

Procedures for Appeal Evaluation & Decision Bases -- Broadband Map V4

September 14, 2021

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 pursuant to and in accordance with Iowa Administrative Code rule 129—20.5(3), the Office has conducted internal reviews of all relevant evidence and information submitted in connection with each appeal and otherwise available to the Office related to the United States Census Blocks ("Census Blocks" or "Blocks") forming the basis of these Appeals. *See* Iowa Admin. Code r. 129—20.5(4).

Following a review of the entire record before it for each appeal, the Office issued the **Final Agency Decisions** ("Decisions") set forth herein. Iowa Admin. Code r. 129—20.5(5).

On July 1, 2021, the Office published version 4 ("V4") of the Statewide Broadband Availability Map ("Map"). The Map is intended to accurately reflect the then current state of broadband service offered or facilitated at a census block level throughout the state. The information provided on the Map in turn informs which areas of the State are eligible for state incentives from the Empower Rural Iowa Broadband Grant program. The Map is constructed utilizing information gathered from multiple sources, including the following:

1. From maps and data sources made available by the Federal Communications Commission (FCC) who had previously collected such information from Communications Service Providers; or
2. Submitted by a Communication Service Provider ("**Provider**") directly to the Office's mapping contractor ("Connected Nation") during the data collection window from April 15, 2021 through April 30, 2021; or
3. Carried forward from prior reporting made to the Office by Communication Service Providers during the creation of previous versions of the Map. Iowa Admin. Code r. 129—20.3. Data representing the status of Broadband in Iowa is as of July 1, 2021 ("As of Date").

A 20-day challenge period follows the publication of each version of the Map wherein "any person or party aggrieved or adversely affected by such determination may challenge the office's finding by filing a notice of appeal with the office" and "provid[ing] the office with all evidence and information necessary to support the appeal." Iowa Admin. Code r. 129—20.5(1); *see also* Iowa Code § 8B.10(2).

The issue on appeal is, in all cases, whether the Map accurately reflects whether and at which existing broadband speed tier a Communications Service Provider offers or facilitates broadband in a particular Census Block as of the as of date.

The Office posted all timely-filed notices of appeal online at <https://ocio.iowa.gov/broadband>. From the date of such posting, any persons or parties affected by the Appeal has "20 calendar days to submit evidence and information in support of, or in opposition to, such appeal." Iowa Admin. Code r. 20.5(3). This posting sufficed as notice to any affected Providers within challenged Census Blocks. After this 20-day notice period, the Office will use any attestations, additional evidence, and any other information made available to and

deemed relevant by the Office to issue a Decision.

Appeals received by the Office generally take one of two forms: First party challenges and third party challenges. First party challenges are appeals submitted by a Provider regarding Tier designations set forth on Map V4 that reflect the Provider's own network capabilities ("First-Party Provider Challenges"). First-Party Provider Challenges generally address one of two issues: (1) First-Party Provider Challenges wherein the Provider claims that its own Broadband service is reflected on Map V4 but is not in fact present; or (2) First-Party Provider Challenges wherein the Provider claims that its own Broadband service is in fact present, but is not currently reflected on Map V4. Third party challenges are appeals wherein the Appellant is challenging Tier designations reflected on Map V4 regarding service not Facilitated by Appellant, but rather by a third party communication service provider. Third party provider challenges can be further divided into two sub-categories: (1) Challenges where the Appellant is Provider ("Third-Party Provider Challenges"); or (2) Challenges where the Appellant is a resident ("Resident Challenges").

Based upon the nature of the Appeal as categorized by the Office, the Office processes the Appeal following a decision path.

The Decision may be impacted by information and resources available to the Office. The Office may take affirmative steps to notify affected Providers in cases where both (1) the Provider's reported speeds establish the tier designation of the Block and (2) a reported speed by any one particular Provider is Facilitated to more than 10% of the geographic area of the Block.¹ This may include contacting the Appellant to re-affirm challenged Blocks in which it is present.

The Office may 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 Appeals from the same Provider, the absence of an affirmation from an impacted Provider, or other factors deemed relevant by the Office.

When the Office makes a determination to modify the tier designation of a challenged Census Block, it must have sufficient evidence proving that a Provider Facilitates service to less than 10% of the geographic area of the Block. Sufficient evidence must unequivocally and systematically prove that Tier 2, Tier 3, or non-TSA Broadband speeds are facilitated to less than 10% of the geographic area of the Census Block, and thus the Census Block is materially underserved as defined in Iowa Admin. Code r. 129—20.1. Attestations from one or even several residents does not suffice when the totality of those attestations is less than 90% of the geographic area of the Census Block. However, the Office may accept attestations concerning the absence of Broadband service as depicted on Map V4 from 90% or more of the residents within a Census Block in lieu of evidence indicating less than 90% of the geographic area of the Census Block is served. In such instances, the Office measures the total number of residences with reference to the count of homes, schools, and businesses reported on Map V4. Unless impacted by other information or resources available to the Office, the Office will make decisions accordingly:

¹ The Office seeks to determine whether a Census Block should be designated a Targeted Service Area (TSA) or a non-Targeted Service Area (non-TSA). A TSA is defined, in applicable part, as a census block that is materially underserved by broadband service. Iowa Code section 8B.1(13)(b). Meaningfully underserved means "a broadband block within which less than 10 percent of the geographic area comprising the broadband block is facilitated with broadband service exceeding Tier 1 upload and download speeds." Iowa Admin. Code r. 129—20.1.

1. A First-Party Provider Challenge, where a Provider appeals the Map because a Census Block reflects service for which it does not Facilitate:
 - a. The Office will modify the Map to reflect the lack of service and adjust the tier designation to the next highest established tier by a reported Provider within the Block.
 - b. The Office will modify the Map to reflect the Facilitated service and adjust the tier designation, if applicable.
2. A Resident Challenge where a resident appeals the Map, the Office will contact impacted Third-Party Providers within the challenged Census Block.
 - a. The Office will find in favor of the resident where the Third-Party Provider either (1) affirms that it did not Facilitate service in the Block at speed levels that establish the current tier designation as set forth on the Map, or (2) did not respond to the Office's inquiry.
 - b. Where a Provider submits Certification under penalty of perjury affirming Facilitated service to a Census Block as of the As Of Date in conflict with a Resident Appeal, the Provider's Certification will receive the greater probative weight. Because TSA designations do not turn on whether a Provider offers or Facilitates to any specific address within a Census Block as identified in a single Resident Appeal, the Office cannot definitively determine that lack of service or speed to any single address itself supports the modification of a tier designation.
3. A Third-Party Provider Challenge, where a Provider appeals the Map because it believes the tier designation is incorrect based on Third-Party Provider reporting:
 - a. The Office will find in favor of the Appellant where the Third-Party Provider either (1) affirms that it did not Facilitate service in the Block at speed levels that establish the current tier designation as set forth on the Map, or (2) did not respond to the Office's inquiry.
 - b. The Office will find in favor of the Third-Party Provider where it affirmed it Facilitates service to 10% or more of the geographic area of the challenged Census Block.
4. Any of these decisions may be found in the alternative when *sufficient* evidence is submitted to prove otherwise.
5. Where a challenged Census Block requests a tier designation that matches what is already reflected on the Map, the Office will not make a change to the tier designation.

Insufficient evidence may include letters of support, maps that do not reflect information on a census block level, reports from engineers or firms that provide information that is not on a census block level, broadband studies describing hypothetical situations or limitations in the region, any report or study making general statements about broadband, and/or statements from residents indicating a preference for Appellant's potential buildout in their area.

The Decision Bases indicated on the Map Appeals correspond to the decisions below:

Decision Basis Number	Explanation
1	The Office found in favor of the Appellant’s requested tier designation for this Census Block because the Office does not possess conflicting evidence or information from other Providers or members of the Public.
2	The Office did not find in favor of the Appellant's requested tier designation for this Census Block but the Office did modify the tier designation, based on evidence available to the Office, to the most appropriate tier designation considering the remaining Providers reportedly in the Block. Such additional evidence may have included Attestations from Third-Party Providers concerning whether and at what speeds Broadband service was Facilitated within 10% or more of the geographic area of the Census Block or speed levels reflected on the Map.
3	The Office did not find in favor of the Appellant’s requested tier designation for this Census Block because the Office possesses conflicting evidence that may include an attestation(s) furnished by one or more Providers certifying that service is Facilitated to more than 10% the Block at speed levels justifying the Tier designation originally set forth on the Map. Additional conflicting evidence may also include, in some circumstances, customer invoices and/or customer databases, speeds established on the Map, other filed Appeal(s), or conflicting/ambiguous information provided by Appellant concerning whether service was or was not facilitated by Appellant as of July 1, 2021.
4	The Office made no change to the map because Appellant requested the same Tier designation as is currently reflected on the Map.
5	The Office did not find in favor of the Appellant’s requested tier designation for this Census Block because the Office received conflicting evidence indicating that speeds were facilitated to more than 10% of the Block including an affirmation(s) furnished by Third-Party Provider(s) certifying that it Facilitated service to more than 10% of the Block at speed levels justifying the Tier designation originally set forth on the Map. Additional evidence supplied by Appellants did not unequivocally prove that Broadband service was not Facilitated within less than 10% of the geographic area of the Census Block.
6	The Office found in favor of the Appellant’s requested tier designation for this Census Block. Although the Office possesses conflicting evidence in the form of another Appeal or an Affirmation, additional evidence supplied by Appellant or a Third-Party was sufficient to cause the Office to question whether such Affirmations(s) were representative of the conditions within the Census Block.
7	The Office did not make a decision regarding this Census Block because the stated reason for challenging this Block is not a basis for appeal. Insufficient bases to appeal include: (1) that build out has begun but was not completed by July 1, 2021; (2) that prior state or federal grants have been issued to fund buildout in the area that is not yet completed; or (3) that the Census Block may be partially, but not fully, served by Appellant. These are not sufficient grounds to justify a change to the Tier designation set forth on the Map.
8	The Office did not make a decision regarding the Block due to an error: either (1) the Block could not be located within the boundaries of the State of Iowa, or (2) the Appeal regarding this specific Block was received after the deadline.

The Office will post its Final Decisions on its website at ocio.iowa.gov/broadband. If an Appellant wishes to appeal the Decision further, Appellant must notify the Office in writing within thirty (30) days of the posting of the Decision. Iowa Admin. Code r. 129—20.5(5). 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 Appellant 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 this Decision, this Decision shall become final and no longer subject to challenge. Iowa Admin. Code r. 129—20.5(5).