support broadband deployment, telehealth, distance learning, affordability programs, and digital literacy initiatives.	\$973,349.80	Unknown	Unknown
Connecting Minority Communities Pilot Program	Grant program that awards HBCUs, TCUs, and MSIs funding to support the purchase of broadband service.	\$9,685,734	Unknown	Unknown

**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.**

The BEAD Program establishes a two-tiered definition of areas that lack qualifying broadband service at or above the level of 100 megabits per second (Mbps) download and 20 Mbps upload (100/20).

In accordance with this definition, for the purposes of BEAD:

- Those locations without access to internet speeds at or above 25/3 are considered unserved.
- Those locations without access to internet speeds at or above 100/20 are considered underserved.

(Req 1.2.1) On the Virginia Open Data Portal, three .csv files are available for download (titled “BEAD Unserved Locations.csv”, “BEAD Underserved Locations.csv”, and “BEAD Served Locations.csv”) listing unserved, underserved, and served location IDs. The data is sourced from the FCC’s Broadband DATA Map as of June 15, 2023, which is reflective of resolved challenges on the FCC’s Broadband DATA Map which were not resolved on the June 1, 2023 publication of the map (Req. 1.2.2). The publication date of the National Broadband Map does not predate the submission of the Initial Proposal by more than 59 days.

For the purposes of the BEAD Program, in accordance with the BEAD Notice of Funding Opportunity (NOFO), locations served exclusively by satellite, services using entirely unlicensed spectrum, or a technology not specified by the Commission for purposes of the Broadband DATA Maps, do not meet the criteria for Reliable Broadband Service and so will be considered “unserved.” For the purposes of this document and process, the definition of Reliable Broadband Service as defined in the BEAD NOFO is adopted, which is broadband service that the Broadband DATA Maps show is accessible to a location via: (i) fiber-optic technology; (ii) Cable Modem/ Hybrid fiber-coaxial technology; (iii) digital subscriber line (DSL) technology; or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.

The status of state or federal funding present at these locations does not impact their service status of served, unserved, or underserved. These locations, locations with an enforceable commitment, are not eligible for funding under BEAD. Locations with an enforceable commitment for the deployment of qualifying broadband to a location exists when the commitment to deploy qualifying broadband service to that location as defined in Footnote 52 of the BEAD Notice of Funding Opportunity.

**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.**

The Virginia Office of Broadband under the Guidelines and Criteria of the Virginia Telecommunication Initiative, has long defined a Community Anchor Institution as “schools, libraries, medical and health care providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by vulnerable populations, including low income, unemployed, and the aged.” This definition significantly aligns with the statutory definition as defined in 47 USC 1702 (a)(2)(E) and will be adopted for the purposes of the BEAD program in the Commonwealth of Virginia. (Req. 1.3.1). Public housing organizations are not included in this definition, given their status as residences; however, other community anchor institutions which qualify under this adopted definition may exist within public housing organizations and thereby qualify to be classified as a community anchor institution.

On the Virginia Open Data Portal, one .csv file is available for download (titled “BEAD Community Anchor Institutions.csv”) with the current list of eligible CAI locations, location ID, and/or latitude and longitude. (Req. 1.3.2)

This list of CAIs was generated from the list as displayed on the Commonwealth Connection map. Additional locations of CAIs were added by cross analysis performed by a 3<sup>rd</sup> party. The Office of Broadband acknowledges that this list will not include many community anchor institutions that meet the criteria established above. The Office of Broadband strongly recommends organizations to review this draft list of community anchor institutions to ensure that your community anchor institution which meets the definition outlined above is included in this list. If it is not, please review the challenge process guidance below on how to include the location as a Community Anchor Institution in this .csv file.

To assess the network connectivity needs of the types of eligible community anchor institutions listed above, the Office of Broadband conducted stakeholder outreach with local and tribal governments, as well as non-profits through a BEAD listening session series. The Office of Broadband, through work under the State Digital Equity Act Planning Grant process, has further engaged with Community Anchor Institutions through regional planning efforts. Additionally, as an office within Virginia’s Department of Housing and Community Development, the Office of Broadband has a long-standing relationship with community anchor institutions in the housing and community development space. These collective conversations have led to an identified need of 1Gbps broadband service availability of download and upload speeds.

### **7. Include a detailed plan to conduct a challenge process**

***Note: Included below is the Draft BEAD Model Challenge Process as released by NTIA in late April 2023 for a public comment period, which closed on May 5, 2023. As of the release of this document, NTIA remains under the review period of these comments and will publish a Final BEAD Model Challenge Process with consideration of this public comment. Comments received on this Draft BEAD Model Challenge Process will be considered in relevance to the Final BEAD Model Challenge Process when released by NTIA for incorporation into this document.***



To ensure expediency in the delivery of BEAD fundings to unserved and underserved areas, the Commonwealth of Virginia will adopt the model challenge process as provided by the National Telecommunications and Information Association. (Req 1.4.1) The Commonwealth of Virginia will not make additional modifications. (Req. 1.4.2) The Commonwealth of Virginia will adopt the BEAD Eligible Entity Planning Toolkit. (Req. 1.4.3)

The Office of Broadband will enumerate locations subject to enforceable commitments by using the BEAD Eligible Entity Planning Toolkit, and consult at least the following data sets: (Req. 1.4.4)

1. The Broadband Funding Map published by the FCC pursuant to IIJA § 60105.8
2. Data sets from state broadband deployment programs that rely on funds from the Capital Projects Fund and the State and Local Fiscal Recovery Funds administered by the U.S. Treasury.
3. State and local data collections of existing enforceable commitments.

The Office of Broadband will make a best effort to create a list of broadband serviceable locations (BSLs) subject to enforceable commitments based on state/territory or local grants or loans. For the purposes of this analysis, Virginia Telecommunication Initiative Awards made during or after January 2021, Connect America Fund II, Rural Digital Opportunity Fund, and USDA Grant and Loan areas, were removed from BEAD eligibility. If necessary, the Office of Broadband will translate polygons or other geographic designations (e.g., a county or utility district) describing the area to a list of Fabric locations. The Office of Broadband will submit this list, in the format specified by the FCC Broadband Funding Map, to NTIA.

The Office of Broadband 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 Office of Broadband reached out to the provider to verify the deployment speeds of the binding commitment. The Office of Broadband will document this process by requiring providers to sign a binding agreement certifying the actual broadband deployment speeds deployed.

The Office of Broadband 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.

In compliment to these efforts, the Commonwealth of Virginia has compiled a list of federal, state and local enforceable commitments as documented in Item 3 of Volume 1 of the Initial Proposal. (Req. 1.4.5)**Challenge Process Design**

Based on the NTIA BEAD Challenge Process Policy Notice, as well as the Office's understanding of the goals of the BEAD program, the proposal represents a transparent, fair, expeditious and evidence-based challenge process. (Req. 1.4.6)

### **Permissible Challenges**

The Office of Broadband will only allow challenges on the following grounds:

- The identification of eligible community anchor institutions, as defined by the Eligible Entity,

- Community anchor institution BEAD eligibility determinations,
- BEAD eligibility determinations for existing broadband serviceable locations (BSLs),
- Enforceable commitments, or
- Planned service.

### Permissible Challengers

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

### Challenge Process Overview

The challenge process conducted by the Office of Broadband will include four phases, spanning 90 days:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, the Office of Broadband will publish the set of locations eligible for BEAD funding, which consists of the locations resulting from the activities outlined in Sections 5 and 6 of the NTIA BEAD Challenge Process Policy Notice (e.g., administering the deduplication of funding process). The Office of Broadband will also publish locations considered served, as they may be challenged. The Office of Broadband anticipates this process will commence in late August into early September 2023.
2. **Challenge Phase:** During the Challenge Phase, the challenger will submit the challenge through the Office of Broadband challenge portal. This challenge will be visible to the service provider whose service availability and performance is being contested. The portal will notify the provider of the challenge through an automated email, which will include related information about timing for the provider's response. After this stage, the location will enter the "challenged" state.
  - a. **Minimum Level of Evidence Sufficient to Establish a Challenge:** The challenge portal will verify that the address provided can be found in the Fabric and is a BSL. The challenge portal will confirm that the challenged service is listed in the National Broadband Map and meets the definition of reliable broadband service. [The challenge will confirm that the email address is reachable by sending a confirmation message to the listed contact email.] For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition (OCR). For availability challenges, the Office of Broadband will manually verify that the evidence submitted falls within the categories stated in the NTIA BEAD Challenge Process Policy Notice and the document is unredacted and dated.
3. **Timeline:** Challengers will have 30 calendar days to submit a challenge from the time the initial list of unserved and underserved locations, community anchor institutions, and existing enforceable commitments are posted. The Office of Broadband anticipates this process will commence in late August into early September 2023. **Rebuttal Phase:** Only the challenged service provider may rebut the reclassification of a location or area with evidence, causing the location or locations to enter the "disputed" state. If a challenge that meets the minimum level of evidence is not rebutted, the challenge is sustained. A provider may also agree with the challenge and thus transition the location to the "sustained" state. Providers must regularly check the challenge portal notification method (e.g., email) for notifications of submitted challenges.



- a. **Timeline:** Providers will have 30 business days from notification of a challenge to provide rebuttal information to the Office of Broadband. The Office of Broadband anticipates this process will commence in late August and operate through October 2023.
4. **Final Determination Phase:** During the Final Determination phase, the Office of Broadband will make the final determination of the classification of the location, either declaring the challenge “sustained” or “rejected.”
  - a. **Timeline:** Following intake of challenge rebuttals, the Office of Broadband will make a final challenge determination within 30 calendar days of the challenge rebuttal. Reviews will occur on a rolling basis, as challenges and rebuttals are received. The Office of Broadband anticipates this process will commence in late September 2023 through November 2023. As required by federal guidance, the Office of Broadband will not allocate grant dollars prior to 60 days after the challenge period closes. While this is the required federal period, the broadband expects this timeline between the challenge process closing and allocation of grant funds to be longer than 60 days.

### **Evidence & Review Approach**

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

Code	Challenge Type	Description	Specific Examples	Permissible rebuttals
A	Availability	The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU).	<ul style="list-style-type: none"> <li>• Screenshot of provider webpage.</li> <li>• A service request was refused within the last 180 days (e.g., an email or letter from provider).</li> <li>• Lack of suitable infrastructure (e.g., no fiber on pole).</li> <li>• A letter or email dated within the last 365 days that a provider failed to schedule a service installation or offer an installation date within 10 business days of a request.<sup>11</sup></li> <li>• A letter or email dated within the last 365 days indicating that a provider requested more than the standard installation fee to connect this location or that a Provider quoted an amount in excess of the provider's standard installation charge in order to connect service at the location.</li> </ul>	<ul style="list-style-type: none"> <li>• Provider shows that the location subscribes or has subscribed within the last 12 months, e.g., with a copy of a customer bill.</li> <li>• If the evidence was a screenshot and believed to be in error, a screenshot that shows service availability.</li> <li>• The provider submits evidence that service is now available as a standard installation, e.g., via a copy of an offer sent to the location.</li> </ul>
S	Speed	The actual speed of the service tier falls below the unserved or underserved 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. <sup>2</sup>

<sup>11</sup> A standard broadband installation is defined in the Broadband DATA Act (47 U.S.C. § 641(14)) as “[t]he initiation by a provider of fixed broadband internet access service [within 10 business days of a request] in an area in which the provider has not previously offered that service, with no charges or delays attributable to the extension of the network of the provider.”

<sup>2</sup> As described in the NOFO, a provider’s countervailing speed test should show that 80 percent of a provider’s download and upload measurements are at or above 80 percent of the required speed. *See Performance Measures Order*, 34 FCC Rcd at 6528, para. 51. *See BEAD NOFO* at 65, n. 80, Section IV.C.2.a.

L	Latency	The round-trip latency of the broadband service exceeds 100 ms.	Speed test by subscriber, showing the excessive latency.	Provider has countervailing speed test evidence showing latency at or below 100 ms, e.g., from their own network management system or the CAF performance measurements. <sup>3</sup>
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. <sup>4</sup>	<ul style="list-style-type: none"> <li>• Screenshot of provider webpage.</li> <li>• Service description provided to consumer.</li> </ul>	Provider has terms of service showing that it does not impose an unreasonable data cap or offers another plan at the location without an unreasonable cap.
T	Technology	The technology indicated for this location is incorrect.	Manufacturer and model number of residential gateway (CPE) that demonstrates the service is delivered via a specific technology.	Provider has countervailing evidence from their network management system showing an appropriate residential gateway that matches the provided service.
B	Business service only	The location is residential, but the service offered is marketed or available only to businesses.	Screenshot of provider webpage.	Provider documentation that the service listed in the BDC is available at the location and is marketed to consumers.
E	Enforceable Commitment	The challenger has knowledge that broadband 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 (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 a going concern).

<sup>3</sup>*Ibid.*

<sup>4</sup> 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).

P	Planned service	The challenger has knowledge that broadband will be deployed at this location by June 30, 2024, without an enforceable commitment or a provider is building out broadband offering performance beyond the requirements of an enforceable commitment.	<ul style="list-style-type: none"> <li>• Construction contracts or similar evidence of on-going deployment, along with evidence that all necessary permits have been applied for or obtained.</li> <li>• Contracts or a similar binding agreement between the Eligible Entity and the provider committing that planned service will meet the BEAD definition and requirements of reliable and qualifying broadband even if not required by its funding source (<i>i.e.</i>, a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024.</li> </ul>	Documentation showing that the provider is no longer able to meet the commitment (e.g., is no longer a going concern) or that the planned deployment does not meet the required technology or performance requirements.
N	Not part of enforceable commitment.	This location is in an area that is subject to an enforceable commitment to less than 100% of locations and the location is not covered by that commitment. (See BEAD NOFO at 36, n. 52.)	Declaration by service provider subject to the enforceable commitment.	
C	Location is a CAI	The location should be classified as a CAI.	Evidence that the location falls within the definitions of CAIs set by the Eligible Entity. <sup>5</sup>	Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation.

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<sup>5</sup> For example, eligibility for FCC e-Rate or Rural Health Care program funding or registration with an appropriate regulatory agency may constitute such evidence, but the Eligible Entity may rely on other reliable evidence that is verifiable by a third party.

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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For planned service (P) challenges, if the final determination for challenges submitted under this category is that the challenge is sustained, the Office of Broadband will issue a Memorandum of Understanding for the broadband provider to sign, which commits that broadband provider to building out the challenged area by June 30, 2024. The components of this MOU are based on the discretion of the Office of Broadband; however, the Office of Broadband will consider amendments to this MOU by the written request of a broadband provider. This MOU must be entered into at least 30 days after the final determination is issued for all locations submitted by a broadband provider under this category statewide.

Challenged locations submitted under this category will remain displayed as unserved and underserved for the purposes of BEAD. If all sustained location challenges under this category are not constructed by June 30, 2024, the entire challenged area will be eligible for funding under the BEAD subgrantee selection process.

### **Area and MDU Challenge**

The Office of Broadband will administer area challenges or challenge types A, S, L, D, and T, Eligible Entities may add area challenges. 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 must demonstrate that they are indeed meeting the availability, speed, latency, data cap and technology requirement, respectively, for all (served) locations within the area. The provider can use any of the permissible rebuttals listed above.

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

Each type of challenge and each technology and provider is considered separately, i.e., an availability challenge (A) does not count towards reaching the area threshold for a speed (S) challenge. If a provider offers multiple technologies, such as DSL and fiber, each is treated separately since they are likely to have different availability and performance.

Area challenges for availability need to be rebutted with evidence that service is available for all BSL within the census block group, e.g., by network diagrams that show fiber or HFC infrastructure or customer subscribers. For fixed wireless service, the challenge system will offer representative random, sample of the area in contention, but no fewer than [10], where the provider has to demonstrate service availability and speed (e.g., with a mobile test unit). A mobile test unit is a testing apparatus that can be easily moved, which simulates the equipment and installation (antenna, antenna mast, subscriber equipment, etc.) that would be used in a typical deployment of fixed wireless access service by the provider.

## **Speed Test Requirements**

The Office of Broadband 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 five forms:

- 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.
- A reading of the speed test available from within the residential gateway web interface.
- A reading of the speed test found on the service provider's web page.
- A speed test performed on a laptop or desktop computer within immediate proximity of the residential gateway, using a speed test tool published by the Office of Broadband.

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 20 , i.e., 80% of these locations must experience a speed that equals or exceeds 80% of the speed threshold. For example, 80% of these locations must have a download speed of at least 20 Mbps (that is, 80% of 25 Mbps) and an upload speed of at least 2.4 Mbps to meet the 25/3 Mbps threshold and must have a download speed of at least 80 Mbps and an upload speed of 16 Mbps to be meet the 100/20 Mbps speed tier. Only speed tests conducted by the provider between the hours of 7 pm and 11 pm local time will be considered as evidence for a challenge rebuttal.

### **Transparency Plan**

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, the Office of Broadband will, upon approval from NTIA, publicly post an overview of the challenge process phases, challenge timelines, and instructions on how to submit and rebut a challenge. This documentation will be posted publicly for at least a week prior to opening the challenge submission window. The Office of Broadband also plans to actively inform all units of local government of its challenge process and set up regular touchpoints to address any comments, questions, or concerns from local governments, nonprofit organizations, and Internet service providers. Relevant stakeholders can sign up on the Office of Broadband website by emailing [broadband@dhcd.virginia.gov](mailto:broadband@dhcd.virginia.gov) for challenge process updates and newsletters. They can engage with the Office of Broadband by a designated email address ([broadband@dhcd.virginia.gov](mailto:broadband@dhcd.virginia.gov)). Internet service providers will be notified of challenges through authorized contacts as registered in the challenge portal published by the Office of Broadband.

Beyond actively engaging relevant stakeholders, the Office of Broadband will also post all submitted challenges and rebuttals before final challenge determinations are made, including:

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

The Office of Broadband will not publicly post any personally identifiable information (PII) or proprietary information, including subscriber names, street addresses and customer IP addresses. To ensure all PII is protected, the Office of Broadband will review the basis and summary of all challenges and rebuttals to ensure PII is removed prior to posting them on the website. Additionally, guidance will be provided to all challengers as to which information they submit may be posted publicly.

The Office of Broadband 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 to the extent allowed pursuant to Section 2.2-3705.6-3 of the Code of Virginia. If information is identified by the entity as privileged or confidential, the entity must submit a letter requesting such exemption to [broadband@dhcd.virginia.gov](mailto:broadband@dhcd.virginia.gov). Pursuant to 2.2-3705.6-3, the Department of Housing and Community Development's Office of Broadband (DHCD) will make a written determination within ten (10) days of the request as to whether FOIA-exemption will be afforded as well as the nature and scope of the protection. Upon receipt of the written determination from DHCD documents must be submitted to [broadband@dhcd.virginia.gov](mailto:broadband@dhcd.virginia.gov). All exempted information will be securely maintained and accessed by Office of Broadband staff only. If no exemption is requested or granted, the responses will be made publicly available. The Office of Broadband will wholly comply with relevant state laws and regulations pertaining to the protection of PII (Personally Identifiable Information).

Stakeholders can stay informed of challenges, rebuttals, and determinations on the Virginia Telecommunication Initiative website, at [dhcd.virginia.gov/vati](http://dhcd.virginia.gov/vati)

UNAPPROVED