



# Initial Proposal Volume 1 (Requirements 3, 5 – 7)

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## BROADBAND EQUITY, ACCESS, AND DEPLOYMENT (BEAD) PROGRAM

DRAFT | November 2023

This document is a draft of Volume 1 of the BEAD Initial Proposal. It is being released for public comment in advance of its submission by the California Public Utilities Commission to the National Telecommunications and Information Administration.

All are welcome to submit comments regarding the draft document. Parties should file and serve comments according to instructions in the Administrative Law Judge's Ruling. Non-parties may submit letters via email to [BEAD@cpuc.ca.gov](mailto:BEAD@cpuc.ca.gov) by December 7, 2023.



**California Public  
Utilities Commission**

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# 1. Introduction

The California Public Utilities Commission (CPUC) hereby submits to National Telecommunications and Information Administration (NTIA) this first volume of the State of California’s BEAD Initial Proposal in alignment with NTIA’s BEAD challenge guidance to propose how the CPUC will meet all requirements of Volume I of the Initial Proposal.<sup>1</sup>

This document represents one of four separate reports that the CPUC is preparing for NTIA in compliance with the BEAD Notice of Funding Opportunity (NOFO). The other documents include California’s Five-Year Action Plan, Initial Proposal Volume 2, and Final Proposal.

This document includes the following requirements outlined in the BEAD NOFO:<sup>2</sup>

1. The document identifies existing efforts funded by the federal government or the State of California within the jurisdiction of the State of California 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 California (under the jurisdiction of California, including unserved and underserved locations in applicable Tribal Lands), using the most recently published National Broadband Map<sup>3</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 the CPUC has applied the statutory definition of the term “community anchor institution” (CAI), identified all eligible CAIs in California, 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 CPUC 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 CPUC determined that such category of CAI facilitates greater use of broadband service by vulnerable populations (Initial Proposal Requirement 6).
4. The document includes a detailed plan as to how the CPUC will conduct a challenge process as required by NTIA and consistent with the challenge process guidance released by NTIA on September 7, 2023 (Initial Proposal Requirement 7).

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<sup>1</sup> This guidance document is intended to help BEAD Eligible Entities better understand the BEAD Program requirements set forth in the Infrastructure Act, the BEAD Notice of Funding Opportunity (NOFO), and the BEAD Challenge Process Policy Notice. This document does not and is not intended to supersede, modify, or otherwise alter applicable statutory or regulatory requirements, or the specific requirements set forth in the NOFO. In all cases, statutory and regulatory mandates, and the requirements set forth in the NOFO, shall prevail over any inconsistencies contained in this document.

<sup>2</sup> *See* BEAD NOFO at 31, Section IV.B.5.b

<sup>3</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)).

The CPUC intends to run its challenge process after (1) NTIA approves this first volume of the Initial Proposal, and (2) the CPUC submits the second volume of its Initial Proposal, addressing all remaining requirements of the Initial Proposal as described in NTIA's BEAD Notice of Funding Opportunity. This will enable the CPUC to maintain the timeline required by NTIA for the BEAD program.

## 2. Existing broadband funding (Requirement 3)

This first volume of the State of California Broadband Equity, Access, and Deployment (BEAD) Initial Proposal includes, consistent with National Telecommunications and Information Administration (NTIA) requirements, descriptions of existing funding for broadband in California.

In its submission to NTIA, the CPUC will attach as Appendix 1 the file that identifies:

1. Sources of funding.
2. A brief description of the broadband deployment and other broadband-related activities
3. Total funding
4. Funding amount expended
5. Remaining funding amount available

# 3. Unserved and underserved locations (Requirement 5)

This first volume of the State of California Broadband Equity, Access, and Deployment (BEAD) Initial Proposal includes, consistent with National Telecommunications and Information Administration (NTIA) requirements, a list of all unserved and underserved locations in California.

## 3.1 Location IDs of all unserved and underserved locations

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California will attach as appendices two CSV files with the location IDs of all unserved and underserved locations, respectively, including unserved and underserved locations in applicable Tribal Lands, in its submission to NTIA and publish an updated list upon NTIA's approval of the Challenge Process.

## 3.2 Publication date of the National Broadband Map used to identify unserved and underserved locations

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The unserved and underserved locations identified in this document and its attachments are based on the August 29, 2023, publication date of the National Broadband Map. Consistent with NTIA guidance, California's actual Challenge Process will use the November 15, 2023, publication of the National Broadband Map (or whichever version is most current as of the time of initiation of the Challenge Process).

## 4. Community anchor institutions (Requirement 6)

This first volume of the State of California Broadband Equity, Access, and Deployment (BEAD) Initial Proposal includes, consistent with National Telecommunications and Information Administration (NTIA) requirements, a definition of “community anchor institution,” a list of community anchor institutions, and an analysis of the connectivity needs of the institution.

### 4.1 Definition of “community anchor institution”

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Based on the statutory definition of “community anchor institution” as defined in 47 USC 1702 (a)(2)(E), the California Public Utility Commission (CPUC) defined “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 and U.S. Department of Housing and Urban Development-assisted 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.

Given California’s heritage, the CPUC noted that its definition of “community anchor institution” included all facilities of the sorts described above that are owned by or provided for Tribal nations.

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

1. **Schools:** This category included 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:** The list of libraries included all those participating in the FCC E-Rate program as well as all member libraries, and their branches, of the American Library Association (ALA).
3. **Health clinic, health center, hospital, or other medical providers:** The list of health clinics, health centers, and hospitals included all institutions that have a Centers for Medicare and Medicaid Services (CMS) identifier certification number (CCN).
4. **Public safety entity:** The list of public safety entities included fire houses, emergency medical service stations, and police stations, based on records maintained by the State of California, units of local government, and Tribal nations. Included in the list of public safety entities was also the list of public safety answering points (PSAP) in the FCC PSAP registry.
5. **Institutions of higher education:** Institutions of higher education included all institutions that have an NCES ID in the category “college,” including junior colleges, community colleges, minority serving institutions, Tribal colleges and universities, other universities, and other educational institutions.



6. **Public housing organizations:** Public housing organizations were identified by contacting the Public Housing Agencies (PHAs) for California enumerated by the U.S. Department of Housing and Urban Development, as well as by contacting nonprofit organizations Public and Affordable Housing Research Corporation (PAHRC) and National Low-Income Housing Coalition, which maintain a database of nationwide public housing units at the National Housing Preservation Database (NHPD).
7. **Community support organizations:** The list included organizations identified by the CPUC, in the context of its multi-year broadband engagement work, that facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals. These included community support organizations such as cultural centers that support vulnerable populations.
8. **Other sources of data:** The CPUC also drew on State, Tribal, county, and municipal resources to identify additional eligible community anchor institutions that were not contained in the data sources listed above. In addition, the CPUC used the Initial Proposal Volume 1 public comment process to ensure that all relevant institutions meeting the CAI criteria are included.

## 4.2 Connectivity needs of defined CAIs

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To assess the network connectivity needs of the types of eligible community anchor institutions listed above, CPUC undertook the following activities:

1. **Engaged government agencies.** The CPUC communicated with relevant California agencies to understand what records they have available regarding relevant community anchor institutions with access to 1 Gbps symmetrical broadband service. Specifically, CPUC contacted the following agencies:
  - a. **Education.** The CPUC coordinated with the California Department of Education to determine which schools and libraries do not currently have access to 1 Gbps symmetrical broadband service. The CPUC has determined that these CAIs have the requisite symmetrical broadband speeds as identified by the BEAD NOFO.
  - b. **Healthcare:** The CPUC communicated with the California Department of Public Health to determine which public health facilities lack 1 Gbps symmetrical broadband service. The CPUC has determined that only some of these CAIs have the requisite symmetrical broadband speeds as identified by the BEAD Notice of Funding Opportunity (NOFO) and *preliminarily presumes as unserved* any CAI in this category that is located in a census block that that does not have access to symmetrical gigabit service.
  - c. **Libraries:** The CPUC coordinated with the California State Library to determine which libraries lack 1 Gbps symmetrical broadband service. The CPUC has determined that only some of these CAIs have the requisite symmetrical broadband speeds as identified by the BEAD NOFO and *preliminarily presumes as unserved* any CAI in this category that that does not have access to symmetrical gigabit service.
  - d. **Public safety.** The CPUC communicated with the California Department of Technology and the California Highway Patrol to obtain 1 Gbps broadband service availability data. The CPUC has determined that these CAIs have the requisite symmetrical broadband speeds as identified by the BEAD NOFO.
2. **Engaged Tribal nations.** The CPUC engaged with representatives of the Tribal nations to coordinate and obtain 1 Gbps broadband service availability data. The CPUC has determined that only some of the Tribal CAIs have the requisite symmetrical broadband speeds as identified by the BEAD NOFO and

*preliminarily presumes as unserved* any CAI in this category that is located in a census block that does not have access to symmetrical gigabit service.

3. **Engaged relevant umbrella organizations and nonprofits.** The CPUC has extensive contacts with community support organizations and maintains a geodatabase of such organizations.
4. **List of CAIs that do not have adequate broadband service.** Using the responses received, the CPUC compiled the list of those CAIs that do not have adequate broadband service. The CPUC will attach as Appendix 4 the CSV file with the relevant list of eligible community anchor institutions that require qualifying broadband service and do not currently have access to such service, to the best of the CPUC's knowledge in its submission to NTIA. These appendices will be provided to NTIA and released as part of the Challenge Process.

# 5. Challenge process (Requirement 7)

This first volume of the State of California Broadband Equity, Access, and Deployment (BEAD) Initial Proposal includes, consistent with National Telecommunications and Information Administration (NTIA) requirements, a detailed and rigorous proposed challenge process for development of the map under which BEAD grants will be evaluated and awarded by the California Public Utility Commission (CPUC). The proposed challenge process, including all required elements, is described in detail below.

Adoption of NTIA Challenge Model:

No

Yes

The CPUC plans to adopt the NTIA BEAD Model Challenge Process to satisfy Requirement 7 and to ensure that the State has a fair process following federal guidelines. California's process will not include additional modifications. California will also adopt the BEAD Eligible Entity Planning Toolkit.<sup>4</sup>

## 5.1 Modifications to reflect data not present in the National Broadband Map: Types of Modifications

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The CPUC proposes the following modifications to the National Broadband Map as a basis for the California BEAD Challenge Process and the CPUC's BEAD grantmaking. Modifications other than the DSL modifications are subject to rebuttal.

### DSL modification 1

The CPUC will treat locations that the National Broadband Map shows to have available qualifying broadband service (i.e., a location that is "served") delivered via DSL as "underserved." This modification will better reflect the locations eligible for BEAD funding because it will facilitate the phase-out of legacy copper facilities and ensure the delivery of "future-proof" broadband service. This designation cannot be challenged or rebutted by the provider.

### DSL modification 2

The CPUC will presume the 5,829 locations that the National Broadband Map shows to have available non-qualifying broadband service (i.e., a location that is "underserved") delivered via DSL as "unserved" for reported speeds that are lower than 30/5, for which there is supporting evidence that speeds consistently deliver below 25/3 service.<sup>5</sup> Considering the low prospects of providers investing in maintenance of legacy

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<sup>4</sup> See "Proposed BEAD Challenge Process Guidance," NTIA, April 24, 2023, [https://www.internetforall.gov/sites/default/files/2023-04/BEAD\\_Model\\_Challenge\\_Process\\_-\\_Public\\_Comment\\_Draft\\_04.24.2023.pdf](https://www.internetforall.gov/sites/default/files/2023-04/BEAD_Model_Challenge_Process_-_Public_Comment_Draft_04.24.2023.pdf).

<sup>5</sup> Examination of AT&T and Frontier: [network-exam-report-phase-ii-complete-report-for-public\\_redacted.pdf \(ca.gov\)](#)  
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copper plant, low speed DSL should be replaced as soon as feasible with more future-proof infrastructure. 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. Most of these locations are within areas designated by the CPUC as Environmental and Social Justice (ESJ) Communities, which are predominantly communities of color or low-income communities underrepresented in the policy setting or decision-making process. Due to the possibility of California’s BEAD allocation being fully committed to deploying service to unserved locations, this modification will also ensure that locations served by low-speed DSL are not excluded from eligibility for this critical investment.<sup>6</sup>

### Low-speed fixed wireless modification

The CPUC will presume the 36,887 locations that the National Broadband Map shows to have available non-qualifying broadband service (i.e., a location that is “underserved”) delivered over Licensed Fixed Wireless (LFW) as “unserved” for reported speeds that are lower than or equal to 30/5 Mbps.

As a technical matter, fixed wireless speeds fluctuate heavily;<sup>7</sup> given this, speeds that barely qualify as underserved will likely be below 25/3 service during peak usage times. This is especially true of older fixed wireless deployments that struggle to reach higher speeds and mitigate interference and line of sight issues. In fixed wireless networks, service performance can be affected by a customer’s proximity to a base station, the capacity of the cell site, the number of other users connected to the same cell site, the surrounding terrain, and radio frequency interference.<sup>8</sup> Additionally, fixed wireless networks require a clear line-of-sight. Therefore, obstructions, such as trees, can block radio signals and impact the reliability of fixed wireless networks.<sup>9</sup> Poor weather conditions, including rain, can affect the availability and quality of a customer’s fixed wireless service.<sup>10</sup>

Furthermore, impartial third parties have found that not all cellular fixed wireless subscribers receive speeds above 25/3 and ‘thus did not provide a reasonable basis for its ‘fast’ or ‘high-speed’ claims.’”<sup>11</sup> The CPUC has observed that some fixed wireless operators report 25/3 or 100/20 speeds on the National Broadband Map even where their networks frequently reach those speeds only under optimal circumstances and have not been replicated in other testing environments, such as the CPUC’s own CalSPEED process. User agreements for leading providers of cellular fixed wireless indicate that users will be deprioritized during

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<sup>6</sup> AT&T’s application to relinquish Carrier of Last Resort Status: [Microsoft Word - California COLR Amended Application \(Public\) \(FINAL\) \(5-17-23\) \(US 173783535 1\)](#).

<sup>7</sup> “Cable Companies and Mobile Carriers Battle Over Fixed Wireless Internet,” *The Wall Street Journal*, April 26, 2023, <https://www.wsj.com/articles/cable-companies-mobile-carriers-battle-fixed-wireless-7dd189d7>.

<sup>8</sup> “Fixed Wireless Internet: a Broadband Alternative Emerges,” *Dgtl Infra*, August 25, 2022, <https://dgtlinfra.com/fixed-wireless-internet-broadband/>.

<sup>9</sup> “Fixed Wireless Internet: a Broadband Alternative Emerges,” *Dgtl Infra*, August 25, 2022, <https://dgtlinfra.com/fixed-wireless-internet-broadband/>.

<sup>10</sup> “Fixed Wireless Internet: a Broadband Alternative Emerges,” *Dgtl Infra*, August 25, 2022, <https://dgtlinfra.com/fixed-wireless-internet-broadband/>.

<sup>11</sup> Jeff Baumgartner, “T-Mobile urged to stop using ‘fast,’ ‘high-speed’ or ‘reliable’ in FWA ads,” *Light Reading*, January 24, 2023, <https://www.lightreading.com/broadband/t-mobile-urged-to-stop-using-fast-high-speed-or-reliable-in-fwa-ads>.

periods of network congestion,<sup>12</sup> decreasing the likelihood that service delivered to consumers will meet the claimed thresholds, especially in future years as network utilization increases

. As a result, this modification will better reflect the locations prioritized for BEAD funding because it will consider the actual speeds of locations while minimizing the burden on residents and challengers to proactively collect data through the speed test module. . Most of these locations are within areas designated by the CPUC as ESJ Communities, which are predominantly communities of color or low-income communities underrepresented in the policy setting or decision-making process, meaning they may face barriers to engaging in the challenge process, in part due to lack of available high-speed internet infrastructure. It is therefore critical to ensure that these communities are not excluded from BEAD based on exaggerated deployment claims. The CPUC will engage with cellular fixed wireless providers to discuss their service availability and will request that these providers update their data to be used for the CPUC’s forthcoming BEAD eligibility map accordingly. To the extent that providers have data demonstrating that their networks may consistently achieve served speeds, providers may rebut this classification through the challenge process.

Due to the possibility of California’s BEAD allocation being fully committed to deploying service to unserved locations, this modification will also ensure that locations served by low-speed and unreliable cellular fixed wireless are not excluded from eligibility for this critical investment.

### Speed test modification

The CPUC will treat as “underserved” locations that the National Broadband Map shows to be “served” if rigorous speed test methodologies (i.e., methodologies aligned to the BEAD Model Challenge Process Speed Test Module), including data collected by the CPUC in connection with another CPUC grant program challenge or objection process, the CPUC’s CalSPEED initiative,<sup>13</sup> or another tool using methodologies equivalent to the BEAD Model Challenge Process Speed Test Module, demonstrate that the “served” locations actually receive service that is materially below 100 Mbps downstream and 20 Mbps upstream.

The CPUC will treat as “unserved” locations that the National Broadband Map shows to be “underserved” or “served” if rigorous speed test methodologies (i.e., methodologies aligned to the BEAD Model Challenge Process Speed Test Module), including data collected by the CPUC in connection with another CPUC grant program challenge or objection process, the CPUC’s CalSPEED initiative,<sup>14</sup> or another tool using methodologies equivalent to the BEAD Model Challenge Process Speed Test Module, demonstrate that these locations actually receive service that is materially below 25 Mbps downstream and 3 Mbps upstream.

This modification will better reflect the locations eligible for BEAD funding because it will consider the actual speeds of locations, leveraging the extensive data collection already conducted by the CPUC and reducing the administrative burden on challengers, providers, and CPUC staff to process challenges for locations already successfully challenged using equivalent evidence to that required for BEAD challenges.

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<sup>12</sup> See for reference Terms of Service for T-Mobile Home Internet: <https://www.t-mobile.com/content/digx/tmobile/us/en/home-internet.html>, Verizon: <https://www.verizon.com/about/terms-conditions/verizon-customer-agreement>, and AT&T: <https://www.att.com/legal/terms.consumerServiceAgreement.html>

<sup>13</sup> “Test Your Speed,” California Broadband for All, CA.GOV, <https://broadbandforall.cdt.ca.gov/speed-test/>.

<sup>14</sup> “Test Your Speed,” California Broadband for All, CA.GOV, <https://broadbandforall.cdt.ca.gov/speed-test/>.

## 5.2 Deduplication of funding: Use of BEAD Planning Toolkit for identifying enforceable commitments

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No

Yes

The CPUC will use the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments.

## 5.3 Process description

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

- The Broadband Funding Map published by the FCC pursuant to IIJA § 60105<sup>15</sup>
- Data sets from the State of California 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
- Data sets from the State of California broadband deployment programs that rely on State of California funds, as well as other local data collections of existing enforceable commitments
- Data sets from California local governments and Tribal nations regarding any broadband deployments they have funded

The CPUC will make its best effort to develop a list of broadband serviceable locations (BSLs) subject to enforceable commitments based on State, Tribal, and local grants or loans. If necessary, the CPUC will translate polygons or other geographic designations (e.g., a county or utility district) describing the area to a list of Fabric locations. The CPUC will submit this list, in the format specified by the FCC Broadband Funding Map, to NTIA.<sup>16</sup>

The CPUC will review its repository of existing State grant programs to validate the upload and download speeds of existing binding agreements to deploy broadband infrastructure. In situations in which the State of California or local program did not specify broadband speeds, or when there was reason to believe a provider deployed higher broadband speeds than required, the CPUC will reach out to the provider to verify the deployment speeds of the binding commitment. The CPUC will document this process by requiring providers to sign a binding agreement certifying the actual broadband deployment speeds deployed.

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

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<sup>15</sup> The broadband funding map published by FCC pursuant to IIJA § 60105 is referred to as the “FCC Broadband Funding Map.”

<sup>16</sup> Guidance on the required format for the locations funded by state or territorial and local programs will be specified at a later date, in coordination with FCC.

## 5.4 List of programs analyzed

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

## 5.5 Challenge process design: Process description

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This CPUC plan is largely based on the NTIA BEAD Challenge Process Policy Notice and the CPUC'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.

### Permissible challenges

The CPUC will allow challenges on the following grounds:

- The identification of eligible community anchor institutions, as defined by the CPUC in the Initial Proposal Volume 1
- Community anchor institution BEAD eligibility determinations
- BEAD eligibility determinations for existing Broadband Serviceable Locations (BSLs) included in the FCC's National Broadband Map
- Enforceable commitments
- Planned service

### Permissible challengers

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

### Challenge process overview

The challenge process conducted by the CPUC will include four phases, potentially spanning up to 90 calendar days, per the schedule of the NTIA model challenge process:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, the CPUC 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 CPUC will also publish locations considered served, as they may be challenged. The CPUC tentatively plans to publish the locations on February 15, 2024.
2. **Challenge Phase:** During the Challenge Phase, challengers may submit the challenge through the CPUC's challenge portal. All challenges will be made 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. At this time, the location will enter the "challenged" state.
  - a. **Minimum Level of Evidence Sufficient to Establish a Challenge:** The challenge portal will verify the following:

- i. That the address provided in the challenge can be found in the Fabric and is a BSL
    - ii. That the challenged service is listed in the National Broadband Map and meets the definition of reliable broadband service
    - iii. That the email address from which the challenge was sent is verifiable and reachable by sending a confirmation message to the listed contact email
    - iv. For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition (OCR)
  - b. For availability challenges, the CPUC 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.
  - c. **Timeline:** Challengers will have 30 calendar days to submit a challenge from the time the initial lists of unserved and underserved locations, community anchor institutions, and existing enforceable commitments are posted. The 30-day challenge submission period will tentatively run from March 1, 2024 to March 30, 2024.
- 3. **Rebuttal Phase:** Only the challenged service provider may rebut the reclassification of a location or area. Providers must regularly check the challenge portal notification method for notifications of submitted challenges.
  - a. **Provider Options:** Challenged service providers will have the following options for action at this time.
    - i. **Rebut:** Rebuttals must be provided with evidence, at which time the challenged location or locations will 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:** In the event the challenged service provider signals agreement with the challenge, the challenge will be considered conceded and sustained. This will result in transition of the challenged location(s) to the “sustained” state.
  - b. **Timeline:** Providers will have 15 calendar days from notification of a challenge to provide rebuttal information to the CPUC. The 15-day challenge rebuttal period will run from April 1, 2024 to April 15, 2024.
- 4. **Final Determination Phase:** During the Final Determination phase, the CPUC will make the final determination of the classification of the location(s) that remain in the disputed state, either declaring the challenge “sustained” or “rejected.”



- a. **Timeline:** The CPUC 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 30-day final determination period will run from April 16, 2024 to May 15, 2024.

#### 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, the CPUC will review all applicable challenge and rebuttal information in detail without bias, before deciding to sustain or reject a challenge. The CPUC will:

- Document the standards of review to be applied in a Standard Operating Procedure
- Require reviewers to document their justification for each determination
- Ensure reviewers have sufficient training to apply the standards of review uniformly to all challenges submitted
- Require that all reviewers submit affidavits to ensure that there is no conflict of interest in making challenge determinations

Table of challenge types, evidence examples, and permissible rebuttals

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).	<p>Screenshot of provider webpage.</p> <p>A service request was refused within the last 180 days (e.g., an email or letter from provider).</p> <p>Lack of suitable infrastructure (e.g., no fiber on pole).</p> <p>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>17</sup></p> <p>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.</p>	<p>Provider shows that the location subscribes or has subscribed within the past 12 months, e.g., with a copy of a customer bill.</p> <p>If the evidence was a screenshot and believed to be in error, a screenshot that shows service availability.</p> <p>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.</p>

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<sup>17</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
<b>S</b>	Speed	The actual speed of the service tier falls below the unserved or underserved thresholds. <sup>18</sup>	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>19</sup>
<b>L</b>	Latency	The round-trip latency of the broadband service exceeds 100 ms. <sup>20</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>21</sup>
<b>D</b>	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. <sup>22</sup>	Screenshot of provider webpage. Service description provided to consumer.	Provider has terms of service showing that it does not impose an unreasonable data cap or offers another plan at the location without an unreasonable cap.

<sup>18</sup> The challenge portal has to gather information on the subscription tier of the household submitting the challenge. Only locations with a subscribed-to service of 100/20 Mbps or above can challenge locations as underserved, while only locations with a service of 25/3 Mbps or above can challenge locations as unserved. Speed challenges that do not change the status of a location do not need to be considered. For example, a challenge that shows that a location only receives 250 Mbps download speed even though the household has subscribed to gigabit service can be disregarded since it will not change the status of the location to unserved or underserved.

<sup>19</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*, 33 FCC Rcd at 6528, para. 51. *See* BEAD NOFO at 65, n. 80, Section IV.C.2.a.

<sup>20</sup> *Performance Measures Order*, including provisions for providers in non-contiguous areas (§21).

<sup>21</sup> *Ibid.*

<sup>22</sup> An unreasonable capacity allowance is defined as a data cap that falls below the monthly capacity allowance of 600 GB listed in the FCC 2023 Urban Rate Survey (FCC Public Notice DA 22-1338, December 16, 2022). Alternative plans without unreasonable data caps cannot be business-oriented plans not commonly sold to residential locations. A successful challenge may not change the status of the location to unserved or underserved if the same provider offers a service plan without an unreasonable capacity allowance or if another provider offers reliable broadband service at that location.

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
<b>T</b>	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.
<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.	Provider has documentation that the service listed in the Broadband Data Collection (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).

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
<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 an enforceable commitment.	<p>Construction contracts or similar evidence of on-going deployment, along with evidence that all necessary permits have been applied for or obtained.</p> <p>Contracts or a similar binding agreement between the State of California or CPUC 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.</p> <p>In order to substantiate the planned service filing, the CPUC will also require, at minimum, a letter from all Tribal, county or local governments corresponding to the project area confirming that construction has begun and/or permits are pending approval for planned service.</p>	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.
<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.	

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
<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 the CPUC in section 1.3. <sup>23</sup>	Evidence that the location does not fall within the definitions of CAIs set by the CPUC in section 1.3 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 the CPUC in section 1.3 or is no longer in operation.	Evidence that the location falls within the definitions of CAIs set by set by the CPUC in section 1.3 or is still operational.

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<sup>23</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 CPUC may rely on other reliable evidence that is verifiable by a third party.

### Area and MDU challenges

The California Public Utility Commission (CPUC) will administer area and multiple dwelling unit (MDU) challenge types A, S, L, D, and T.<sup>24</sup> 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 there are challenges to 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 will be considered separately, i.e., an availability challenge (A) does not count toward 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 because they are likely to have different availability and performance.

Area challenges must be rebutted with evidence that service is available for all Broadband Serviceable Locations (BSLs) within the census block group, e.g., by network diagrams that show fiber or hybrid fiber-coaxial (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).<sup>25</sup>

### Speed test requirements

In accordance with the National Telecommunications and Information Administration's (NTIA) Model Challenge Process, the CPUC will accept speed tests as evidence for substantiating challenges and rebuttals. Each speed test must consist 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 (ONT) (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

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<sup>24</sup> These challenge types correspond to the codes in the above "Table of challenge types, evidence examples, and permissible rebuttals" and pages 17-19 of NTIA's Challenge Process Policy Notice (Table 3).

<sup>25</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. A speed test performed on a laptop or desktop computer within immediate proximity of the residential gateway, using speedtest.net or other Ookla-powered front ends or M-Lab's speed test services

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 to which the customer subscribes (e.g., a copy of the customer's last invoice or signed certification by the customer of the speed tier and a statement indicating the customer is subscribed to the highest service tier available)
- An agreement, using an online form provided by the CPUC, that grants access to these information elements to the CPUC, 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. Since speed tests can only be used to change the status of locations from "served" to "underserved", only speed tests of subscribers that subscribe to tiers at 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>26</sup>, i.e., 80% of these locations must experience a speed that equals or

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<sup>26</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.



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.

### Transparency plan

The CPUC anticipates actively engaging stakeholders and members of the public prior to the challenge process in order to facilitate broad-based participation in the process and ensure the BEAD eligibility map is as accurate as possible. The CPUC welcomes comments from parties in the proceeding on the specific types of outreach and engagement that will be most effective in encouraging participation from a broad and representative set of challengers, especially challengers representing Tribal communities, disadvantaged communities, and other areas with significant deployment needs. The CPUC also encourages local and Tribal governments and relevant community-based organizations that are not parties to the BEAD Rulemaking to provide feedback on the most effective forms of outreach and engagement, such as webinars, in-person public events, and written documentation posted to a public website. Local and Tribal governments and relevant community-based organizations may provide input in the form of letters sent via email to [BEAD@cpuc.ca.gov](mailto:BEAD@cpuc.ca.gov).

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, the CPUC anticipates, upon approval from NITIA, publicly posting 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 CPUC also plans to actively engage units of local and Tribal government of its challenge process and set up regular touchpoints to address any comments, questions, or concerns from local governments, Tribal governments, nonprofit organizations, and internet service providers. Relevant local and Tribal governments, non-profit and ISP stakeholders will be able to sign up on the CPUC's website at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/broadband-implementation-for-california/bead-program> for the challenge process and related BEAD updates and emails. They can also engage with the CPUC through a designated email address: [BEAD@cpuc.ca.gov](mailto:BEAD@cpuc.ca.gov) to be added to the contact list for California's challenge process. Providers will be notified of challenges through email notification based on the CPUC's current list of California ISPs.

Beyond actively engaging relevant stakeholders, the CPUC 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)
- A summary of the challenge, including whether a provider submitted a rebuttal

The CPUC 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 CPUC 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 CPUC 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 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.

California State law has long protected a broad category of residential subscribers' PII from public disclosure or sale without a subscriber's consent. Recently, the California Legislature extended this protection to residential subscriber information, including address-level information, collected from providers of broadband services.<sup>27</sup>

State law and CPUC regulations protect corporate confidential and proprietary information from disclosure unless that information is specifically required to be open to public inspection.<sup>28</sup> The California Public Records Act allows the CPUC to withhold submitted material from public disclosure when a service provider has properly submitted a claim of confidentiality.<sup>29</sup> Among other requirements, CPUC regulations require a provider to mark as proprietary and confidential any submitted information that it asserts is subject to protection from public disclosure. The CPUC's regulations also set forth a process for providers to object to the release of information by the CPUC in specific situations on the grounds that it is proprietary and confidential.

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<sup>27</sup> Cal. Pub. Util. Code §281.6(e) (citing §2891).

<sup>28</sup> Cal. Pub. Util. Code §583; California Public Utilities Commission General Order 66-D (Rev.1, February 2019).

<sup>29</sup> California Public Records Act, Cal. Govt. Code §§ 6250, et seq.

# Appendix 1: Descriptions of existing funding for broadband in California

This appendix is presented as a separate file: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/bead/appendix-1---broadband-funding-sources.xlsx> .

# Appendix 2: Location IDs of all unserved locations

This appendix is presented as a separate file: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/bead/appendix-2---unserved.csv>

# Appendix 3: Location IDs of all underserved locations

This appendix is presented as a separate file: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/bead/appendix-3---underserved.csv>

# Appendix 4: List of eligible CAs that do not currently have qualifying broadband service (1/1 Gbps)

This appendix is presented as a separate file: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/bead/appendix-4---community-anchor-institutions.xlsx>

# Appendix 5: List of federal and State programs analyzed to remove enforceable commitments from the locations eligible for BEAD funding

This appendix is presented as a separate file: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/bead/appendix-5---programs-for-de-duplication.xlsx>

(END ATTACHMENT A)