

KIM REYNOLDS, GOVERNOR

ADAM GREGG, LT. GOVERNOR

Procedures for Challenge Evaluation & Decision Bases—Broadband Map V5

December 16, 2022

Following the Office of the Chief Information Officer of the State of Iowa's ("Office") notification of and opportunity for input from affected persons and parties, the Office has conducted internal reviews of all relevant evidence and information submitted in connection with each challenge and otherwise available to the Office related to the address locations forming the basis of these challenges.

Following a review of the entire record before it for each challenge, the Office issued the Final Agency Decisions ("Decisions") set forth herein.

Map V5

The Statewide Broadband Availability Map ("Map") is intended to accurately reflect the current state of broadband service offered at individual address locations ("location") throughout the state as of August 2, 2022. The information provided on the Map in turn informs which areas of the State are eligible for future grant incentives under the Empower Rural Iowa Broadband Grant program. However, the final eligibility determination of any particular address location is contingent on the requirements associated with the federal funding being used to fund future Notices of Funding Availability ("NOFAs") and will be established at a later time. Accordingly, final eligibility determinations are subject to change over time and may deviate from the "likely eligible" and "likely ineligible" preliminary determinations set forth on Map V5. In addition, eligibility designations in no way guarantee facilitation of service in the future through state- or federally-funded broadband builds.

The Map is constructed utilizing information gathered from multiple sources, including the following:

1. Submitted by a Communication Service Provider ("Provider") directly to the Office's mapping contractor, Connected Nation, during the data collection window from November 1, 2021 through February 11, 2022; or
2. From maps and data sources made available by the Federal Communications Commission (FCC) who had previously collected such information from Providers; or
3. Carried forward from prior reporting made to the Office by Providers during the creation of previous versions of the Map.

Map V5 identifies where Broadband service was offered or facilitated at speeds greater than 25/3 Mbps

as of August 2, 2022 ("As of Date"). The Map also reflects a preliminary determination of 'likely eligible' or 'likely ineligible' based on speed, technology type, and previous incentives and is a prospective estimate of potential eligibility under various federal programs. The Map does not reflect service slower than 25/3 Mbps.

Timeline

The Office published version 5 (“V5”) of the Map on August 2, 2022.

A 30-day challenge period followed the publication of Map V5 wherein any person or party aggrieved or adversely affected by mapping determinations could challenge the Office’s final determination of Map V5.

The Office posted all timely-filed challenges online on October 3, 2022 at <https://ocio.iowa.gov/broadband-availability-map-version-5-challenge-process> thereby notifying all affected parties of challenges to address locations. From the date of such posting, any affected persons or parties had 20 calendar days to submit evidence and information in support of, or in opposition to, such challenge. Thereafter, the Office considered any additional evidence and information made available to the Office to issue a Decision.

Challenge Types

The Office accepted six types of challenges:

1. Resident
2. Community
3. Provider self-reporting (First Party)
4. Provider Third-Party
5. State
6. Location Not on Map

In most cases, the challenge type was determined by the entity submitting the challenge. A Resident challenge was submitted by the resident via a form on the OCIO website. A community challenge was submitted by a person/entity representing individual residents of a community. A Provider who is challenging the Map reflecting their own service is a “First Party Challenge.” A Provider challenging the service of another Provider is a “Third Party Challenge.” This Office, on behalf of the residents of Iowa, filed a Challenge citing DSL speeds for particular providers. One challenge form may include multiple types of challenges.

Who is the Challenger?	What are they challenging?	Type
Resident	The service of any Provider	Third Party
Community	The service of any Provider	Third Party
Provider	Their own service	First Party
Provider	The service of another Provider	Third Party
State	The service of a particular Provider	Third Party

Because this particular challenge process is location-based, the Office allowed for information that indicated among other things, whether a serviceable location was not being reflected on the Map, or perhaps whether the Map reflected a serviceable location that was not in fact serviceable.

Decision Tree

The Decision may be impacted by information and resources available to the Office. The Office affirmatively noticed every Provider at a challenged address location reporting service faster than 25/3 Mbps to confirm the presence of reported Broadband service at a location, and the technology and speed levels. This may have included contacting the Challenger regarding locations within its own challenge in which it is present.

While challenges were filed at an address location basis, decisions were made for every Provider reporting service at that address location. To that end, for every address location being challenged, every Provider at that location was noticed. If the Challenger specified a particular provider against which the challenge is being filed, these Providers are “Challenged Providers.” Because the Office noticed all Providers at a challenged address location, Providers noticed that are not Challenged Providers are “Unchallenged Providers.”

The Office sent letters and Notices to impacted providers. The Notice Forms were in an Excel format. The Office’s attempts, and any response are attached to the Final Decision in Appendix D.

The Office may also consider, for instance: conflicting information found in a prior NOFA round, conflicting information reported to outside agencies or grant programs, conflicting information found on the Provider’s own website or previously conveyed either formally or informally to this Office, a lack of a Certificate of Completion for prior grant award project areas, conflicting information reported to Connected Nation, conflicting attestations between two or more challenges from the same Provider, the absence of an affirmation from an impacted Provider, conflicting information published by a federal agency, or other factors deemed relevant by the Office.

Unless impacted by conflicting information, overlapping challenge(s), or resources available to the Office, the Office made decisions accordingly:

1. For a First-Party Challenge, the Office accepted the information provided and will modify the Map accordingly.
2. For a Resident Challenge, the Office considered a Resident challenge, in itself, as evidence of the status of Broadband at that location. All Providers, both Challenged and Unchallenged, were noticed. With that, the Office accepted the information in the Resident’s challenge when:
 - a. The Challenged Provider responds without evidence.
 - b. The Challenged or Unchallenged Provider does not respond.
 - c. The Challenged Provider responds with evidence that does not sufficiently refute the claim.
3. For a Community, Third-Party, or State Challenge, the Office used the following decision path:

Challenge indicates:	Did Challenger provide supplemental information?	Provider Response to Notice:	Change to the Map?
Challenged Provider	Yes	Yes, with evidence	Depends. The Office evaluates the information submitted by

			both the Challenger and the Challenged Provider.
Challenged Provider	No	Yes, without evidence	No
Challenged Provider	No	No	Yes
Unchallenged Provider	Not applicable	Yes	No
Unchallenged Provider	Not applicable	No	Yes

Whether the Office accepted the information of a challenge hinged on two factors:

- i. Did the Challenger provide supporting evidence?
- ii. Did the Challenged Provider sufficiently rebut the claim with evidence?

In the case in which a Challenger was contacted regarding locations within its own challenge in which it is present, a nonresponse does not result in the Challenger being removed from its challenged locations.

In some cases, the challenged address location overlapped with another challenge. If so, the overlapping challenges were evaluated in conjunction with each other and the final decision was applied to both.

Challenges that noted a change in Broadband Serviceable Locations were marked as Updated. The Office will use this information to make changes to the Map. If a Provider reported service in conjunction with its reporting of a Broadband Serviceable Location, the Office made a Decision regarding that service in accordance with the Decision Path. Decisions regarding service on the Locations Not on Map tab will be reserved for providers reporting their own service.

Final Decision

The Decision Bases number indicated on the Final Decision correspond to the decisions below:

Basis No.	Decision	Explanation	For Use When:	Result
1	Accepted	The Office accepts the information submitted by the Challenger for this address location because the Office does not possess conflicting information.	(1) A provider confirms they do not serve that address location; (2) The challenged provider did not respond to the Notice Form.	Change to the map
2	Declined	The Office declines the information submitted by the Challenger due to one of the following reasons: (1) the evidence provided by the Challenger is not sufficiently probative; (2) the evidence or explanation given by provider(s) at that location was sufficient to overcome challenger's claim; (3)	(1) The Unchallenged Provider responded to the Notice Form; (2) The address location falls outside the area identified in the evidence; (3) The Challenged Provider responded to the Notice Form with sufficient evidence to	No change to the map

		Challenger's claim was not against this provider, and provider responded to Notice; (4) Location ID is outside of NOFA project area.	rebut the claim.	
3	Accepted	The Office accepts the information submitted by the Challenger for this address location despite information having been submitted by impacted provider(s). The Office finds the evidence submitted by the Challenger to be more probative than the information submitted by impacted provider(s).	(1) The Challenged Provider responded without evidence or without sufficient evidence to rebut the claim.	Change to the map
4	Declined	The Office declines the information submitted by the Challenger because there was an insufficient basis for challenge.	(1) No providers reflect at this address location; (2) A provider was noticed for their own submitted challenge and did not respond; (3) Provider claims previous incentive already reflected on the map; (4) Resident claims they are happy with their service and not reporting problems with their provider; (5) Challenged provider is not reflected on the Map for that address location; (6) Map already reflects the stated claim for challenge.	No change to the map

A submitted challenge may be both First Party and Third Party. First Party adjudications are reflected on Appendix A. Third Party adjudications are reflected on Appendix A.1. Adjudications regarding the presence or absence of broadband serviceable locations, and any reported service, are reflected on Appendix B.

Appeal

The Office will post its Final Decisions on its website at ocio.iowa.gov/broadband. If a Challenger wishes to appeal the Decision, Challenger must notify the Office in writing within thirty (30) days of the posting of the Decision. A request for a contested case must be filed by mailing a written request to:

Office of the Chief Information Officer
c/o Matt Behrens
200 E. Grand Avenue
Des Moines, Iowa 50309

In so doing, the reason for further appealing this Decision must be stated, specifically identifying the particular aspects of the Decision with which Challenger disagrees and the reasons why, whether factual or legal in nature. The request for a contested case proceeding should state the name and address of the requester; identify the specific Office action which is disputed; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding

in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute. Iowa Admin. Code r. 129—6.4.

Upon receipt, the appeal will be forwarded to the Department of Inspections and Appeals where an Administrative Law Judge (“ALJ”) will perform an independent review. Iowa Admin. Code r. 129—20.6(1); Iowa Admin. Code r. 129—6.6. At that time, an ALJ will schedule a hearing. If Appellant does not exercise its appeal right within thirty (30) days of the posting of a Decision, the Decision shall become final and no longer subject to challenge.