

# Compare Results

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**NV - BEAD Initial Proposal - Volume 1 Submitted.pdf**

**22 pages (805 KB)**  
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versus

New File:

**NV - BEAD Initial Proposal - Volume 1 Final.pdf**

**22 pages (515 KB)**  
2/20/2024 8:35:18 AM

## Total Changes

**141**

Text only comparison

## Content

**71** Replacements  
**37** Insertions  
**33** Deletions

## Styling and Annotations

**0** Styling  
**0** Annotations

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**HIGH  
SPEED NV**

***BEAD Initial Proposal***  
**Volume I**



Nevada Governor's  
Office of Science,  
Innovation and  
Technology

## Version Note

The following is the version of Nevada's Initial Proposal Volume I as submitted by OSIT and as approved by NTIA. As a part of the initial proposal submission process, OSIT was required to provide tentative dates in a timeline for the starts of the Challenge, Rebuttal, and Final Determination Phases with the understanding that the actual start date might change depending on final approval. During the course of the approval process, the tentative dates initially proposed have now passed. These dates remain unchanged in the version of the Initial Proposal approved by NTIA that is published below starting on page 8 of this document. For clarity and to ensure consistency across different documents, OSIT is posting here updated dates for the start of the challenge process. Note that no other aspect of the initial proposal has changed and challengers and rebutters will still have the 30 calendar days to challenge and rebut challenges as was proposed by OSIT and approved in the Initial Proposal by NTIA.

### Challenge Process Timeline:

- Challenge Phase:
  - o Tuesday, February 20<sup>th</sup>: OSIT will announce the date of a 7-day notification period of the start of the challenge process.
  - o On February 20<sup>th</sup>, OSIT will announce the date of the start of the Challenge Phase ("Challenge Phase Start Date) and will post the initial list of unserved and underserved locations, community anchor institutions, and existing enforceable commitments. The Challenge Phase Start Date will be February 27, 2024.
  - o Challengers will have 30 days from the Challenge Phase Start Date to submit a challenge. Challengers will have until 11:59 PM PT on March 28<sup>th</sup>, 2024 to submit challenges.
  - o OSIT will verify all challenges meet the minimum level of evidence sufficient to establish a challenge.
- Rebuttal Phase
  - o Once OSIT has completed its verification, all challenged providers will be receive a notification of challenge.
  - o Providers will have 30 calendar days from notification of a challenge to provide rebuttal information to OSIT.
- Final Determination Phase
  - o Following the Rebuttal Phase, OSIT will make the final determination of the classification of the location, either declaring the challenge "sustained" or "rejected."

## Nevada BEAD Initial Proposal Volume I: As Approved by NTIA

### Message from the OSIT Director

Dear Fellow Nevadans,

The Nevada Governor's Office of Science, Innovation and Technology (OSIT) is honored to publish this draft of Nevada's BEAD Initial Proposal Volume I for public comment. The BEAD Program is a vital part of the [High Speed Nevada Initiative](#) and critical to achieving Nevada's broadband vision: every Nevadan has a high speed internet connection that is affordable, reliable, and scalable. OSIT will deploy over \$416 million for infrastructure to unserved, underserved, and Community Anchor Institution locations throughout the state.

Volume I of Nevada's Initial Proposal focuses on identifying available funding for broadband, the locations of unserved, underserved, and community anchor institution locations without gigabit service, and the process to submit challenges to the location lists. Volume II, which will be released at a later date, will provide further details on how OSIT will administer the BEAD program, including a subgrantee selection process.

This Initial Proposal resulted from feedback and insights gleaned from conversations with Nevadans from all corners of the state. Once submitted and approved by National Telecommunications and Information Administration (NTIA), this proposal, and Volume II to follow, will allow OSIT to begin to implement the strategies and activities we describe in our [Five-Year Action Plan](#) and more specifically in these two proposals.

Your partnership is essential in completing this proposal. OSIT wishes to thank the many stakeholders who lent their voices and expertise to the crafting of this proposal. OSIT is committed to continuing conversations and partnerships in support of our common goals of universal access to high speed internet that is affordable, reliable, and scalable, and closing the digital divide. Our success is Nevada's success!

Please contact OSIT [HighSpeedNV@gov.nv.gov](mailto:HighSpeedNV@gov.nv.gov) with any questions.

Cheers,

*Brian Mitchell*

Brian Mitchell

Director, OSIT

## Overview of the Broadband Equity, Access, and Deployment (BEAD) Program

Created by the Infrastructure Investment and Jobs Act (IIJA), the Broadband Equity, Access, and Deployment (BEAD) program provides federal funding to all fifty states for broadband planning, deployment, mapping, equity, and adoption activities. The National Telecommunications and Information Administration (NTIA) is the federal agency responsible for administering the BEAD Program. The IIJA allocated \$42.5 billion to the BEAD Program and Nevada was allocated \$416 million. To read the BEAD Notice of Funding Opportunity, which establishes the rules for the BEAD Program, click [here](#).

The Nevada Governor's Office of Science, Innovation and Technology (OSIT) is responsible for realizing Nevada's broadband vision: every Nevadan has access to high-speed internet that is affordable, reliable, and scalable. Part of OSIT's work to realize that vision is administering the BEAD Program in Nevada. The BEAD Program is an important part of the [High Speed Nevada Initiative](#). More information about the BEAD Program in Nevada can be found [here](#).

The BEAD Program NOFO requires OSIT to submit an Initial Proposal in two volumes that describes in detail how OSIT will administer the BEAD Program in Nevada. This is Nevada's Initial Proposal Volume I. OSIT has created this draft to meet the requirements as directed by NTIA. OSIT is seeking public comment on Volume I prior to submission to NTIA for approval.

### Initial Proposal Volume I Requirements – Table of Contents

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### 3. Existing Broadband Funding (Requirement 3)

OSIT is required to submit a brief description of deployment and other broadband-related activities.

The table below describes the broadband funding source, the purpose of the fund, either deployment or non-deployment activities, and the total remaining funding. OSIT will ensure throughout the BEAD process that funding is not duplicated. Note- OSIT cannot verify remaining funding amounts for awards it did not directly receive, such as USDA ReConnect, FCC Rural Digital Opportunity Fund, and NTIA Tribal Broadband Connectivity Program, among others.

#### Broadband Funding

Source	Purpose	Total Available Remaining Funding
US Treasury- State Fiscal Recovery Fund	Deployment	\$203,586,110.00
US Treasury- Capital Projects Fund	Deployment	\$135,603,020.00
NTIA Middle Mile	Deployment	\$43,547,459.38
FCC- E-rate	Deployment	\$60,962,283.26
NTIA- Tribal Broadband Connectivity Program	Deployment	\$33,461,480.00
NTIA- BEAD	Deployment	\$416,666,229.74
NTIA- Digital Equity Capacity Grant	Adoption, Digital Literacy, Device Access	TBD
State Funding	Deployment, Workforce Development	\$57,547,459.38
NTIA- Broadband Infrastructure Program	Deployment	\$7,350,000
USDA- ReConnect	Deployment	\$29,454,596
NTIA- Connecting Minority Communities	Adoption, Digital Literacy	\$2,488,048
FCC- Rural Digital Opportunity Fund	Deployment	\$8,168,887.80
FCC- Rural Healthcare Program	Deployment	\$11,428,638.65
FCC- ACP Outreach and Enrollment	Adoption, Affordability	\$450,000
NTIA- State Digital Equity Planning Grant	Adoption, Digital Literacy, Device Access	\$754,458.89
FCC- Connect America Fund II Auction	Deployment	\$2,926,448
FCC- ACAM	Deployment	\$5,130,971
FCC- Affordable Connectivity Program	Adoption, Affordability, Device Access	\$88,304,033 <sup>1</sup>

<sup>1</sup> Total support received by Nevada January 2022-June 30, 2023

## 5. Unserved and underserved locations (Requirement 5)

*Identify each unserved location and underserved location under the jurisdiction of the Eligible Entity, including unserved and underserved locations in applicable Tribal Lands, using the most recently published Broadband DATA Maps as of the date of submission of the Initial Proposal, and identify the date of publication of the Broadband DATA Maps used for such identification.*

### **Req 1.2.1 and 1.2.2: Locations IDs of all unserved and underserved locations**

Attached are two CSV files (unserved.csv and underserved.csv) with the location IDs of all unserved and underserved locations, respectively.

**Req 1.2.3: Date Selection:** The data is sourced from the FCC's Broadband DATA Map as of October 25, 2023.

This first volume of the State of Nevada BEAD Initial Proposal includes, consistent with NTIA requirements, a list of all unserved and underserved locations in Nevada by FCC location ID. Consistent with the BEAD NOFO, "unserved" means a location that lacks reliable broadband service of at least 25 Mbps download and 3 Mbps upload speeds, along with latency levels low enough to support real-time, interactive applications (less than 100ms). "Underserved" means locations that lack similar broadband connections, but at speeds of at least 100 Mbps download and 20 Mbps upload. The publication date of the National Broadband Map does not predate the submission of the Initial Proposal by more than 59 days.

## 6. Community anchor institutions (Requirement 6)

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

This first volume of the State of Nevada 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.

### 1.3.1 Definition of “community anchor institution”

Adopting the statutory definition of “community anchor institution” as defined in 47 USC 1702 (a)(2)(E), OSIT 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, and aged individuals.” As described in greater detail below, OSIT adds State and local government facilities that facilitate greater use of broadband by vulnerable populations to this statutory definition.

In order to collate the fields outlined in Appendix A of the BEAD Challenge Process Policy Notice, OSIT<sup>✖</sup> relied upon the CAI’s identified in the broadband fabric via CostQuest Associates. Note, that CAIs identified in Phase 1 of the High Speed Nevada initiative have been deduplicated from this list. In each case, OSIT also drew on state, territorial, tribal, county<sup>✖</sup> and municipal resources to identify additional eligible community anchor institutions that were not contained<sup>✖</sup> in the data sources listed above. OSIT met with stakeholders in each county in Nevada, including government agencies, umbrella organizations, and non-profits, during its public engagement listening tour. In addition, OSIT used the Initial Proposal public comment process to ensure that all relevant institutions meeting the CAI criteria are included.

Nevada has 28 federally recognized Tribes and OSIT also has a long history of working with its Tribal Nations. Nevada’s Governor wrote a letter offering a formal government-to-government consultation. This letter was mailed physically and electronically to all Tribal Chairs and other points of contact, and OSIT staff followed up with additional outreach via email and phone. OSIT also distributed a paper survey to Tribal Nations. In the engagement process, OSIT was assisted by the Nevada Indian Commission and the Inter-Tribal Council of Nevada (ITCN).

At the time of publication, OSIT had conducted 16 Tribal consultations. Additionally, 9 Tribal Nations that did not participate in a consultation were among those that OSIT previously successfully assisted to apply for the NTIA Tribal Broadband Connectivity Grant that would bring connectivity to residential locations

and CAIs. In total, OSIT has made contact with 25 of Nevada's 28 Tribes during the last two years. During the consultations, OSIT and Tribal representatives discussed existing infrastructure, infrastructure needs, both for residential and for Tribal CAIs, and their interest in collaborating with the State to pursue broadband funding from the Tribal Broadband Connectivity Program administered by NTIA. Efforts continue to connect with the remaining Tribal Nations. OSIT will also ensure that Tribes are aware of and are able to participate in the challenge process.

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

- **Schools:** K-12 schools include all K-12 schools participating in the FCC E-Rate program or that have an NCES (National Center for Education Statistics) ID in the categories "public schools" or "private schools".
- **Libraries:** Including all libraries participating in the FCC E-Rate program as well as all member libraries, and their branches, of the American Library Association (ALA).
- **Health clinic, health center, hospital, 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.
- **Public safety:** The list includes entities such as fire houses, emergency medical service stations, police stations, and public safety answering points (PSAP), based on records maintained by the Eligible Entity and units of local government.
- **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, other universities, or other educational institutions.
- **Public housing organizations:** Public housing organizations were identified by contacting the Public Housing Agencies (PHAs) for the state or territory enumerated by the U.S. Department of Housing and Urban Development. The nonprofit organizations Public and Affordable Housing Research Corporation (PAHRC) and National Low-Income Housing Coalition maintain a database of nationwide public housing units at the National Housing Preservation Database (NHPD).
- **Community support organizations:** The Eligible Entity included any organizations that facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals. OSIT included senior centers job training centers, and State and local government facilities that facilitate greater use of broadband by vulnerable populations in this category. Government facilities perform critical public services that in recent years have migrated online, including education, workforce and job training, enrollment and distribution of public benefits such as healthcare, telemedicine, family and child, food and nutrition assistance, unemployment insurance, vehicle and driving services, public safety, and enrollment in ACP. When government facilities have sufficient connectivity, they facilitate the use of broadband services by vulnerable populations to receive the public services they need while also providing services like public Wi-Fi and access to computers. Note, OSIT only includes government facilities that facilitate broadband by vulnerable populations, such as education, workforce and job training, enrollment and distribution of public benefits such as healthcare, telemedicine, family and child, food and nutrition assistance, unemployment insurance, vehicle and driving services, public safety, and other related facilities and does not include government

facilities such as water treatment facilities or maintenance facilities that do not facilitate broadband by vulnerable populations.

**1.3.2- Attachment: CSV file that lists eligible CAIs that require qualifying broadband service and do not currently have access to such service, to the best of OSIT's knowledge.**

OSIT relied on data from the FCC's Broadband Data Map, separately-licensed data from CostQuest Associates, proprietary data from OSIT, and conversations with communities during the public engagement process to identify CAIs OSIT believes do not have access to qualifying broadband service. OSIT welcomes public comment to add or remove CAIs from the list. The list of CAIs can be found here: <https://osit.nv.gov/Broadband/BEAD/>

**7. Challenge Process (Requirement 7)**

**1.4.1- NTIA BEAD Model Challenge Process Adoption-** OSIT plans to adopt the NTIA Model Challenge Process while adding two proposed pre-challenge modifications that were not included in the Model.

**1.4.2- Modifications to Reflect Data Not Present in the National Broadband Map-** OSIT plans to make the following modifications:

**Modification 1- DSL Modification:** OSIT 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.

**Modification 2- Cellular Fixed Wireless Access Modification:** OSIT will treat as "underserved" locations that the National Broadband Map shows to have available qualifying broadband service (i.e., a location that is "served") due solely to the availability of Cellular Fixed Wireless Access (CFWA) as "underserved." The broadband office has determined that this modification, and the corresponding rebuttal opportunity, will assist the office in determining the availability of networks with sufficient capacity to meet the expected consumer demand for qualifying broadband in the relevant area. OSIT has determined that this pre-challenge modification affects approximately 1,015 locations based on location data from the November 7, 2023 version of the FCC National Broadband Map. The affected CFWA provider will have an opportunity to rebut this modification. To successfully rebut this modification, the cellular fixed wireless provider must demonstrate it: 1. is providing 100/20 Mbps or better service at the relevant locations; and 2. has sufficient network capacity to simultaneously serve (i.e., as concurrently active subscribers) at least 80% of claimed locations in the relevant coverage areas. As one option for making such a showing, a provider may describe how many fixed locations it serves from each cell tower and the amount of per-user averaged bandwidth it uses for capacity planning.

**1.4.3- Deduplication of Funding-** OSIT plans to use the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments. The BEAD Eligible Entity Planning Toolkit is a collection of NTIA-developed technology tools that, among other things, overlay multiple data sources to capture federal, state, and local enforceable commitments.

**1.4.4- Describe the process that will be used to identify and remove locations subject to enforceable commitments-** OSIT will enumerate locations subject to enforceable commitments by using the BEAD Eligible Entity Planning Toolkit, and consult at least the following data sets:

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

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

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

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

**1.4.5-** OSIT has compiled a list of federal, state and local enforceable commitments as documented in Item 3 of Volume 1 of the Initial Proposal.

**1.4.6- Describe the plan to conduct an evidence-based, fair, transparent, and expeditious challenge process-** Based on the NTIA BEAD Challenge Process Policy Notice, as well as OSIT's understanding of the goals of the BEAD program, this Volume I proposal represents a transparent, fair, expeditious and evidence-based challenge process.

### **Permissible Challenges**

OSIT will only allow challenges on the following grounds:

- The identification of eligible community anchor institutions, as defined by the Eligible Entity,
- Community anchor institution BEAD eligibility determinations,
- BEAD eligibility determinations for existing broadband serviceable locations (BSLs),
- Enforceable commitments, or
- Planned service.

## Permissible Challengers

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

## Challenge Process Overview

The challenge process conducted by OSIT will include four phases, spanning up to 90 days:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, OSIT 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). OSIT will also publish locations considered served, as they may be challenged. Publication is tentatively scheduled for late **December 5, 2023**.
2. **Challenge Phase:** During the Challenge Phase, the challenger will submit the challenge through the OSIT challenge portal. This challenge will be visible to the service provider whose service availability and performance is being contested. The portal will notify the provider of the challenge through an automated email, which will include related information about timing for the provider's response. After this stage, the location will enter the "challenged" state.
  - a. **Minimum Level of Evidence Sufficient to Establish a Challenge:** The challenge portal will verify that the address provided can be found in the Fabric and is a BSL. The challenge portal will confirm that the challenged service is listed in the National Broadband Map and meets the definition of reliable broadband service. **The challenge will confirm that the email address is reachable by sending a confirmation message to the listed contact email.** For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition (OCR). For availability challenges, OSIT 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.
  - b. **Timeline:** Challengers will have 30 calendar days to submit a challenge from the time the initial list of unserved and underserved locations, community anchor institutions, and existing enforceable commitments are posted. The Challenge Phase will tentatively take place **from December 12 to January 12.**
3. **Rebuttal Phase:** Only the challenged service provider may rebut the reclassification of a location or area with evidence, causing the location or locations to enter the "disputed" state. If a challenge that meets the minimum level of evidence is not rebutted, the challenge is sustained. A provider may also agree with the challenge and thus transition the location to the "sustained" state. Providers must regularly check the challenge portal notification method (e.g., email) for notifications of submitted challenges.
  - a. **Timeline:** Providers will have 30 **calendar** days from notification of a challenge to provide rebuttal information to OSIT. The Rebuttal Phase will tentatively take place **from January 12 to February 12.**
4. **Final Determination Phase:** During the Final Determination phase, OSIT will make the final determination of the classification of the location, either declaring the challenge "sustained" or "rejected."

- a. **Timeline:** Following intake of challenge rebuttals, OSIT will make a final challenge determination within about 30 calendar days of the challenge rebuttal. Reviews will occur on a rolling basis, as challenges and rebuttals are received. The Final Determination Phase will tentatively take place **starting February 12.**

### Evidence & Review Approach

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

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

			installation or offer an installation date within 10 business days of a request. <sup>2</sup> <ul style="list-style-type: none"> <li>A letter or email dated within the last 365 days indicating that a provider requested more than the standard installation fee to connect this location or that a Provider quoted an amount in excess of the provider's standard installation charge in order to connect service at the location.</li> </ul>	of an offer sent to the location.
S	Speed	The actual speed of the service tier falls below the unserved	Speed test by subscriber, showing the insufficient	Provider has countervailing speed test evidence showing sufficient

<sup>2</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."

		or underserved thresholds. <sup>3</sup>	speed and meeting the requirements for speed tests.	speed, e.g., from their own network management system. <sup>4</sup>
L	Latency	The round-trip latency of the broadband service exceeds 100 ms <sup>5</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 CAF performance measurements. <sup>6</sup>
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. <sup>7</sup>	<ul style="list-style-type: none"> <li>• Screenshot of provider webpage.<sup>8</sup></li> <li>• Service description provided to consumer.</li> </ul>	Provider has terms of service showing that it does not impose an unreasonable data cap or offers another plan at the location without an unreasonable cap.
T	Technology	The technology indicated for this location is incorrect.	Manufacturer and model number of residential	Provider has countervailing evidence from their network

<sup>3</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>4</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>5</sup> *Performance Measures Order*, including provisions for providers in non-contiguous areas (§21).

<sup>6</sup> *Ibid.*

<sup>7</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.

			gateway (CPE) that demonstrates the service is delivered via a specific technology.	management system showing an appropriate residential gateway that matches the provided service.
B	Business service only	The location is residential, but the service offered is marketed or available only to businesses.	Screenshot of provider webpage.	Provider documentation that the service listed in the BDC is available at the location and is marketed to consumers.
E	Enforceable Commitment	The challenger has knowledge that broadband will be deployed at this location by the date established in the deployment obligation.	Enforceable commitment by service provider (e.g., authorization letter). In the case of Tribal Lands, the challenger must submit the requisite legally binding agreement between the relevant Tribal Government and the service provider for the location(s) at issue (see Section 6.2 above).	Documentation that the provider has defaulted on the commitment or is otherwise unable to meet the commitment (e.g., is no longer a going concern).
P	Planned service	The challenger has knowledge that	<ul style="list-style-type: none"> <li>Construction contracts or</li> </ul>	Documentation showing that the

		<p>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>	<p>similar evidence of on-going deployment, along with evidence that all necessary permits have been applied for or obtained.</p> <ul style="list-style-type: none"> <li>• Contracts or a similar binding agreement between the Eligible Entity and the provider committing that planned service will meet the BEAD definition and requirements of reliable and qualifying broadband even if not required by its funding source (<i>i.e.</i>, a separate federal grant program), including the expected date deployment</li> </ul>	<p>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.</p>
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			will be completed, which must be on or before June 30, 2024.	
N	Not part of enforceable commitment.	This location is in an area that is subject to an enforceable commitment to less than 100% of locations and the location is not covered by that commitment. (See BEAD NOFO at 36, n. 52.)	Declaration by service provider subject to the enforceable commitment.	
C	Location is a CAI	The location should be classified as a CAI.	Evidence that the location falls within the definitions of CAIs set by the Eligible Entity. <sup>8</sup>	Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation.
R	Location is not a CAI	The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation.	Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation.	Evidence that the location falls within the definitions of CAIs set by the Eligible Entity or is still operational.
CFWA	Cellular Fixed Wireless	OSIT will treat as “underserved” locations that the	Pre-challenge modification	<ul style="list-style-type: none"> <li>Evidence of capacity</li> </ul>

<sup>8</sup> For example, eligibility for FCC e-Rate or Rural Health Care program funding or registration with an appropriate regulatory agency may constitute such evidence, but the Eligible Entity may rely on other reliable evidence that is verifiable by a third party.

	Access Modification	National Broadband Map shows to have available qualifying broadband service (i.e., a location that is "served") due solely to the availability of Cellular Fixed Wireless Access (CFA) as "underserved."		described in 1.4.6.
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### Area and MDU Challenge

OSIT will administer area and MDU challenges for challenge types A, S, L, D, and T. An area challenge reverses the burden of proof for availability, speed, latency, data caps and technology if a defined number of challenges for a particular category, across all challengers, have been submitted for a provider. Thus, the provider receiving an area challenge or MDU challenge must demonstrate that they are indeed meeting the availability, speed, latency, data cap and technology requirement, respectively, for all locations it serves within the area or all units within an MDU. The provider can use any of the permissible rebuttals listed above.<sup>9</sup>

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

An MDU challenge requires challenges 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.<sup>10</sup> 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 is considered separately, e.g., an availability challenge (A) does not count towards reaching the area threshold for a speed (S) challenge. If a provider offers multiple technologies, such as DSL and fiber, each is treated separately since they are likely to have different availability and performance.

Area challenges for availability need to be rebutted in whole or by location with evidence that service is available for all BSLs within the census block group, e.g., by network diagrams that show fiber or HFC infrastructure or by subscriber information. 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

<sup>9</sup> 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.

<sup>10</sup> For example, a complex of apartment buildings may be represented by multiple BSLs in the Fabric.

must demonstrate service availability and speed (e.g., with a mobile test unit).<sup>11</sup> 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.

### Speed Test Requirements

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

Speed tests can take four forms:

1. A reading of the physical line speed provided by the residential gateway, (i.e., DSL modem, cable modem (for HFC), ONT (for FTTH), or fixed wireless subscriber module.
2. A reading of the speed test available from within the residential gateway web interface.
3. A reading of the speed test found on the service provider's web page.
4. A speed test performed on a laptop or desktop computer within immediate proximity of the residential gateway, using OSIT's speed test administered in partnership with Ookla: <https://ositnv.speedtestcustom.com/>

Each speed test measurement must include:

- The time and date the speed test was conducted.
- The provider-assigned internet protocol (IP) address, either version 4 or version 6, identifying the residential gateway conducting the test.

Each group of three speed tests must include:

- The name and street address of the customer conducting the speed test.
- A certification of the speed tier the customer subscribes to (e.g., a copy of the customer's last invoice).
- An agreement, using an online form provided by the Eligible Entity, that grants access to these information elements to the Eligible Entity, any contractors supporting the challenge process, and the service provider.

The IP address and the subscriber's name and street address are considered personally identifiable information (PII) and thus are not disclosed to the public (e.g., as part of a challenge dashboard or open data portal).

Each location must conduct three speed tests on three different days; the days do not have to be adjacent. The median of the three tests (i.e., the second highest (or lowest) speed) is used to trigger a speed-based (S) challenge, for either upload or download. For example, if a location claims a broadband speed of 100 Mbps/25 Mbps and the three speed tests result in download speed measurements of 105, 102 and 98 Mbps, and three upload speed measurements of 18, 26 and 17 Mbps, the speed tests qualify the location for a challenge, since the measured upload speed marks the location as underserved.

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<sup>11</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.

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>12</sup>, i.e., 80% of these locations must experience a speed that equals or exceeds 80% of the speed threshold. For example, 80% of these locations must have a download speed of at least 20 Mbps (that is, 80% of 25 Mbps) and an upload speed of at least 2.4 Mbps to meet the 25/3 Mbps threshold and must have a download speed of at least 80 Mbps and an upload speed of 16 Mbps to be meet the 100/20 Mbps speed tier. Only speed tests conducted by the provider between the hours of 7 pm and 11 pm local time will be considered as evidence for a challenge rebuttal.

### Cellular Fixed Wireless Requirements

OSIT will treat as “underserved” locations that the National Broadband Map shows to have available qualifying broadband service (i.e., a location that is “served”) due solely to the availability of Cellular Fixed Wireless Access (CFWA) as “underserved.” The broadband office has determined that this modification, and the corresponding rebuttal opportunity, will assist the office in determining the availability of networks with sufficient capacity to meet the expected consumer demand for qualifying broadband in the relevant area. OSIT has determined that this pre-challenge modification affects approximately 1,015 locations based on location data from the November 7, 2023 version of the FCC National Broadband Map. The affected CFWA provider will have an opportunity to rebut this modification.

To successfully rebut this modification, the cellular fixed wireless provider must demonstrate both of the following:

1. Is providing 100/20 Mbps or better service at the relevant locations. The method for rebuttal for this challenge mirrors the procedure described in “Speed Test Requirements” above.

And

2. The Provider has sufficient network capacity to simultaneously serve (i.e., as concurrently active subscribers) at least 80% of claimed locations in the relevant coverage areas. As one option for making such a showing, a provider may describe how many fixed locations it serves from each cell tower and the

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<sup>12</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.

amount of per-user averaged bandwidth it uses for capacity planning. To provide confidence to Nevada that a cellular network is likely to be able to support a reasonable fraction of BSLs in the claimed coverage area, a simpler, approximate analysis will be offered as an evidentiary rebuttal method. The provider must indicate the spectrum available to fixed wireless customers (which may be less than that available to mobile devices) for each tower. A minimum capacity demand of 5 Mbps per BSL is required to be considered served only because of cellular fixed wireless service by the provider, with a spectral efficiency of 10 b/s/Hz. Thus, the rebuttal is successful only if the total capacity of all sectors of a cell tower exceeds the number of claimed BSLs dependent on cellular fixed wireless, multiplied by 5 Mbps.

## Transparency Plan

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, OSIT will, upon approval from NTIA, publicly post an overview of the challenge process phases, challenge timelines, and instructions on how to submit and rebut a challenge. This documentation will be posted publicly for at least a week prior to opening the challenge submission window. OSIT also plans to actively inform all units of local government of its challenge process and set up regular touchpoints to address any comments, questions, or concerns from local governments, nonprofit organizations, and Internet service providers. Relevant stakeholders can sign up on the OSIT website <https://osit.nv.gov/> for challenge process updates and newsletters. They can engage with OSIT by a designated email address: [highspeednv@gov.nv.gov](mailto:highspeednv@gov.nv.gov). Providers will be notified of challenges via email.

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

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

OSIT 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, OSIT 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.

OSIT will treat information submitted by an existing broadband service provider designated as proprietary and confidential consistent with applicable federal law. If any of these responses do contain information or data that the submitter deems to be confidential commercial information that should be exempt from disclosure under state open records laws or is protected under applicable state privacy laws, that information should be identified as privileged or confidential. Otherwise, the responses will be made publicly available.

### **Volume I Public Comment Period**

The public comment period for Nevada's Initial Proposal Volume I lasted 30 days from September 19<sup>th</sup>, 2023 through October 20<sup>th</sup>, 2023.

### **Volume I Public Comment Outreach and Engagement for Public Comment Period**

Nevada's Initial Proposal Volume I was posted on the OSIT website with an overview of its contents and clear instructions for comment submission. Immediately upon posting on the website, OSIT emailed an announcement to all stakeholders notifying them of the posting and requesting comment. OSIT posted a notice of public comment in State Offices in Carson City and Las Vegas. OSIT also posted notice of the public comment period on social media. OSIT met with commenters and stakeholders upon request. OSIT also gave an overview of the proposal during various stakeholder gatherings.

OSIT accepted written comments online via an online portal posted on the OSIT website and via mail.

Nevada received 34 public comments. OSIT thoroughly reviewed each comment it received. Comments included support for OSIT's proposed approach as well as suggestions for modifications. Commenters requested additional time for the challenge and rebuttal processes and suggested increases from 14 to 30 days, which OSIT changed in the updated version submitted to NTIA. Commenters were universally supportive of the inclusion of the DSL pre-challenge modification. Comments were received both in support and in opposition of the other pre-challenge modifications and Area and MDU challenge options. Some commenters proposed that OSIT relax Area, MDU, and speed test challenge requirements while other commenters suggested removing those options all together. Ultimately, OSIT elected to leave these requirements unchanged as further relaxing the requirements would not allow for a balanced process. Some commenters requested the addition of new locations to the FCC map, which falls beyond the scope of this Initial Proposal. OSIT carefully considered and weighed the suggestions against those of other commenters as well as the comments received during OSIT's community outreach and engagement during the past year. OSIT reaffirms its commitment to follow federal guidelines while conducting a fair, transparent, expeditions and efficient challenge process.