

Commonwealth Connect

Initial Proposal Volume 1 Virginia



Overview

The Commonwealth of Virginia has drafted the following sections of the Initial Proposal, as required under the Broadband Equity, Access, and Deployment Program (BEAD). These sections serve as Volume 1 of the Initial Proposal. Upon receipt and consideration of comments to this document, the Commonwealth of Virginia will submit this document for consideration to the National Telecommunications and Information Association (NTIA), the administrators of BEAD, including the Assistant Secretary of the U.S. Department of Commerce.

Upon approval of this plan, as well as submission of those remaining requirements for the Initial Proposal as outlined in the BEAD Notice of Funding Opportunity (Volume 2), the Office of Broadband will commence the challenge process as outlined in this document while Volume 2 is under consideration by the aforementioned federal entities. This approach – submitting in two volumes – allows the Office of Broadband to maintain an accelerated timeline of approval and implementation of funds provided under the BEAD program.

Comments Volume 1 of the BEAD Initial Proposal should be submitted via email to broadband@dhcd.virginia.gov by 11:59PM June 21, 2023 for review and consideration.

For more information about how the Initial Proposal, as well as other documents under the BEAD program align with closing the digital divide, we recommend reviewing the resources at [Virginia Telecommunication Initiative \(VATI\) | DHCD](#)

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

The Commonwealth of Virginia has experienced multiple rounds of state and federal investment to address the digital divide. These funding programs to address broadband access, affordability, and adoption are discussed in the table below (Req. 1.1.1).

Source	Purpose	Total	Expended (Allocated to Projects)	Available
Virginia Telecommunication Initiative	The Virginia Telecommunication Initiative (VATI) extends broadband service to currently unserved areas. VATI prepares communities to build, utilize, and capitalize on telecommunications infrastructure with the goal of creating strong, competitive communities. This includes \$698,812,354 in funds under the American Rescue Plan Act.	\$875,546,490	\$825,846,490	\$49.7million in state general funds in both FY23 and FY24
Line Extension Customer Assistance Program	The Line Extension Customer Assistance Program is designed to support the extension of existing broadband networks to low-to- moderate income residents.	\$16,000,000	\$987,526.45	\$15,012,474
ACAM	Provide financial support to rate-of-return providers for the extension of broadband networks to rural areas.	Unknown	Unknown	\$ 0
Connect America Fund II	Provide funding to providers to subsidize extension of broadband networks.	\$ 108,923,613	\$108,923,613	\$ 0
Rural Digital Opportunity Fund	Reverse auction that provides funds to providers to extend broadband networks to specific census blocks.	\$ 238,644,934 (Prior to Defaults)	\$ 238,644,934 (Prior to Defaults)	\$ 0

USDA ReConnect	Program furnishing loans to providers to support the construction, improvement, or acquisition of facilities and equipment to provide service in rural areas.	\$42.4 million (Approximation)	\$42.4 million (Approximation)	\$ 0
Coronavirus Aid, Recovery, and Economic Security (CARES) Act	Federal funding for short-term implementation projects around broadband infrastructure.	\$30 million	\$30 million	\$0
Regional Digital Opportunity Planning Grant Program (Digital Equity Act Planning Grant subgrant program)	Subgrant program enabling Community Action Agencies to undergo planning efforts to study the digital divide in their communities and identify solutions to address it, funded under Virginia's Digital Equity Act Planning Grant.	\$500,000	\$500,000	\$0
Digital Opportunity Case Study Pilot Program (Digital Equity Act Planning Grant subgrant program)	Subgrant program enabling eligible organizations with digital opportunity-related programs to develop case studies for inclusion in the Virginia Digital Opportunity Plan, funded under Virginia's Digital Equity Act Planning Grant.	\$100,000	\$100,000	\$0
Local Government Broadband Affordability and Adoption Planning Grants	Enable localities to develop plans to utilize federal funding to address the affordability and adoption of broadband using BEAD Planning Grant funds.	\$3,125,000	\$0	\$3,125,000
Tribal Broadband Connectivity Program	Program for Tribal governments to support broadband deployment, telehealth, distance learning, affordability programs, and digital literacy initiatives.	\$973,349.80	Unknown	Unknown
Connecting Minority Communities Pilot Program	Grant program that awards HBCUs, TCUs, and MSIs funding to support the purchase of broadband service.	\$9,685,734	Unknown	Unknown

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.

The BEAD Program establishes a two-tiered definition of areas that lack qualifying broadband service at or above the level of 100 megabits per second (mbps) download and 20 mbps upload (100/20).

In accordance with this definition, for the purposes of BEAD:

- Those locations without access to internet speeds at or above 25/3 are considered unserved.
- Those locations without access to internet speeds at or above 100/20 are considered underserved.

(Req 1.2.1) On the Virginia Open Data Portal, two .csv files are available for download (titled “BEAD Unserved Locations.csv” and “BEAD Underserved Locations.csv”) listing unserved and underserved location IDs. *Note: These files are not yet published and will be published when the final version of this document is published after consideration of public comments.* The data is sourced from the FCC’s Broadband DATA Map as of June 1, 2023, which was published on May 30, 2023 (Req. 1.2.2). The publication date of the National Broadband Map does not predate the submission of the Initial Proposal by more than 59 days.

For the purposes of the BEAD Program, in accordance with the BEAD Notice of Funding Opportunity, locations served exclusively by satellite, services using entirely unlicensed spectrum, or a technology not specified by the Commission for purposes of the Broadband DATA Maps, do not meet the criteria for Reliable Broadband Service and so will be considered “unserved.”

The status of state or federal funding present at these locations does not impact their service status of served, unserved, or underserved. These locations, locations with an enforceable commitment, are not eligible for funding under BEAD. Locations with an enforceable commitment for the deployment of qualifying broadband to a location exists when the commitment to deploy qualifying broadband service to that location as defined in Footnote 52 of the BEAD Notice of Funding Opportunity.

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.

The Virginia Office of Broadband under the Guidelines and Criteria of the Virginia Telecommunication Initiative, has long defined a Community Anchor Institution as “schools, libraries, medical and health care providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by vulnerable populations, including low income, unemployed, and the aged.” This definition aligns with the statutory definition as defined in 47

USC 1702 (a)(2)(E) and will be adopted for the purposes of the BEAD program in the Commonwealth of Virginia. (Req. 1.3.1)

On the Virginia Open Data Portal, one .csv file is available for download (titled “BEAD Community Anchor Institutions.csv”) with the current list of eligible CAI locations, location ID, and/or latitude and longitude. (Req. 1.3.2) *Note: This file is not yet published and will be published when the final version of this document is published after consideration of public comments.*

The Office of Broadband acknowledges that this list will not include many community anchor institutions that meet the criteria established above. The Office of Broadband strongly recommends organizations to review this draft list of community anchor institutions to ensure that your community anchor institution which meets the definition outlined above is included in this list. If it is not, please review the challenge process guidance below on how to include the location as a Community Anchor Institution in this .csv file.

7. Include a detailed plan to conduct a challenge process

Note: Included below is the Draft BEAD Model Challenge Process as released by NTIA in late April 2023 for a public comment period, which closed on May 5, 2023. As of the release of this document, NTIA remains under the review period of these comments and will publish a Final BEAD Model Challenge Process with consideration of this public comment. Comments received on this Draft BEAD Model Challenge Process will be considered in relevance to the Final BEAD Model Challenge Process when released by NTIA for incorporation into this document.

To ensure expediency in the delivery of BEAD fundings to unserved and underserved areas, the Commonwealth of Virginia will adopt the model challenge process as provided by the National Telecommunications and Information Association. (Req. 1.4.1) The Commonwealth of Virginia will not make additional modifications. (Req. 1.4.2) The Commonwealth of Virginia will adopt the BEAD Eligible Entity Planning Toolkit. (Req. 1.4.3)

The Office of Broadband will enumerate locations subject to enforceable commitments by using the BEAD Eligible Entity Planning Toolkit, and consult at least the following data sets: (Req. 1.4.4)

1. The Broadband Funding Map published by the FCC pursuant to IIJA § 60105.8
2. Data sets from state broadband deployment programs that rely on funds from the Capital Projects Fund and the State and Local Fiscal Recovery Funds administered by the U.S. Treasury.
3. State and local data collections of existing enforceable commitments.

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

The Office of Broadband will review its repository of existing state and local broadband grant programs to validate the upload and download speeds of existing binding agreements to deploy broadband infrastructure. In situations in which the state or local program did not specify broadband speeds, or when there was reason to believe a provider deployed higher broadband speeds than required, the

broadband office will reach out to the provider to verify the deployment speeds of the binding commitment. The broadband office will document this process by requiring providers to sign a binding agreement certifying the actual broadband deployment speeds deployed.

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

In compliment to these efforts, the Commonwealth of Virginia has compiled a list of federal, state and local enforceable commitments as documented in Item 3 of Volume 1 of the Initial Proposal. (Req. 1.4.5)

Challenge Process Design

Based on the NTIA BEAD Challenge Process Policy Notice, as well as the Office's understanding of the goals of the BEAD program, the proposal represents a transparent, fair, expeditious and evidence-based challenge process. (Req. 1.4.6)

Permissible Challenges

The broadband office will only allow challenges on the following grounds:

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

Permissible Challengers

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

Challenge Process Overview

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

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, the broadband office will publish the set of locations eligible for BEAD funding, which consists of the locations resulting from the activities outlined in Sections 5 and 6 of the NTIA BEAD Challenge Process Policy Notice (e.g., administering the deduplication of funding process). [\[Insert Tentative Dates\]](#)
2. **Challenge Phase:** During the Challenge Phase, the challenger will submit the challenge through the broadband office challenge portal. This challenge will be visible to the service provider whose service availability and performance is being contested. The portal will notify the provider of the challenge through an automated email, which will include related information about timing for the provider's response. After this stage, the location will enter the "challenged" state.

- a. **Minimum Level of Evidence Sufficient to Establish a Challenge:** The challenge portal will verify that the address provided can be found in the Fabric and is a BSL. The challenge portal will confirm that the challenged service is listed in the National Broadband Map and meets the definition of reliable broadband service. [The challenge will confirm that the email address is reachable by sending a confirmation message to the listed contact email.] For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition (OCR). For availability challenges, the broadband office will manually verify that the evidence submitted falls within the categories stated in the NTIA BEAD Challenge Process Policy Notice and the document is unredacted and dated.
 - b. **Timeline:** Challengers will have 30 calendar days to submit a challenge from the time the initial list of unserved and underserved locations, community anchor institutions, and existing enforceable commitments are posted. [\[Insert Tentative Dates\]](#)
3. **Rebuttal Phase:** Only the challenged service provider may rebut the reclassification of a location or area with evidence, causing the location or locations to enter the “disputed” state. If a challenge that meets the minimum level of evidence is not rebutted, the challenge is substantiated. A provider may also agree with the challenge and thus transition the location to the “sustained” state.
 - a. **Timeline:** Providers will have 15 business days from notification of a challenge to provide rebuttal information to the broadband office. [\[Insert Tentative Dates\]](#)
4. **Final Determination Phase:** During the Final Determination phase, the broadband office will make the final determination of the classification of the location, either declaring the challenge “sustained” or “rejected.”
 - a. **Timeline:** Following intake of challenge rebuttals, the broadband office will make a final challenge determination within 30 calendar days of the challenge rebuttal. Reviews will occur on a rolling basis, as challenges and rebuttals are received. [\[Insert Tentative Dates\]](#)

Evidence & Review Approach

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

Code	Challenge Type	Description	Specific Examples	Permissible rebuttals
A	Availability	The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU).	<ul style="list-style-type: none"> • Screenshot of provider webpage. • A service request was 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 request.¹¹ • A letter or email dated within the last 365 days indicating that a provider requested more than the standard installation fee to connect this location or that a Provider quoted an amount in excess of the provider's standard installation charge in order to connect service at the location. 	<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. • 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.
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.

L	Latency	The round-trip latency of the broadband service exceeds 100 ms.	Speed test by subscriber, showing the excessive latency.	Provider has countervailing speed test evidence showing latency at or below 100 ms, e.g., from their own network management system. 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 has terms of service showing that it does not impose a data cap.
T	Technology	The technology indicated for this location is incorrect.	Manufacturer and model number of residential gateway that demonstrates the service is delivered via a specific technology.	Provider has 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.	Screenshot of provider webpage.	Provider documentation that the service listed in the BDC is available at the location and is marketed to consumers.
E	Enforceable Commitment	The challenger has knowledge that broadband will be deployed at this location by the date established in the deployment obligation.	Enforceable commitment by service provider (e.g., authorization letter). In the case of Tribal Lands, the challenger must submit the requisite legally binding agreement between the relevant Tribal Government and the service provider for the location(s) at issue (see Section 6.2 above).	Documentation that the provider has defaulted on the commitment or is otherwise unable to meet the commitment (e.g., is no longer a going concern).

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).

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 on-going 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 a going 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 to less than 100% of locations and the location is not covered by that commitment. (See BEAD NOFO at 36, n. 52.)	Declaration by service provider subject to the enforceable commitment.	
C	Location is a CAI	The location should be classified as a CAI.	Evidence that the location falls within the definitions of CAIs set by the Eligible Entity. ⁵	Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation.

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.

R	Location is not a CAI	The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation.	Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation.	Evidence that the location falls within the definitions of CAIs set by the Eligible Entity or is still operational.
---	-----------------------	--	--	---

Area and MDU Challenge

For challenge types A, S, L, D, and T, Eligible Entities may add area and 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 challenge or MDU must demonstrate that they are indeed meeting the availability, speed, latency, data cap and technology requirement, respectively, for all (served) locations within the area or all units within an MDU. The provider can use any of the permissible rebuttals listed above.

An area challenge is triggered if 6 or more broadband serviceable locations using a particular technology and a single provider within a census block group are challenged.

An MDU challenge requires challenges by at least 3 units or 10% of the unit count listed in the Fabric within the same broadband serviceable location, whichever is larger.

Each type of challenge and each technology and provider is 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 is treated separately since they are likely to have different availability and performance.

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

Transparency Plan

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, the broadband office 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. The broadband office also plans to actively inform all units of local government of its challenge process and set up regular touchpoints to address any comments, questions, or concerns from local governments, nonprofit organizations, and Internet service providers. Relevant

stakeholders can sign up on the broadband office website by emailing broadband@dhcd.virginia.gov for challenge process updates and newsletters. They can engage with the broadband office by a designated email address (broadband@dhcd.virginia.gov).

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

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

The broadband office will not publicly post any personally identifiable information (PII) or proprietary information, including subscriber names, street addresses and customer IP addresses. To ensure all PII is protected, the broadband office 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.

The broadband office will treat information submitted by an existing broadband service provider designated as proprietary and confidential consistent with applicable federal law. If any of these responses do contain information or data that the submitter deems to be confidential commercial information that should be exempt from disclosure under state open records laws or is protected under applicable state privacy laws, that information should be identified as privileged or confidential to the extent allowed pursuant to Section 2.2-3705.6-3 of the Code of Virginia. If information is identified by the entity as privileged or confidential, the entity must submit a letter requesting such exemption to broadband@dhcd.virginia.gov. Pursuant to 2.2-3705.6-3, the Department of Housing and Community Development's Office of Broadband (DHCD) will make a written determination within ten (10) days of the request as to whether FOIA-exemption will be afforded as well as the nature and scope of the protection. Upon receipt of the written determination from DHCD documents must be submitted to broadband@dhcd.virginia.gov. All exempted information will be securely maintained and accessed by Office of Broadband staff only. If no exemption is requested or granted, the responses will be made publicly available.