

## FINAL AGENCY DECISION

Docket No. SD20V3036<sup>1</sup>

February 3, 2021

In response to the Notice of Appeal (“**Appeal**”) filed by Vinton Municipal Communications Utility (“**Appellant**”) 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 this Appeal and otherwise available to the Office related to the United States Census Blocks (“**Census Blocks**”) forming the basis of this Appeal. *See* Iowa Admin. Code r. 129—20.5(4). Following its review of the entire record before it, the Office issues the following **FINAL AGENCY DECISION** (“**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 basis of this Appeal 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 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 megabits per second of download speed and three 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

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<sup>1</sup>Appellant filed an “Affirmation, Attestation, and Certification of Service or lack of Service in Census Block Broadband Grants Program Broadband Availability Map Challenge Process” (“**Certification**”) to initiate this Appeal. The Office considers this Certification to constitute a proper Notice of Appeal that comports with the form and content requirements of Iowa Administrative Code rule 129—20.5(1).

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](https://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.**

On November 13, 2020, within the initial twenty-day window, Appellant filed this Appeal (Docket 20OCIO036).<sup>2</sup> Therein, Appellant challenged the Office’s determination with respect to the following one (1) Census Block:

190119603005076

Supporting its Appeal, Appellant completed and submitted a Certification. Pursuant to this Certification, Appellant attested and certified under penalty of perjury that it offered or Facilitated 25/3

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<sup>2</sup> Appendix A - Vinton Municipal Communications Utility Map Appeal

Broadband service in this Census Block, to the exclusion of all others, forming the basis of its Appeal as of July 31, 2020. With respect to this Census Block, Appellant explained:

This census block contains land that is currently in the process of being developed for residential lots in multiple phases. VMCU has started offering broadband service to the 33 lots in Phase 1 during Q4 of 2020. The developer is planning for an additional 70 residential lots and 48 apartment units in Phase 2 during 2021. The census block covering Phase 1 and Phase 2 shows it receiving fixed wireless broadband service at a **maximum advertised speed** of 25/3 Mbps service from both LTD Broadband and SpeedConnect. Phase 1 of the development has 33 lots. As of 11/12/20, 20 of the lots have homes constructed and all those homeowners have signed up for FTTH service ranging from 100/100 Mbps to 1 Gig/1 Gig service from VMCU. No other current wireline broadband provider has extended facilities to provide service or materially facilitate service to Phase 1. The homeowners were very anxious to get service from VMCU because they were using mobile hotspots for internet service instead of fixed wireless service and were using up their data allowance quickly. They expressed frustration due to quickly using all their data allowance during the process of signing up for VMCU's service. None of the customers mentioned the availability of service from LTD Broadband or SpeedConnect. If these services were an option, it seems logical they would be highly motivated to sign up for fixed wireless service up to 25/3 service without data limits and avoid the frustration they are experiencing. Additionally, the Vinton City Administrator stated that no leases for the city water tower, light poles, buildings, or grain elevators exist today. Since the census block was unoccupied when the latest FCC Form 477 was filed, as shown at <http://iowa.maps.arcgis.com/apps/webappviewer/index.html?id=3030a9350c11405ca26e8184ffad4328>, neither fixed wireless provider would have had any customers in the census block. Therefore, their inclusion of this census block in the FCC Form 477 would have only been based on a theoretical propagation study that may have only clipped a small area of the census block and caused them to show coverage in the entire census block. The direct experience of actual customers in the census block supports the reclassification of this census block to the Target Service Area for this grant program.

Appellant requested that this Census Block be designated as a TSA.

As required by Iowa Administrative Code rule 129—20.5(3), the Office posted this Appeal online on November 16, 2020. *See Broadband Availability Map - Version 3 Challenge Process*, at OCIO.IOWA.GOV (<https://ocio.iowa.gov/broadband-availability-map-version-3-challenge-process>). Over the course of the next twenty days, “[no other] affected persons or parties . . . submit[ted] evidence and information in support of, or in opposition to, such appeal.” Iowa Admin. Code r. 129—20.5(3). The Office subsequently conducted an internal review of all relevant evidence and information submitted by Appellant and otherwise available to the Office in connection with the Census Blocks forming the basis of

this Appeal. *Id.* r. 20.5(4). Based on that review, the Office now issues the following Decision. *Id.* r. 20.5(5).

#### IV. DECISION(S) AND REASONING.

##### A. DECISION REGARDING BLOCK ID: 190119603005076. (the “IV.A Block”)

1. **SUMMARY: APPEAL DENIED.** The Office will maintain the designation for the Census Block identified in IV.A above as a non-TSA.
2. **DETAILED RESPONSE:** With respect to the Census Block identified as the IV.A Block, above, 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 this Census Block is or is not a non-TSA. 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 IV.A Block as of July 31, 2020, based on the additional evidence and information now available to it, or whether its original determination based on the “fixed broadband availability maps and corresponding data sources made available by the Federal Communications Commission (FCC)” should stand. Iowa Code §§ 8B.1(12), 8B.10(1)-(2); Iowa Admin. Code r. 129—20.1, 20.3, 20.4, 20.5.

Here, 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 the IV.A Block as of July 31, 2020. Appellant appealed the designation of the IV.A Block, asserting that no Communication Service Providers Facilitated 25/3 Broadband as of July 31, 2020, thereby further asserting that this Census Block was incorrectly labeled as non-TSAs, and that its designation should be changed to TSA.

In considering the evidence and information provided by Appellant in support of its Appeal, 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.

Appellant completed and submitted a Certification on forms provided by the Office certifying under penalty of perjury that 25/3 broadband was not available in the Census Block identified by Appellant 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 the Census Block 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 basis of this Appeal. In this case, two (2) Communications Service Providers are shown to be present within the Block, one of which responded to the Office's inquiry,<sup>3</sup> confirming, and 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 Block identified in their Certifications as of July 31, 2020.

Where the Office must determine the relative weight of equal but opposing Certifications provided under the penalty of perjury, the greater weight shall be afforded to the Certification affirming Broadband was Facilitated in the Census block(s) in question as of the As of Date. Accordingly, the Office has concluded that 25/3 Broadband service was offered or Facilitated in the IV.A Block as of July 31, 2020, and furthermore that this Census Block should maintain its current designation as a non-TSA. Accordingly, the IV.A Block is ineligible to receive State incentives under the programs administered by the Office.

**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](https://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

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<sup>3</sup> Appendix B - LTD Broadband LLC Certification dated 12/30/2020

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](https://ocio.iowa.gov/broadband), this Decision shall become final and no longer subject to challenge. Iowa Admin. Code r. 129—20.5(5).

Sincerely,

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Matt Behrens  
Deputy Chief Information Officer  
State of Iowa



## Appendix A



KIM REYNOLDS, GOVERNOR  
ADAM GREGG, LT. GOVERNOR

STATE OF IOWA

ANNETTE DUNN  
CHIEF INFORMATION OFFICER

### Affirmation, Attestation, and Certification of Service or Lack of Service in Census Blocks Broadband Grants Program Broadband Availability Map Challenge Process

<b>A. COMPANY INFORMATION (if submitted on behalf of an entity)</b>			
<b>Company Name:</b>	Vinton Municipal Communications Utility		
<b>Address:</b>	214 E 2 <sup>nd</sup> Street		
<b>City:</b>	Vinton	<b>State:</b>	IA <b>Zip:</b> 52349

  

<b>B. DESIGNATED CONTACT INFORMATION</b>			
<b>Contact Name</b>	Tom Richtsmeier	<b>Phone #</b>	(319) - 472 - 4813
		<b>Email:</b>	<a href="mailto:generalmanager@vm.eu.org">generalmanager@vm.eu.org</a>

  

<b>C. CERTIFICATION/ATTESTATION/AFFIRMATION</b>			
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In signing and submitting this form, the above-identified company, and its duly authorized representative signing on behalf thereof, hereby affirms, attests, and certifies under penalty of perjury that, as represented in its submission:

1. Company, consistent with the representations made in this form, and regardless of whether your company's prior reporting to the FCC and/or Connected Nation was correct or in error, either:
  - a. Offered or Facilitated material 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 Broadband**") in the identified census blocks as of July 31, 2020; or
  - b. Did **NOT** offer or Facilitate 25/3 Broadband in the identified census blocks as of July 31, 2020;

**OR**

2. Another unaffiliated company, consistent with the representations made in this form, either:
  - a. Offered or Facilitated material 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 Broadband**") in the identified census blocks as of July 31, 2020; or
  - b. Did **NOT** offer or Facilitate 25/3 Broadband in the identified census blocks as of July 31, 2020;

<b>Choose One</b>
<input type="checkbox"/> Response Concerns Your Company or An Affiliated Company (#1 above)
<b>OR</b>
<input checked="" type="checkbox"/> Response Concerns An Unaffiliated Company (#2 above)

CENSUS BLOCK ID IN WHICH 25/3 BROADBAND OFFERED OR FACILITATED (OR NOT) (please attach excel spreadsheet listing additional census blocks and making corresponding representations in columns to the right if necessary)	PRIOR REPORTING to FCC or Connected Nation  <u>In Error</u> means data was reported incorrectly to FCC or Connected Nation <u>Correct</u> means data was reported correctly to FCC or Connected Nation <u>No Response</u> means data was not reported to FCC or Connected Nation <u>Unknown</u> means data is incorrect for unknown reasons				25/3 Broadband materially FACILITATED AS OF July 31, 2020  <u>Yes</u> means 25/3 broadband was available as of July 31, 2020 <u>No</u> means 25/3 broadband was not available as of July 31, 2020
190119603005076	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input checked="" type="checkbox"/> Unknown	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Unknown	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Unknown	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Unknown	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Unknown	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Unknown	<input type="checkbox"/> Yes <input type="checkbox"/> No

**D. ADDITIONAL EXPLANATION** (To the extent you believe additional explanation is required to ensure that you are communicating full and accurate information, please use the below space to further explain, qualify, or substantiate your above certification/attestation/affirmation. To the extent necessary, please feel free to upload additional explanations/supporting documentation. If you are a Communications Service Provider and indicated "In Error" or "No Response" in the "Prior Reporting to FCC" column for any census blocks above, please elaborate.)

This census block contains land that is currently in the process of being developed for residential lots in multiple phases. VMCU has started offering broadband service to the 33 lots in Phase 1 during Q4 of 2020. The developer is planning for an additional 70 residential lots and 48 apartment units in Phase 2 during 2021. The census block covering Phase 1 and Phase 2 shows it receiving fixed wireless broadband service at a **maximum advertised speed** of 25 / 3 Mbps service from both LTD Broadband and SpeedConnect. Phase 1 of the development has 33 lots. As of 11/12/20, 20 of the lots have homes constructed and all those homeowners have signed up for FTTH service ranging from 100/100 Mbps to 1 Gig/1 Gig service from VMCU. No other current wireline broadband provider has extended facilities to provide service or materially facilitate service to Phase 1. The homeowners were very anxious to get service from VMCU because they were using mobile hotspots for internet service instead of fixed wireless service and were using up their data allowance quickly. They expressed frustration due to quickly using all their data allowance during the process of signing up for VMCU's service. None of the customers mentioned the availability of service from LTD Broadband or SpeedConnect. If these services were an option, it seems logical they would be highly motivated to sign up for fixed wireless service up to 25/3 service without data limits and avoid the frustration they are experiencing. Additionally, the Vinton City Administrator stated that no leases for the city water tower, light poles, buildings, or grain elevators exist today. Since the census block was unoccupied when the latest FCC Form 477 was filed, as shown at <https://iowa.maps.arcgis.com/apps/webappviewer/index.html?id=3030a9350c11405ca26e8184ffad4328>, neither fixed wireless provider would have had any customers in the census block. Therefore, their inclusion of this census block in the FCC Form 477 would have only been based on a theoretical propagation study that may have only clipped a small area of the census block and caused them to show coverage in the entire census block. The direct experience of actual customers in the census block supports the reclassification of this census block to the Target Service Area for this grant program.



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<b>E. SIGNATURE*</b>	
Authorized Signature: <u>Tom Richtsmeier</u>	Date: November 13, 2020
Printed Name: Tom Richtsmeier, P.E.	
Title: General Manager	

**\*PLEASE READ BEFORE SIGNING:** By signing and submitting this form, I, on my own behalf or as a representative of the company identified above, as applicable, expressly represent that I am authorized to make the above factual representation on behalf of said company and/or myself, as applicable, and under penalty of perjury as authorized by Iowa Code section 622.1 and pursuant to the laws of the state of Iowa, certify the following with respect to this form submitted on behalf of said company and/or myself: any statements, representations, warranties, certifications, or attestations made in this form, including any attachments or enclosures associated therewith, are true and accurate; I, on behalf of said company and/or myself, have not knowingly made any false statements or representations in this form. In addition to any criminal penalties authorized by Iowa Code section 720.2 that may result from any false statements of material fact made herein or any other remedies available at law, equity, or otherwise, if it is subsequently determined that I have made a statement, representation, warranty, certification, or attestation in this form, or any attachments or enclosures associated herewith, that is later proven untrue in any material respect, the company on which I submitted this form on behalf of may be disqualified from current incentive programs administered by the Office or may be ordered to repay the Office the entire amount of any funds previously distributed by the Office to said company in connection with any current incentive programs administered by the Office. OCIO makes no guarantees as to whether the information supplied by you will result in any change to the Broadband Availability Map V3 or the way any incentive decisions are reviewed, scored, or decided. This form, as completed, any attachments hereto, and any other information or materials submitted to the Office in connection with this form or related inquiry, shall be considered public records and shall be made available for public examination and/or disseminated upon request by third parties as required by Iowa Code chapter 22. The Office reserves the right to reject this form and relatedly consider any information communicated through this form as neither credible nor probative if this form is not fully and properly filled out.

## Appendix B

## EXHIBIT B

### Affirmation, Attestation, and Certification of Service or lack of Service in Census Blocks Broadband Grants Program Broadband Availability Map Challenge Process

A. COMPANY INFORMATION (if submitted on behalf of an entity)				
Company Name:		LTD Broadband		
Address:		P O Box 3064		
City:	Blooming Prairie	State:	MN	Zip: 55917

B. DESIGNATED CONTACT INFORMATION			
<b>Contact Name</b>	Rebecca Shields	<b>Phone #</b>	(507)410 -0446
		<b>Email:</b>	rebeccashields@ltdbr oadband.com

### C. CERTIFICATION/ATTESTATION/AFFIRMATION

In signing and submitting this form, the above-identified company, and its duly authorized representative signing on behalf thereof, hereby affirms, attests, and certifies under penalty of perjury that, as represented in its submission:

1. Company, consistent with the representations made in this form, and regardless of whether your company's prior reporting to the FCC or State of Iowa was correct or in error, either:
  - a. Facilitated material 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 Broadband**") in the identified census blocks as of July 31, 2020; or
  - b. Did **NOT** offer or Facilitate 25/3 Broadband in the identified census blocks as of July 31, 2020;

CENSUS BLOCK ID IN WHICH 25/3 BROADBAND OFFERED OR FACILITATED	25/3 Broadband materially FACILITATED AS OF July 31, 2020  <u>Yes</u> means 25/3 broadband was offered or facilitated as of July 31, 2020 <u>No</u> means 25/3 broadband was not offered or facilitated as of July 31, 2020
190119603005076	<input type="checkbox"/> Yes <input type="checkbox"/> No

**D. ADDITIONAL EXPLANATION** (To the extent you believe additional explanation is required to ensure that you are communicating full and accurate information, please use the below space to further explain, qualify, or substantiate your above certification/attestation/affirmation. To the extent necessary, please feel free to upload additional explanations/supporting documentation.)

