



DEED - OFFICE OF BROADBAND DEVELOPMENT

PROCEDURE: 2016 BORDER-TO-BORDER BROADBAND GRANT CHALLENGE PROCEDURE

SUMMARY:

In 2016, a formal challenge process was added by law to the Border-to-Border Broadband grant review process. To assist potential challengers with preparing a challenge, this document explains the process and the documentation that will be necessary to support a credible challenge. This document outlines the type of information the Commissioner will require to determine if a challenge is credible, while at the same time ensuring that DEED meets the legislative intent of achieving border to border broadband access.

CHALLENGE PROCESS AS OUTLINED IN STATUTE:

Minn. Stat. §116J.395, subd. 5a. provides:

Subd. 5a. **Challenge process.** (a) Within three days of the close of the grant application process, the office shall publish on its Web site the proposed geographic broadband service area and the proposed broadband service speeds for each application submitted.

(b) An existing broadband service provider in or proximate to the proposed project area may, within 30 days of publication of the information under paragraph (a), submit in writing to the Office of Broadband Development at the Minnesota Department of Employment and Economic Development a challenge to an application. A challenge must contain information demonstrating that:

(1) the provider currently provides or has begun construction to provide broadband service to the proposed project area at speeds equal to or greater than the state speed goal contained in section 237.012, subdivision 1; or

(2) the provider commits to complete construction of broadband infrastructure and provide broadband service in the proposed project area at speeds equal to or greater than the state speed goal contained in section 237.012, subdivision 1, no later than 18 months after the date grant awards are made under this section for the grant cycle under which the application was submitted.

(c) The commissioner must evaluate the information submitted in a provider's challenge under this section, and is prohibited from funding a project if the commissioner determines that the provider's commitment to provide broadband service that meets the requirements of paragraph (b) in the proposed project area is credible.

(d) If the commissioner denies funding to an applicant as a result of a broadband service provider's challenge made under this section, and the broadband service provider does not fulfill the provider's commitment to provide broadband service in the project area, the commissioner is prohibited from denying funding to an applicant as a result of a challenge by the same broadband service provider for the following two grant cycles, unless the commissioner determines that the broadband service provider's failure to fulfill the provider's commitment was the result of factors beyond the broadband service provider's control.

CHALLENGE DOCUMENTATION REQUIREMENTS:

Applicants for the Border-to-Border Broadband grant program must provide in their applications, due by 4:00 p.m. on October 3, 2016, written location information and a map of the project area. For last mile projects, the information should include the geographical boundaries and list of census blocks and road segments if the census block is over two square miles. For last mile and middle mile projects, a map of the service area boundaries must be included with place names, boundaries, buildings, road/street names, street addresses or other features that clearly identify the project coverage area. Applicants must also provide the number of unserved and/or underserved locations that would receive service under their project and the speeds that will be made available.

DEED will publish on its website by October 6, 2016, a list of all applications submitted, the project area, and the proposed broadband service speeds.

A challenging provider must submit its challenge no later than 4:00 p.m., November 7, 2016. A provider must include in its challenge information documentation (that existing service is available at or above the state speed goals or verification that the construction plans are under way and have executive sign-off, budget assigned, etc. for service availability by June 2018) to support that it will provide broadband service at or above the state speed goals to the full project area. If the provider is only challenging a portion of the project area, the provider must identify the portion challenged at the same level of detail provided in the application and provide the same documentation as for a full project challenge.

The challenge must also identify the broadband speed(s) that will be available throughout the challenged portion of the project. For an application from an unserved area, the challenger must document that service is or will be provided at speeds of at least 25Mbps download and 3 Mbps upload. For an application from an underserved area, the challenger must document that service is or will be provided at speeds of at least 100Mbps download and 20Mbps upload. If the application is from an unserved area, and the challenge is found to be credible but the challenger will provide service at speeds less than 100Mbps download and 20Mbps upload, the application will be considered for funding as an underserved application.

CREDIBLE CHALLENGES:

Following evaluation of the information contained in the provider's challenge:

1. The Commissioner will determine whether a challenge is credible. If a challenge is found to be credible, no funding will be awarded to that project or portion of a project as an unserved area.
2. If a credible challenge was submitted for only a portion of a project, the rest of the project will continue through the review process for possible grant award.
3. As noted above, if the speeds that will be provided under a credible challenge are less than 100Mbps download and 20Mbps upload, the successfully challenged project or portion of a project will still be considered eligible for funding as an underserved area.
4. Where a provider's challenge has been found to be credible, the Commissioner will notify the provider.
5. DEED will also post on its website a list of challenges found to be credible and whether for the full or a portion of the project area.
6. For each challenge found to be credible, the challenging provider must submit documentation no later than 18 months from the grant award dates for this grant round to the Commissioner substantiating that it has fulfilled its commitment to deploy broadband service to the challenged area at the speeds identified in its challenge.
7. In its review of whether the provider has met its commitment, DEED may consult with the grant applicant.