DEED - OFFICE OF BROADBAND DEVELOPMENT

PROCEDURE: 2023 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, along with the new Challenge Form, 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:

Broadband grants are awarded by locations. *See* Minn. Stat. § 116J.395, subd. 5. The statute allows providers in or near a proposed project area to challenge the application of a competitor awarded a grant to develop broadband services to locations in that area. Minn. Stat. § 116J.395, subd. 5a(b).

The provider’s challenge must demonstrate 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 [Minnesota Statutes] section 237.012”; or

2) the provider commits to completing the project, “at speeds equal to or greater than the state speed goal contained in [Minnesota Statutes] section [237.012, subdivision 1](https://www.revisor.mn.gov/statutes/cite/237.012#stat.237.012.1), no later than 18 months after the date grant awards are made.” Minn. Stat. § 116J.395, subd. 5a(b)(1)-(2).

The commissioner must evaluate challenges submitted by broadband service providers (Provider). Minn. Stat. § 116J.395, subd. 5a(c). The commissioner is prohibited from funding a project if the commissioner determines that the Provider has credibly committed to meeting the two requirements stated above.

CHALLENGE DOCUMENTATION REQUIREMENTS:

DEED will publish on its website by December 12, 2023, a list of all applications submitted, the project area/locations, and the proposed broadband service speeds.

A challenging provider must submit its challenge via email to deed.broadband@state.mn.us no later than 4:00 p.m. Central Time on January 11, 2024. Providers may use this Challenge Form <https://mn.gov/deed/assets/2023-challenge-form_tcm1045-566930.docx> to submit a challenge.

As indicated on the Challenge Form, a Provider must include documentation to support that it either 1) provides broadband service at or above 100 Mbps download and 20 Mbps upload to the project area, or 2) is in the process of completing construction to provide broadband service at or above 100 Mbps download and 20 Mbps upload to the project area.

Challenges will only be considered from Providers that submitted broadband mapping data to Connected Nation for the 2023 data collection.

PROCESS FOR CREDIBLE CHALLENGES:

1. The Commissioner of DEED (Commissioner) must evaluate the information submitted in a Provider's challenge. The Commissioner will determine whether a challenge is credible.
2. If the Commissioner determines that the Provider's commitment to provide broadband service in the proposed project area is credible, the Commissioner is prohibited from funding that project or the challenged portion of the project. The Commissioner will notify the Provider that its challenge was found to be credible.
3. 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.
4. DEED will also post on its website a list of challenges the Commissioner found to be credible and whether the challenge related to the full project area or a portion of the project area.
5. The challenging Provider must submit documentation to the Commissioner no later than 18 months from the grant award dates for this grant round substantiating that the Provider has fulfilled its commitment to deploy broadband service to the challenged area at the speeds identified in the Provider’s challenge.
6. In its review of whether the Provider has met its commitment, DEED may consult with the grant applicant.