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51

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11

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State of New Mexico
Office of Broadband Access and Expansion
Initial Proposal Volume I
(Requirements 3, 5 – 7)
BEAD Program

FINAL | March 2024

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Acronym guide

Key acronyms referenced more than once in this Proposal are defined below. This guide was added based on a request during the public comment process.

ACP: The FCC’s Affordable Connectivity Program, which provides subsidies for low-income and Tribal households to access home broadband subscriptions and/or internet-enabled devices.¹

ARPA: The federal American Rescue Plan Act of 2021.

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

CAI: Community anchor institution, defined by NTIA in the BEAD NOFO “an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations.” The more in-depth definition for New Mexico is outlined in Section 4.1

DoIT: The New Mexico Department of Information Technology (DoIT).

FCC: The Federal Communications Commission, administrator of the ACP and developer of the National Broadband Map.

FTTP: Fiber-to-the-premises.

ISP: Internet service provider.

NOFO: Notice of Funding Opportunity; specifically, NTIA’s Notices of Funding Opportunity for the BEAD and State Digital Equity Planning Grant Programs.

OBAE: The New Mexico Office of Broadband Access and Expansion, which is administratively attached to the New Mexico Department of Information Technology (DoIT) for budget and expenditure oversight.

PEN: The Pueblo Education Network (PEN) is focused on connecting Tribal schools and libraries.

RDOF: The Rural Digital Opportunity Fund Program, administered by the FCC.

SEN: The Pueblo Education Network (PEN) is focused on connecting Tribal schools and libraries.

TWG: OBAE regularly meets with the Connect New Mexico Tribal Working Group (TWG).

¹ However, see “Affordable Connectivity Program (ACP) Wind-Down Fact Sheet,” FCC, https://www.fcc.gov/sites/default/files/ACP_Wind-down_Fact_Sheet_Final.pdf, which notes, “Without additional funding from Congress, the allotted \$14.2 billion to fund the ACP is projected to run out in April 2024 (this date is an estimate and may change).”

1. Introduction

The State of New Mexico Office of Broadband Access and Expansion (OBAE) hereby submits to the National Telecommunications and Information Administration (NTIA) this first volume of the Broadband Equity, Access, and Deployment (BEAD) Initial Proposal in alignment with NTIA’s BEAD challenge process guidance to propose how OBAE will meet all requirements of Volume I of the Initial Proposal.

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

This document, the Initial Proposal Volume 1, is limited to the requirements specified for this document by NTIA and includes the following requirements outlined in the BEAD NOFO:

1. The document identifies existing efforts funded by the federal government or the State of New Mexico within the jurisdiction of the State of New Mexico to deploy broadband and close the digital divide (Initial Proposal Requirement 3).
2. The document identifies each unserved location and underserved location within New Mexico, using the most recently published National Broadband Map 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 OBAE has applied the statutory definition of the term “community anchor institution” (CAI), identified all eligible CAIs in New Mexico, 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 OBAE 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 OBAE determined that such category of CAI facilitates greater use of broadband service by vulnerable populations (Initial Proposal Requirement 6).
4. The document proposes a detailed plan as to how OBAE will conduct a challenge process as required by NTIA and consistent with the draft challenge process guidance released by NTIA on June 28, 2023 (Initial Proposal Requirement 7).

OBAE intends to run its challenge process after (1) NTIA approves this first volume of the Initial Proposal, and (2) OBAE submits the second volume of its Initial Proposal, addressing all remaining requirements of the Initial Proposal as described in NTIA’s BEAD NOFO. This will

enable OBAE to maintain the timeline required by NTIA for the BEAD program—including the development of a Final Proposal, which will lead to NTIA’s release of the remainder of the state’s allocated BEAD funds. (For more details, see NTIA’s BEAD Program timeline, <https://broadbandusa.ntia.doc.gov/funding-programs/broadband-equity-access-and-deployment-bead-program/timeline>.)

2. Existing broadband funding (Requirement 3)

This first volume of the State of New Mexico BEAD Initial Proposal includes, consistent with NTIA requirements, descriptions of existing funding for broadband in New Mexico.

Attached as Appendix 1 is a 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 New Mexico BEAD Initial Proposal includes, consistent with NTIA requirements, a list of all unserved and underserved locations in New Mexico.

3.1 Locations IDs of all unserved and underserved locations

Attached as Appendices 2 and 3 are two CSV files with the location IDs of all unserved and underserved locations, respectively.

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

The unserved and underserved locations identified in this document and its attachments are based on the December 12, 2023, publication date of the National Broadband Map. Consistent with NTIA guidance, New Mexico's actual challenge process will use 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 New Mexico BEAD Initial Proposal includes, consistent with 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”

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

Given New Mexico’s unique heritage, OBAE notes that its definition of “community anchor institution” includes all facilities of the sorts described above that are owned or operated by or provided for Pueblos, Tribes, or Nation as well as institutions that are regarded as anchors by the Pueblos, Tribes, and Nations of New Mexico.

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 public use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, veterans, disabled individuals, aged individuals, and racial and ethnic minorities.

The following definitions and sources were used to identify community anchor institutions:

1. **Schools:** This category includes 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 includes 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 clinics, health centers, hospitals, or other medical providers:** The list of health clinics, health centers, hospitals, and other medical providers includes all institutions that have a Centers for Medicare and Medicaid Services (CMS) identifier.
4. **Public safety entities:** The list of public safety entities includes fire houses, emergency medical service stations, and police stations, based on records maintained by the State of New Mexico, units of local government, and Tribal Nations. Included in the list of public safety entities is also the list of public safety answering points (PSAP) in the FCC PSAP registry.
5. **Institutions of higher education:** Institutions of higher education include all institutions that have an NCES ID in the category “college”, including junior colleges, community colleges, minority serving institutions, 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 New Mexico 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 includes organizations identified by DBAE, in the context of its multi-year broadband engagement work, that facilitate greater public use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, aged individuals, and incarcerated individuals. Such facilities include boys and girls clubs, senior centers, job centers, daycares, youth centers, and detention centers. Facilities such as job centers and senior centers provide opportunities such as digital skills training, access to computers, and other programs to help enhance the use of broadband by aging individuals and unemployed individuals. Facilities such as boys and girls clubs, daycares, and youth centers provide digital training programs to children in addition to providing access to devices that enable access to broadband. As the digital world becomes steadily more important, people are learning to use devices and access broadband at steadily younger ages. Even a decade ago, NTIA provided grants for digital skills programs designed for young people, whose households are likely to be members of one or more covered populations, given the prevalence of covered populations in New Mexico. Several stakeholders commented that such centers should be included due to their existing and future roles in digital skills development, and no comments objected to their inclusion. Detention centers can

facilitate greater use of broadband for incarcerated individuals by providing limited access to the internet for educational or rehabilitative programs.

8. **Government facilities:** This category of CAIs includes all of the facilities that are owned or operated by local, state, federal, or Tribal entities that facilitate greater use of broadband service by vulnerable populations. Such facilities include, for example, chapter houses and cultural centers, which in Tribal areas often function as community centers that are venues for digital skills classes and that offer free Wi-Fi to Tribal members. OBAE relied on its existing relationships, facilitated, for example, by the Tribal Working Group (TWG), to identify the correct facilities on Tribal lands. Tribal stakeholders requested that these be specifically included as eligible CAIs and no comments were received objecting to their inclusion.
9. **Other sources of data:** OBAE 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, OBAE used the Initial Proposal Volume I public comment process to ensure that all relevant institutions meeting the CAI criteria are included.

4.2 Connectivity needs of defined CAIs

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

1. **Engaged government agencies.** OBAE communicated with relevant State agencies to understand what records they have available regarding relevant community anchor institutions 1 Gbps broadband service availability. Specifically, OBAE contacted the following agencies:
 - a. **Education.** OBAE coordinated with the New Mexico Public Schools Facilities Administration and Public Education Department to determine which schools and libraries do not currently have access to 1 Gbps symmetrical broadband service. OBAE has determined that 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 is not located within 1,000 feet of a location with best available download speed of 1 Gbps or greater.*
 - b. **Health care:** OBAE communicated with the New Mexico Department of Health and the New Mexico Human Services Department to determine which public health facilities lack 1 Gbps symmetrical broadband service. OBAE 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 is not located within 1,000 feet of a location with best available download speed of 1 Gbps or greater.

- c. **Libraries:** OBAE coordinated with the New Mexico State Library to determine which libraries lack 1 Gbps symmetrical broadband service. OBAE 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 is not located within 1,000 feet of a location with best available download speed of 1 Gbps or greater.
 - d. **Public safety.** OBAE communicated with the New Mexico Department of Information Technology, the New Mexico State Police, the New Mexico Department of Finance and Administration, and the New Mexico Department of Public Safety to obtain 1 Gbps broadband service availability data. OBAE has determined that 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 is not located within 1,000 feet of a location with best available download speed of 1 Gbps or greater and is not on a list provided by the entities listed above.
2. **Engaged Tribal Nations.** OBAE engaged with representatives of the Tribal Nations to coordinate and obtain symmetrical 1 Gbps broadband service availability data. OBAE 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 not located within 1,000 feet of a location with best available download speed of 1 Gbps or greater and is not on a list provided by the entities listed above.
 3. **Engaged relevant umbrella organizations and nonprofits.** OBAE engaged with umbrella and nonprofit organizations that work with community anchor institutions to coordinate and obtain 1 Gbps broadband service availability data. Specifically, OBAE requested information related to availability needs from the member organizations across all geographic regions, including the following organizations:
 - New Mexico Department of Veterans Affairs
 - New Mexico Department of Workforce Solutions
 - New Mexico Human Services Departments
 - New Mexico Department of Corrections

- New Mexico Department of Health
- New Mexico Department of Transportation
- New Mexico Department of Indian Affairs
- New Mexico Higher Education Department
- Southern Pueblos Agency
- San Juan Community College
- University of New Mexico
- New Mexico Exchange Carrier Group
- New Mexico AARP
- 100 Women Albuquerque
- North Central New Mexico Economic Development District
- New Mexico IDEA
- Rio Arriba Health Council
- Southern Broadband Action Team
- Project ECHO
- NM Tech Council
- Mamacitas Ciberneticas

OBAE *preliminarily presumes as unserved* any CAI in this category that is not located within 1,000 feet of a location with best available download speed of 1 Gbps or greater and is not on a list provided by the entities listed above.

4. **List of CAIs that do not have adequate broadband service.** Using the responses received, OBAE compiled the list of those CAIs that do not have adequate broadband service. Attached as Appendix 4 is a 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 OBAE's knowledge.

5. Challenge process (Requirement 7)

This first volume of the State of New Mexico BEAD Initial Proposal includes, consistent with NTIA requirements, a detailed and rigorous proposed challenge process for development of the map under which BEAD grants will be evaluated and awarded by OBAE. The proposed challenge process, including all required elements, is described in detail below.

Adoption of NTIA Challenge Model

No

Yes

OBAE 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. The New Mexico State process will not include additional modifications. New Mexico will also adopt the BEAD Eligible Entity Planning Toolkit.²

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

OBAE proposes the following modifications to the National Broadband Map as a basis for the New Mexico State BEAD Challenge Process and OBAE's BEAD grant-making.

OBAE analyzed its Ookla Speedtest data, ISPs' fabric claims, and FCC address data to inform the proposed modifications. OBAE recognizes that its BEAD allocation will not be sufficient to reach all unserved and underserved locations and CAIs. Because New Mexico is committed to ensuring broadband service to all of New Mexico, the State wants to ensure its data are corrected for longer-term planning efforts. Therefore, OBAE proposes the modifications below to ensure those locations with service levels below 100/20 and 25/3 are correctly classified as underserved and unserved, respectively.

Providers that wish to dispute any data prior to the Challenge Process will be notified via the same process as any other challenge and the State will follow the same procedure for reviewing the challenge.

² See "BEAD Model Challenge Process," NTIA, https://www.internetforall.gov/sites/default/files/2023-04/BEAD_Model_Challenge_Process_-_Public_Comment_Draft_04.24.2023.pdf.

5.1.1 DSL modification 1

OBAE 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.

5.1.2 Speed test modification

OBAE 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 and the related New Mexico version below) demonstrate that the “served” locations actually receive service that is materially below 100 Mbps downstream and 20 Mbps upstream. This modification will better reflect the locations eligible for BEAD funding because it will consider the actual speeds of locations. As described below, such speed tests can be rebutted by the provider during the rebuttal period.

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

Yes

No

OBAE will use the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments. OBAE reserved the right to submit a waiver request to the FCC if a commitment cannot be fulfilled.

5.3 Process description

OBAE will identify 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
- Datasets from the State of New Mexico 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
- Datasets from the State of New Mexico broadband deployment programs that rely on State of New Mexico funds, as well as other local data collections of existing enforceable commitments

- Data sets from New Mexico local governments and Tribal Nations regarding any broadband deployments they have funded

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

OBAE 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 program did not specify broadband speeds, or when there was reason to believe a provider deployed higher broadband speeds than required, OBAE will reach out to the provider to verify the deployment speeds of the binding commitment. OBAE will document this process by requiring providers to sign a binding agreement certifying the actual broadband deployment speeds deployed.

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

OBAE plans to deduplicate any funding from programs that will take effect after the challenge process begins but before the grant program is run, potentially including but not limited to CPF funding, FFA funding, or RDOF or USDA grants. OBAE will monitor these and other programs in the State, both before and after the challenge process begins, to ensure the deduplication of all funding before the grant program is run.

5.4 List of programs analyzed

Attached as Appendix 5 is a CSV 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

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

5.5.1 Permissible challenges

OBAE will allow challenges on the following grounds:

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

5.5.2 Permissible challengers

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

5.5.3 Challenge process overview

The challenge process conducted by OBAE will include four phases, potentially spanning up to 14 weeks, per the schedule of the NTIA model challenge process:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, OBAE 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). OBAE will also publish locations considered served, as they can be challenged. OBAE tentatively plans to publish the locations on **March 5, 2024**.
2. **Challenge Phase:** During the Challenge Phase, challengers may submit the challenge through OBAE’s challenge portal. All challenges will be made visible to the service provider whose service availability and performance is being contested. Providers will be responsible for regularly checking the portal for information regarding new challenges, including 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, OBAE 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. OBAE tentatively plans that the 30-day challenge submission period will run tentatively from March 12, 2024, to April 11, 2024.
3. **Rebuttal Phase:** For challenges related to location eligibility, only the challenged service provider may rebut the reclassification of a location or area with evidence. If a provider claims gigabit service availability for a CAI or a unit of local government disputes the CAI status of a location, the CAI may rebut. All types of challengers may rebut planned service (P) and enforceable commitment (E) challenges. 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 for information regarding submitted challenges.
 - a. **Timeline:** Providers will have 30 calendar days from notification of a challenge to provide rebuttal information to OBAE. OBAE tentatively plans that the 30-day challenge rebuttal period will tentatively run from April 12, 2024, to May 12, 2024.

4. **Final Determination Phase:** During the Final Determination phase, OBAE 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:** OBAE 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. OBAE tentatively plans that the 30-day final determination period will tentatively run from May 13, 2024, to June 12, 2024.

5.5.4 Evidence and review approach

To ensure that each challenge is reviewed and adjudicated in a way that is fair to all participants and relevant stakeholders, OBAE will review all applicable challenge and rebuttal information in detail without bias, before deciding to sustain or reject a challenge. OBAE 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

5.5.5 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).	<ul style="list-style-type: none"> • Screenshot of provider webpage. • A service request was refused within the last 180 days (e.g., an email or letter from the provider). • Lack of suitable infrastructure (e.g., no fiber on pole). • A letter or email dated within the last 365 days that a provider failed to schedule a service installation or offer an installation date within 10 business days of a request.³ • A letter or email dated within the last 365 days indicating that a provider requested 	<ul style="list-style-type: none"> • Provider shows that the location subscribes or has subscribed within the last 12 months, e.g., with a redacted copy of a customer bill. • If the evidence was a screenshot and believed to be in error, a screenshot that shows service availability. • The provider submits evidence that service is now available as a standard installation, e.g., via a copy of an offer sent to the location.

³ 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
			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.	
S	Speed	The actual speed of the service tier falls below the unserved or underserved thresholds. ⁴	Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests. ⁵	Provider has countervailing speed test evidence showing sufficient speed, e.g., from their own network management system. ⁶
L	Latency	The round-trip latency of the broadband	Speed test by subscriber, showing the excessive latency.	Provider has countervailing speed test evidence

⁴ 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.

⁵ For speed test requirements, see, “BEAD Challenge Process Policy,” NTIA, <https://www.internetforall.gov/bead-challenge-process-policy> including “BEAD Model Challenge Process,” NTIA, <https://www.ntia.gov/sites/default/files/2023-09/bead-model-challenge-process.zip>.

⁶ 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.

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
		service exceeds 100 ms. ⁷		showing latency at or below 100 ms, e.g., from their own network management system or the CAF performance measurements. ⁸
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. ⁹	<ul style="list-style-type: none"> • 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.
T	Technology	The technology indicated for this location is incorrect.	Manufacturer and model number of residential gateway (CPE) that demonstrates the service is delivered via a specific technology.	Provider has countervailing evidence from its network management system showing an appropriate residential gateway that matches the

⁷ Performance Measures Order, including provisions for providers in non-contiguous areas (§21).

⁸ *Ibid.*

⁹ An unreasonable capacity allowance is defined as a data cap that falls below the capacity allowance of 600 GB listed in the FCC 2023 Urban Rate Survey (FCC Public Notice DA 22-1338, December 16, 2022). Alternative plans without unreasonable data caps cannot be business-oriented plans not commonly sold to residential locations. A successful challenge may not change the status of the location to unserved or underserved if the same provider offers a service plan without an unreasonable capacity allowance or if another provider offers reliable broadband service at that location.

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
				 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 has documentation that the service listed in the Broadband Data Collection (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. Tribal entities are among the entities that may files these challenges.	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
P	Planned service	The challenger has knowledge that broadband will be deployed at this location by June 30, 2024, without an enforceable commitment or a provider is building out broadband offering performance beyond the requirements of an enforceable commitment.	<ul style="list-style-type: none"> • Construction contracts or similar evidence of on-going deployment, along with evidence that all necessary permits have been applied for or obtained. • Contracts or a similar binding agreement between the State or SBO 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. 	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.

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
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 p. 36, fn. 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 OBAE. ¹⁰	Evidence that the location does not fall within the definitions of CAIs set out in section 4.1 or is no longer in operation.
R	Location is not a CAI	The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation.	Evidence that the location does not fall within the definitions of CAIs set out in section 4.1 or is no longer in operation.	Evidence that the location falls within the definitions of CAIs set out in section 4.1 or is still operational.

¹⁰ 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 OBAE may rely on other reliable evidence that is verifiable by a third party.

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
G	CAI: Qualifying broadband unavailable ¹¹	The CAI cannot obtain qualifying broadband.	Evidence that the CAI has tried to acquire qualifying broadband but has been unsuccessful.	Evidence that qualifying broadband is available to the CAI.
Q	CAI: Qualifying broadband available	The CAI can obtain qualifying broadband	Evidence that the CAI can acquire symmetric gigabit service.	Evidence that qualifying broadband is not available to the CAI.
M	Measurement challenge	Pre-challenge modification for a measurement-based challenge using anonymous speed tests	No location-specific evidence required.	Provider has countervailing speed test evidence showing sufficient speed, e.g., from their own network management system. ¹²

5.5.6 Area and MDU challenges

OBAE will administer area and multi-dwelling unit (MDU) challenge type codes A, S, L, D, and T. An area challenge reverses the burden of proof for availability, speed, latency, data caps, and technology if a defined number of challenges for a particular category, across all challengers, have been submitted for a provider. Thus, the provider receiving an area challenge or MDU must demonstrate that they are indeed meeting the availability, speed, latency, data cap and technology requirement, respectively, for all (served) locations within

¹¹ “Qualifying broadband” to a CIA is Reliable Broadband Service with (i) a speed of not less than 1 Gbps for downloads and uploads alike and (ii) latency less than or equal to 100 milliseconds.” NOFO, p.37

¹² As described in the NOFO, 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.

the area or all units within an MDU. The provider can use any of the permissible rebuttals listed above.¹³

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

An MDU challenge requires challenges for one unit for MDUs having fewer than 15 units, for two units for MDUs of between 16 and 24 units, and at least three units for larger MDUs. Here, the MDU is defined as one broadband serviceable location listed in the Fabric.¹⁴ An MDU challenge counts towards an area challenge (*i.e.*, six successful MDU challenges in a census block group may trigger an area challenge).

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

Area challenges for availability need to be rebutted with evidence that service is available for all BSLs within the census block group, *e.g.*, by network diagrams that show fiber or hybrid fiber-coaxial (HFC) infrastructure or customer subscribers. For fixed wireless service, the challenge must be rebutted with representative random samples of the area in contention, but no fewer than 10 data points, in which the provider demonstrates service availability and speed (*e.g.*, with a mobile test unit).¹⁵ For MDU challenges, the rebuttal must show that the inside wiring is reaching all units and is of sufficient quality to support the claimed level of service.

5.5.7 Speed test requirements

OBAE 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 days.

Speed tests can take four forms:

¹³ A successful MDU challenge converts the status of the location to the lowest level of service across all units. For example, the location is considered unserved if one unit is found to be unserved, even if other units within the MDU reach the underserved or served speed thresholds.

¹⁴ For example, a complex of apartment buildings may be represented by multiple BSLs in the Fabric.

¹⁵ 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.

- 1 A reading of the physical line speed provided by the residential gateway, (i.e., DSL modem, cable modem (for HFC), ONT (for FTTH), or fixed wireless subscriber module
- 2 A reading of the speed test available from within the residential gateway web interface
- 3 A reading of the speed test found on the service provider's web page
- 4 A speed test performed on a laptop or desktop computer within immediate proximity of the residential gateway, using OBAE's speed-test located on its website, which is powered by Ookla

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

5.5.8 Transparency plan

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, OBAE 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 notification of the challenge process and its deadlines will be actively extended to units of local and Tribal government, relevant nonprofit organizations, and broadband providers through OBAE’s extensive list of stakeholders developed through its BEAD outreach programs.

¹⁶ 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.

This documentation will be posted publicly for at least a week prior to opening the challenge submission window. OBAE 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 OBAE’s website at <https://connect.nm.gov/mailling-list.html> for challenge process updates and newsletters. They can engage with OBAE through a designated email address: broadband@connect.nm.gov. Providers will be responsible for checking the portal for updates regarding challenges.

Beyond actively engaging relevant stakeholders, OBAE 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

After resolving all challenges and at least 60 days before allocating grant funds for network deployment, OBAE will provide public notice on its website of the final classification of each unserved location, underserved location, or Eligible Community Anchor Institution within OBAE’s jurisdiction.

OBAE 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, OBAE 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 New Mexico Office of Broadband Access and Expansion (OBAE) recognizes the importance of protecting Personal Identifiable Information (PII).

NMSA 1978 § 57-12C-2 (2021) includes the following definition.

“Personal identifying information”:

(1) means an individual's first name or first initial and last name in combination with one or more of the following data elements that relate to the individual, when the data elements are not protected through encryption or redaction or otherwise rendered unreadable or unusable:

(a) social security number;

(b) driver's license number;

(c) government-issued identification number;

(d) account number, credit card number or debit card number in combination with any required security code, access code or password that would permit access to a person's financial account; or

(e) biometric data; and

(2) does not mean information that is lawfully obtained from publicly available sources or from federal, state or local government records lawfully made available to the general public;"

Additionally, NMSA § 57-12C-4 (2021) states that:

"A person that owns or licenses personal identifying information of a New Mexico resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal identifying information from unauthorized access, destruction, use, modification or disclosure."

OBAE, which is administratively attached to DoIT, adheres to the following DoIT policies:

DoIT-361-700 Information Security Policy, which establishes direction and rules necessary to protect Information Assets from threats or hazards, whether internal or external, deliberate, or accidental, and,

DoIT-361-704 Data Classification Policy, which further defines PII and requires data to be protected according to its sensitivity, criticality, and value, regardless of the media on which it is stored, the manual or automated systems that process it, or the methods by which it is distributed.

Pursuant to these statutory and policy requirements, OBAE has established a practice of using Multi-Factor Authentication (MFA), which provides robust protection of OBAE data, including PII, from being accessed by an unauthorized third party. OBAE additionally stores all data on

SharePoint, a web-based document management and storage platform. Access to SharePoint is restricted to OBAE staff and contractors and access is protected by MFA. Finally, OBAE uses third party software for grants management that allows Single Sign-On (SSO) integration with OBAE staff and contractor credentials and MFA protection.

Authorization for access to PII will only be granted to individuals with a demonstrated need to access such information to perform their duties. Only the minimum, or least privileged level of access needed to perform those duties shall be granted, and access will be periodically reviewed and assessed by the appropriate authority within OBAE.

OBAE 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.

OBAE 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.

6. Public comment process

This section describes the public comment period conducted for the Initial Proposal Volume I and provides a high-level summary of the comments received as well as how they were addressed by OBAE.

OBAE made Volume I available for public comment for a period of 30 days ending on November 10, 2023, to gather feedback from stakeholders and promote transparency in the development of the Proposal. OBAE conducted a separate comment period for the Initial Proposal Volume II, which is described in that volume, following the same process.

A draft of Volume I was posted publicly on OBAE's website with a description of its role in the BEAD program and an invitation to submit comments on the content via an online portal. This inbox was monitored by OBAE for the duration of the comment period.

To encourage broad awareness, participation, and feedback during the public comment period, OBAE conducted outreach and engagement activities to solicit participation by a diverse range of stakeholders, with a particular focus on Tribal governments, local community organizations, unions and worker organizations, and other underrepresented groups.

OBAE received comments from trade associations, community anchor institutions, working groups, internet service providers, Tribal Nations, and local governments.

At a high level, these comments addressed concerns regarding the definition of CAI and the challenge process. Several commenters requested that specific organizations be community anchor institutions. Some already fall under the definition of CAI (such as Encuentro and the New Mexico Black Leadership Council). Others (such as plazas in Spanish-speaking areas and electric vehicle charging stations) fall outside of the definition, for example because they are not entities or do not facilitate greater use of broadband to vulnerable populations (e.g. does not provide broadband access at all).

Several commenters asked for changes to the challenge process that are not contemplated in the NTIA's Guidance. Some commenters requested changes to the FCC's Fabric, but such changes are made by the FCC, not OBAE. (See "Fabric Challenge Process," FCC Broadband Data Collection Help Center, December 6, 2022, <https://help.bdc.fcc.gov/hc/en-us/articles/8554187214107-Fabric-Challenge-Process>.)

Some commenters noted that specific programs were not listed in the draft Proposal's list of programs for deduplication, including the FCC's E-ACAM program and the PRC Broadband Grant Program. These programs were added to the list of programs for deduplication. A representative

of the Martha Liebert Public Library asked for a glossary of terms, “given the ‘alphabet soup,’” and OBAE added the acronym guide at the start of this Proposal.

OBAE appreciated that several commenters requested to work in partnership with OBAE, including a member of OBAE’s Tribal Working Group as well as some for-profit and nonprofit entities.

OBAE carefully considered the feedback it received from a variety of stakeholders to inform this Proposal. The comments received, as well as the State’s responses to those comments, are documented in the Local Coordination Tracker Tool, which is attached to the Initial Proposal Volume II as Appendix A.

OBAE will continue to take this input into account as it implements the Challenge Process and develops the Final Proposal and will conduct ongoing communications to inform and engage the public through this process.

Appendix 1: Descriptions of existing funding for broadband in New Mexico

This appendix is presented in a separate file.

Appendix 2: Location IDs of all unserved locations

This appendix is presented in a separate file.

Appendix 3: Location IDs of all underserved locations

This appendix is presented in a separate file.

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

This appendix is presented in a separate file.

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

This appendix is presented in a separate file.