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**FLORIDA DEPARTMENT *of*  
ECONOMIC OPPORTUNITY**

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## **Application Challenge Process Guide**

Broadband Opportunity Program

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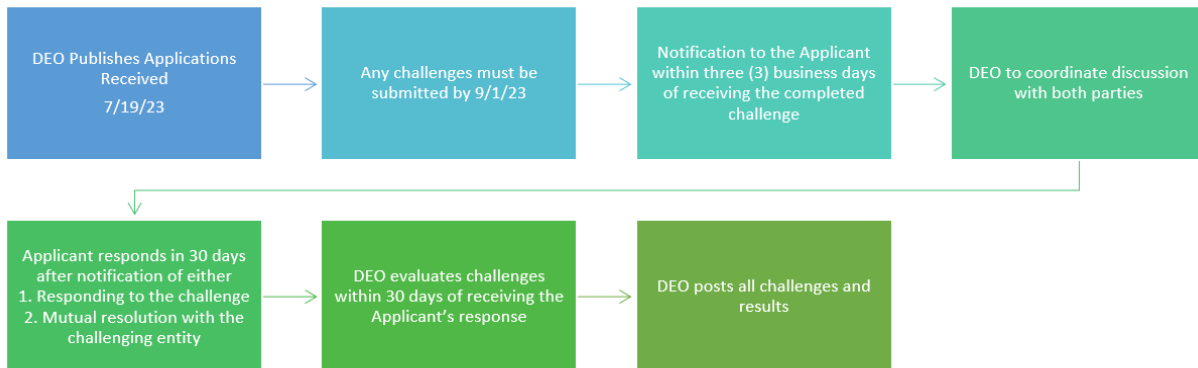
# 1. Application Challenge Process

## 1.1. Process Overview, Purpose of the Guide, and Challenge Timeline

Section 288.9962(6), Florida Statutes, (F.S.) and Chapter 73C-50.005, Florida Administrative Code (F.A.C.), outline the Broadband Opportunity Program (Program) application challenge process. The purpose of the challenge process is to improve accountability in deployment of public funds by preventing funds from being allocated to areas where Internet Service Providers (ISPs) are already offering service or plans to provide such service within the timeframe of the contested application(s).

The users of this guide include Florida Department of Economic Opportunity (DEO) staff and contractors assisting with the challenge process, and ISPs or existing service providers. This guide is meant to merely aid in understanding the application challenge review process, and as such, applicable legal authorities, including but not limited to Section 288.9962, F.S. and Chapter 73C-50, F.A.C., which take precedence over the information provided in this guide.

The overall timeline is as follows:



For definitions and defined terms in this guide, refer to the Application Review Guide.

## 1.2. Publish Applications Received to Open Challenge Window

As per Chapter 73C-50.004, F.A.C., the Office is required to perform the following activities within three (3) business days after the close of the application process:

1. Publish a list of the proposed unserved areas to be served.
2. Publish the proposed broadband internet speeds of the areas to be served.

3. Publish a service map of the proposed project areas on the DEO's website at [www.floridajobs.org/broadband](http://www.floridajobs.org/broadband).

### **1.3. Challenging an application**

For the timelines specified in the challenge timeline, grant applications requesting funds from the Program will be subject to formal challenges. Prospective challengers are recommended to review the contested project area or component before submitting a formal challenge.

Apart from the instances where a challenge involves a credible allegation of willful misrepresentation made within a submitted application, formal challenge submissions are reserved for entities that would be directly impacted by the Project described in an application for the development of broadband service infrastructure. The Department will only consider challenges that shows at least one of the following:

- The proposed project will result in an overbuild because the challenger currently provides, has begun construction to provide, or has a documented commitment to provide, broadband service to a portion of the Applicant's proposed locations at speeds equal to or greater than 25/3 Mbps.
- The Applicant made a willful misrepresentation in their application.

The burden for proving claims made within submitted challenges will fall on the challenging entity, who must submit enough evidence to fully support their claims.

Challenges must be submitted within forty-five (45) calendar days of the Office's publication of the list of the proposed unserved areas to be served.

### **1.4. Determine Eligibility of the Challenging Entity**

Per Section 288.9962(6)(c), F.S. and Chapter 73C–50.005(1), F.A.C., a broadband ISP may submit a challenge to all or a portion of the proposed project area if it provides existing service in or adjacent to a proposed project area in an application. The DEO Project Manager will work with the Contractor to determine whether the ISP meets this requirement based on additional analysis and any relevant evidence provided by the challenging ISP.

### **1.5. Information Requirements for the Challenge**

The challenge(s) may be submitted to the Florida Department of Economic Opportunity, 107 East Madison Street, Mail Station #160, Caldwell Building, Tallahassee, Florida 32399-4128, or via email at [Broadband@DEO.MyFlorida.com](mailto:Broadband@DEO.MyFlorida.com). Note that a separate challenge must be submitted by the challenging entity for each application that is challenged.

The challenge must provide information demonstrating one or more factors set forth in Section 288.9962(6)(c), F.S.:

**Case 1:** The provider currently has deployed broadband internet service to retail customers

within the proposed project area within the timeframe proposed by the Applicant.

**Case 2:** The provider has begun construction to provide broadband internet service to retail customers within the proposed project area within the timeframe proposed by the Applicant.

**Case 3:** The provider commits to providing broadband internet service to retail customers within the proposed project area within the timeframe proposed by the Applicant.

The challenge must include the following:

1. Affirmative certification by the ISP of the accuracy of the information submitted.
2. Geographic Information Systems (GIS) map of the challenged area indicating where internet services are either currently being provided or services are planned to be provided within the stipulated timeframe. This should include geospatial files such as .kmz, .shp, or .kml file(s).

In addition, the challenging entity is expected to provide the following information to support the challenge:

1. Evidence that the challenging entity is an ISP in the State.
2. The number of households or retail locations served or to be served within the proposed project area.

**For Case 1:** The provider currently has deployed broadband internet service to retail customers within the proposed project area within the timeframe proposed by the Applicant. To provide the documentation necessary to prove their challenge, the challenging entity shall provide:

- Date stamped speed test results documenting speed test provider, upstream/downstream speed, and physical address of the speed test. Broadband internet speed should meet the definition as outlined in Florida Statutes.
- Technology specifications of the existing infrastructure including middle-mile and last-mile infrastructure demonstrating capacity of transmission.
- Testimonials or proof of evidence from currently served customers.

**For Case 2:** The provider has begun construction to provide broadband internet service to retail customers within the proposed project area within the timeframe proposed by the Applicant. To provide the documentation necessary to prove their challenge, the challenging entity shall provide:

- Clear identification of the locations/addresses that will be served. That is, a map in .kmz format detailing the proposed service area containing the following:
  - Number of serviceable locations, each marked with an identifier within the proposed project area, including the speeds those serviceable locations are able to receive
  - Street level data of customers receiving service within the proposed project area
- Speed metrics in the proposed area
- Approved engineering plans and drawings
- Permit requests

- Relevant purchase orders, invoices, or agreements with suppliers
- Relevant Federal Communications Commission's (FCC) map information
- Signed agreements with relevant municipalities, if applicable
- Heat maps (if applicable) indicating received signal strength indicator (RSSI) in the challenged area

**For Case 3:** The provider commits to providing broadband internet service to retail customers within the proposed project area within the timeframe proposed by the Applicant. To provide the documentation necessary to prove their challenge, the challenging entity shall provide:

- Clear identification of the locations/addresses that will be served. That is, a map in .kmz format detailing the proposed service area containing the following:
  - Number of serviceable locations, each marked with an identifier within the proposed project area, including the speeds those serviceable locations are able to receive
  - Street level data of customers receiving service within the proposed project area
- Speed metrics in the proposed area
- Commitment letters and supporting information to provide broadband internet service to retail customers within the proposed project area
- Timeframe proposed by the challenging entity, including an estimated date by which the deployment of the broadband infrastructure will be completed with service available to the public
- Heat maps (if applicable) indicating received signal strength indicator (RSSI) in the challenged area
- If the challenge is based on an expected project leveraging planned state or federal funding, documentation detailing commitments of award to provide internet service in or adjacent to the proposed project area

The DEO Project Manager and its Contractor may request additional information from the challenging entity to complete their review.

**Confidential Information:**

DEO takes its responsibilities under Chapter 119, F.S., and Article I, Section 24 of the Florida Constitution very seriously. Any and all information that a submitter believes is confidential under Florida Law should be so identified at the time of submission and a redacted copy of the same material provided concurrently with the claim of confidentiality. Each individual portion of the redacted copy that the submitter asserts is confidential must contain a citation to the specific law making the content of the redacted portion confidential. **A submitter's failure to comply with this provision may serve to waive any applicable confidentiality of the information at issue.**

## **1.6. Notification to Applicants and Response Requirements**

Within three (3) business days of receiving a complete challenge, the Office will notify the Applicant of the challenge in writing and provide them with a redacted copy as applicable. The Applicant will be allowed thirty (30) calendar days from the date on the notice of the challenge to respond, and the Applicant's application will be placed in pending status.

The Applicant's response must address, in detail, the factors identified in the challenge. The response must include concise statements asserting the Applicant's position regarding each factor identified within the challenge. The response should also state with specificity the Applicant's reasons why the challenge is not valid and include all necessary supporting documentation.

### **Communications between Challenging Entity and the Applicant:**

Throughout the challenge process, the Applicant and the challenging entity are strongly encouraged to communicate with each other. Communication between the Applicant and the challenging entity may be facilitated and attended by the Office and its Contractor(s) to provide feedback and assistance as needed to help mutually resolve the challenge between both parties. In the event of a settlement of the challenge, evidence of such settlement must be submitted to the Office for review within thirty (30) days of the challenge notification.

Until the challenge is resolved by the Office, the application will remain in pending status.

## **1.7. Challenge Evaluation and Resolution Process**

All challenges to the Program applications will be evaluated to determine the validity and completeness of the challenge. DEO, assisted by its Contractor(s), will utilize the information provided in the challenge process and the grant application to arrive at a final determination recommendation concerning the resolution of the challenge. In addition, the Applicant's response to the challenge will also be reviewed in the evaluation process to include any settlement offered by the Applicant or the challenging entity.

The purpose of the challenge meeting is to provide the challenger(s) and the Applicant an opportunity to discuss and work toward a mutually agreeable resolution. DEO and its Contractor(s) can participate in these meetings to facilitate the conversation and answer questions.

If the challenger effectively proves the validity of their challenge, the Applicant may choose to amend their originally submitted map(s) and adjust their coverage area accordingly. It is possible the Applicant may withdraw their entire application.

If the Applicant effectively proves the challenge cannot be substantiated, the challenger may settle with the Applicant based on the information provided and submit in writing to the Applicant that they have no further issues to discuss.

Once challenge meetings are complete, the resolution must be documented and confirmed. The following steps will occur:

1. If the Applicant is modifying their map (i.e., to remove the challenged locations), they will email updated map(s) to all parties. If the Applicant is withdrawing the entire application, the email

will state this withdrawal.

2. The challenger will review the email and any updated map(s) and provide an email reply stating acceptance of the modification.
3. Copies of the email exchange will be used in the final decision process with DEO.
4. DEO and/or the Contractor will review the amend map for additional overlaps with previously awarded grants, federally funded project areas and additional project areas if applicable. Amendment may be needed.
5. DEO will receive and review summary information for each challenge and render a final decision of how to move the application forward.

If the challenger and Applicant do not initially agree on a resolution, DEO may hold follow up meetings as needed in order to render a decision that aligns with the program's priorities.

Based on the challenge review, DEO's Contractor(s) shall provide a summary detailing information received depending on the case as outlined below:

**For Case 1:** The provider currently has deployed broadband internet service to retail customers within the proposed project area.

**Summary will include:**

1. Strength of the evidence based on speed test results and customer testimonials.
2. Comparison and evaluation of the service area as outlined by the challenging entity versus that proposed by the Applicant.
3. Comparison and evaluation of the service area compared to previously awarded projects and/or other federally funded project.
4. Comparison of the technology and specifications served by the challenging entity versus that proposed by the Applicant.

**For Case 2:** The provider has begun construction to provide broadband internet service to retail customers within the proposed project area within the timeframe proposed by the Applicant.

**Summary will include:**

1. Strength of evidence of construction start.
2. Comparison and evaluation of the service area as outlined by the challenging entity versus that proposed by the Applicant.
3. Comparison and evaluation of the service area compared to previously awarded projects and/or other federally funded project.
4. Comparison of the technology and specifications served by the challenging entity versus that proposed by the Applicant.
5. Comparison of the project timelines between the challenging entity versus that proposed by the Applicant.

**For Case 3:** The provider commits to providing broadband internet service to retail customers within the proposed project area within the timeframe proposed by the Applicant.

**Summary will include:**



1. Strength of evidence of the planned project.
2. Evaluation of the funding and financing commitments for the project.
3. Comparison and evaluation of the service area as outlined by the challenging entity versus that proposed by the Applicant.
4. Comparison and evaluation of the service area compared to previously awarded projects and/or other federally funded project.
5. Comparison of the technology and specifications served by the challenging entity versus that proposed by the Applicant.
6. Comparison of the project timelines between the challenging entity versus that proposed by the Applicant.

## **1.8. Evaluation Results and Next Steps**

DEO will review all relevant information as well as recommendations from the Contractor and will make a determination on each challenge. One of the following options will be elected:

1. Confirm the challenge covering the entire application.
2. Deny the challenge in its entirety.
3. Confirm the challenge for only a portion of the proposed area as outlined in the application.

Note that for option 3, the Office may award a reduced grant to the unchallenged portion of the application to the Applicant.

DEO will provide official written communication to the Applicant stating the outcome of the challenge process.

Note that a challenge may be confirmed or denied, however this does not ensure an award of the proposed project.

### **Abuse and Disqualification:**

A challenge can be dismissed if it is determined by DEO that the entity's challenge is an abuse of the challenge process. Reasons may include but are not limited to the following:

- Serial submission of meritless challenges
- Intentional repeated challenges of a single project
- Multiple challenges containing no supporting information
- Harassment of DEO staff, Contracted staff or subject community members

The Applicant and the challenging entity will be notified by DEO of the evaluation results. Pursuant to Section 288.9962(6)(f), F.S., if DEO denies funding to an Applicant as a result of a confirmed challenge, and the challenge entity does not fulfill its commitment to provide broadband internet service in the proposed area as outlined in the challenge, DEO may not consider another challenge from the provider for the next two grant application cycles, unless DEO determines that the failure to fulfill the

commitment was due to circumstances beyond the provider's control.

DEO will publish the results of the challenges on its website at [www.floridajobs.org/broadband](http://www.floridajobs.org/broadband) in accordance with Section 288.9962(10)(b), F.S.