

Department of Housing and Community Development

Utility Leverage Program – Unserved Certification Guidelines

Guidelines as of May 28, 2021

Submission Process

Pursuant to “§ 56-585.1:9” of the Code of Virginia, petitioners may submit proposed project areas to the Department of Housing and Community Development (DHCD) to be designated as unserved by broadband. Petitioners must submit point and polygon shapefile(s) of the proposed project area as defined in this document. Petitioners must describe the proposed geographic area including specific boundaries of the project area (e.g. street names, local and regional boundaries, etc.) and attach a copy of the map of your project area(s). In addition, wireless petitioners are required to include shapefiles of heat maps indicating received signal strength indicator (RSSI) measures in the proposed project area. Petitioners must list existing providers near the proposed project area and describe the outreach efforts to identify existing providers, ensure overlap was avoided, and how this information was compiled with source(s). Petitioners are encouraged to submit further documentation demonstrating the unserved nature of the project. Areas with service by satellite providers are not considered served.

After submission, the petition materials will be posted online to the DHCD website. Entities signed up to be notified when certifications are posted will be notified via email that a new petition is available for review. Petitioners are strongly encouraged to contact incumbent providers, if any, adjacent to the project area to ensure the proposed project area does not overlap with existing service. DHCD shall make a determination if the project area is unserved within 30 business days, from the date of posting the proposed project, depending on project volume. A written determination of a petition shall be provided by the Director of the Office of Broadband.

Challenge Process

Pursuant to “§ 56-585.1:9” of the Code of Virginia, “unserved by broadband” means a designated area in which less than 10 percent of residential and commercial units are capable of receiving broadband service, provided that the DHCD for its Virginia Telecommunication Initiative may, by guideline, increase such percentage from time to time. 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. Evidence of serviceability must be demonstrated by showing a reasonable number of customers within the area of claimed serviceable units.

Planned service to a proposed project area is eligible for the purpose of a challenge if state or federal funds have been awarded and the provider has committed to providing service to the areas using these state or federal funds. Areas adjacent to state or federally funded areas may be eligible for a challenge if the challenger demonstrates existing awards will cover the adjacent

area. The challenger must commit to serving the adjacent areas at speeds equal to or greater than the petitioners deployment speed.

DHCD will post electronic copies of all submitted petitions to the agency website within five (5) business days after they are received. DHCD will notify individuals signed up for certification notifications via email that the petition is available for review. Providers wishing to submit a challenge must provide the information required in this section no later than fifteen (15) business days from the date the petition is posted on the agency website. Petitioners will be notified if their proposed project area is being challenged and will have seven (7) business days from notification of a challenge to provide rebuttal information to DHCD.

Challenges can be made to portions of a proposed project area without invalidating the entire project. DHCD reserves the right to invalidate a portion(s) of a proposed project area as served, aggregate challenges by different providers to determine overlap, and invalidate insufficient challenges. Challengers must demonstrate that serviceable units in the project area have access to speeds above 25/3 mbps as of the date of the petition or that the petition is ineligible as a result of committed state or federal funding subject to the conditions described above.

DHCD must receive all of the information detailed below or the challenge may be deemed incomplete and invalid. Challengers must provide:

1. A signed and notarized affidavit affirming the challenge and attached information is true.
2. Current Federal Communications Commission (FCC) Form 477 or equivalent.
3. Minimum/maximum speeds available in the proposed project area.
4. Number of serviceable units within the proposed project area and provide the speeds those serviceable units are able to receive.
5. Street level data of customers receiving service within the proposed project area.
6. Point shapefiles that show each proposed passing in the challenged area, designated by a singular mapped point, in the challenged area containing attribute data showing the addresses of each point. Polygon shapefiles delineating the general challenged area(s).
7. For wireless providers: Heat maps indicating received signal strength indicator (RSSI) in the challenged area.
8. 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.
9. If challenging due to planned state or federal funding, documentation detailing commitment to provide service in or adjacent to the proposed project area.

DHCD will review all applicable challenge and rebuttal information to determine if a challenge is credible. DHCD reserves the right to request verified speed tests on all or portion(s) of the challenged area at the time of peak network usage. DHCD shall notify the applicant and challenger in writing if a challenge is valid no later than thirty (30) business days after the petition is posted on the agency website and the email notification is sent. DHCD may extend the validation period by thirty (30) days and will provide notice to the petitioner and challenger if any additional review time is needed or if current petition volume necessitates extension. If no

challenge is received and DHCD is unaware of any other public funding in the project area and will be deemed as unserved.

For all questions regarding the submission and challenge process, please email: broadband@dhcd.virginia.gov.

Freedom of Information Act (FOIA) Policy

Pursuant to “§ 2.2-3705.6-3” of the Code of Virginia, information pertaining to utility leverage program challenges may be eligible for FOIA exemption. Challengers wishing to receive FOIA exemption must request exemption directly to broadband@dhcd.virginia.gov, detailing the nature of the requested material. **Do not include the confidential materials in the FOIA exemption request.** Challengers wishing to request exemption for multiple challenges must do so individually, in separate requests. DHCD will notify challengers if their FOIA exemption request is approved and then challengers can transmit confidential information to DHCD. Petitioners who have received a challenge will be notified and may also request FOIA exemption for information pertaining to their rebuttal.

In order for the information submitted by the applicant and specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Department:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;*
- b. Identifying with specificity the data, information, or other materials for which protection is sought; and*
- c. Stating the reasons why protection is necessary.*

The Department shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or confidential proprietary information of the applicant. The Department shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

Definitions

Adjacent – adjoining parcels sharing a roadway, private or public, other than highways or expressways as a common boundary

Passing – any structure that can receive service. Multi-unit structures may be counted as more than 1 passing, provided individual connections and accounts are planned at that structure.

Peak Usage - Weekdays from 7:00 p.m. – 11:00 p.m. local time.

Point Shapefiles – shapefiles that show each proposed passing in the application area as a singular mapped point, in the application or challenged area containing attribute data showing the addresses of each point.

Polygon Shapefiles - shapefiles delineating the general project area(s).

RSSI - Received Signal Strength Indicator, or RSSI, is an estimated measure of power level that a wireless client device is receiving from an access point or router. See Appendix B for more information.

Service Area – Refers to the geographic territory in which a petitioner has proposed to provide service.

Serviceable Units – Properties that are eligible for broadband service without additional special construction costs from the property owner/subscriber.

Street Level Data – Address ranges or specific addresses from an existing provider along with the existing number of customers within those ranges. No personal information on specific customers will be requested.

Unserved – Properties that currently have access to internet speeds below 25 Megabits per second (Mbps) download and 3 Megabits (Mbps) upload.