

Memo

To: State broadband offices
From: Jake Varn, The Pew Charitable Trusts
Date: Nov. 4, 2021
Subject: Broadband Grant Program—Challenge Processes

The following memo includes information on the “challenge processes” in state broadband grant programs, with key features from a variety of states.

Summary Points

- Challenge processes can be an important control to prevent public subsidies from being awarded to areas that are already receiving equivalent service or will receive equivalent service within a set period (e.g., 12 months). The challenge process can also help prevent a project from inappropriately receiving duplicative state, local, and/or federal funding.
- States can require providers to participate in the state’s data collection and mapping efforts in order to engage in the challenge process.
- The documentation required for a valid challenge varies among states, and can include shape files, address-level service information, service speed validation, and a signed affidavit attesting to the service. If allowed by state code, the data collected in the challenge process may be used by the state to update its maps.
- *Notably, the challenge process can also refer to objections and evidence submitted by residents and communities to challenge the designated eligibility of a given area as it relates to the grant program’s guidelines and/or the area’s designation on a state’s broadband availability map.*

Challenge Process Overview

Challenge processes allow service providers to contest or “challenge” an application on the grounds that they already provide service in a grant application area, have started construction in that area, or have plans to provide service within the proposed grant area. This stage in the grant award process is intended to prevent subsidies from going to areas where providers are already offering or are in the process of building equivalent service.

Following the close of the grant application window, states publicly post the proposed grant areas eligible for awards. Challengers then have a defined window—for example, 30 days (e.g., Minnesota, Indiana, and Wyoming)—to submit a challenge to any of the applications. Those wishing to challenge the proposed areas are required to provide documentation to support their claim that they currently provide service or will provide service in the application area in a set period of time (typically between 6 and 18 months, depending on the state). States require different documentation to substantiate a challenge, although many require a formal attestation or affidavit from the service provider confirming that the service claims made in its challenge are true and correct.

For example:

- California requires a .csv file with households served within the challenge area and a customer bill from one subscriber in each census block included in the challenge, demonstrating that the reported service was available prior to filing the challenge.
- Indiana requires maps of the service area, an Excel sheet with census blocks, and information on the technology specifications of the area that is served or to be served.
- Virginia requires that challenges provide current Federal Communications Commission (FCC) data on the applicant’s proposed project area, the minimum and maximum speeds available in that area, the number of serviceable units, street-level data on the number of customers receiving service within the project area, and a point shapefile with proposed passings (for wireline providers) or a heat map with a received signal strength indicator (for wireless providers).

State offices then review the challenges and associated materials to determine whether they are credible. Some states (e.g., Alabama, Indiana, and Virginia) allow changes to a grant award following a challenge, allowing the applicant to receive funding for parts of the project area that do not overlap with the challenger’s service territory. Other states (e.g., Nebraska and Minnesota) do not allow funding to be awarded to a proposed project if the challenge is found to be credible.

As referenced above, states have set timelines for challengers to complete builds if they challenge on the grounds that they have started construction or plan to provide service in a proposed project area. The timelines range from 180 days (e.g., California) from when the grants are awarded to 12 months (e.g., Missouri and Tennessee), and 18 months (e.g., Minnesota, Nebraska, Pennsylvania, and Wyoming). If the challenger fails to provide service within the state’s timeframe, the challenger may be disqualified from challenging applications for the next two grant cycles (e.g., Florida, Minnesota, Missouri, and Pennsylvania) or next two fiscal years of funding (e.g., Nebraska and Wyoming).

Sample challenge process



Select State Challenge Process Examples

California

Challenge window: the right of first refusal must be received by Jan. 15 of each year (postponed in 2020 to June 8, 2020)

Materials required:

- Area designated for broadband deployment by census block or geospatial file, such as .kmz or shapefile.
- The number of households or locations to be served.

- A commitment to ensure that all households within the area will have the capability to receive minimum speeds.
- An estimate of the date (within the 180-day statutory requirement) by which the deployment will be completed with service available to the public.

Other features:

- The state’s updated instructions for a “confidential challenge” must include the specific census block being challenged, a .csv file with geolocated street address information, a customer billing from one subscriber within the challenged census block (with sufficient identifiable information and with service speed details), and an attestation that the households identified are offered and have the capacity to receive a minimum of 6/1 Mbps upload/download speeds.
- The incumbent’s challenge may be renewed only with the agreement of the California Public Utilities Commission, and only in the event of delays outside the provider’s control.

CPUC Resolution: [T-17590 Res F CASF Right Of First Refusal](#) & Updated Challenge Instructions—[May 2020](#)

Indiana

Challenge window: within 30 days of application publication

Materials required:

- Challenger must be a “qualified broadband provider” as defined by the state or to the satisfaction of the Indiana Office of Community and Rural Affairs (OCRA).
- The challenger must be able to provide a terrestrial connection to the internet that provides an actual speed of at least 25 Mbps downstream and at least 3 Mbps upstream, regardless of the technology medium used to provide the connection.
- The challenge must identify the broadband speed(s) that are or will be available, and the technology specifications. Challengers must include the minimum and maximum speeds provided.
- Challenges are by address-level data rather than against individual applications. An entity should include all addresses being challenged within one submittal and may not submit multiple challenges. Challenger must provide a map of the existing or to-be-deployed service area as a single high-resolution PDF file.
- Total customers served in Indiana for the prior three years.
- Signed affidavit.

Other features:

- The challenge must include that the existing area has service availability or can have service within 10 days at or above the minimum actual speed of 25/3 Mbps and be available to all residential customers in the defined area.
- Providers may also provide GIS data of the service area.
- If a challenge is found to be valid, an applicant may choose to submit additional supporting documentation within its full application to provide evidence of lack of service for each address provided in the project area. OCRA will ultimately utilize the information provided in the challenge and full application to determine whether the addresses provided may receive funding.

Guidelines: Indiana Next Level Connections [Challenge Phase Instructions](#)

Minnesota

Challenge window: within 30 days of application publication

Materials required:

- Information demonstrating that the provider currently provides or has begun construction to the proposed project area at speeds equal to or greater than the state's speed goal (25/3 Mbps for unserved areas, 100/100 Mbps for underserved areas), or commits to complete said construction no later than 18 months after the date grant awards are made.
- Challenges will only be considered from providers that submitted broadband mapping data to Connected Nation for the state's most recent data collection.

Other features:

- If funding is denied to an applicant as a result of a challenge, and the challenging provider does not fulfill its commitment to provide service in the project area, the commissioner is prohibited from denying funding to an applicant as a result of a challenge by the same provider for the next two grant cycles, unless the commissioner determines the provider's failure to fulfill its commitment was the result of factors beyond its control.
- The office notes, "Challenges that contain detailed information (address level data with broadband speed identified) will be more likely to be found credible than challenges that rely on general information such as maps with percentages of households receiving service at or above the state speed goals noted."

Statute: [Minn. Stat. §116J.395, subd. 5a.](#)

Virginia

Challenge window: 30 days after application publication

Materials required:

- A signed and notarized affidavit affirming that the challenge and attached information is true.
- Current FCC Form 477 or equivalent.
- Minimum/maximum speeds available in the proposed project area.
- Number of serviceable units within the proposed project area and the speeds those serviceable units are able to receive.
- Street-level data of customers receiving service within the proposed project area.
- Point shapefiles that show each proposed passing in the challenged area, designated by a singular mapped point, containing attribute data showing the addresses of each point. Polygon shapefiles delineating the general challenged area(s). (Note: These files must be provided in .zip file form.)
- For wireless providers: Heat maps indicating received signal strength indicator (RSSI) in the challenged area, accounting for terrain and peak vegetation. (Note: These files must be provided in .zip file form.)
- Wireless providers must also note if the bandwidth is shared or dedicated in the challenged area.
- Using the project area map submitted by the applicant, create a map indicating where the challenger's serviceable units are located in the proposed project area. Challengers are encouraged to submit additional maps and information if necessary.
- If challenging due to planned state or federal funding, documentation detailing commitment to provide service in or adjacent to the proposed project area.

Other features:

- Prospective challengers are strongly encouraged to contact applicants directly and discuss the contested project area before submitting a challenge as project areas can often be re-scoped to remove overlap.
- Applicants have 15 business days to respond to a challenge.
- Providers wishing to submit challenges on multiple applications must submit a separate challenge for each application.
- Challenges can be made to portions of a proposed project area without invalidating the entire project.
- The department reserves the right to invalidate a portion(s) of a proposed project area, aggregate challenges by different providers to determine the percentage of serviceable units served in a proposed project area, and invalidate insufficient challenges.
- Challengers must demonstrate that more than 10% for wireline projects, or 25% for wireless projects, of serviceable units in the project area have access to speeds above 25/3 Mbps as of the date of the application or that the application is ineligible as a result of committed state or federal funding subject to the conditions described above.

Guidelines: 2022 Virginia Telecommunication Initiative (VATI) [Program Guidelines and Criteria](#)