

**North Dakota BEAD
CHALLENGE PROCESS
RESOURCE GUIDE**

Version 2.1

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BEAD Challenge Process Guide

As required by statute, the initial eligibility determinations for funding eligibility under the Broadband Equity Access and Deployment (BEAD) program are based on the Federal Communication Commission's (FCC) [National Broadband Map](#).

The BEAD State Challenge Process is designed to provide stakeholders in North Dakota with an opportunity to challenge the eligibility of locations. Based on the process approved by the National Telecommunications and Information Administration (NTIA), challengers can dispute the data from the National Broadband Map using local data.

- **Questions related to technical assistance** issues should be directed to ndhelpdesk@ready.net
- **Questions related to policy or procedural items** should be directed to broadband@nd.gov

Note: Due to ongoing discussions between federal and state partners, this information in this document is subject to update and clarification. Any changes will be announced through official channels, with any changes documented in a change log.

Allowable Challenges

What Can Be Challenged?

The BEAD Challenge Process is designed to accommodate different categories of challenges that are necessary to develop a more accurate list of BEAD eligible locations.

There are different challenge types within each category, but generally, North Dakota Information Technology can only accept challenges on the following grounds:

- BEAD eligibility determinations for Broadband Serviceable Locations (BSLs).
- Enforceable commitments for existing BSLs (locations with existing funding).
- Planned or existing service for existing BSLs.
- The identification of eligible Community Anchor Institutions (CAIs), as defined in North Dakota's Initial Proposal Volume 1.
- CAI BEAD eligibility determinations.

Area & MDU Challenges

The State Broadband Program Office will administer area and MDU challenges for Availability, Technology, Latency, and Data Cap challenge types (A, S, L, D, and T). An area challenge is triggered if six or more BSLs using a particular technology and a single provider within a census block group are challenged.¹ 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

¹ Area challenge determinations will be determined based on 2020 Census Block Groups

three units for larger MDUs. Here, the MDU is defined as one broadband serviceable location listed in the Fabric.² An MDU challenge counts towards an area challenge (i.e., six successful MDU challenges in a census block group may trigger an area challenge).

The provider receiving an area challenge or MDU challenge must demonstrate that they are meeting the availability/technology, latency, and data cap requirement, respectively, for all locations within the area or all units within an MDU. The provider can use any of the permissible rebuttals described in this document for the respective challenge type.

Area challenges for Availability need to be rebutted with evidence that service is available for all BSLs within the census block group. For wireline providers this should include network diagrams that show fiber or HFC infrastructure and/or customer subscribers. For fixed wireless service, the challenge system will offer a representative random sample of the area in contention, but no fewer than ten [10], where the provider has to demonstrate service availability and speed (e.g., with a mobile test unit).³

For a Speed Test Area Challenge, the challenged provider will be required to submit a rebuttal for at least 10% of the customers in the challenged area. The customers must be randomly selected. Providers must apply the 80/80 rule (i.e., 80% of these locations must experience a speed that equals or exceeds 80% of the speed threshold). 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.

For a Latency Area Challenge, the challenged provider will be required to submit a rebuttal for at least 10% of the customers in the challenged area. The customers must be randomly selected. Providers must apply the 80/80 rule (i.e., 80% of these locations must experience a latency that does not exceed 80 milliseconds).

In the event of a representative random sample being used for a rebuttal, such as with a latency area challenge or a fixed wireless provider, the rebuttals against the original challenged locations will not count toward the minimum number of locations required for the area challenge rebuttal.

Permissible Challengers

Who can submit a challenge?

Under the federal policy for the BEAD Program, only the following entities are permitted to submit formal challenges during the BEAD Challenge Process:

- Units of Local and Tribal Governments
- Non-profit organizations
- Broadband Providers

Role for Residents, Businesses, and CAIs

While residents and businesses are not allowed to submit challenges directly to the State, they are an essential part of the challenge process. For many types of challenges, the data

² For example, a complex of apartment buildings may be represented by multiple BSLs in the Fabric.

³ 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.

submitted by the permissible challengers will be gathered directly from residents and/or businesses that have not been provided the level of broadband service that is reportedly available to them the broadband that is reportedly available to them.

Structure and Timing

The BEAD Challenge Process is required to be completed before the state can distribute the funds. This ensures that the list of eligible locations is finalized before the grant application window opens.

Prior to the kickoff of the challenge process, North Dakota Information Technology will post the final eligibility determinations on a public map and available through the portal.

The Challenge Process Phases⁴

| Phase | Tentative Dates | Optional 15 Day Extension |
|-----------------------------|---------------------|---------------------------|
| Challenge Submission Window | 03/15/24 – 04/14/24 | Yes |
| Rebuttal Submission Window | 03/15/24 – 05/14/24 | No |
| Final Determination | 03/15/24 – 06/13/24 | Yes |

Challenge Phase

The challenge phase will run for 30-calendar days. During this phase, eligible challengers will be able to submit challenges using the Challenge Portal. After a challenge is submitted, the State Broadband Program Office will review the evidence and determine if it meets the evidentiary requirements. If a challenge is determined to meet the minimum level of evidence, it will be considered a “valid challenge”.

After all of the challenges have been reviewed, the valid challenges will be processed collectively to determine which challenges require a rebuttal and identify any Area Challenges.

Tip: Submit your challenges early. If there are errors in your submission, you will be given an opportunity to re-submit, but ONLY until the challenge phase ends. You will not be allowed to fix errors or omissions in your challenge after the 30-day submission window closes. *Rebuttal Phase*

After the Challenge Phase closes and challenges are processed, the Rebuttal Phase will run for 30 calendar days. At the beginning of the Rebuttal Phase, all of the challenges that require a rebuttal will be posted in the challenge portal. For challenges directed against providers, only the challenged provider may submit a rebuttal. For other challenge types, any Permissible Challenger may submit a rebuttal.

Broadband providers will be directly notified via email of any challenges directed against them and provided the details necessary to respond during the Rebuttal Phase. The challenged

⁴ These tentative dates are subject to change based upon the timeline for NTIA approval of IPV1.

provider will have 30 days to agree with the challenge or dispute the challenge. If no rebuttal is filed in the allotted time, the challenge will be sustained.

Units of Local and Tribal governments, and non-profit organizations, will receive an email notification when the Rebuttal Phase has opened. However, they will not receive direct notifications for specific challenges since they will not be named parties in the challenges. Accordingly, these challenges will remain open for the entirety of the 30-day period. Unlike the provider challenges, other challenge types are still subject to the final review and determination by the State Broadband Program Office.

After a rebuttal is submitted, the State Broadband Program Office will review the evidence and determine if it meets the evidentiary requirements. If a rebuttal submission is determined to meet the minimum level of evidence, it will be considered a 'valid rebuttal.' At the end of the Rebuttal Phase, all challenges with valid rebuttals submitted will be marked as "disputed" and proceed to the Final Determination Phase.

Tip: Submit your rebuttals early. If there are errors in your submission, you will be given an opportunity to re-submit, but ONLY until the challenge phase ends. You will not be allowed to fix errors or omissions in your challenge after the 30-day submission window closes.

Final Determination Phase

Within 30 days of the close of the Rebuttal Phase, the North Dakota Information Technology team will review the evidence for each challenge, including the evidence from any rebuttals, and will make a final determination to "sustain" or "reject" each challenge. The State Broadband Program Office may choose to extend the Final Determination phase to 45 days to allow the State additional time to thoroughly adjudicate all challenges. Therefore, the Final Determination Phase will overlap with the beginning of the Challenge and Rebuttal Phases but will last 90-105 days total to account for rebuttals submitted at the end of the Rebuttal Phase. The reviewers will fully review all information included in each challenge and rebuttal prior to making any final determinations.

How to Participate in the Challenge Process

Account Registration

Before a Permissible Challenger can participate in the Challenge Process, they must register for an account in the Challenge Portal, ensuring that only eligible parties submit challenges.

Registration Steps

- 1. Visit the Registration Page** – The registration page provides a brief overview of the challenge process and helpful links.
- 2. Click the Register button** – The Register button will open an intake form to provide the necessary information.
- 3. Complete the intake form** – The intake form will ask you for the information needed to verify your account as a permissible challenger.
 - a. General information** – Every registrant for the challenge process will be asked to provide the following information:
 - i. Entity Name
 - ii. Entity Website
 - iii. Primary Contact name
 - iv. Primary Contact Email (Please use domain affiliated with entity)
 - v. Primary Contact Phone Number
 - vi. Type of Entity (select from dropdown)
 - b. Broadband Providers Information**
 - i. Provider Name (select from dropdown)
 - ii. FRN
 - iii. Physical Address
 - iv. Additional documentation to verify identity
 - c. Unit of Local Government Information**
 - i. Physical Address
 - ii. Additional documentation to verify identity
 - d. Unit of Tribal Government Information**
 - i. UEI Number assigned by Sam.gov.
 - ii. Tribe's name as listed by BIA.
 - iii. Physical Address
 - iv. Additional documentation to verify identity

The screenshot shows a web form titled "Register For The BEAD Challenge Process" with a close button (X) in the top right corner. Below the title, it says "SECTION 1 OF 2" and "About You". The form contains several input fields:

- Entity Name:** A text input field with a red asterisk indicating it is required.
- Entity Website:** A text input field with a red asterisk, a "https://" icon, and a placeholder "Entity Website".
- Primary Contact Name:** A text input field with a red asterisk and a search icon.
- Primary Contact Email:** A text input field with a red asterisk and an email icon.
- Primary Contact Number:** A text input field with a red asterisk and a phone icon.
- Type of Organization:** A dropdown menu with a red asterisk and a downward arrow.

At the bottom of the form, there is a "Next" button.

- e. Non-Profit Organization Information**
 - i. EIN
 - ii. Physical Address
 - iii. Additional documentation to verify identity
- 4. Click “Finish” and submit form** - After you submit the form, you will receive an email confirmation. **You do not need to do anything at this point.**
- 5. Wait for Account Approval** – After submitting your account request, each registration will be manually reviewed by the State Broadband Program Office before it is approved. As a result, there will be a slight delay between registration and account setup. If your registration lacks necessary details, you will be notified by email to update your account request with the necessary information.
- 6. Complete setting up your account** – Once approved, you will receive an email with a link to complete the setup of your account, where you’ll be asked to set a password.

How to Submit Challenges and Rebuttals

Once your registration has been approved and your account has been set up, you’ll be able to file challenges and rebuttals while the respective phases are open.

Submitting Challenges

In general, all Permissible Challengers are eligible to submit challenges of any type. The primary exception is that “Planned Service or Existing Service” will require an agreement between the provider and the Office.

Challenge Steps

- 1. Log-in to the Challenge Portal** - Users can log-in using email/password combo or use a “Magic Link” which sends an email with a link to log-in directly without password.
- 2. Expand “Challenge” Item in the Navigation Menu** – There are a range of options in the sidebar navigation menu. When clicking on the Challenge menu item, the sub-menu will expand to display two options: “Dashboard” and “Challenge Map.”
- 3. Click on either “Dashboard” or “Challenge Map”** – Both options provide different functionality, but each of them will allow you to open a challenge submission window. The Challenge Map provides a geospatial representation of the eligibility designations under BEAD, while the Dashboard is your portal to review the challenges that you’ve submitted. If you’re a provider, you will eventually see challenges submitted on your reported service in your Dashboard.
- 4. Click on “Add Challenge” Button** – The “Add Challenge” button is found on the top right of the “Submitted Challenges” panel of the Challenge Map page or on the top-right of the challenges table on the Dashboard page. This will open the “Create a Challenge” page, which includes the Challenge Map with a challenge flow panel on the right and layers that can be used to filter the map based on a range of parameters.

- 5. Create a Challenge** – When creating a challenge in the challenge portal, there are several steps included in the flow:
- a. Select Challenge Category and Type** – Each challenge category includes multiple challenge types to select from:
 - i. Planned or Existing Service**
 - 1. Planned Service
 - 2. Existing Service
 - ii. Enforceable Commitments**
 - 1. Covered by Enforceable Commitment
 - 2. Not Covered by Enforceable Commitment
 - iii. Provider Service Level**
 - 1. Availability
 - 2. Latency
 - 3. Data Cap
 - 4. Technology
 - 5. Business Service Only
 - iv. Anchor Institution Classification**
 - 1. Location is a CAI
 - 2. Location is not a CAI.
 - 3. Location Does Not Receive 1 Gbps Service
 - 4. Location Does Receive 1 Gbps Service
 - b. Select Challenge Details** – After selecting the Challenge Type, the data in the map will be filtered to display only those locations that are eligible for the selected challenge type. For example, if an area is already unserved, you will not be able to file an Availability challenge. From the locations eligible for the selected challenge type, you will be prompted to provide the challenge details that will further filter the locations, based on the options you select. The required challenge details will vary by challenge type, as described further throughout this document.
 - c. Select Locations** – After providing challenge details, only the locations eligible for the challenge type and details provided will be displayed. From the remaining locations, you will be prompted to select the location(s) that you want to challenge. You can add locations one-by-one or select a group of locations.
 - i. Adding individual locations** – To add an individual location, click on the location on the map, which will then provide a pop-up of the address of that location and an “Add to Challenge” button. If the address aligns with the location you intend to add to the challenge, click “Add to Challenge” and then click “Confirm” in the following prompt. You can add multiple locations to the same challenge submission using this method.

- ii. **Add locations in bulk** – When filing bulk challenge submissions, you can add locations in groups, rather than adding each location individually, to add multiple locations as a group, there are two methods available.
 1. **Shift+Click+Drag cursor** - This method allows you to quickly select multiple locations directly on the map. This is the quickest, but less precise method of selecting multiple locations, because the selection boundaries are in a rectangular shape. Once you've selected locations using this method, you'll be prompted to confirm that you want to add these locations to your challenge. The prompt will include the number of locations that you've selected.
 2. **Select or Upload Area by creating a "Zone"** - This method allows you to define a zone by drawing a polygon, uploading a shapefile, or selecting from a library, which includes defined geographies such as cities, counties, and Tribal areas. To add a zone, click on the Zones tab in the left panel to define a new zone by drawing, uploading a shapefile or selecting from a library of official boundaries.
 3. **Removing locations from selection** - If you inadvertently added locations, you do not wish to challenge, you can remove the locations by clicking the trash icon next to the location in the right panel or remove all selected locations by clicking "Remove All".
- d. **Upload Evidence and Documentation** - Once you've finalized the location(s) that you want to challenge you will be asked to provide any evidence and documentation that you want included in the review of your challenge. For challenges that require you to separate evidence files per location, you will be prompted to download a .csv file with the selected Location.
- e. **Attestation** - After you've uploaded your evidence, you will be required to accept and complete an attestation that the details and to the best of my knowledge and belief, the challenge is true, complete, and accurate, subject to potential civil or administrative penalties.

Submitting Rebuttals

1. **Notifications of Rebuttal Phase Sent** – When the Rebuttal Phase opens, notifications will be sent to all registered Permissible Challengers to provide formal notice that the challenges are open for rebuttal. All permissible challengers will be notified of the opportunity to submit rebuttals to open rebuttal challenges, which includes any challenge not submitted directly against a provider. In addition to the standard notification the Broadband Providers notification will include a notification of whether challenges were received against them. The formal notice will initiate the 30-day rebuttal window.
2. **Log-in to the Challenge Portal** – Users can log-in using email/password combo or use a "Magic Link" which sends an email with a link to log-in directly without password.
3. **Expand "Challenge" Item in the Navigation Menu** – There are a range of options in the sidebar navigation menu. When clicking on the Challenge menu item, the sub-menu will expand to display two options: "Dashboard" and "Challenge Map." To view the challenges available for rebuttal, click on the "Dashboard."

4. **Go to “Dashboard”** – During the Rebuttal Phase, the Dashboard is your portal to review the challenges for which you are eligible to submit rebuttals. In the dashboard, you will have two tabs available to review challenges: “Challenges Received” (Providers Only) and “Open for Rebuttal.”
 - a. **Challenges Received (Providers Only)** – The Challenges Received tab will display the challenges that you’ve received against your reported service. The challenges will be grouped by submission and include details, including the challenging entity, challenge type, number of challenged locations, and other details.
 - b. **Open for Rebuttal** – The Open for Rebuttal tab will display all challenges that are not directed at a specific broadband provider, such as Planned Service, Enforceable Commitment, or CAI challenges. The challenges will be grouped by submission and include details, including the challenging entity, challenge type, number of challenged locations, and other details.
5. **Click View Details** – To begin the Rebuttal Process, click “View Details” on the challenge that you want to submit a rebuttal against. This will pull up an interface with a map displaying the locations and details on the challenged locations included in the submission. The information on the challenge submission will be available in the right panel, which has two tabs: Details and Locations.
 - a. **Details:** The challenge details will be similar to those provided in the Dashboard but will include an expanded description of the challenge type.
 - b. **Locations:** The locations tab will provide a full list of locations that were challenged under the selected submission.
6. **Rebut or Accept Challenges** – Using the locations tab, you can choose which individual location challenges you want to Rebut and which location individual location challenges you want to accept. If you want to submit or accept all of the challenges, you can do so using the Rebut All/Accept All button. Note that accepting challenges is only an option for providers reviewing challenges against them, since they are the only ones eligible to rebut those challenges. Open challenges can be rebutted by multiple entities, so they will remain open for the entire 30-day window.
7. **Upload Evidence and Documentation** – Once you’ve finalized the location(s) that you want to challenge you will be asked to provide any evidence and documentation that you want included in the review of your challenge.

Attestation – After you’ve uploaded your evidence, you will be required to accept and complete an attestation that, to the best of my knowledge and belief that the challenge is true, complete, and accurate, subject to potential civil or administrative penalties.

Evidence and Documentation Requirements

The evidence and documentation submission are the most important part of the challenge submission. If your submission does not meet the minimum level of evidence sufficient to establish a valid challenge, it will not be approved to proceed to the rebuttal phase. In special cases, the North Dakota State Broadband Program Office will review other forms of evidence not listed here (denoted as “Other Evidence to Support a Challenge”) and make determinations on acceptability on a case-by-case basis. The minimum level of evidence required varies by challenge type.

Availability Challenges

The Availability challenge type in the BEAD Challenge Process closely resembles the FCC Challenge Process. It supports challenges that have evidence that the service reported in the maps at a specific location is not actually currently available, or cannot be delivered within 10 days, over the reported technology and maximum advertised speeds.

In alignment with the FCC Challenge Process, the BEAD Challenge Process requires the “Reason for the Challenge” to be documented, using the `reason_code` field from the *FCC Broadband Data Collection: Data Specifications for Bulk Fixed Availability Challenge and Crowdsource Data*.⁵

Evidence for Availability Challenges

When filing availability challenges, you will be required to select one of the following reasons and provide evidence for each challenge. Table 1 outlines the acceptable evidence for each reason code and the maximum age of the evidence submitted to support the challenge.

If you choose to provide “Other evidence to support challenge,” instead of an explicitly stated evidence type, we cannot ensure that the evidence will meet the minimum requirements. To support our review, please provide a thorough explanation of any evidence classified as other.

An Availability Challenge (Challenge Code A) is defined as: the broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU). **Table 1** below provides a series of examples as described in the BEAD Challenge Process Policy Notice.⁶

⁵ See “Broadband Data Collection: Data Specifications for Bulk Fixed Availability Challenge and Crowdsource Data (Section 3.2),” Federal Communications Commission, January 12, 2023, [bdc-bulk-fixed-challenge-dataspecifications.pdf](#)

⁶ https://broadbandusa.ntia.doc.gov/sites/default/files/2024-02/BEAD_Challenge_Process_Policy_Notice_v1.3.pdf

Table 1

| Reason | Acceptable Evidence Types for Challenges | Data Age |
|--|---|-----------------|
| Provider failed to schedule a service installation within 10 business days of a request. | <ul style="list-style-type: none">• Screenshot from provider website.• Email from provider.• Letter from provider (Physical or PDF).• Other evidence to support challenge (e.g., text message from provider, voicemail transcript from provider, documentation of phone-call, documentation of in-person interaction). | Past 365 days |
| Provider requested more than the standard installation fee to connect the location. | <ul style="list-style-type: none">• Screenshot from provider website.• Email from provider.• Letter from provider (Physical or PDF).• Other evidence to support challenge (e.g., text message from provider, voicemail transcript from provider, documentation of phone-call, documentation of in-person interaction). | Past 365 days |
| Provider denied the request for service. | <ul style="list-style-type: none">• Screenshot from provider website.• Email from provider.• Letter from provider (Physical or PDF).• Other evidence to support challenge (e.g., text message from provider, voicemail transcript from provider, documentation of phone-call, documentation of in-person interaction). | Past 180 days |
| Lack of suitable infrastructure (e.g., no fiber on pole). | <ul style="list-style-type: none">• Screenshot from provider website.• Email from provider.• Letter from provider (Physical or PDF).• Other evidence to support challenge (e.g., Text message from provider, voicemail transcript from provider, terms of service / service Description, documentation of phone call, documentation of in-person interaction, infrastructure knowledge evidence such as manufacturer and model number of residential gateway). | Past 365 days |

Evidence for Availability Rebuttals

Only the challenged provider may submit a rebuttal to an availability challenge. Rebuttal evidence must counter the challenge evidence provided by the challenger. The acceptable forms of evidence are provided in **Table 2**.

Table 2

| Reason | Acceptable Evidence Types for Rebuttals |
|--|---|
| Provider failed to schedule a service installation within 10 business days of a request. | <ul style="list-style-type: none">• Provider shows that the location subscribes or has subscribed to a qualifying service with speeds of 100/20 Mbps or above within the last 12 months, e.g., with a 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. |
| Provider requested more than the standard installation fee to connect the location. | <ul style="list-style-type: none">• Provider shows that the location subscribes or has subscribed to a qualifying service with speeds of 100/20 Mbps or above within the last 12 months, e.g., with a 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. |
| Provider denied the request for service. | <ul style="list-style-type: none">• Provider shows that the location subscribes or has subscribed to a qualifying service with speeds of 100/20 Mbps or above within the last 12 months, e.g., with a 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. |

| Reason | Acceptable Evidence Types for Rebuttals |
|---|--|
| Lack of suitable infrastructure (e.g., no fiber on pole). | <ul style="list-style-type: none"><li data-bbox="599 321 1414 449">• Provider shows that the location subscribes or has subscribed to a qualifying service with speeds of 100/20 Mbps or above within the last 12 months, e.g., with a copy of a customer bill.<li data-bbox="599 474 1414 537">• If the evidence was a screenshot and believed to be in error, a screenshot that shows service availability.<li data-bbox="599 562 1414 653">• 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. |

Speed Challenges

The State Broadband Program Office 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. 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.

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 directly connected to the CPE router via ethernet connection, if applicable, using speedtest.net or other Ookla-powered front ends, M-Lab's speed test services, or any other NTIA-approved source. If a direct connection is not available, a speed test performed on a laptop or desktop computer within immediate proximity of the residential gateway using speedtest.net or other Ookla-powered front ends, M-Lab's speed test services, or any other NTIA-approved source. Additional language added to this option for speed testing is intended to capture speeds at the subscriber's point-of-use (i.e., the connected device). This will allow subscribers who are otherwise unable to capture speed data using the above methods (e.g., unable to access their modem, no access to ethernet cord) to run a speed test using a connected device.

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 State Broadband Program Office, that grants access to these information elements to the State Broadband Program Office, any contractors supporting the challenge process, and the service provider.

Evidence for Speed Challenges

Speed tests may be conducted by subscribers, but speed test challenges must be gathered and submitted by units of local government, nonprofit organizations, a broadband service provider. Subscribers submitting a speed test must indicate the speed tier they are subscribing to.

A Speed Challenge (Challenge Code S) is defined as: The actual speed of the service tier falls below the unserved or underserved thresholds. **Table 3** below provides a series of examples of acceptable evidence for speed challenges.

Table 3

| Reason | Acceptable Evidence Types for Challenges |
|--|--|
| The actual speed of the service tier falls below the unserved or underserved thresholds. | <ul style="list-style-type: none">• Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests. |

Evidence for Speed Rebuttals

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. 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.

For providers conducting remote or on-premises testing, providers must, at a minimum, apply the 80/80 rule, i.e., 80% of these locations must experience a speed that equals or exceeds 80% of the speed threshold.

Only the challenged provider may submit a rebuttal to a speed challenge. This evidence must include evidence that counter the evidence provided by the challenger. The acceptable forms of evidence are provided in **Table 4**.

Table 4

| Reason | Acceptable Evidence Types for Rebuttals |
|--|---|
| The actual speed of the service tier falls below the unserved or underserved thresholds. | <ul style="list-style-type: none">• Provider has countervailing speed test evidence showing latency at or below 100 milliseconds, e.g., from their own network management system or the CAF performance measurements. |

Latency Challenges

Latency speed tests must consist of three measurements, taken on different days. The measurements do not need to occur on consecutive days but must be conducted between the hours of 7 pm and 11 pm local time to be considered as evidence for a challenge rebuttal. The median of the three tests is used for the rebuttal to the challenge.

Each measurement must include the following details:

- The time and date each latency speed test was conducted.
The provider-assigned internet protocol (IP) address identifying the residential gateway where the test is conducted.

Evidence for Latency Challenges

Latency speed tests may be conducted by subscribers, but latency challenges must be gathered and submitted by units of local government, nonprofit organizations, a broadband service provider. Subscribers submitting a speed test showing excessive latency must indicate the speed tier they are subscribing to.

A Latency Challenge (Challenge Code L) is defined as: The round-trip latency of the broadband service exceeds 100 milliseconds (ms). **Table 5** below provides acceptable evidence for latency challenges.

Table 5

| Reason | Acceptable Evidence Types for Challenges |
|---|--|
| The round-trip latency of the broadband service exceeds 100 ms. | <ul style="list-style-type: none">• Speed test by subscriber, showing the excessive latency. |

Evidence for Latency Rebuttals

Only the challenged provider may submit a rebuttal to a latency challenge. This evidence must include countervailing latency speed test evidence showing latency at or below 100 milliseconds (e.g., from their own network management system or the CAF performance measurements). The acceptable forms of evidence are provided in **Table 6**.

Latency speed tests must consist of three measurements, taken on different days. The measurements do not need to occur on consecutive days but must be conducted between the hours of 7 pm and 11 pm local time to be considered as evidence for a challenge rebuttal. The median of the three tests is used for the rebuttal to the challenge.

Each measurement must include the following details:

- The time and date each speed test was conducted.
- The provider-assigned internet protocol (IP) address identifying the residential gateway where the test is conducted.

A service provider may rebut an area latency challenge by providing latency speed tests, in the manner described above, for at least 10% of the customers in the challenged area. The

customers must be randomly selected. 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.

For providers conducting remote or on-premises testing, providers must, at a minimum, apply the 80/80 rule, i.e., 80% of these locations must experience a speed that equals or exceeds 80% of the speed threshold.

Table 6

| Reason | Acceptable Evidence Types for Rebuttals |
|---|---|
| The round-trip latency of the broadband service exceeds 100 ms. | <ul style="list-style-type: none">• 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. |

Data Cap Challenges

Evidence for Data Cap Challenges

A Data Cap Challenge (Challenge Code D) is defined as: The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. **Table 7** below provides a series of examples of acceptable evidence for Data Cap challenges.

Table 7

| Reason | Acceptable Evidence Types for Challenges | Data Age |
|--|---|----------|
| The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. | <ul style="list-style-type: none">• Screenshot of provider webpage.• Service description provided to consumer.• Other evidence to support challenge (e.g., Email from provider, text message from provider, voicemail transcript from provider, letter from provider, documentation of phone call, documentation of in-person interaction, terms of service / service description, end-user contract or offer). | 180 days |

Evidence for Data Cap Rebuttals

Only the challenged provider may submit a rebuttal to a Data Cap challenge. This evidence must include evidence that counter the evidence provided by the challenger. The acceptable forms of evidence are provided in **Table 8**.

Table 8

| Reason | Acceptable Evidence Types for Rebuttals |
|--|--|
| The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. | <ul style="list-style-type: none">• 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. |

Technology Challenges

Evidence Technology Challenges

A Technology Challenge (Challenge Code T) is defined as: The technology indicated for this location is incorrect. **Table 9** below provides a series of examples of acceptable evidence for Technology challenges.

Table 9

| Reason | Acceptable Evidence Types for Challenges | Data Age |
|--|--|----------|
| The technology indicated for this location is incorrect (Provider does not offer the technology entered above at this location). | <ul style="list-style-type: none">Manufacturer and model number of residential gateway (CPE) that demonstrates the service is delivered via a specific technology. | 365 days |

Evidence for Technology Rebuttals

Only the challenged provider may submit a rebuttal to a Technology challenge. This evidence must include evidence that counter the evidence provided by the challenger. The acceptable forms of evidence are provided in **Table 10**.

Table 10

| Reason | Acceptable Evidence Types for Rebuttals |
|--|---|
| The technology indicated for this location is incorrect (Provider does not offer the technology entered above at this location). | <ul style="list-style-type: none">Provider has countervailing evidence from their network management system showing an appropriate residential gateway that matches the provided service. |

Business Service Only Challenges

Evidence for Business Service Only Challenges

A Business Service Only Challenge (Challenge Code B) is defined as: The location is residential, but the service offered is marketed or available only to businesses. **Table 11** below provides acceptable evidence for Business Service Only challenges.

Table 11

| Reason | Acceptable Evidence Types for Challenges | Data Age |
|---|--|----------|
| 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.• Other evidence to support challenge (e.g., email from provider, letter from provider). | 180 days |

Evidence for Business Service Only Rebuttals

Only the challenged provider may submit a rebuttal to a Business Service Only challenge. This evidence must include evidence that counter the evidence provided by the challenger. The acceptable forms of evidence are provided in **Table 12**.

Table 12

| Reason | Acceptable Evidence Types for Rebuttals |
|---|--|
| The location is residential, but the service offered is marketed or available only to businesses. | <ul style="list-style-type: none">• Provider documentation that the service listed in the BDC is available at the location and is marketed to residential customers. |

Enforceable Commitment Challenges

In preparation for the deployment of the BEAD program, the State Broadband Program Office is required to identify every location where an “Enforceable Commitment” exists to deploy qualifying broadband service at or above 100/20 Mbps, regardless of the current service available at the funded locations. This includes identifying the broadband serviceable locations served by federal and state funding programs.

Evidence for Enforceable Commitment Challenges

The Enforceable Commitment Challenge allows Permissible Challengers to provide evidence that an unserved or underserved locations have an existing federal, state, or local funding that should make those locations ineligible for BEAD. An Enforceable Commitment Challenge (Challenge Code E) is defined as: The challenger has knowledge that broadband will be deployed at this location by the date established in the deployment obligation. **Table 13** below provides acceptable evidence for Enforceable Commitment challenges.

Table 13

| Reason | Acceptable Evidence Types for Challenges |
|--|--|
| 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, the challenger must submit the requisite legally binding agreement between the relevant Tribal Government and the service provider for the location(s) at issue. |

Evidence for Enforceable Commitment Rebuttals

Any Permissible Challenger may file a rebuttal to an Enforceable Commitment Challenge if they have 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). The acceptable forms of evidence are provided in **Table 14**.

Table 14

| Reason | Acceptable Evidence Types for Rebuttals |
|--|---|
| 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">• 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). |

Enforceable Commitment Identification – Process and Methodology

The State Broadband Program Office has deduplicated the list of BEAD-eligible locations, based on existing funding from current programs, using the following process:

Federally Administered Grant Programs

The State Broadband Program Office used the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments, which includes data on funding from the following programs (not all applicable to North Dakota):

- NTIA Broadband Infrastructure Program (BIP)*
- NTIA Tribal Broadband Connectivity Program (TBCP)*
- FCC Rural Digital Opportunity Fund (RDOF)
- FCC Connect America Fund II (CAFII)
- Capital Projects Fund (CPF)
- Enhanced Alternative Connect America Cost Model (EACAM)
- USDA Rural eConnectivity Broadband Loan and Grant Program (ReConnect)
- USDA Telephone Loan Program (TLP)*
- USDA Community Connect Grant Program (CCGP)*
- Puerto Rico Together (BPRT)*
- Connect U.S. Virgin Islands (CUSVI)*

*Programs did not fund any infrastructure deployment in North Dakota

If you are a provider electing to participate in Enhanced A-CAM, we encourage you to notify the State Broadband Program Office proactively.

Planned or Existing Service Challenges

If a provider has deployed service or will deploy service that will be available by June 30, 2024, they can file a “Planned or Existing Service Challenge.”

Evidence for Planned Service Challenges

A Planned Service Challenge (Challenge Code P) is defined as: 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. **Table 15** below provides acceptable evidence for Planned Service challenges.

For a Planned Service Challenge to be successful, you will be required to enter into a binding agreement with the State Broadband Program Office that the service will be deployed and available as documented in the challenge. Additional guidance will be provided on a case-by-case basis by the State Broadband Program Office.

Table 15

| Reason | Acceptable Evidence Types for Challenges |
|--|--|
| 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 North Dakota 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.e., a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024. |

Evidence for Planned Service Rebuttals

Any Permissible Challenger may submit a rebuttal for Planned Service Rebuttal. The rebuttal must include countering evidence that demonstrates that the planned service cannot be deployed by June 30, 2024. The acceptable forms of evidence are provided in **Table 16**.

It is anticipated that the primary rebuttals will be submitted by units of Local or Tribal government that have knowledge and evidence that necessary permits, reviews, or other pre-construction requirements have not been met.

Table 16

| Reason | Acceptable Evidence Types for Rebuttals |
|------------------------------|---|
| The challenger has knowledge | <ul style="list-style-type: none">• Documentation showing that the provider is no |

| Reason | Acceptable Evidence Types for Rebuttals |
|---|---|
| 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. | 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. |

Not Enforceable Commitment Challenges

Evidence for Not Enforceable Commitment Challenges

A Not Enforceable Commitment Challenge (Challenge Code N) is defined as: 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.). **Table 17** below provides acceptable evidence for Not Enforceable Commitment challenges.

Table 17

| Reason | Acceptable Evidence Types for Challenges |
|---|--|
| 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. | <ul style="list-style-type: none"> Declaration by service provider subject to the enforceable commitment. |

CAI Challenges

There are two categories of Community Anchor Institutions (CAI) challenges, including.

- Identification of CAIs.
- Eligibility based on Broadband Need.

The identification of Community Anchor Institutions for the purposes of BEAD is based on the definition and process outlined in Section 1.3 of North Dakota's Initial Proposal Vol. 1, which includes:

- **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:** 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 entity:** Public safety entities encompass fire houses, emergency medical service stations, police stations, and public safety answering points (PSAP), based on records maintained by North Dakota and units of local government. The list of public safety answering points (PSAPs) includes all PSAPs in the FCC PSAP registry.
- **Institutions of higher education:** Institutions of higher education include all institutions that have an NCES ID in the category "college," including tribal colleges and universities, junior colleges, community colleges, minority serving institutions, historically black colleges and universities, other universities, or other educational institutions.
- **Public housing organizations:** Public housing organizations include organizations in North Dakota that facilitate decent and safe housing for vulnerable populations and 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.⁷
- **Community support organizations:** Community support organizations (CSO) include those that facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, children, the incarcerated, aging individuals, individuals with disabilities, and veterans. This category includes but is not limited to senior centers, job training centers, head start programs, veteran centers, parole and probation offices, county offices, and community action partnerships. The Department of Labor maintains a database of "American Job Training" training centers, established as part of the Workforce Investment Act, and reauthorized in the Workforce Innovation and Opportunities Act of 2014. The database can be accessed at the American Job Center Finder.⁸ The National Council on Aging (NCOA) helped identify senior centers.⁹ In addition, the State Broadband program Office has expanded the definition of Community Support Organizations to include State Parks. State parks were identified through the list of state parks maintained by the North Dakota Parks and Recreation Department.

⁷ [PHA Contact Information - HUD | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)

⁸ <https://www.careeronestop.org/localhelp/americanjobcenters/find-american-job-centers.aspx>

⁹ National Institute of Senior Centers

Identification of CAI

All Permissible Challengers can challenge the designation of the location as a CAI, based on the categories described above.

Evidence for Location is a CAI Challenge

If you believe that a location is incorrectly identified as a non-CAI, you may challenge to have that location included as a CAI. To submit a successful challenge, you will need to submit the evidence that the location falls within the definition of CAIs set by the State Broadband Program Office.

A CAI Challenge (Challenge Code C) is defined as: The location should be classified as a CAI. **Table 18** below provides acceptable evidence for CAI challenges.

Table 18

| Reason | Acceptable Evidence Types for Challenges |
|---|--|
| The location should be classified as a CAI. | <p>Evidence that the location falls within the definition of CAIs set by the State Broadband Program Office. Evidence will ideally include:</p> <ol style="list-style-type: none"><li data-bbox="711 911 1214 940">1. Official entity name of the institution<li data-bbox="711 961 959 991">2. The type of CAI<li data-bbox="711 1012 1393 1293">3. Supporting identification numbers, e.g., CMS Certification Number (CCN) for hospitals<ul style="list-style-type: none"><li data-bbox="805 1100 1393 1293">• If a Community Support Organization, explanation of how organizations facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals.<li data-bbox="711 1314 1349 1482">4. Evidence to support the challenge, which may include:<ul style="list-style-type: none"><li data-bbox="805 1398 1159 1428">• Registration documents<li data-bbox="805 1449 1247 1478">• Contact information to confirm.<li data-bbox="711 1503 1312 1598">5. Other evidence that demonstrates that the organization meets the requirements of the selected category of CAI. |

When challenging to add a location as a CAI, you will be given an opportunity to indicate whether the institution has unmet broadband needs based on the standard of 1000/1000 Mbps.

If the location for a CAI is missing entirely from the map, please contact broadband@nd.gov

Evidence for Location is a CAI Rebuttal

Any Permissible Challenger may submit a rebuttal for a Location is a CAI Challenge. The information and evidence must show that the location does not fall within the definition of CAIs

set by the State Broadband Program Office or is no longer in operation. The acceptable forms of evidence are provided in **Table 19**.

Table 19

| Reason | Acceptable Evidence Types for Rebuttals |
|---|---|
| The location should be classified as a CAI. | <p>Evidence that the location does not fall within the definition of CAIs set by the State Broadband Program Office or is no longer in operation. Evidence will ideally include:</p> <ol style="list-style-type: none"> 1. Identifying the basis for the challenge that claims the locations is not a CAI. <ol style="list-style-type: none"> 1. Location is a residence. 2. Location is a non-CAI business. 3. Institution does not fall under listed category. <ol style="list-style-type: none"> 1. Identify the institution type that the location should be listed as 4. CAI has ceased operations. <ol style="list-style-type: none"> 1. Date CAI ceased operations: 2. Evidence to support rebuttal |

Evidence for Location is a Not CAI Challenge

If you believe that a location is incorrectly identified as a CAI, you may challenge to have that location removed from the list. Please note that the State Broadband Program Office is not allowed to add Broadband Serviceable Locations (BSLs) to the map, so a successful challenge will remove this location from BEAD eligibility altogether.

A Location is not a CAI Challenge (Challenge Code R) is defined as: The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation. **Table 20** below provides acceptable evidence for CAI challenges.

Table 20

| Reason | Acceptable Evidence Types for Challenges |
|--|---|
| 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 State Broadband Program Office or is no longer in operation. Evidence will ideally include: <ol style="list-style-type: none">1. Identifying the basis for the challenge<ul style="list-style-type: none">• Location is a residence.• Location is a non-CAI business.• Institution does not fall under listed category.<ul style="list-style-type: none">○ Identify the institution type the location should be listed as• CAI has ceased operations.<ul style="list-style-type: none">○ Date CAI ceased operations:○ Is there another CAI currently operating at this location? If so, provide the following information:<ol style="list-style-type: none">i. Official entity name of the institutionii. The type of CAI, selecting from the categories defined above<ol style="list-style-type: none">a. Depending on the entity type, you will be asked to provide different types of identification numbers, e.g., CMS Certification Number (CCN) for hospitals.b. If a Community Support Organization, explanation of how organizations facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals.c. Other evidence that demonstrates that the organization meets the requirements of the selected category of CAI.• Evidence that demonstrates that the location is a non-CAI or is no longer in operation |

Evidence for Location is a Not CAI Rebuttal

Any Permissible Challenge may submit a rebuttal for a Location is a CAI Challenge. The information and evidence must show that the location falls within the definition of CAIs set by the State Broadband Program Office or is still operational.

The acceptable forms of evidence are provided in **Table 21**.

Table 21

| Reason | Acceptable Evidence Types for Rebuttals |
|--|---|
| 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 falls within the definition of CAIs set by the State Broadband Program Office. Evidence will ideally include: <ol style="list-style-type: none"><li data-bbox="711 705 1214 732">1. Official entity name of the institution<li data-bbox="711 753 954 781">2. The type of CAI<li data-bbox="711 802 1393 1083">3. Supporting identification numbers, e.g., CMS Certification Number (CCN) for hospitals<ul style="list-style-type: none"><li data-bbox="805 890 1393 1083">• If a Community Support Organization, explanation of how organizations facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals.<li data-bbox="711 1104 1349 1272">4. Evidence to support the challenge, which may include:<ul style="list-style-type: none"><li data-bbox="805 1192 1154 1220">• Registration documents<li data-bbox="805 1241 1247 1268">• Contact information to confirm.<li data-bbox="711 1293 1312 1388">5. Other evidence that demonstrates that the organization meets the requirements of the selected category of CAI. |

Obtaining CostQuest BSL Fabric Licenses

In order to administer the BEAD program, the State Broadband Program Office is required to use the FCC National Broadband Map as the baseline, which provides reported broadband availability data at the location level and relies on a proprietary dataset to provide the location data.

The State Broadband Program Office was required to enter into a license agreement with CostQuest Associates, the owner of the dataset, to access the data for the purposes of the BEAD program including the challenge process. The terms of this license agreement restrict the State Broadband Program Office from making the data fully available to stakeholders participating in the challenge process.

While the State Broadband Program Office cannot make the data fully available to stakeholders, the participants in the challenge process are eligible to apply for their own licenses with CostQuest. The NTIA entered into a contract with CostQuest to cover the cost of these licenses, so there is no expense to the licensees.

A CostQuest License is not required to file challenges directly through the challenge portal. However, if you are considering submitting bulk challenges (challenges to more than one location in the same submission), we highly recommend that you obtain a license from CostQuest, which will allow us to provide a bulk challenge template pre-populated with Location IDs that you select.

License Tiers

There are two tiers of licenses relevant for the BEAD Program:

- **Tier D License** – The Tier D License is available to all qualified, or presumptively qualified, recipients and subrecipients of federal broadband grants. This license is available to broadband providers, including co-ops, and units of Tribal governments. [Request License](#)
- **Tier E License** – The Tier E license is intended for units of local government, non-profits, and other organizations that have signed an FCC Tier 4 license. [Request License](#)