

2023

BROADBAND EQUITY ACCESS AND DEPLOYMENT

Initial Proposal - Volume 1

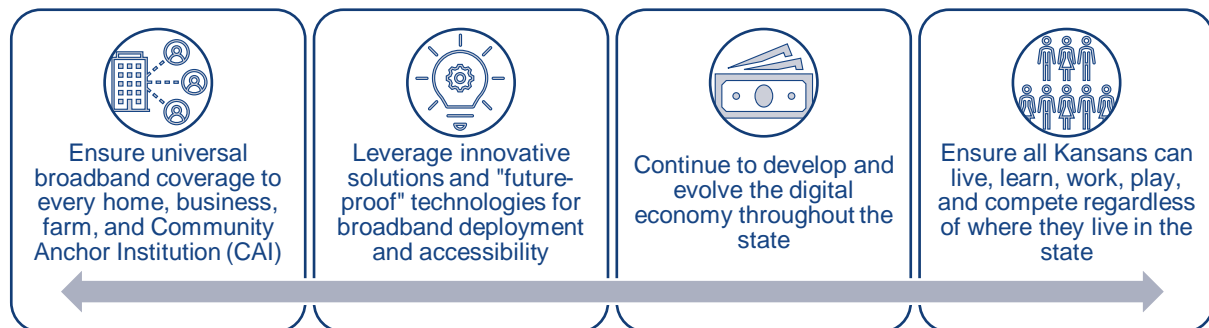
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A Message from the Director

Fellow Kansans,

The Kansas Office of Broadband Development ([KOBD](#)) is pleased to present the first of two volumes of the Broadband Equity, Access, and Deployment Program ([BEAD](#)) Initial Proposal (BEAD-IP) for public comment. The BEAD program, established by the Infrastructure Investment and Jobs Act, allocated more than \$451 million to Kansas for the development of broadband networks to help achieve Governor Laura Kelly's broadband vision to:



To achieve these lofty objectives, your partnership and input is invaluable.

We invite you, a Kansan stakeholder, to review this BEAD-IP, Volume 1, using the online feedback form at

<https://kansasdeptofcommercebroadband.submittable.com/submit/268780/bead-volume-1>

The public comment period will be open for thirty (30) days. The deadline for comment is 5:00 p.m. (CT) August 30, 2023.

KOBD will use your input to update the BEAD-IP, Volume 1, which focuses on existing funding, unserved and underserved locations, community anchor institutions (CAI), and a challenge process that will follow the approval of this plan. A second volume of the BEAD-IP will be released at a later date to address other NTIA requirements such as the subgrantee selection process. You can learn more from this [Notice of Funding Opportunity](#).

Please contact kdc_broadband@ks.gov if you have any questions or need clarification

Sincerely,

Jade Piros de Carvalho
Director of the Kansas Office of Broadband Development

Introduction

KOBD drafted the following sections to meet the requirements for BEAD-IP Volume 1:

- Identification of existing broadband efforts
- Identification of existing unserved and underserved locations
- Identification and application of community anchor institutions
- Detailed challenge process plan

BEAD-IP Volume 2 will include the remaining sections to complete the BEAD-IP requirements. For the purposes of this proposal, “Eligible Entity” refers to the State of Kansas and KOBD.

Existing Broadband Funding (Requirement 3)

Identify existing efforts funded by the federal government or an Eligible Entity within the jurisdiction of the Eligible Entity to deploy broadband and close the digital divide, including in Tribal Lands.

Since its inception, KOBD has administered state and federal grant programs focused on broadband deployment throughout the state, which are documented in the Five-Year Action Plan (FYAP). An update of existing efforts to address broadband infrastructure deployment, access, affordability, and adoption and their funding is presented in Table 1.

Table 1. Existing Broadband Efforts				
Source	Purpose	Total	Expended	Available
Capital Projects Fund (CPF) Program – American Rescue Plan Act (ARPA). Awarding Agency: U.S. Department of Treasury	The CPF program provided funding to deploy broadband infrastructure that delivers 100/100 Mbps to unserved and critical areas of the state that lacked access. CPF is intended to address the following priorities: <ul style="list-style-type: none"> • Broadband infrastructure deployment designed to directly enable work, education, and healthcare monitoring. • A critical need that resulted from or was made apparent or exacerbated by the COVID-19 public health emergency. • A critical need of the community to be served. 	\$83,460,391 with \$41,883,267 in matching funds for a total of \$125,343,657 invested	\$83,460,391 Awarded	\$0 Award In Process
Broadband Equity, Access, and Deployment Program (BEAD). Awarding Agency: NTIA	BEAD will provide \$42.45 billion nationally to bring universal broadband access to all Americans. Kansas’ allocation is \$451.7 million.	\$451,725,998	\$0	\$451,725,998
BEAD Initial Planning Grant. Awarding Agency: NTIA	The BEAD Initial Planning Grant provides funds for the creation of the FYAP.	\$4,999,943	\$871,599	\$4,128,344

Table 1. Existing Broadband Efforts				
Source	Purpose	Total	Expended	Available
State Digital Equity Planning Grant Program (DEA). Awarding Agency: NTIA	The Digital Equity Act (DEA) supports the creation of a digital equity plan. The goal of the DEA program is to promote the meaningful adoption and use of broadband services across covered populations. KOBD created a Digital Equity Advisory Council and completed robust outreach to covered populations.	\$692,644	\$199,291	\$493,353
Enabling Middle Mile Broadband Infrastructure (EMMBI). Awarding Agency: NTIA	<p>The state applied for NTIA's competitive EMMBI program focused on the construction, improvement, or acquisition of middle-mile broadband infrastructure.</p> <p>KOBD partnered with the Kansas Department of Transportation, the Kansas Research and Education Network (KanREN), and private providers, with input from the Kansas Department of Agriculture and the Kansas Division of Emergency Management, to submit a middle mile application in September 2022.</p> <p>On June 16, 2023, KOBD and our partners, were awarded \$42.5 million.</p>	\$42,514,219	\$0	\$42,514,219
Capital Projects Fund Digital Connectivity Technology (CPF-DCT). Awarding Agency: U.S. Department of Treasury	In February 2023, Kansas was the first state to be awarded \$15.5 million of DCT funds. The CPF-DCT program will support equal access to high-speed internet and provide devices to unserved and underserved Kansans. The program will be competitively allocated to eligible entities to bring free devices to income-qualifying households, free Wi-Fi to CAIs, and free Wi-Fi to low-income multi-dwelling units (MDU).	\$15,500,000	In Process	In Process
Lasting Infrastructure and Network Connectivity Program (LINC). Awarding Agency: Kansas Department of Commerce	Kansas allocated \$30 million in ARPA State Fiscal Recovery Funds (SFRF) to LINC for broadband infrastructure expansion. LINC is a multi-faceted effort to improve broadband infrastructure, middle mile connectivity, and Internet Exchange Point capabilities throughout Kansas.	\$30,000,000	Applications closed; applications currently under review: 100% expected to be allocated	\$0

Table 1. Existing Broadband Efforts				
Source	Purpose	Total	Expended	Available
Broadband Acceleration Grant (BAG). Awarding Agency: Kansas Department of Transportation (KDOT)	In 2020, KDOT, through its Eisenhower Legacy Transportation Program (IKE), partnered with KOBD to fund BAG. The program will invest \$85 million over 10 years toward bridging the digital divide in Kansas. BAG will invest \$5 million per year in grant awards for years one (1) through three (3), and \$10 million per year in grant awards for years four (4) through ten (10). BAG prioritizes access to unserved and underserved areas through the construction of broadband infrastructure across Kansas. Total investment, including matching funds, over the first two years exceeds \$20 million and broadband access was brought to more than 5,700 locations. The third funding year process launched July 2023.	\$85,000,000	\$10,000,000	\$75,000,000
ReConnect. Awarding Agency: U.S. Department of Agriculture (USDA)	ReConnect offers loans, grants, and a loan-grant combination to facilitate broadband deployment in rural areas. Since 2020, Kansas providers received three (3) awards for broadband infrastructure at or above 100/20 Mbps. The total of the three (3) awards is \$61.5 million, with the most recent award on June 12, 2023, for \$49.9 million.	\$61,500,000	In Process	In Process
Tribal Broadband Connectivity Program (TBCP). Awarding Agency: NTIA	This program directs funding to Sovereign Nation Tribal governments for broadband deployment, telehealth, distance learning, broadband affordability, and digital inclusion. Three Sovereign Nation Tribes that reside in Kansas received TBCP grants: (1) The Kickapoo Tribe of Kansas received \$3,710,576 to 146 unserved households, two businesses, 10 tribal government facilities, and 15 CAIs at 1Gbps symmetrical; and (2) The Prairie Band Potawatomi Nation received \$499,741 to assist in future fiber development. (3) The Iowla Tribe of Kansas and Nebraska received \$498,000 to assist in future fiber development and digital inclusion efforts.	\$4,708,317	In Process (Controlled by Sovereign Nation Tribal governments)	In Process

Table 1. Existing Broadband Efforts				
Source	Purpose	Total	Expended	Available
Universal Service Fund (USF) Program for Schools & Libraries (E-rate). Awarding Agency: FCC	The E-rate program helps schools and libraries to obtain affordable broadband service. The E-rate program in Kansas is managed by the Kansas Corporation Commission, which distributed \$30.6M in FY 2022.	\$19,085,247	\$19,085,247	In Process
Alternate Connect America Cost Model (ACAM). Awarding Agency: FCC	ACAM II provides funding to rate-of-return carriers that voluntarily elect to transition to a new cost model for calculating high-cost support in exchange for meeting defined broadband build-out obligations. Those that elect to participate receive predictable monthly payments of up to \$200, based on support, for each funded location over the program's ten (10) year support term (2017-2026). In Kansas, five (5) companies receive ACAM II funding covering over 14,000 locations. Funding numbers are for 2022.	\$19,119,450	\$19,119,450	In Process
Rural Health Care (RHC) Program. Awarding Agency: FCC	This program provides funding to eligible healthcare providers for telecommunications and broadband services. The program's goal is to improve the quality of health care available to patients in rural communities. To date, 331 rural healthcare entities in Kansas utilize the RHC subsidy. Funding numbers are for 2022.	\$6,729,375	\$6,729,375	In Process
Connect America Fund (Auction 903). Awarding Agency: FCC	The federal universal service high-cost program (also known as the Connect America Fund) is designed to ensure consumers in rural, insular, and high-cost areas have access to modern communications networks capable of providing voice and broadband service, both fixed and mobile, at rates that are reasonably comparable to those in urban areas.	\$4,679,866	In Process	In Process

Table 1. Existing Broadband Efforts				
Source	Purpose	Total	Expended	Available
Affordable Connectivity Program (ACP). Awarding Agency: FCC	<p>ACP is a federal affordability program for broadband subscription. For eligible households, ACP provides a discount of up to \$30 per month toward internet service and up to \$75 per month for households on qualifying Sovereign Tribal Nation lands. Eligible households can also receive a one-time discount of up to \$100 for the purchase of a laptop, desktop computer, or tablet.</p> <p>KOBD partners with Education Superhighway to promote ACP. Education Superhighway provided training and resources to community partners, local governments, and ISPs. As a result, 69 organizations and 4 representatives have signed up to provide training on how to enroll interested households. As of May 2023, Kansas has 105,575 ACP subscribers in Kansas. Funding numbers are for 2022.</p>	\$23,218,466	\$23,218,466	In Process (ACP is awarded based on direct applications from eligible subscribers to their service providers.)
Emergency Broadband Benefit (EBB). Awarding Agency: FCC	<p>ACP replaced EBB.</p> <p>EBB was a program to help families and households struggling to afford internet service during the COVID-19 pandemic.</p>	\$10,480,106	\$10,480,106	Discontinued
Community Connect Grants Awarding Agency: USDA	This program provides financial assistance to provide broadband service in rural, economically distressed communities where service does not exist. To date, no Kansas communities nor ISPs have applied for funds under this program.	No Current Applications	\$0	\$0

Table 1. Existing Broadband Efforts				
Source	Purpose	Total	Expended	Available
Distance Learning and Telemedicine Grants. Awarding Agency: USDA	This competitive program helps rural communities use advanced telecommunications technology to connect to each other and the world, overcoming the effects of remoteness and low population density. To date, Kansas has 173 distance learning projects and 108 telemedicine projects. This grant is administered by the USDA directly to eligible entities (state and local governments, Sovereign Tribal Nations, not for profit organizations, incorporated for-profit businesses in populations with 20,000 or fewer).	\$64,000,000 for Federal Fiscal Year (FFY) 2023. Applications closed January 30, 2023	Unknown, awards not posted. Likely posted in FFY 2023 Q4	Unknown
Connecting Minority Communities (CMC) Pilot Program. Awarding Agency: NTIA	This is a \$268M grant program to Historically Black Colleges and Universities (HBCU), Tribal Colleges and Universities (TCU), and Minority-Serving Institutions (MSI) for the purchase of broadband service and eligible equipment. To date, no Kansas entities have applied for funds under this program.	No Current Applications	\$0	\$0
Broadband Technical Assistance (BTA) Grant. Awarding Agency: USDA	BTA provides funds to receive or provide broadband technical assistance and training, while also supporting the development and expansion of broadband cooperatives. On June 20, 2023, Kansas submitted a BTA application to provide broadband technical assistance to six of the most rural and economically distressed counties in the state. The counties covered are Linn, Kiowa, Gove, Wilson, Kearny, and Rawlins.	Pending application for \$1,000,000	\$0	\$0
Affordable Connectivity Outreach Grant Program. Awarding Agency: Federal Communications Commission (FCC)	The ACP Outreach Grant Program provides funding and resources to promote ACP and increase enrollment. Activities to promote ACP include a robust marketing and advertising campaign, social media, traditional media, flyers, infographics, standing banners, mailers, a video, and community education events in partnership with the FCC.	\$1,000,000 (3 awards: City of Topeka, \$90,200; Wichita State University, \$409,800; and Kansas City Digital Divide, \$500,000)	\$0	\$1,000,000

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.

Under the BEAD program, locations without access to internet speeds at or below 25/3 Mbps are considered **unserved** and locations without access to internet speeds at or below 100/20 Mbps but above 25/3 Mbps are considered **underserved**. The two associated reference files titled “BEAD Unserved Locations.csv” and “BEAD Underserved Locations.csv” listing unserved and underserved location IDs are available for download at the following link:

<https://www.kansascommerce.gov/officeofbroadbanddevelopment/broadband-equity-access-and-deployment/>

The data was sourced on June 1, 2023, by KOBD from the May 30, 2023, version of the FCC Broadband DATA Map; which can be found here:

<https://broadbandmap.fcc.gov/home>

In accordance with the NTIA guidelines of BEAD, locations served exclusively by satellite, unlicensed spectrum, or a technology not specified by the FCC for purposes of the Broadband DATA Maps will not meet the criteria for reliable broadband service and will be considered “unserved.”

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.

Based on the statutory definition of “community anchor institution” from 47 USC 1702 (a)(2)(E), KOBD 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, HUD-assisted housing organization, or Sovereign Nation Tribal housing organization), or community support organization that facilitates greater use of broadband service for vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

The following sources were used by KOBD to identify CAIs:

- **Schools:** K-12 schools include those that participate in the FCC’s E-Rate program or have a National Center for Education Statistics (NCES) ID in the categories of “public schools” or “private schools.”

- **Libraries:** Libraries include those that participate in the FCC’s E-Rate program, are American Library Association (ALA) member libraries and their branches, and those on record with the State Librarian.
- **Local, state, federal or tribal government buildings:** KOBD used the U.S. General Services Administration’s (GSA) “Inventory of GSA Owned and Leased Properties” to identify federal buildings in Kansas. State, local, and tribal government buildings were identified by consulting state, territorial, and tribal records.
- **Health clinic, health center, hospital, or other medical providers:** The list includes institutions that have a Centers for Medicare and Medicaid Services (CMS) identifier, such as health clinics, health centers, hospitals, and other medical providers.
- **Public safety entity:** The list includes entities based on records maintained by the state and local units of government, such as fire houses, emergency medical service stations, police stations, and public safety answering points (PSAP). The list of PSAPs also includes those in the FCC PSAP registry.
- **Institutions of higher education:** Institutions of higher education include those that have a NCES ID in the category of “college,” including junior colleges, community colleges, minority serving institutions, historically black colleges and universities, other universities, and other educational institutions.
- **Public housing organizations:** Public housing organizations were identified by contacting the Public Housing Agencies (PHA) for the state or territory enumerated by the U.S. Department of Housing and Urban Development. The nonprofit organizations, the Public and Affordable Housing Research Corporation (PAHRC), and the National Low-Income Housing Coalition maintain a database of nationwide public housing units at the National Housing Preservation Database (NHPD).
- **Community support organizations:** KOBD included any organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals. Senior centers and job training centers were also included. The Department of Labor maintains a database of “American Job Training” training centers, which can be accessed at the American Job Center Finder. The National Council on Aging (NCOA) helped identify senior centers.

KOBD is using this public comment process to ensure all relevant institutions meeting the CAI criteria are included, as BEAD requires every CAI to have 1Gbps symmetrical service. Additionally, each Internet Service Provider (ISP) will be asked to provide the highest broadband service speed available to each CAI. To properly assess the network connectivity needed to meet the requirements for eligible CAIs, public comment is encouraged from engaged state governmental agencies, relevant umbrella organizations, and nonprofits throughout the state. Desired comments may be in the form of additional CAI locations, recommended deletions, or a confirmation from CAIs if they desire 1Gbps symmetrical service. Using the responses received, KOBD will review and include any changes necessary to the list of CAIs.

One .csv file detailing all CAIs identified by KOBD is available for download titled “BEAD CAI.csv” here:

<https://www.kansascommerce.gov/officeofbroadbanddevelopment/broadband-equity-access-and-deployment/>

Challenge Process (Requirement 7)

Include a detailed plan to conduct a challenge process as described in Section IV.B.6.

Kansas will adopt the model challenge process, as provided by NTIA.

Kansas will make Digital Subscriber Line (DSL) modifications and speed test modifications as outlined in guidance provided by the NTIA. These modifications will ensure the accuracy of served, unserved, and underserved locations from the FCC Broadband DATA Map. In addition, KOBD will administer the optional Area Challenge Module for areas and multiple dwelling units (MDU). Kansas will adopt the BEAD Eligible Entity Planning Toolkit to document locations subject to enforceable commitments and consult the following data sets:

- The FCC Broadband DATA Map,
- Data from broadband deployment programs that meet BEAD qualifying speeds (i.e., programs funded through CPF and SLFRF), and
- Data of existing enforceable commitments regarding broadband deployment projects.

KOBD will create a list of broadband serviceable locations (BSLs). Furthermore, KOBD will review its existing state and local broadband grant programs to confirm the upload and download speeds of existing binding agreements. This BSL list will then include these enforceable commitments. If these enforceable commitments did not require a list of BSLs, KOBD will translate polygons (i.e., coverage areas) or other geographic representations (e.g., a county) describing the previously awarded area into a list of BSLs that will then be excluded from BEAD funding.

KOBD compiled a list of federal, state, and local enforceable commitments as documented in Requirement 3 of BEAD-IP Volume 1. In situations in which the funding program did not mandate specific broadband speeds for the funded network, or when there was reason to believe a provider deployed higher broadband speeds than required, KOBD will reach out to the provider to verify the deployment speeds and create a binding agreement that commit the provider to those speeds within the previously awarded area.

Challenge Process Design

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

Permissible Challenges

KOBD will only allow challenges on the following grounds:

- The identification of eligible CAIs, as defined by the Eligible Entity,
- CAI BEAD eligibility determinations,
- BEAD eligibility determinations for existing BSLs,
- Enforceable commitments, or
- Planned service.

Permissible Challengers

KOBD will only allow challenges from nonprofit organizations, units of local or tribal governments, or broadband service providers.

Challenge Process Overview

The challenge process conducted by KOBD will include four phases, spanning up to 120 days:

1. **Publication of Eligible Locations:** KOBD will publish the set of BSLs eligible for BEAD funding, which will consist of the locations resulting from the activities outlined in Sections 5 and 6 of the Policy Notice (e.g., administering the deduplication of funding process). Publication is tentatively scheduled for November 25, 2023, immediately following approval of BEAD-IP Volume 1 and the submission of BEAD-IP Volume 2.

2. **Challenge Phase:** During the challenge phase, a challenger will submit their challenge through the KOBD portal. It will be visible to the ISP whose service availability and performance are being contested. The portal will notify the provider of the challenge through an automated email, which will include related information about timing for the provider's response. The location will then be considered "challenged."

a. **Minimum Level of Evidence Sufficient to Establish a Challenge:** The KOBD challenge portal will verify the address provided can be found in the Fabric and is a BSL. The portal will confirm the challenged location is listed in the Broadband DATA Map, meets the definition of reliable broadband service, and a verifiable email address is being used. For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition (OCR). For availability challenges, KOBD will manually verify the evidence submitted falls within the categories stated in the 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, CAIs and existing enforceable commitments are posted. The challenge phase is tentatively scheduled from November 25 to December 25, 2023.

3. **Rebuttal Phase:** Only a challenged ISP may rebut the reclassification of a location or area, and if properly rebutted, it would cause the location or locations to be considered "disputed." If a proper challenge (i.e., one that meets the minimum level of evidence) is not rebutted, the challenge is "substantiated." A provider may also agree with the challenge and then the location is considered "sustained."

a. **Timeline:** Providers will have a minimum of 14 and a maximum of 30 business days from the notice of a challenge to provide rebuttal information to KOBD. The rebuttal phase is tentatively scheduled from December 26, 2023, to February 6, 2024.

4. **Final Determination Phase:** During the final determination phase, KOBD will make final determinations on the classification of a location, by declaring the challenge "sustained" or "rejected."

a. **Timeline:** KOBD will make a final challenge determination within 30 calendar days of a challenge's rebuttal. Reviews will occur on a rolling basis. The final determination phase is tentatively scheduled from February 7, 2024, to March 8, 2024.

Evidence & Review Approach

To ensure each challenge is reviewed and fairly adjudicated, KOBD will review all applicable challenges and rebuttal information without bias, before deciding to sustain or reject a challenge. Standards of review to be applied will be outlined in a standard operating procedure manual. Reviewers will have sufficient training to uniformly apply the standards of review to all properly submitted challenges. Moreover, reviewers will be required to document their justifications for each determination and submit affidavits to ensure there are no conflicts of interest in making challenge determinations. A list of challenge types with specific examples is provided in Table 2.

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"> • Screenshot of provider webpage • A service request refused within the last 180 days (e.g., an email or letter from 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 request¹ • 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 more than the provider's standard installation charge to connect service at the location 	<ul style="list-style-type: none"> • Provider shows that the location subscribes or has subscribed within 12 months, e.g., with a copy of a customer bill • Provider submits evidence that service is now available as a standard installation, e.g., via a copy of an offer sent to the location
S	Speed	The actual speed of the fastest available service tier falls below the unserved or underserved thresholds.	Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests	Provider has countervailing speed test evidence showing sufficient speed (e.g., from their own network management system ²)

¹ 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.”

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

Table 2: Challenge Types with Examples				
Code	Challenge Type	Description	Specific Examples	Permissible rebuttals
L	Latency	The round-trip latency of the broadband service exceeds 100 ms.	Speed test by subscriber, showing the excessive latency	Provider's countervailing speed test evidence showing latency at or below 100 ms (e.g., from the provider's network management system ³)
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance ("data cap") on the consumer. ⁴	<ul style="list-style-type: none"> • Screenshot of provider webpage • Service description provided to consumer 	Provider's terms of service showing that the provider does not impose a data cap
T	Technology	The technology indicated for this location is incorrect.	<ul style="list-style-type: none"> • Manufacturer and model number of residential gateway that demonstrates the service is delivered via a specific technology. 	Provider's countervailing evidence from their network management system showing an appropriate residential gateway that matches the provided service
B	Business service only	The location is residential, but the service offered is marketed or available only to businesses.	<ul style="list-style-type: none"> • 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.	<ul style="list-style-type: none"> • Enforceable commitment by service provider (e.g., authorization letter) • In the case of Tribal Lands, submission of 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 an ongoing concern)

³ *Ibid.*

⁴ For example, this excludes business-oriented plans not commonly sold to residential locations. An unreasonable capacity allowance is defined as a data cap that falls below the capacity allowance of 600 GB listed in the FCC 2023 Urban Rate Survey (FCC Public Notice DA 22-1338, December 16, 2022).

Table 2: Challenge Types with Examples				
Code	Challenge Type	Description	Specific Examples	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 ongoing deployment, along with evidence that all necessary permits have been applied for or obtained. Contracts or a similar binding agreement between the Eligible Entity and the provider committing that planned service will meet the BEAD definition and requirements of reliable and qualifying broadband even if not required by its funding source (<i>i.e.</i>, a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024 	Documentation showing that the provider is no longer able to meet the commitment (e.g., is no longer an ongoing concern) or that the planned deployment does not meet the required technology or performance requirements
N	Not part of enforceable commitment	This location is in an area that is subject to an enforceable commitment. Previous awards did not cover 100% of BSLF locations. Enforceable commitment must be expanded or BSLF declared eligible for BEAD funding. (See BEAD NOFO at 36, n. 52.)	<ul style="list-style-type: none"> Declaration by service provider to expand enforceable commitment 	Service provider to provide KMZ and timeline demonstrating planned coverage
C	Location is a CAI	The location should be classified as a CAI.	<ul style="list-style-type: none"> Evidence that the location falls within the definitions of CAIs set by the Eligible Entity⁵ 	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.	<ul style="list-style-type: none"> 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

Area and Multiple Dwelling Units (MDU) Challenge

For challenge types A, S, L, D, and T (referenced in Table 2 above), KOBD intends to add Area and Multiple Dwelling Units (MDU) challenges. An area challenge reverses the burden of proof for availability, speed, latency, data caps and technology if a defined number of challenges for a particular category, across all challengers, have been submitted for a provider. Thus, the provider receiving an Area or MDU challenge must demonstrate they are meeting the availability, speed, latency, data cap and technology requirements for all served locations within the area or the units within an MDU. The provider can use any of the permissible rebuttals listed above. An area

⁵ 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.

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

An MDU challenge requires challenges by at least three units or 10% of the unit count listed in the Fabric within the same BSL, whichever is larger. Each type of challenge, 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 technology will be treated separately since one will likely 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 Coax [HFC] infrastructure or customer subscribers). For fixed wireless service, the challenge system will offer a representative random sample of the area in contention, with no fewer than 10 locations, where the provider demonstrates service availability and speed. For example, a mobile test unit is a testing apparatus that can be easily moved, which simulates the equipment and installation (e.g., antenna, antenna mast, subscriber equipment) that would be used in a typical deployment of fixed wireless access service by the provider.

Transparency Plan

To ensure the challenge process is transparent and open to public and stakeholder scrutiny, KOBD 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. KOBD 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 ISPs. Relevant stakeholders can sign up by emailing kdc_broadband@ks.gov for challenge process updates and newsletters. KOBD will also post all submitted challenges and rebuttals before final challenge determinations are made, including:

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

KOBD will not publicly post any personally identifiable information (PII) or proprietary information, including subscriber names, street addresses or customer IP addresses. To ensure all PII is protected, KOBD 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. KOBD 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 the submitter deems to be confidential commercial information that should be exempt from disclosure under state open records laws or is protected under applicable state privacy laws, that information should be identified as privileged or confidential to the extent allowed pursuant to Kansas Open Records Act (KORA) K.S.A 45-221 (1,12,20,30,32 and 45). If information is identified by the entity as privileged or confidential, the entity must submit a letter requesting such exemption to kdc_broadband@ks.gov. All exempted information will be securely maintained and accessed by KOBD and confidential contractors only.