

KIM REYNOLDS, GOVERNOR
ADAM GREGG, LT. GOVERNOR

ANNETTE DUNN
CHIEF INFORMATION OFFICER

FINAL AGENCY DECISION

CD20V3002¹

February 3, 2021

In response to the Notice of Appeal Docket No. 20OCIO002 and the subsequent appeal(s) consolidated hereto in Appendix A (each individually an “**Appeal**” and collectively the “**Appeals**”), filed by concerned members of the public (each individually an “**Appellant**” and collectively the “**Appellants**”) pursuant to and in accordance with Iowa Administrative Code rules 129—20.5(1) and (2), and following the Office of the Chief Information Officer of the State of Iowa’s (“**Office**”) notification of and opportunity for input from affected persons and parties pursuant to and in accordance with Iowa Administrative Code rule 129—20.5(3), the Office has conducted an internal review of all relevant evidence and information both submitted in connection with these Appeals and otherwise available to the Office related to the United States Census Blocks (“**Census Blocks**”) forming the basis of these Appeals. *See* Iowa Admin. Code r. 129—20.5(4).

Consistent with Iowa Administrative Code rule 129—20.5(4), the Office “shall consolidate all appeals involving the same broadband block(s) and conduct an internal review of the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources identified and originally utilized in [subrule] 20.3 and [subrule] 20.4, and any other information deemed relevant by the office.”

Accordingly, due to some overlap among various Appeals identified in Appendix A, attached hereto, and the Census Block(s) referenced in this Appeal Docket No. CD20V3002, the Office has consolidated these matters under this **FINAL AGENCY DECISION** (“**Decision**”). Following its review of the entire record before it, the Office issues the following Decision. Iowa Admin. Code r. 129—20.5(5).

I. ISSUE(S) ON APPEAL.

Whether the Office correctly determined that the Census Blocks forming the bases of these Appeals did not constitute Targeted Service Areas (“**TSAs**”) as defined by Iowa Code section 8B.1(13) and Iowa Administrative Code rule 129—20.1.

II. BACKGROUND, LAW, AND PROCEEDINGS.

Iowa Code section 8B.11, as amended, creates programs the Office is responsible for or involved in administering, including a Broadband Grants Program and a Property Tax Exemption Program (Iowa Code section 427.1(40)). At a high level, these programs are designed to reduce or eliminate areas in the

¹ Appellants filed a form online by visiting V3 of the Map at <https://ocio.iowa.gov/broadband-availability-map-version-3> and selecting the link titled “Citizens broadband challenge or incorrect information.” Submission of this form constituted a proper Notice of Appeal that comports with the form and content requirements of Iowa Administrative Code rule 129—20.5(1).

State that do not have access to Broadband service at minimally acceptable speed thresholds. *See* Iowa Code § 8B.11. In order to identify these unserved and underserved areas and best direct the incentives available through these programs, the Office is required to make determinations as to whether any Communications Service Providers already offer or Facilitate Broadband service at or above twenty-five (25) megabits per second of download speed and three (3) megabits per second of upload speed (“**25/3**”) as of July 31, 2020 (“**As of Date**”). The Office makes these determinations on an individual Census Block basis by referencing Broadband availability maps or data sources that are widely accepted for accuracy and available for public review and comment. Iowa Code § 8B.10. In October 2020, the Office documented and communicated its TSA determinations by publishing Version 3 (“**V3**”) of the Statewide Broadband Availability Map (“**Map**”). Iowa Admin. Code r. 129—20.3, 20.4.

On October 28, 2020, the Office published V3 of the Map. V3 of the Map is based on maps and data sources made available by the Federal Communications Commission (FCC) and/or developed or produced by contractors or third parties retained or utilized by the Office for such purpose. Iowa Admin. Code r. 129—20.3. Data representing the status of fixed Broadband in Iowa is as of July 31, 2020. Iowa Admin. Code r. 129—20.1, 20.3, 20.4(1); *see Broadband Availability Map - Version 3 Challenge Process*, at OCIO.IOWA.GOV (<https://ocio.iowa.gov/broadband-availability-map-version-3-challenge-process>). In publishing V3 of the Map, the Office triggered a statutorily-required challenge period whereby “[w]ithin 20 days after [October 28], any person or party aggrieved or adversely affected by such determination may challenge the office’s finding by filing a notice of appeal with the office” and “provid[ing] the office with all evidence and information necessary to support the appeal.” Iowa Admin. Code r. 129—20.5(1); *see also* Iowa Code § 8B.10(2) (“The office shall establish procedures to allow challenges to the office’s finding on whether an area meets the definition of targeted service area.”). After the expiration of this initial twenty-day appeal window, the Office was to post any notices of appeal received by the Office online at ocio.iowa.gov/broadband. *Id.* r. 20.5(3). From the date of such posting, any other persons or parties affected by a challenge received by the Office would “have 20 calendar days to submit evidence and information in support of, or in opposition to, such appeal” to the Office. *Id.* After expiration of this second twenty-day submission window, the Office would “consolidate all appeals involving the same census block[s] and conduct an internal review of the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties . . . , the maps and data sources originally utilized [by the Office], and any other information deemed relevant by the office.” *Id.* r. 20.5(4). Thereafter, the Office would issue a final agency decision stating the reasons for the Office’s decision concerning the census block(s) in question. *Id.* r. 20.5(5).

The period for appeals closed November 16, 2020 at 11:59 p.m. In accordance with Iowa Administrative Code rule 129—20.5(5), the Office is considering the evidence and information submitted to or otherwise available to the Office, and issuing final decisions concerning all of the Census Blocks forming the basis of appeals received by the Office.

III. FACTUAL BACKGROUND.

Within the initial twenty-day window, each Appellant filed their Appeal. Therein, Appellants challenged the Office’s determination with respect to listed Census Blocks corresponding with Appellants’ addresses, found in Appendix A.

Supporting each Appeal, and in accordance with Iowa Administrative Code rules 129—20.5(1-2), each Appellant completed and submitted an online form which provided the opportunity to assert that one of the following conditions was specifically applicable to the Census Block in question:

- Broadband unavailable from current provider;
- Broadband speed not as advertised;
- No providers in area;
- No Problems.

For the sake of administrative simplicity, the Office has interpreted each Appellant claim listed herein as a request to modify the designation of the Census Block in question from a designated non-TSA to a designated TSA.

As required by Iowa Administrative Code rule 129—20.5(3), the Office posted these Appeals online (*see Broadband Availability Map V3 Notice of Appeal* posted at https://ocio.iowa.gov/sites/default/files/notice_of_appeal_-_broadband_availability_map_v3.pdf) including associated docket numbers, Census Block IDs, Data/Time challenge was received, and date the notice of appeal was posted. The Office further notified affected third parties, including any communication service provider(s) who reported providing service within the appealed Census Block(s). The Office subsequently conducted an internal review of all relevant evidence and information submitted by each Appellant and otherwise available to the Office in connection with the Census Blocks forming the basis of each Appeal. *Id.* r. 20.5(4). Based on that review, the Office now issues the following Decision. *Id.* r. 20.5(5).

IV. DECISION BASES AND REASONING.

With respect to the Census Block forming the basis of each Appeal, the Office has reviewed the evidence and information submitted by Appellant related thereto, in conjunction with the maps and data sources originally utilized in determining whether these Census Blocks are or are not TSAs. Iowa Admin. Code r. 129—20.5(4). In reviewing this evidence and information, the Office’s specific objective is to determine whether it should change its original determination of “whether a communications service provider offers or facilitates broadband service” at or above 25/3 in the Census Blocks forming the basis of this Appeal as of July 31, 2020, based on the additional evidence and information now available to it, or whether its original determination based on the Broadband Availability Map V3 should stand. Iowa Code §§ 8B.1(13), 8B.10(1-2); Iowa Admin. Code r. 129—20.1, 20.3, 20.4, 20.5.

A. DECISION BASIS 1

1. **SUMMARY: APPEALS GRANTED.** The Office will designate the Census Blocks comprising Decision Basis 1 Appeals as TSAs based on Appellants’ Certifications, and no evidence to the contrary.
2. **DETAILED RESPONSE:** With respect to the Census Blocks comprising Decision Basis 1 Appeals, the map data representing the status of fixed Broadband in Iowa as of July 31, 2020, and originally relied on by the Office in generating V3

of the Map indicates that no Communications Service Provider offered or Facilitated 25/3 Broadband as of July 31, 2020.

Utilizing the same processes and evidence more fully described above, the Office based its decision on one of three circumstances:

- a) The Office received responses from notified interested Communication Service Providers asserting that they do not facilitate 25/3 Broadband in the Census Blocks specified; or
- b) The Office did not receive certification from known Communication Service Provider(s) in the Census Block asserting that Service is provided to the Census Block specified; or
- c) The Office received Certification during the notice window from known Communication Service Providers stating that they facilitate 25/3 Broadband in the Census Block(s) specified. Typically, in the event of discordant Certifications, the Office is inclined to elevate the Certification of Facilitated service from an incumbent Communication Service Provider in any given Census Block. However, here, it is apparent that the service facilitated from the attesting Communication Service Provider(s) is less than 10% of the geographic area of the Census Block, and therefore meets the definition of “Materially Underserved” as set forth in Iowa Administrative Code rule 129–20.

Because the Office considers Appellant’s Certification to be particularly probative, combined with the verifying assertions of present Communication Service Providers or lack thereof, the Office concluded that 25/3 Broadband service was not available in the Census Blocks comprising Decision Basis 1 Appeals as of July 31, 2020. Accordingly, these Census Blocks will be changed from non-TSAs to TSAs, and shall be eligible to receive State incentives under the programs administered by the Office.

B. DECISION BASIS 2

- 1. SUMMARY: APPEAL GRANTED.** The Office will designate the Census Blocks comprising Decision Basis 2 Appeals as TSAs based on Appellants’ Certification, and no evidence to the contrary.
- 2. DETAILED RESPONSE:** With respect to the Census Blocks comprising Decision Basis 2 Appeals, the map data representing the status of fixed Broadband in Iowa as of July 31, 2020, and originally relied on by the Office in generating V3 of the Map indicates that there are no known Communications Service Providers in the specified Census Blocks as of July 31, 2020.

Because the Office considers Appellant’s Certification to be particularly probative, combined with a lack of evidence that Communication Service Providers are currently present in the specified Census Blocks, the Office concluded that 25/3 Broadband service was not available in the Census Blocks

comprising Decision Basis 2 as of July 31, 2020. Accordingly, these Census Blocks will be changed from non-TSAs to TSAs, and shall be eligible to receive State incentives under the programs administered by the Office.

C. DECISION BASIS 3

1. **SUMMARY: APPEAL DENIED.** The Office will maintain the designation for the Census Blocks forming the basis of this Appeal for Decision Basis 3 as non-TSAs.
2. **DETAILED RESPONSE:** With respect to the Census Blocks comprising Decision Basis 3 Appeals, the map data representing the status of fixed Broadband in Iowa as of July 31, 2020, and originally relied on by the Office in generating V3 of the Map indicates that at least one Communication Service Provider offered or Facilitated 25/3 Broadband in each of the specified Census Blocks as of July 31, 2020. Appellants appealed the designation of these Census Blocks, asserting that no Communication Service Providers in each block Facilitated 25/3 Broadband as of July 31, 2020, thereby further asserting that these Census Blocks were incorrectly labeled as non-TSAs, and that their designation should be changed to TSAs.

In considering the evidence and information provided by Appellants in support of their Appeals, the Office looks to Iowa Administrative Code rule 129—20.5(8), which provides in relevant part:

Examples of evidence and information the office would consider particularly probative of broadband service at or above the download and upload speeds specified in the definition of targeted service area as of the as of date for purposes of adjudicating an appeal of the office’s determination of whether a particular census block constitutes a targeted service area include . . . [s]igned attestations submitted to the office under penalty of perjury on forms provided by the office that the applicable census block(s) was or was not served as of the as of date with broadband service at or above the download and upload speeds specified in the definition of targeted service area.

Appellants completed and submitted a Certification on forms provided by the Office certifying that 25/3 broadband was not available in Census Blocks identified by Appellants as of July 31, 2020. The Office considers this Certification to be particularly probative.

Following the Appeal period, Iowa Administrative Code rule 129—20.5(3) allows for input from affected persons or parties, including evidence or information received from other interested Communications Service Providers attesting to their presence or non-presence in each of the Census Blocks forming the basis of this Appeal for twenty (20) days after notification. Within that twenty-day (20) period, the Office contacted Communications Service Providers known or

understood to be Facilitating 25/3 Broadband service or faster within the Census Blocks forming the bases of these Appeals. In this case, Communications Service Providers responded to the Office's inquiry, each confirming, consistent with their prior statements made to the Office's mapping contractor regarding Broadband service availability, that 25/3 Broadband was offered or Facilitated in the Census Blocks identified in their Certifications as of July 31, 2020.

Where a Communication Service Provider's Certification provided under penalty of perjury that 25/3 Broadband or faster service was offered or Facilitated within a Census Block as of the As Of Date conflicts with a Citizen Appeal claiming the opposite, the Communication Service Provider's Certification will receive the greater probative weight. Because TSA designations do not turn on whether a Communication Service Provider offers or Facilitates service to *any specific* address within a Census Block as identified in a single Citizen Appeal, the Office cannot definitively assume that lack of service to any single address itself supports the designation of a Census Block as a Targeted Service Area.

Therefore, the Office has concluded that 25/3 Broadband service was offered or Facilitated in the Census Blocks comprising Decision Basis 3 Appeals as of July 31, 2020, and furthermore that these Census Blocks should maintain their current designation as non-TSAs. Accordingly, these Census Blocks are ineligible to receive State incentives under the programs administered by the Office.

D. DECISION BASIS 4

- 1. SUMMARY: APPEAL GRANTED.** The Office will maintain the Census Blocks comprising Decision Basis 4 Appeals as TSAs. These blocks were originally designated as TSAs in V3 of the Map.
- 2. DETAILED RESPONSE:** With respect to the Census Blocks comprising Decision Basis 4 Appeals, the Office agrees with Appellants that these Census Blocks should remain designated as TSAs, consistent with the Office's original determination. The Office possesses no evidence or information supporting a conclusion that any Provider offered or Facilitated 25/3 as of July 31, 2020. Thus, the Office concludes these Census Blocks should remain TSAs.

V. APPEALING FURTHER.

If you wish to appeal this Decision further, within thirty (30) days of the posting of this Decision at ocio.iowa.gov/broadband, you must notify us in writing by mailing a written request for a contested case proceeding to:

Office of the Chief Information Officer
c/o Matt Behrens
200 E. Grand Avenue
Des Moines, Iowa 50309

In so doing, you must state the reason(s) you are appealing this Decision, specifically identifying the particular aspects of the Decision with which you disagree and the reasons why, whether factual or legal in nature. The request for a contested case proceeding should state the name and address of the requester; identify the specific Office action which is disputed; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute. Iowa Admin. Code r. 129—6.4.

Upon receipt, your appeal will be forwarded to the Department of Inspections and Appeals where an Administrative Law Judge (“ALJ”) will perform an independent review. Iowa Admin. Code r. 129—20.6(1); Iowa Admin. Code r. 129—6.6. At that time, you will have an opportunity to make a presentation, in person or over the telephone, to an ALJ regarding the nature of your concerns. If you do not exercise your appeal right within thirty (30) days of the posting of this Decision at ocio.iowa.gov/broadband, this Decision shall become final and no longer subject to challenge. Iowa Admin. Code r. 129—20.5(5).

Sincerely,

Matt Behrens
Deputy Chief Information Officer
State of Iowa

Appendix A - Decision Matrix

Docket	Address	Census Block	Decision	Decision Basis
20OCIO002	130 Grandy Dr	191930033002007	Granted	1
20OCIO003	5108 Cotton Ct SW	191130030021013	Denied	3
20OCIO004	18606 93rd Ave	191810211002043	Granted	1
20OCIO005	3819 Deer Run Lane	191690001005014	Denied	3
20OCIO006	3751 Deer Run Ln	191690001005014	Denied	3
20OCIO007	316 Hickory Ln	191250301002142	Granted	4
20OCIO008	106 Sunset Dr	191250301002142	Granted	4
20OCIO009	197 Hickory Ln	191250301002039	Denied	3
20OCIO010	193 Hickory Ln	191250301002039	Denied	3
20OCIO011	188 Hickory Lane	191250301002039	Denied	3
20OCIO012	188 Hickory Lane	191250301002039	Denied	3
20OCIO013	314 Hickory Ln	191250301002141	Granted	1
20OCIO014	390 Hickory Ln	191250301002141	Granted	1
20OCIO015	188 Hickory Lane	191250301002039	Denied	3
20OCIO016	1725 S 14th St	191530102033047	Granted	1
20OCIO017	10445 NW 44th St	191530102033108	Denied	3
20OCIO018	7100 NE Berwick Dr	191530106001030	Denied	3
20OCIO019	2919 260th St	190799602003114	Granted	2
20OCIO020	317 Hickory Ln	191250301002142	Granted	4
20OCIO021	132 Hi View Dr	191250304021028	Denied	3
20OCIO022	10990 NW 115th Ave	191530115002111	Denied	3
20OCIO023	10497 NW 114th Ave.	191530115002107	Granted	1
20OCIO024	11536 NW 107th CT	191530115002111	Denied	3
20OCIO025	11635 NW Beaver Drive	191530115002111	Denied	3
20OCIO026	11591 NW 107thCt	191530115002111	Denied	3
20OCIO027	11565 NW 107th Ct	191530115002107	Granted	1
20OCIO028	11670 NW Beaver Dr	191530115002091	Granted	1
20OCIO029	11483 nw 107th Street	191530115002111	Denied	3

20OCIO030	11584 NW 107th Ct.	191530115002111	Denied	3
20OCIO031	11689 NW Beaver Dr.	191530115002111	Denied	3
20OCIO032	2912 135th St	191839601004006	Granted	4
20OCIO049	1269 61st St	190119602002028	Denied	3
20OCIO052	11518 NW Beaver Drive	191530115002076	Granted	1
20OCIO053	11228 NW 103rd Ct.	191530115002110	Granted	1
20OCIO054	larson 11595 nw beaver dr	191530115002111	Denied	3
20OCIO055	11541 NW 107TH CT	191530115002111	Denied	3
20OCIO065	2284 V Ave	191712901001106	Denied	3
20OCIO071	3175 CR-E36	191712901001138	Denied	3
20OCIO103	3343 255th St	191712901003001	Denied	3
20OCIO128	1429 61st St	190119602002030	Denied	3
20OCIO129	1241 63rd St	190119602002164	Denied	3
20OCIO130	24831 Calico Creek LN	190490507003040	Granted	1
20OCIO131	24998 River Ridge Rd	190490507003040	Granted	1
20OCIO132	24949 Calico Creek Ln	190490507003040	Granted	1
20OCIO133	24889 Calico Creek Ln	190490507003040	Granted	1
20OCIO134	24953 River Ridge Rd	190490507003040	Granted	1
20OCIO135	25103 Calico Creek Ln	190490507003040	Granted	1
20OCIO136	25057 River Ridge Road	190490507003040	Granted	1
20OCIO137	25047 Calico Creek Ln	190490507003040	Granted	1
20OCIO138	25065 River Ridge Rd	190490507003040	Granted	1
20OCIO139	30310 Old Portland Road	190490507003040	Granted	1
20OCIO140	30196 Old Portland Road	190490507003040	Granted	1
20OCIO141	25106 Calico Creek LN	190490507003040	Granted	1
20OCIO142	24750 River Bye Rd	190490507003040	Granted	1
20OCIO143	32260 Old Portland Road	190490507003040	Granted	1
20OCIO144	30435 Little Pine In	190490507003040	Granted	1
20OCIO145	25076 River Bye Rd.	190490507003040	Granted	1
20OCIO146	25227 River Bye Rd	190490507003040	Granted	1
20OCIO147	30352 kasten ridge lane	190490507003040	Granted	1

20OCIO148	25121 River Bye Road	190490507003040	Granted	1
20OCIO149	30500 Little Pine Ln	190490507003040	Granted	1
20OCIO150	30516 Little Pine Lane	190490507003040	Granted	1
20OCIO151	25035 River Ridge Rd	190490507003040	Granted	1
20OCIO152	25011 River ridge rd	190490507003040	Granted	1
20OCIO153	24720 River Ridge Rd	190490507003040	Granted	1
20OCIO154	24643 River Bye Rd	190490507003040	Granted	1
20OCIO155	2919 260th St	190799602003114	Granted	4
20OCIO156	115 Sunset Dr	191250301002146	Granted	4
20OCIO157	33033 W Loop Rd	191499706001129	Granted	1
20OCIO158	33033 w loop rd	191499706001129	Granted	1
20OCIO159	10602 NW 114th Ave	191530115002110	Granted	1
20OCIO160	11566 nw 107th ct	191530115002111	Denied	3