

FINAL AGENCY DECISION

Docket No. 19OCIO002¹

November 25, 2019

Heartland Telecommunications Company of Iowa, d/b/a Premier Communications
c/o Ryan Boone
339 1st Ave. NE
Sioux Center, IA 51250

Dear Mr. Boone:

In response to the Notice of Appeal (“**Appeal**”) filed by Heartland Telecommunications Company of Iowa d/b/a Premier Communications (“**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 the 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 the Census Blocks forming the basis of this Appeal constitute “Targeted Service Areas” (“**TSAs**”)² as defined by Iowa Code section 8B.1(12).³

II. BACKGROUND FACTS, LAW, AND PROCEEDINGS.

In 2015 House File 655 (“**H.F. 655**”) was signed into law. 2015 Iowa Acts, H.F. 655, ch. 120. H.F.

¹Appellant 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).

²As used in this Decision, the term “non-TSA” shall refer to a Census Block that does not constitute a “Targeted Service Area” as defined by Iowa Code section 8B.1(12).

³Any references to Iowa Code chapter 8B (2019) (or any sections or subsections therein) throughout this Decision shall be understood to reference Iowa Code chapter 8B as amended by 2019 Iowa Acts, House File 772, chapter 159, Division II. In addition, capitalized terms used in this Decision but not otherwise specifically defined herein shall have the same meaning given them by Iowa Code chapter 8B.

655 created several programs the Office was responsible for or involved in administering, including a Broadband Grants Program and a Property Tax Exemption Program. *Id.*, Div. III and IV (codified, in relevant part, at Iowa Code chapter 8B and Iowa Code section 427.1(40)). At a high level, these programs were designed to reduce or eliminate areas in the State that did not have access to Broadband service at minimally acceptable speed thresholds. *Id.* In order to identify these unserved areas and best direct the incentives available through these programs, HF 655 required the Office to make determinations of whether any Communications Service Providers already offered or facilitated 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 1, 2015, on an individual Census Block basis by reference to Broadband availability maps or data sources that are widely accepted for accuracy and available for public review and comment. *Id.* §§ 26, 31, 32, 41. These “Targeted Service Areas” were generally considered eligible to receive State incentives. *Id.* In 2016, the Office documented and communicated its Targeted Service Area determinations by publishing Version 1 (“**V1**”) of the Statewide Broadband Availability Map (“**Map**”). Iowa Admin. Code r. 129—20.3, .4 (October 26, 2016).

As required by H.F. 655, following the official publication of V1 of the Map, the Office opened and administered a process by which interested parties could “challenge[] . . . the office’s finding on whether an area meets the definition of a targeted service area” as represented on V1 of the Map. *Id.* § 31; Iowa Admin. Code r. 129—20.4, .5. As part of this process, the Office received seven (7) notices of appeal challenging the Office’s determination with respect to approximately 698 Census Blocks. *See Broadband Map Version 1 Appeals*, OCIO.IOWA.GOV (last visited Nov. 1, 2019), <https://ocio.iowa.gov/broadband-map-version-1-appeals>. In accordance with Iowa Administrative Code rule 129—20.5(5), after considering the evidence and information submitted to or otherwise available to the Office, the Office issued final decisions concerning all of the Census Blocks forming the basis of appeals received by the Office. *Broadband Map Version 1 Appeals*, *supra*. No further appeals were taken from the Office’s final decisions, rendering the V1 of the Map, in its entirety, final and no longer subject to challenge. Iowa Administrative Code rule 129—20.4, .5(5). The Office administered the Broadband Grants Program and a Property Tax Exemption Program by reference to V1 of the Map until 2019.

In 2019, House File 772 (“**H.F. 772**”), the Empower Rural Iowa Act, was signed into law. 2019 Iowa Acts, H.F. 772, ch. 159. Division II of H.F. 772 continued the Broadband Grants Program and Property Tax Exemption Programs for Broadband infrastructure installed through 2025. *Id.*, Div. II. Under H.F. 772, the core pillars of these programs remained unaltered, including, subject to several modifications described in more detail below, as it relates to the Targeted Service Area determination process and related mapping processes. *Id.* Specifically, H.F. 772 retained the “Targeted Service Area” concept and continued to require that the Office make determinations of whether any Communications Service Provider already offered or Facilitated Broadband service at or above a certain speed threshold by reference to Broadband availability maps or data sources that are widely accepted for accuracy and available for public review and comment. *Id.* §§ 3, 5, 6, 13. And the Office would continue to document and communicate these Targeted Service Area determinations by publishing a Statewide Broadband Availability Map. Iowa Admin. Code r. 129—20.3, .4 (Aug. 14, 2019). However, H.F. 772 made the following key modifications to the Census Block eligibility process—whether a census block constitutes a Targeted Service Area and is thereby eligible for State incentives:

- First, H.F. 772 defined the previously undefined concept of “Facilitate” to mean “a communication service provider’s ability to provide broadband service at or above the download and upload speeds specified in the definition of targeted service area in this section to a home, farm, school, or business within a commercially reasonable time and at a commercially reasonable price upon request by a consumer.” 2019 Iowa Acts, H.F. 772, ch. 159 § 2. This had the effect of establishing a standard Communications Service Providers must satisfy before reporting or claiming that they are able to Facilitate Broadband service at or above 25/3 in a Census Block, thereby rendering a Census Block a non-TSA and ineligible to receive State incentives.
- Second, H.F. 772 tied the speed benchmark for purposes of determining whether a Census Block constitutes a Targeted Service Area—previously fixed by statute at 25/3—to “the download and upload speeds identified by the federal communications commission pursuant to section 706 of the federal Telecommunications Act of 1996, as amended.” *Id.* § 3. In practice, this did not immediately impact any programs administered by the Office, as “the FCC[s] . . . existing speed benchmark [for fixed services is] 25 Mbps download/3 Mbps upload”—the same download and upload speed previously established by state law. *2018 Broadband Deployment Report*, FCC.GOV (Feb. 2, 2018), <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2018-broadband-deployment-report>.
- Third, H.F. 772 eliminated an “as of date” that was set at a fixed point in time. Under H.F. 655, the relevant point in time for Targeted Service Area determinations was fixed at July 1, 2015. 2015 Iowa Acts, H.F. 655, ch. 120, § 26 (defining “Targeted service area” to be tied to service delivery as of the effective date of the Act—July 1, 2015). This resulted in the creation of a static Map. In contrast, H.F. 772 was silent on the issue, affording the Office greater flexibility. 2019 Iowa Acts, H.F. 772, ch. 159, § 3 (eliminating statutory “as of date” concept). In turn, the Office established an “as of date” that is tied to the “as of date of the broadband availability maps and corresponding data sources utilized by the office in determining whether a communications service provider offers or facilitates broadband service in a particular census block at or above the download and upload speeds specified in the definition of targeted service area and underlying the statewide map published and then in effect.” Iowa Admin. Code r. 129—20.1; *see also id.* r. 129—20.3, .4(1). Relatedly, H.F. 772 affirmatively required the Office to “periodically make renewed determinations of whether a communications service provider offers or facilitates broadband service at or above the download and upload speeds specified in the definition of targeted service area in section 8B.1, which shall, to the extent updated maps and data sources are available at the time, include making such determinations prior to each round of grant applications solicited by the office pursuant to section 8B.11.” 2019 Iowa Acts, H.F. 772, ch. 159, § 5. Collectively, these changes permit and require the Office to refresh the Map on a recurring basis.

Prior to the official publication of Version 2 (“V2”) of the Map, on July 29, 2019, the Office published a preliminary draft of V2 of the Map. *See About Broadband Availability Map V2*, OCIO.IOWA.GOV (last visited Nov. 1, 2019), https://ocio.iowa.gov/sites/default/files/about_section_-_broadband_availability_map_-_final_publication.pdf. The Office considered this preliminary draft to be a

“Pre-publication Draft,” and use this Pre-publication Draft to elicit informal feedback and comments, some of which were incorporated into the final, official publication of V2 of the Map. *Id.* The Pre-publication Draft of V2 of the Map was based on an “as of date” of December 31, 2017, meaning it identified the status of fixed Broadband service in Iowa as of December 31, 2017. *Id.* This Pre-publication Draft of V2 of the Map did not identify any Communications Services Providers as offering or Facilitating Broadband service at or above 25/3 in the 190 Census Blocks forming the basis of this Appeal, which Census Blocks are listed in **Exhibit A**.

As is of particular relevance here, during the period for informal feedback and comments on V2 of the Map, NET Broadband, Inc. (“NET”), a subsidiary of Evertek Enterprises, submitted an “Affirmation, Attestation, and Certification of Service in Claimed Targeted Service Areas Broadband Grants Program Public Comment Validation Process” (“**Certification**”) certifying and attesting under penalty of perjury that it offered or Facilitated 25/3 Broadband as of December 31, 2017, in over 6,000 Census Blocks that it erroneously failed to report to the FCC in prior Form 477 submissions. Exhibit D, pp. 1–4. Net explained:

The census blocks on the attached and referenced in section C are shown on the OCIO map as not being served with 25/3 Mbps service as of December 31, 2017. This was an error in reporting on the FCC’s Form 477 Deployment File. A portion of the census blocks, listed on the attached, had 25/3 Mbps service available as of December 31, 2017. The FCC’s Form 477 Deployment File has been corrected for the December 31, 2018 and 2019 reporting period. In 2019, at the time of this filing, the census blocks covered by NET Wireless are all at the 25/3 Mbps service. Please acknowledge this update to the attached blocks.

Exhibit D, p. 2. These roughly 6,000 Census Blocks that Net Certified it was able to provide 25/3 service as of December 31, 2017, encompassed all of the 190 Census Blocks forming the basis of this Appeal.

On September 20, 2019, the Office documented and communicated its final, renewed Targeted Service Area determinations by publishing the final, official publication of V2 of the Map. *See Broadband Map - Version 2*, OCIO.IOWA.GOV (last visited Nov. 1, 2019), <https://ocio.iowa.gov/broadband-availability-map-version-2>. As is relevant here, between the publication of the Pre-publication Draft and publication of the final, official publication of V2 of the Map, the FCC released updated data with an “as of date” of June 30, 2018. *See About Broadband Availability Map V2, supra*. “Because the accuracy of the Iowa Map is of critical importance to the OCIO, OCIO . . . determined that it [was] appropriate to rely on this more recent Form 477 data in finalizing Iowa’s Map. Accordingly, the as of date for this final publication of V2 of the Iowa Map is June 30, 2018.” *Id.* However, notwithstanding the fact that V2 of the Map is based primarily on FCC Broadband Deployment data representing the status of fixed Broadband in Iowa as of June 30, 2018, the Office still took into account and incorporated feedback and comments it received during the informal feedback and comment period described above where it made sense to do so. For example, in the case of the feedback received from NET, this included incorporating NET’s representation that, despite its prior reporting to the FCC, NET offered or Facilitated 25/3 Broadband as of June 30, 2018, in the Census Blocks identified in its Certification.⁴

⁴Although NET’s Certification represented that it offered or Facilitated 25/3 Broadband in these Census Blocks as of December 31, 2017, in incorporating feedback and comments received during the informal feedback and comment process, the Office generally assumed that Communications Service Providers that Certified to the Office during that process that they

In publishing V2 of the Map, the Office triggered a statutorily-required challenge period whereby “[w]ithin 20 days after [September 20], 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).

On October 10, 2019, within the initial twenty-day window, Appellant filed this Appeal. Therein, Appellant challenged the Office’s determination with respect to 190 Census Blocks listed in **Exhibit A**. Exhibit D, pp. 5–11. With respect to three (3) of the 190 Census Blocks forming the basis of Appellants challenge—specifically, Census Block ID Nos. 191670704001143, 191670704001144, and 191670704001146—NET and one other provider, Alliance Communications (“**Alliance**”), are identified on the Map as being capable of providing 25/3 Broadband as of June 30, 2018. *See Iowa Targeted Service Areas*, OCIO.IOWA.GOV (last visited Nov. 1, 2019), <https://iowa.maps.arcgis.com/apps/webappviewer/index.html?id=6a88a5f1522b450682e6e6e6692469dd>. With respect to the other 187 of the 190 Census Blocks forming the basis of this Appeal, NET is the only Communications Services Provider identified on the Map as being capable of providing 25/3 Broadband as of June 30, 2018. *Id.*

Appellant explained its position as follows:

Heartland Telecommunications Company of Iowa d/b/a Premier Communications is challenging the census blocks attached to this document and has indicated “No Response” in the column Prior Reporting to FCC because the entity(ies) who indicated they can serve the census blocks in question has not previously filed a 477 form according to the FCC’s publicly available 477 data as of 6/30/18.

In an effort to substantiate that 25/3 broadband service is not available throughout the entirety of the challenged census blocks, we engaged an engineering firm, Vantage Point Solutions (Mitchell, SD), to perform a wireless RF analysis by a certified professional engineer. This study utilized publicly known tower locations, spectrum used, and equipment used. Attached is the result of this analysis which substantiates

offered or Facilitated 25/3 Broadband at the earlier date of December 31, 2017, also offered or Facilitated such service roughly six (6) months later. In NET’s particular case, NET indicated in its Certification that it did not correct the error in its Form 477 filings until 2019. Exhibit D, p. 2.

Premier’s claim that broadband service is not available throughout a significant portion of the challenged census blocks or that there are locations within the census block that are unlikely to consistently have broadband coverage.

Heartland has also obtained a letter from the general manager of Alliance Communications, Ross Petrick, to confirm that the census blocks listed in his letter were filed on the 477 by their company in error and should be eligible census blocks for the Iowa Broadband Grant program.

Exhibit D, p. 6.

As indicated in Appellant’s explanation, in support of its Appeal Appellant obtained and provided a letter from Alliance indicating that Alliance was not able to offer or Facilitate 25/3 Broadband in the three (3) Census Blocks in which both NET and Alliance are identified on the Map as being capable of providing 25/3 Broadband as of June 30, 2018, notwithstanding the information displayed on the Map to the contrary. Exhibit D, p. 12. In addition, Appellant obtained and provided the following propagation Map developed by Vantage Point Solutions, a certified professional engineer, to document NET’s actual wireless coverage and service capabilities in the Census Blocks forming the basis of Appellant’s Appeal:

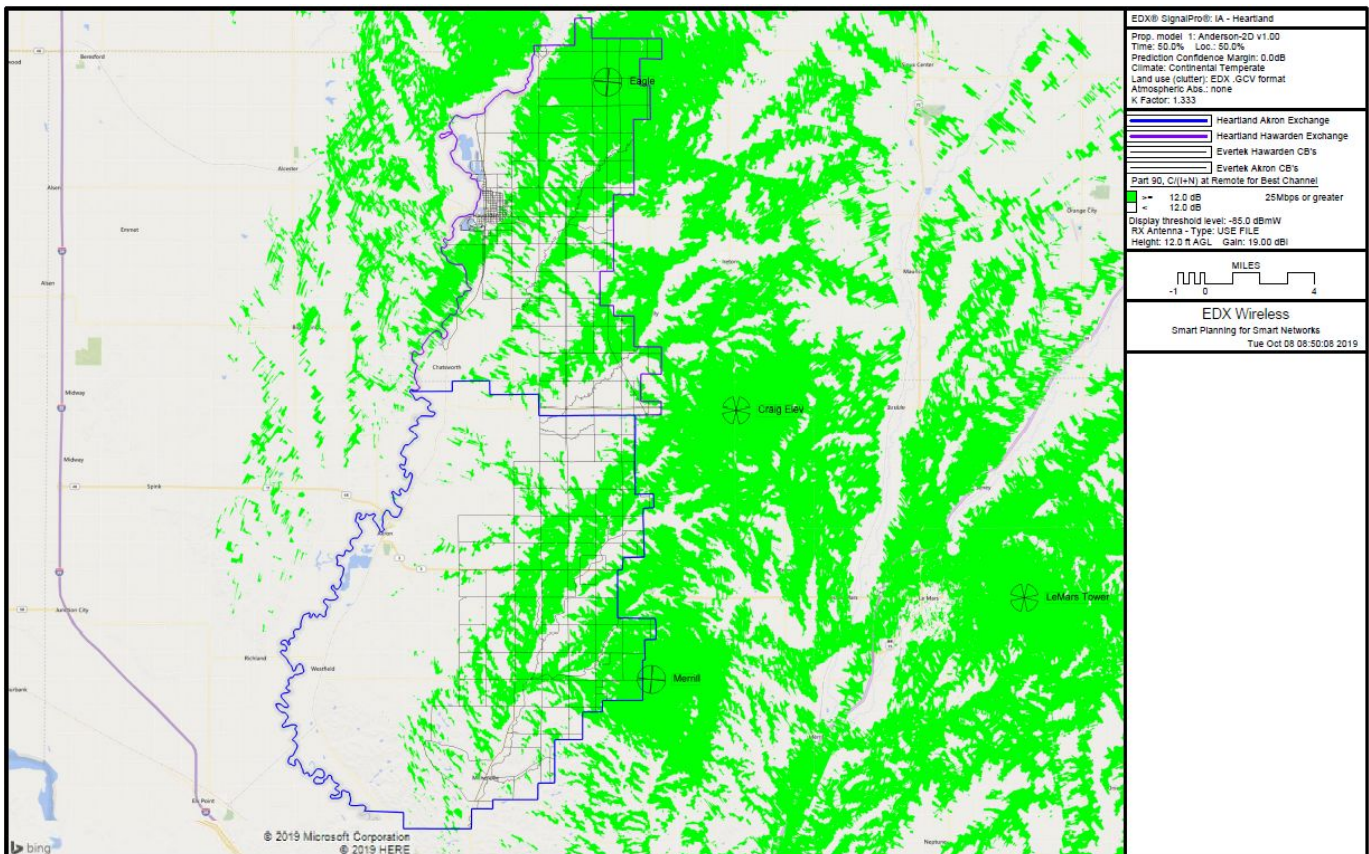


Exhibit D, p. 13.

As required by Iowa Administrative Code rule 129—20.5(3), the Office posted this Appeal online on October 11, 2019. See *Broadband Availability Map - Version 2 Challenge Process*, OCIO.IOWA.GOV

(last visited Nov. 1, 2019), <https://ocio.iowa.gov/broadband-availability-map-version-2-Challenge-process>. In addition, because this Appeal took a position that was adverse to NET’s prior Certification to the Office, on October 15 the Office sent NET a letter of inquiry. Exhibit D, pp. 15–17. Specifically, the Office requested the following:

- 1) Complete and return the Affirmation, Attestation, and Certification of Service or lack of Service in Census Blocks Broadband Grants Program Broadband Availability Map Challenge Process Form, a copy of which is also attached to this message, **by no later than October 31, 2019**. Pursuant to this form, OCIO requests that a representative with legal authority to bind your company:
 - a) Confirm whether your company offered or Facilitated Broadband service at or above 25/3 in the Census Blocks identified in **Exhibit A** as of June 30, 2018; or, alternatively confirm whether you company did **NOT** offer or Facilitate 25/3 Broadband service in the Census Blocks identified in **Exhibit A** as of June 30, 2018.
 - i) For purposes of this representation, “ ‘Facilitate’ means a communication service provider’s ability to provide broadband service at or above the download and upload speeds specified in the definition of targeted service area in this section to a home, farm, school, or business **within a commercially reasonable time and at a commercially reasonable price upon request by a consumer.**” 2019 Iowa Acts, ch. 159, § 2 (emphasis added).
 - b) Fully complete all other aspects of the Form.

We recognize that your firm completed and submitted a similar form as part of the informal feedback/comments process on the Pre-publication Draft V2 of the Map. However, . . . although we assumed your prior attestation indicating you were able to provide service as of December 31, 2017—an earlier date than the “as of date” underlying V2 of the final, officially published Map—meant you were capable of providing service roughly six (6) months later, because the “as of date” changed from December 31, 2018, to June 30, 2018, and because this area is now being contested, the Office deems it prudent to request further confirmation concerning your firm’s service capabilities as of the final as of date—June 30, 2018—underlying the final, official publication of V2 of the Map.

- 2) In addition to the form, please also submit any other evidence or information in your possession to the Office that supports your prior representations to the Office regarding the Census Blocks identified in **Exhibit A**. Examples of evidence and information the Office would consider particularly probative of Broadband service at or above 25/3 as of June 30, 2018, include “Bills or invoices provided to or received by customers in the applicable census block(s) which identify the specific download and upload speeds provided or received as of [June 30, 2018].” Iowa Admin. Code r. 129—20.5(8).

- 3) Proof of advertising or other affirmative solicitations of customers in the Census Blocks set forth in **Exhibit A**.
- 4) Further, in your particular case we would draw your attention to page 9 of the Heartland Attestation, which contains a propagation map obtained by Heartland from an engineering firm that performed a wireless RF analysis of the disputed area. Heartland claims this propagation map demonstrates that “broadband service is not available throughout a significant portion of the challenged census blocks or that there are locations within the census block that are unlikely to consistently have broadband coverage.” Heartland Attestation, p. 2. In light of this analysis, we would request a response to this propagation map or other similar evidence or information demonstrating your coverage capabilities from your perspective, such as an alternative propagation map demonstrating the actual coverage areas of your wireless service concerning your actual offering of or ability to Facilitate 25/3 Broadband service as of June 30, 2018 overlaid on top of the United States Census Blocks attached as Exhibit A as a base layer.

Exhibit D, pp. 16–17. If the Office did not not receive any additional input from NET within the period for input from affected persons or parties, in accordance with Iowa Administrative Code rule 129—20.5(4) and (5), the Office informed NET that it would make “a final decision based on the evidence and information currently available to it.” Exhibit D, p. 17.

On October 29, within the twenty (20) day period for input from affected parties, NET responded to the Office’s inquiry, confirming that consistent with its prior Certification to the Office during the informal feedback and comment process in connection with the Pre-publication Draft of V2 of the Map by which NET Certified it offered or Facilitated 25/3 Broadband as of December 31, 2017, in the Census Blocks forming the basis of this Appeal, “NET remained capable of providing comparable service roughly six (6) months later.” Exhibit D, p. 25. NET also submitted an updated Certification attesting under penalty of perjury that it offered or Facilitated 25/3 Broadband as of June 30, 2018, in the Census Blocks forming the basis of this Appeal. Exhibit D, p. 26. NET submitted no additional evidence or information to the Office, and no other “affected persons or parties . . . submit[ted] evidence and information in support of, or in opposition to, [Appellant’s] appeal” during the twenty (20) day period for input from affected parties. 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 NET and otherwise available to the Office in connection with the Census Blocks forming the basis of this Appeal, including all of the evidence and information outlined above. *Id.* r. 20.5(4).

III. DECISION(S) AND REASONING.

- **BLOCK IDs: Census Block IDs listed in Exhibit A.**
 - **SUMMARY: APPEAL DENIED.** These Census Blocks will remain non-TSAs based on NET’s Certification that it offered or Facilitated 25/3 Broadband in these Census Blocks as of June 30, 2018, and Appellant’s propagation map which supports the conclusion that

NET's wireless coverage is available throughout significant portions of these Census Blocks.

- **DETAILED RESPONSE:** With respect to these Census Blocks, 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, the Certification provided by NET, and the evidence and information otherwise available to the Office in connection with the Census Blocks forming the basis of this Appeal. 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 June 30, 2018, 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), .10(1)—(2); Iowa Admin. Code r. 129—20.1, .3, .4, .5.

Here, the FCC Broadband Deployment data representing the status of fixed Broadband in Iowa, and originally relied on by the Office in generating V2 of the Map, indicates that NET did not previously report to the FCC that it is capable of providing 25/3 Broadband as of June 30, 2018, in each of these Census Blocks. However, NET has now certified and attested under penalty of perjury that it offered or Facilitated 25/3 Broadband service in these Census Blocks as of June 30, 2018. In considering NET's Certification, 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.

Thus, in accordance with Iowa Administrative Code rule 129—20.5(8), NET's Certification that it offered or Facilitated 25/3 Broadband service in these Census Blocks as of June 30, 2018, is particularly probative. In addition, consistent with past decisions of the Office, "[t]he Office considers [a Communications Service Provider]'s intimate knowledge of its own networks and service capabilities to be strong evidence." See *Hospers Tel. Exch., Inc.*, Docket No. 17OCIO004, p. 8 (May 11, 2017), https://ocio.iowa.gov/sites/default/files/documents/2017/05/case_no_17ocio004_-_htc_communications_final_agency_decision.pdf.

While Appellant has supplied the Office with a propagation map demonstrating that NET's wireless coverage may not be "available throughout the entirety of the challenged census blocks," that is not what is required under applicable law. The Office previously addressed the "split census block" issue in *Hospers Telephone Exchange, Inc.*, Docket No. 17OCIO004 (May 11, 2017). There the Office reasoned:

It is important to take a moment to note that Intervenor's Appeal raises a primarily legal issue concerning so-called "split census blocks": whether a census block is a non-TSA when a Provider offered or facilitated 25/3 as of July 1, 2015, to only a portion of the census block, as opposed to the entire census block. As a matter of law, Intervenor's argument is without merit. Iowa Code section 8B.1(12) defines a TSA as: "[A] United States census bureau *census block* located in this state . . . *within which* no communications service provider offers or facilitates broadband service at or above [25/3] as of July 1, 2015." (Emphasis added.). The plain language of this section clearly establishes the relevant unit of measure for purposes of designating underserved areas within the State: Census Blocks. *Id.* This language does not permit the Office to further divide or "split" census blocks into smaller increments. This unit was clearly chosen by the Iowa General Assembly to align the State with currently accepted data collection and reporting practices, thereby allowing it to identify underserved areas both with a reasonable degree of accuracy and in a cost-effective manner by taking advantage of data previously collected and analyzed. *See* Iowa Code § 8B.10(1) ("The determination of whether a [Provider] offers or facilitates broadband service meeting the download or upload speeds specified in the definition of [TSA] in section 8B.1 shall be determined or ascertained by reference to *broadband availability maps or data sources that are widely accepted for accuracy and available for public review and comment* and that are identified by the office by rule." (Emphasis added.)); *see also* Modernizing the FCC Form 477 Data Program, WC Docket No. 11-10, p. 18 (Fed. Commc'n Comm'n June 27, 2013), https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-87A1.pdf ("At this time, we decline to gather fixed broadband deployment data at a level more granular than the census block because the added complexity and burden are unlikely . . . to provide a significant insight into how many residences and businesses lack access to service. Although some commenters advocate for address-level reporting, many providers do not maintain broadband network deployment data on an address-by-address basis. Also, rural areas where networks are deployed may not have 'street' addresses assigned. We are not persuaded that the benefits of requiring address-level data would outweigh the overall increase in the filing burden." (Footnotes omitted.)). The Office acknowledges that a Provider "that reports deployment of a particular technology and bandwidth in a census block may not necessarily offer that service everywhere in the block." *See* Fed. Commc'n Comm'n, *Fixed Broadband Deployment Data*

from FCC Form 477: *Who Files What?*, FCC.GOV <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477> (last updated Oct. 16, 2015). This is, however, the degree of granularity the law currently requires.

Nothing has changed since that decision that would change the Office's prior reasoning. H.F. 772 did define "Facilitate" to mean "a communication service provider's ability to provide broadband service at or above the download and upload speeds specified in the definition of targeted service area in this section to a home, farm, school, or business within a commercially reasonable time and at a commercially reasonable price upon request by a consumer," establishing a clearer standard Communications Service Providers must satisfy before reporting or claiming that they are able to Facilitate Broadband service at or above 25/3 within a particular Census Block. 2019 Iowa Acts, H.F. 772, ch. 159 § 2. However, under H.F. 772, the relevant unit of measure for purposes of designating Targeted Service Areas remains Census Blocks: " 'Targeted service area' means a United States census bureau *census block* located in this state, including any crop operation located within the census block, *within which* no communications service provider offers or facilitates broadband service at or above the download and upload speeds identified by the federal communications commission pursuant to section 706 of the federal Telecommunications Act of 1996, as amended." *Id.* § 3 (emphasis added). The introduction of the defined term "Facilitates" precludes a Communications Service Provider which is not actually able to provide service to a Census Block from claiming "but we're nearby and if you're willing to wait long enough and pay enough, we can get service to you"; it does not, however, change the relevant unit of measure or change the result with respect to the split census-block issue. And while the FCC has recently proposed changing the unit of measure at the federal level, such changes have not yet been implemented. *See* Establishing the Digital Opportunity Data Collection and Modernizing the FCC Form 477 Data Program, 84 Fed. Reg. 43764 (proposed Aug. 22, 2019) (seeking "comment on ways to develop location-specific data that could be used in conjunction with the polygon-based data in the new collection to precisely identify the homes and small businesses that have and do not have access to broadband services"); *About: Fixed Broadband Deployment*, FCC.GOV (last visited Nov. 7, 2019), <https://broadbandmap.fcc.gov/#/about> ("Providers report fixed-broadband deployment data at the census block level. Form 477 data are reported using 2010 Census blocks. Providers may not offer service to every home in every block in which they report service. The calculations used to create the graphs treat every location as having service, and may therefore over-estimate broadband coverage, particularly in areas with large census blocks."); *Fixed Broadband Deployment Data from FCC Form 477*, FCC.GOV (last updated Sept. 10, 2019), <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477> ("*Note: A provider that reports deployment of a particular technology and bandwidth in a census block may not necessarily offer that service everywhere in the block."). In the final analysis, both changes in state law and federal mapping programs (or a settled alternative to federal maps) are required before the Office can implement the more granular approach implicit in Appellant's position.

Turning then to the facts of this particular case, and with the relevant unit of measure in mind, with respect to the Census Blocks identified in Exhibit A the propagation map submitted by Appellant in fact supports NET's position that NET Facilitates 25/3 Broadband in the Census Blocks identified in Exhibit A. Exhibit D, p. 13. As shown by Appellant's propagation Map, consistent with NET's Certification, NET's wireless network appears to be able to Facilitate 25/3 Broadband to, with a few exceptions discussed below, a significant portion of each of the Census Blocks forming the basis of this Appeal. Exhibit D, p. 13. While NET may not offer or Facilitate service to every home, school, or business located within each of these Census Blocks, that is not what is required under current law. Considering all of the evidence and information presently available to the Office, and the relevant unit of measure, the Office concludes that NET did offer or Facilitate 25/3 Broadband in these Census Blocks as of June 30, 2018. Accordingly, these Census Blocks will remain non-TSAs.

- **BLOCK IDs: Census Block IDs listed in Exhibit B.**

- **SUMMARY: APPEAL GRANTED.** These Census Blocks will be designated as TSAs based on: Appellant's propagation map, which shows that with respect to these Census Blocks NET's coverage is so minimal or sporadic such that the Office simply cannot conclude that NET would be able to provide service to a home, farm, school, or business within these Census Blocks within a commercially reasonable time and at a commercially reasonable price upon request by a consumer; and NET's failure to provide full and complete responses to the Office's letter of inquiry.
- **DETAILED RESPONSE:** The propagation map submitted by Appellant shows that, with respect to the Census Blocks identified in Exhibit B, NET's coverage is so sparse so as to not constitute coverage at all in any meaningful sense. *See* Exhibit D, p. 13. The overlay map attached to this Decision as Exhibit C visually identifies the Census Blocks that fit that description. And as discussed above, while H.F. 772 did not change the relevant unit of measure for purposes of determining whether a given area is eligible to receive state incentives, it did define the term "Facilitate" to mean "a communication service provider's ability to provide broadband service at or above the download and upload speeds specified in the definition of targeted service area in this section to a home, farm, school, or business within a commercially reasonable time and at a commercially reasonable price upon request by a consumer," thereby establishing a clearer standard Communications Service Providers must satisfy before reporting or claiming that they are able to Facilitate Broadband service at or above 25/3 within a particular Census Block. 2019 Iowa Acts, H.F. 772, ch. 159 § 2. Looking at Appellant's propagation map, in the Census Blocks identified in Exhibit B it appears that NET's coverage is so minimal or sporadic such that the Office simply cannot conclude that NET would be able to provide service to a home, farm, school, or business within those Census Blocks within a commercially reasonable time and at a commercially reasonable price upon request by a consumer. *See* Exhibit C.

The Office recognizes that Appellant's propagation map conflicts with NET's most recent letter and Certification in which NET Certified it offered or Facilitated 25/3

Broadband as of June 30, 2018, in all of the Census Blocks forming the basis of this Appeal, including those identified in Exhibit B. The Office is mindful that pursuant to applicable administrative rules, a Certification such as the one provided by NET is particularly probative of prior service. Iowa Admin. Code r. 129—20.5(8) (“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.”). However, unlike with respect to the Census Blocks identified in Exhibit A where Appellant’s propagation map and NET’s Certification pointed to the same conclusion, here, the evidence is in conflict, requiring the Office to determine to which evidence to afford greater weight. Further, the Office appreciates that representations of service coverage as displayed on a propagation map like the one obtained and supplied by Appellant may be based on a number of assumptions that may affect how coverage is calculated and represented, such as whether or not the wireless nodes are accurate in regards to location, transmission network density, transmission device height, and customer receiver location.

In the final analysis, however, the Office afforded NET an opportunity to provide it with additional support of its general service claims and refute Appellant’s propagation map challenging NET’s service claims. Specifically, in its October 15 letter of inquiry, the Office asked NET to, in addition to submitting an updated Certification with an updated As of Date:

- 2) Please also submit any other evidence or information in your possession to the Office that supports your prior representations to the Office Examples of evidence and information the Office would consider particularly probative of Broadband service at or above 25/3 as of June 30, 2018, include “Bills or invoices provided to or received by customers in the applicable census block(s) which identify the specific download and upload speeds provided or received as of [June 30, 2018].” Iowa Admin. Code r. 129—20.5(8).
- 3) [Provide] Proof of advertising or other affirmative solicitations of customers in the Census Blocks set forth in **Exhibit A**.
- 4) Further, in your particular case we would draw your attention to page 9 of the Heartland Attestation, which contains a propagation map obtained by Heartland from an engineering firm that performed a wireless RF analysis of the disputed area. Heartland claims this propagation map demonstrates that “broadband service is not available throughout a significant portion of the challenged census blocks or that there are locations within the census block that are unlikely to consistently have

broadband coverage.” Heartland Attestation, p. 2. In light of this analysis, we would request a response to this propagation map or other similar evidence or information demonstrating your coverage capabilities from your perspective, such as an alternative propagation map demonstrating the actual coverage areas of your wireless service concerning your actual offering of or ability to Facilitate 25/3 Broadband service as of June 30, 2018 overlaid on top of the United States Census Blocks attached as Exhibit A as a base layer.

Exhibit D, pp. 16–17. While NET did respond to the Office’s inquiry and generally Certified it offered or Facilitated 25/3 Broadband as of June 30, 2018, in all of the Census Blocks forming the basis of this Appeal, including those identified in Exhibit B, it simply did not respond to many of the Office’s specific requests: NET did not provide bills or invoices provided to or received by customers in the applicable census block(s); it did not provide any proof of advertising in these areas; and, importantly, it made no effort to refute Appellant’s propagation map which generally undermines NET’s claim that it is able to offer or Facilitate service in the Census Blocks identified in Exhibit B in any meaningful sense. Exhibit D, pp. 18–30. NET’s failure to provide the Office with more specific evidence and information, despite being afforded the opportunity and being specifically prompted to do so, cuts in Appellant’s favor, and generally supports the conclusion that Appellant’s propagation map is accurate and worthy of considerable weight. *See Grand River Mut. Tel. Corp.*, Docket No. 17OCIO002, p. 8 (May 12, 2017), https://ocio.iowa.gov/sites/default/files/documents/2017/05/case_no_17ocio002_-_grm_networks_final_agency_decision.pdf (“The Office attempted to address these issues with Mediacom, requesting it clarify its service capabilities at the census block level utilizing the boundaries provided on the State’s official Broadband Map to aid the Office in making an accurate determination. . . . Mediacom did not respond using the Office’s form, and never responded to the Office’s Follow Up. And Appellant has provided the Office with evidence in the form of summaries of conversations between Appellant and Mediacom customer service evincing Mediacom’s present inability to provide service to select addresses located in each of these census blocks. While the Office does not afford great weight to these conversations, which are both hearsay and presumably not Mediacom’s official position on the matter, the Office afforded Mediacom ample time to clarify its service capabilities with respect to each of these census blocks, and Mediacom either chose or failed to do so.”). Considering all of the evidence and information presently available to the Office, based on: Appellant’s propagation map, which shows that with respect to these Census Blocks NET’s coverage is so minimal or sporadic such that the Office simply cannot conclude that NET would be able to provide service to a home, farm, school, or business within these Census Blocks within a commercially reasonable time and at a commercially reasonable price upon request by a consumer; and NET’s failure to provide full and complete responses to the Office’s letter of inquiry, the Office concludes that NET did not offer or Facilitate 25/3 Broadband in these Census Blocks as of June 30, 2018. Accordingly, these Census Blocks will be designated as TSAs.

IV. APPEALING FURTHER.

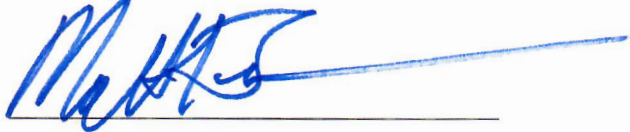
If you wish to appeal this Decision further, you must, within thirty (30) days of the posting of this Decision at ocio.iowa.gov/broadband, notify us in writing by mailing a written request for a contested case proceeding to:

Office of the Chief Information Officer
c/o Matt Behrens
Hoover State Office Building, Level B
1305 East Walnut Street
Des Moines, Iowa 50319

In so doing, please 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 receiving your appeal, we will forward it 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

Exhibit A—Appealed Census Blocks Denied

191499706001059
191499706001003
191499706001063
191499706001064
191499706001062
191499703004036
191499703003063
191499703003113
191499703003067
191499703003114
191499703004045
191499703004129
191499703004043
191499703003011
191499703001044
191499703002002
191499703001048
191499703002077
191499706001005
191499703001032
191499703003061
191499703003107
191499703003104
191499703003062
191499703001033
191499703003065
191499703003066
191499703001045
191499703003111
191499703004016
191499703003105
191499703001046
191499703004040
191499703004020
191499703004018
191499703004059
191499703004019
191499703002001
191499703004048
191499703004017
191499703002000
191499703004047
191499703004055

191499703002059
191499703002060
191499703004053
191499703004060
191499703002106
191499703003053
191499703004130
191499703002107
191499703002105
191499703004132
191499706001004
191499703004131
191499706001001
191499706001000
191499703004134
191499703004058
191499703003110
191499703004057
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191499703002078
191499703003106
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191670704001196
191670704001198
191670704003106
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191670704001170
191670704001183
191670704001207
191670704001180
191670704001190
191670704001144
191670704001191

191670704001200
191670704001201
191670704001202
191670704001222
191670704001238
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191670704001229
191670704001223
191670704001316
191670704001228
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191670704001297
191670704001294
191670704001298
191670704001296
191670704001232
191670704001181
191670704001194
191670704001224
191670704001182
191670704002000
191670704001186
191670704001195
191670704001231

Exhibit B—Appealed Census Blocks Granted

191499703003017
191499703003014
191499703003024
191499703003016
191499703003019
191499703003021
191499703003022
191499703003056
191499703003125
191499703003064
191499703003055
191499703003010
191499703004046
191499706001056
191499706001072
191499706001066
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191499706001070
191499706001069
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191499706001078
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191499706001067
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191499706001057
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191499703002083
191499703004141
191499703003018
191499703003013
191499703004041
191499706001079
191499706001061
191499703004056
191499703003020
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191670704003001
191670704003000
191670704003007
191670704003006
191670704003009
191670704003014
191670704003003
191670704003004
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191670704001140
191670704003008
191670704001203
191670704001221
191670704001225
191670704001227
191670704001260
191670704001314
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191670704001204
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191670704003002

Exhibit C - Overlay Visually Identifying Unserved Areas

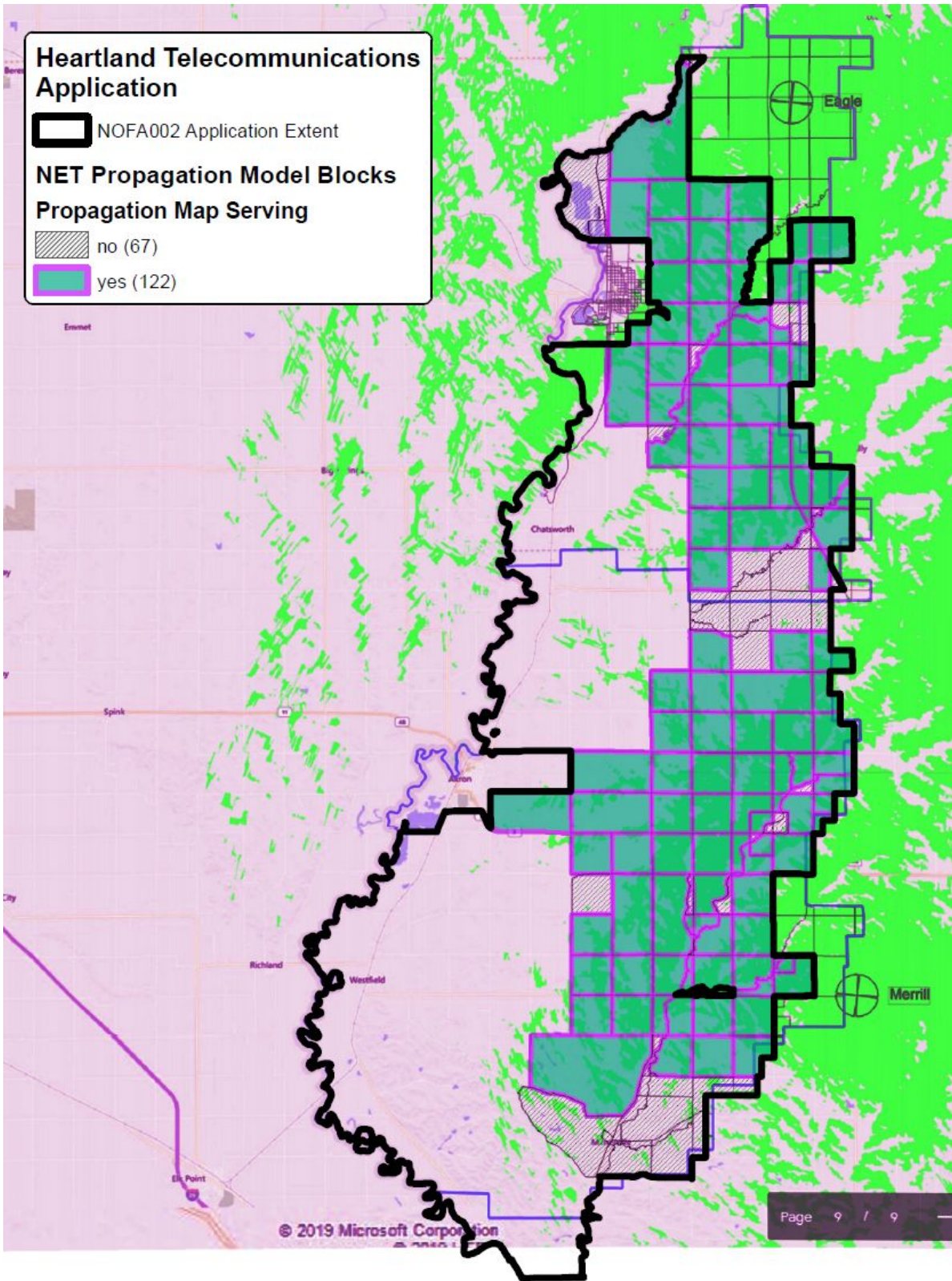


Exhibit D—Agency Record

KIM REYNOLDS, GOVERNOR
ADAM GREGG, LT. GOVERNOR

JEFF FRANKLIN
CHIEF INFORMATION OFFICER

**Affirmation, Attestation, and Certification of Service in Claimed Targeted Service Areas
Broadband Grants Program Public Comment Validation Process**

A. COMPANY INFORMATION (if submitted on behalf of an entity)			
Company Name:	NET Broadband		
Address:	216 N Main St		
City:	Everly	State:	IA Zip: 51338

B. DESIGNATED CONTACT INFORMATION (if submitted on behalf of an entity or individual)			
Contact Name	Roxanne White	Phone #	712-834-2255 Email rwhite@evertek.net

C. CERTIFICATION/ATTESTATION/AFFIRMATION

In signing and submitting this form, the above-identified company, and its duly authorized representative signing on behalf thereof, or you as an individual if you are not submitting this form on behalf of an entity, hereby affirms, attests, and certifies under penalty of perjury that, as represented in the table below:

1. If submitted on behalf of a Communications Service Provider, that the above-identified company, consistent with the representations in the table below, either:
 - a. Offered or Facilitated 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 below-identified census blocks as of December 31, 2017; or
 - b. Did **NOT** offer or Facilitate 25/3 Broadband in the below-identified census blocks as of December 31, 2017.

Whether your company's prior reporting to the FCC was correct or in error.

2. If submitted by or on behalf of a person other than a Communication's Service Provider (e.g., consumer, business, farm), the above-identified entity or individual, consistent with the representations in the table below, either:
 - a. Did or could receive 25/3 Broadband in the below-identified census blocks as of December 31, 2017; or
 - b. Did **NOT** and could **NOT** (within a reasonable time upon request, at a reasonable price) receive 25/3 Broadband in the below-identified census blocks as of December 31, 2017.

CENSUS BLOCK ID IN WHICH 25/3 BROADBAND OFFERED OR FACILITATED (OR NOT) (please attach additional pages if necessary)	PRIOR REPORTING TO FCC (only use this column if you are submitting this form on behalf of a Communications Service Provider)			25/3 Broadband OFFERED OR FACILITATED AS OF December 31, 2017
	<input checked="" type="checkbox"/> In Error	<input checked="" type="checkbox"/> updated	<input type="checkbox"/> No Response	
See attached list of census blocks	<input checked="" type="checkbox"/> In Error	<input checked="" type="checkbox"/> updated	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> response below in D.
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response

	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response

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 attach additional pages and 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.)

The census blocks on the attached and referenced in section C are shown on the OCIO map as not being served with 25/3 Mbps service as of December 31, 2017. This was an error in reporting on the FCC's Form 477 Deployment File. A portion of the census blocks, listed on the attached, had 25/3 Mbps service available as of December 31, 2017. The FCC's Form 477 Deployment File has been corrected for the December 31, 2018 and 2019 reporting period. In 2019, at the time of this filing, the census blocks covered by NET Wireless are all at the 25/3 Mbps service. Please acknowledge this update to the attached blocks.

E. SIGNATURE*

Authorized Signature:

Date:

9-4-19

Printed Name: Roxanne White

Title: General Manager

*PLEASE READ BEFORE SIGNING: By affixing my signature above, I, a representative of the company identified above, 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 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.

Corresponding list of Census Blocks
in separate excel file

See Attached page(s)	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input checked="" type="checkbox"/> No Response	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> No Response
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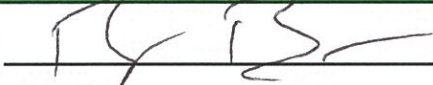
D. ADDITIONAL EXPLANATION (To the extent you believe additional explanation is required to ensure that you are communicating full and accurate information, please use the below space to further explain, qualify, or substantiate your above certification/attestation/affirmation. To the extent necessary, please feel free to attach additional pages and 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.)

Heartland Telecommunications Company of Iowa d/b/a Premier Communications is challenging the census blocks attached to this document and has indicated "No Response" in the column Prior Reporting to FCC because the entity(ies) who indicated they can serve the census blocks in question has not previously filed a 477 form according to the FCC's publicly available 477 data as of 6/30/18.

In an effort to substantiate that 25/3 broadband service is not available throughout the entirety of the challenged census blocks, we engaged an engineering firm, Vantage Point Solutions (Mitchell, SD), to perform a wireless RF analysis by a certified professional engineer. This study utilized publicly known tower locations, spectrum used, and equipment used. Attached is the result of this analysis which substantiates Premier's claim that broadband service is not available throughout a significant portion of the challenged census blocks or that there are locations within the census block that are unlikely to consistently have broadband coverage.

Heartland has also obtained a letter from the general manager of Alliance Communications, Ross Petrick, to confirm that the census blocks listed in his letter were filed on the 477 by their company in error and should be eligible census blocks for the Iowa Broadband Grant program.

E. SIGNATURE*

Authorized Signature: 	Date: October 10, 2019
Printed Name: Ryan Boone	
Title: COO	

***PLEASE READ BEFORE SIGNING:** By affixing my signature above, 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 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.

CENSUS BLOCK ID IN WHICH 25/3 BROADBAND OFFERED OR FACILIATED (OR NOT)	PRIOR REPORTING TO FCC	25/3 BROADBAND OFFERED OR FACILIATED AS OF JUNE 30, 2018
191499703001032	No Response	No
191499703001033	No Response	No
191499703001044	No Response	No
191499703001045	No Response	No
191499703001046	No Response	No
191499703001047	No Response	No
191499703001048	No Response	No
191499703002000	No Response	No
191499703002001	No Response	No
191499703002002	No Response	No
191499703002058	No Response	No
191499703002059	No Response	No
191499703002060	No Response	No
191499703002077	No Response	No
191499703002078	No Response	No
191499703002083	No Response	No
191499703002105	No Response	No
191499703002106	No Response	No
191499703002107	No Response	No
191499703003010	No Response	No
191499703003011	No Response	No
191499703003012	No Response	No
191499703003013	No Response	No
191499703003014	No Response	No
191499703003015	No Response	No
191499703003016	No Response	No
191499703003017	No Response	No
191499703003018	No Response	No
191499703003019	No Response	No
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191499703003053	No Response	No
191499703003054	No Response	No
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191499703003056	No Response	No
191499703003060	No Response	No
191499703003061	No Response	No
191499703003062	No Response	No
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191499703003064	No Response	No

191499703003065	No Response	No
191499703003066	No Response	No
191499703003067	No Response	No
191499703003104	No Response	No
191499703003105	No Response	No
191499703003106	No Response	No
191499703003107	No Response	No
191499703003110	No Response	No
191499703003111	No Response	No
191499703003113	No Response	No
191499703003114	No Response	No
191499703003124	No Response	No
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191499703004132	No Response	No
191499703004134	No Response	No
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191499706001002	No Response	No

191499706001003	No Response	No
191499706001004	No Response	No
191499706001005	No Response	No
191499706001056	No Response	No
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191499706001060	No Response	No
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191670704003008	No Response	No
191670704003009	No Response	No
191670704003014	No Response	No
191670704003106	No Response	No



September 30, 2019

To whom it may concern,

Alliance Communications Coop. Inc (Alliance) is a fiber to the home based telecommunications and broadband Internet provider in South Dakota, Minnesota, and Iowa. For the purpose of setting the record straight in relation to the Office of the Chief Information Officer (OCIO) Broadband Grant project in Iowa and contrary to any records, maps or data base that may show otherwise, Alliance has no broadband customers/locations in the census blocks listed below.

Iowa Census Blocks:

191670704001143

191670704001144

191670704001146

Thank you.

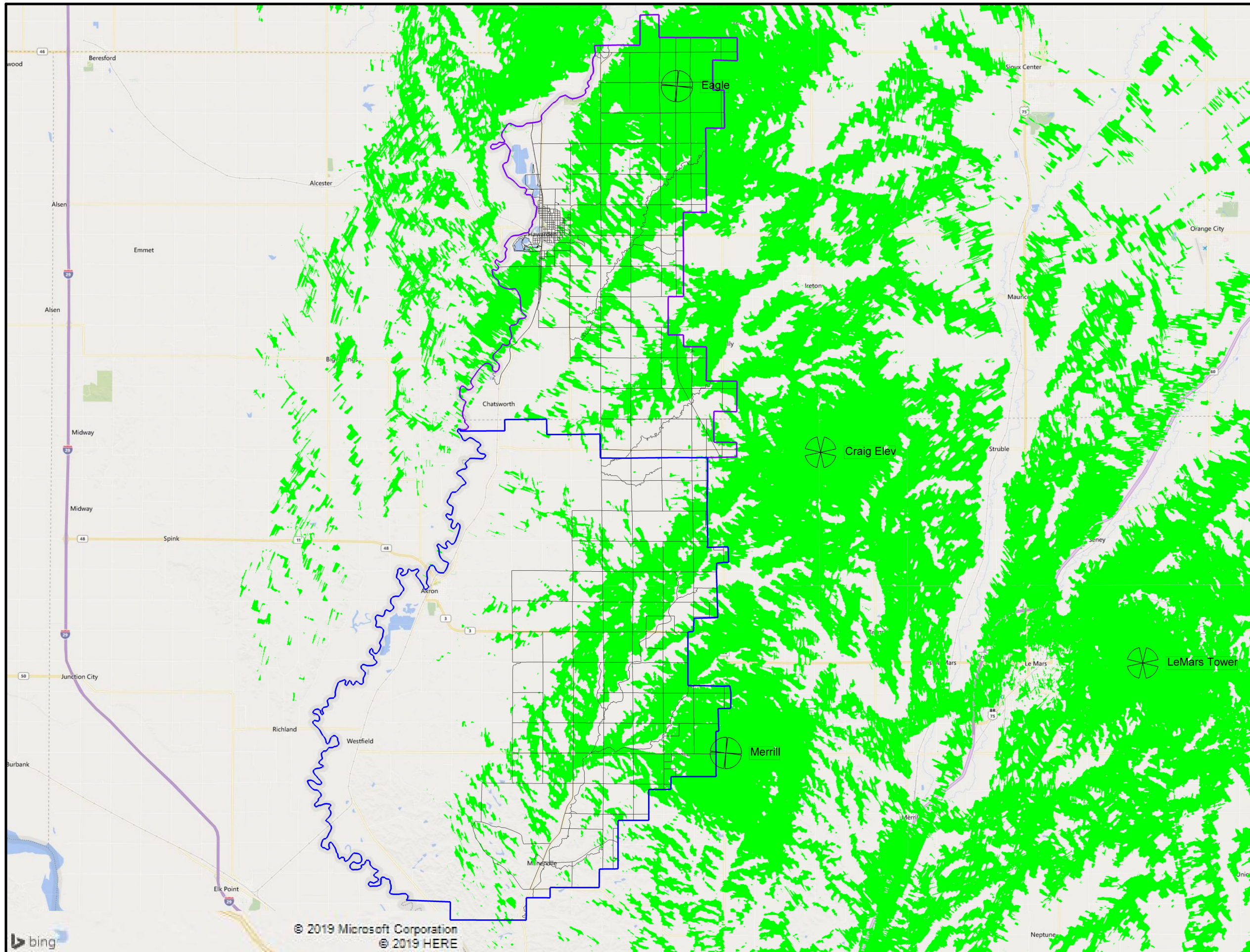
Sincerely,
Ross Petrick

A handwritten signature in blue ink, appearing to read "Ross Petrick", is written over a light blue horizontal line.

General Manager

wired differently

OCIO--12



EDX® SignalPro®: IA - Heartland

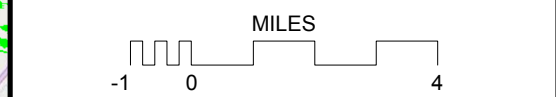
Prop. model 1: Anderson-2D v1.00
 Time: 50.0% Loc.: 50.0%
 Prediction Confidence Margin: 0.0dB
 Climate: Continental Temperate
 Land use (clutter): EDX .GCV format
 Atmospheric Abs.: none
 K Factor: 1.333

- Heartland Akron Exchange
- Heartland Hawarden Exchange
- Evertex Hawarden CB's
- Evertex Akron CB's

Part 90, C/(I+N) at Remote for Best Channel

■	≥ 12.0 dB	25Mbps or greater
□	< 12.0 dB	

Display threshold level: -85.0 dBmW
 RX Antenna - Type: USE FILE
 Height: 12.0 ft AGL Gain: 19.00 dBi



EDX Wireless
 Smart Planning for Smart Networks
 Tue Oct 08 08:50:08 2019

From: matt.behrens@iowa.gov on behalf of [Grants, OCIO <ociogrants@iowa.gov>](mailto:Grants_OCIO_ociogrants@iowa.gov)
To: [Roxanne White; inquiry@evertek.net](mailto:Roxanne.White;inquiry@evertek.net)
Subject: State of Iowa - Inquiry Concerning Broadband Map Appeal
Date: Tuesday, October 15, 2019 4:02:07 PM
Attachments: [Letter to Evertek Wireless - Docket No. 19OCIO002 \(Heartland Telecommunications Company of Iowa d b a Premier Communications\).pdf](#)
[affirmation of service form for broadband map v2.docx](#)

October 15, 2019

To Whom It May Concern,

Attached please find a letter of inquiry and accompanying attestation form concerning an appeal received by the Office of the Chief Information Officer of the State of Iowa regarding the Broadband Map of the State of Iowa Version 2.

The appeal in question may be located at <https://ocio.iowa.gov/broadband-availability-map-version-2-challenge-process> (refer to Docket #19OCIO002).

The appeal names United States Census Blocks within which Evertek Wireless previously reported to the Office of the Chief Information that it provided broadband service as of December 30, 2017.

Questions concerning this inquiry and the response may be submitted to this e-mail address (ociogrants@iowa.gov) on or before October 31, 2019. Please note that you are under no legal obligation to respond to this request for information.

Sincerely,

Office of the Chief Information Officer
State of Iowa

October 15, 2019

Office of the Chief Information Officer of the State of Iowa
c/o Matt Behrens
1305 E. Walnut Street, Level B
Des Moines, IA 50309

Evertex Wireless
216 North Main
PO Box 270
Everly, IA 51338

To whom it may concern:

This is a letter of inquiry concerning your firm's prior reporting to the State of Iowa Office of the Chief Information Officer ("OCIO" or "Office") concerning the availability of Broadband service in certain United States Census Blocks within the State of Iowa. Our Office recently received a formal notice of appeal that identifies Census Blocks within which your firm, Evertex Wireless, previously reported to us as part of an informal feedback/comment process on a Pre-publication Draft of Version 2 ("V2") of the Statewide Broadband Availability Map ("Map") that your firm provided Broadband service at or above 25 mbps of download speed and 3 mbps of upload speed ("25/3") in those Census Blocks as of December 31, 2017.¹ Our Office subsequently incorporated your feedback/comments into the official publication of V2 of the Map, which official publication triggered a formal appeal window as explained in more detail below and during which time we received the above-referenced appeal. The appeal we received claims that your reporting to our Office was inaccurate. This appeal and accompanying evidence can be found at <https://ocio.iowa.gov/broadband-availability-map-version-2-challenge-process> (navigate to 19OCIO002, [HeartlandTelecommunications Company of Iowa d/b/a Premier Communications](#)—evidence and information in support of Heartland's appeal is attached at the end of its Affirmation, Attestation, and Certification of Service or lack of Service in Census Blocks Broadband Grants Program Broadband Availability Map Challenge Process Form ("Heartland Attestation"), beginning on page 8). **To resolve this matter, the Office requests that your firm provide certain information concerning your service in the affected United States Census Blocks as further identified and described below.**

On September 20, 2019, the Office officially published the final version of V2 of the Map, which Map generally identifies where Broadband service was offered or Facilitated at or above 25/3 as of June 30, 2018.² V2 of the Map is based

¹The Office notes that the Pre-publication Draft version of V2 of the Map was based on an "as of date" of December 31, 2017. Since that time, the FCC released updated data with an "as of date" of June 30, 2018. Because the accuracy of the Map is of critical importance to the OCIO, OCIO determined that it was appropriate to rely on this more recent Form 477 data in finalizing Iowa's Map. Accordingly, the as of date for this final publication of V2 of the Map is **June 30, 2018**. The Office took this change into consideration in reviewing feedback and comments it received as it relates to the Pre-publication Draft of V2 of the Map. In your firm's case, because you indicated you were able to provide service as of December 31, 2017—an earlier date than final "as of date" underlying V2 of the Map—the Office assumed you remained capable of providing comparable service roughly six (6) months later, which assumption was reflected in the final, officially published version of 2 of the Map, and which position is now being challenged by Heartland.

²See Iowa Code §§ 8B.1(12) (defining "Targeted Service Areas"), 8B.10 (requiring OCIO to designate Targeted Service Areas within the State of Iowa). *See also* Iowa Admin. Code r. 129—20.1 (defining "As of Date"), .3 (designating data sources for Broadband Availability Map), .4 (outlining Targeted Service Area determination process).

primarily on data submitted to the FCC by Communications Service Providers concerning their service capabilities in the State of Iowa³ and on informal comments/feedback supplied by interested parties as part of the informal comment/feedback process described above and in which your firm participated. V2 of the Map, and a more detailed background of the same, can be found at: <https://ocio.iowa.gov/broadband-availability-map-version-2>.

Through the official publication of V2 of the Map, the Office triggered the challenge process it is required by law to administer.⁴ Pursuant to applicable administrative rules, within 20 days after the Office’s official publication of V2 of the Statewide Broadband Availability Map, “any person or party aggrieved or adversely affected by such determination [was able to] challenge the office’s finding by filing a notice of appeal with the office” along with all evidence or information supporting their appeal. Iowa Admin. Code r. 129—20.5(1). Specifically, interested parties were permitted to provide the Office with evidence and information either that a Census Block that is **NOT** currently designated as a Targeted Service Area should be a Targeted Service Area because 25/3 Broadband was **NOT** available within that Census Block **as of June 30, 2018**; or, conversely that a Census Block that is currently designated as a Targeted Service Area should **NOT** be a Targeted Service Area because 25/3 Broadband **WAS** available within that Census Block as of **June 30, 2018**.

As part of the above-outlined process, OCIO received a formal notice of appeal and supporting evidence or information from Heartland Telecommunications Company of Iowa d/b/a Premier Communications (“Heartland”), claiming that Broadband service is **NOT** offered or Facilitated at or above 25/3 Broadband within the Census Blocks listed in **Exhibit A**. See also <https://ocio.iowa.gov/broadband-availability-map-version-2-challenge-process> (navigate to 19OCIO002 [HeartlandTelecommunications Company of Iowa d/b/a Premier Communications](#)—evidence and information in support of Heartland’s appeal is attached at the end of the Heartland Attestation, beginning on page 8). Contrary to Heartland’s appeal, Evertex’s prior reporting to the Office as part of the informal feedback/comment process on the Pre-publication Draft of V2 of the Map indicates that your firm offered or Facilitated 25/3 Broadband service in the disputed area.

At this time, the Office requests your assistance in making an accurate determination as to whether any Communications Services Provider offered or Facilitated 25/3 Broadband as of June 30, 2018, to the Census Blocks identified in **Exhibit A**. To that end, the Office requests that you:

- 1) Complete and return the [Affirmation, Attestation, and Certification of Service or lack of Service in Census Blocks Broadband Grants Program Broadband Availability Map Challenge Process Form](#), a copy of which is also attached to this message, **by no later than October 31, 2019**. Pursuant to this form, OCIO requests that a representative with legal authority to bind your company:
 - a) Confirm whether your company offered or Facilitated Broadband service at or above 25/3 in the Census Blocks identified in **Exhibit A** as of June 30, 2018; or, alternatively confirm whether you company did **NOT** offer or Facilitate 25/3 Broadband service in the Census Blocks identified in **Exhibit A** as of June 30, 2018.
 - i) For purposes of this representation, “ ‘Facilitate’ means a communication service provider’s ability to provide broadband service at or above the download and upload speeds specified in the

Please note that any references to Iowa Code chapter 8B (2019) (or any sections or subsections therein) throughout this communication shall be understood to reference [Iowa Code chapter 8B](#) as amended by [2019 Iowa Acts, ch. 159, Div. II](#). In addition, capitalized terms used in this communication but not otherwise specifically defined herein shall have the same meaning given them by Iowa Code chapter 8B as amended by 2019 Iowa Acts, ch. 159, Div. II.

³See Iowa Admin. Code r. 129—20.3 (“To determine whether a communications service provider offers or facilitates broadband service in a particular census block at or above the download and upload speeds specified in the definition of targeted service area as of the as of date, the office utilizes fixed broadband availability maps and corresponding data sources made available by the Federal Communications Commission (FCC) online, which as of September 18, 2019, was available at www.fcc.gov/general/broadband-deployment-data-fcc-form-477.”).

⁴See 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.”); Iowa Admin. Code r. 129—20.5 (outlining appeal process).

definition of targeted service area in this section to a home, farm, school, or business **within a commercially reasonable time and at a commercially reasonable price upon request by a consumer.**” 2019 Iowa Acts, ch. 159, § 2 (emphasis added).

b) Fully complete all other aspects of the Form.

We recognize that your firm completed and submitted a similar form as part of the informal feedback/comments process on the Pre-publication Draft V2 of the Map. However, as explained in greater detail in Footnote 1, above, although we assumed your prior attestation indicating you were able to provide service as of December 31, 2017—an earlier date than the “as of date” underlying V2 of the final, officially published Map—meant you were capable of providing service roughly six (6) months later, because the “as of date” changed from December 31, 2018, to June 30, 2018, and because this area is now being contested, the Office deems it prudent to request further confirmation concerning your firm’s service capabilities as of the final as of date—June 30, 2018—underlying the final, official publication of V2 of the Map.

- 2) In addition to the form, please also submit any other evidence or information in your possession to the Office that supports your prior representations to the Office regarding the Census Blocks identified in **Exhibit A**. Examples of evidence and information the Office would consider particularly probative of Broadband service at or above 25/3 as of June 30, 2018, include “Bills or invoices provided to or received by customers in the applicable census block(s) which identify the specific download and upload speeds provided or received as of [June 30, 2018].” Iowa Admin. Code r. 129—20.5(8).
- 3) Proof of advertising or other affirmative solicitations of customers in the Census Blocks set forth in **Exhibit A**.
- 4) Further, in your particular case we would draw your attention to page 9 of the Heartland Attestation, which contains a propagation map obtained by Heartland from an engineering firm that performed a wireless RF analysis of the disputed area. Heartland claims this propagation map demonstrates that “broadband service is not available throughout a significant portion of the challenged census blocks or that there are locations within the census block that are unlikely to consistently have broadband coverage.” Heartland Attestation, p. 2. In light of this analysis, we would request a response to this propagation map or other similar evidence or information demonstrating your coverage capabilities from your perspective, such as an alternative propagation map demonstrating the actual coverage areas of your wireless service concerning your actual offering of or ability to Facilitate 25/3 Broadband service as of June 30, 2018 overlaid on top of the United States Census Blocks attached as Exhibit A as a base layer.

Please return the fully completed form and any other supporting evidence or information to ociogrants@iowa.gov.

Please note that you are under no legal obligation to respond to this request for information. Generally, pursuant to applicable administrative rules, any affected person or party is free to submit evidence or information to the Office in support of or in opposition to Heartland’s appeal (or any other appeal received by the Office) until **October 31, 2019**. Iowa Admin. Code r. 129—20.5(3). However, because Heartland’s claim contradicted your firm’s prior reporting to our Office, we are affirmatively reaching out to notify you of this fact, of the circumstances surrounding Heartland’s appeal, and to solicit your feedback and position. Consistent with the period for input from affected persons or parties, if we do not receive any additional input from you by **October 31, 2019**, the Office will make a final decision based on the evidence and information currently available to it. Iowa Admin. Code r. 129—20.5(4), (5).

OCIO strives at all times to produce and disseminate accurate information. We appreciate your assistance in helping us achieve our statutory mandate.

Sincerely,

Office of the Chief Information Officer,
State of Iowa

Exhibit A—Census Blocks forming basis of Heartland’s Challenge

191499703003017
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191670704001182
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191670704002000
191670704001186
191670704001195

**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: _____

Address: _____

City: _____ State: _____ Zip: _____

B. DESIGNATED CONTACT INFORMATION (if submitted on behalf of an entity or individual)

Contact Name _____ Phone # (____) ____ - ____ Email: _____

C. CERTIFICATION/ATTESTATION/AFFIRMATION

In signing and submitting this form, the above-identified company, and its duly authorized representative signing on behalf thereof, or you as an individual if you are not submitting this form on behalf of an entity, hereby affirms, attests, and certifies under penalty of perjury that, as represented in the table below:

1. If submitted on behalf of a Communications Service Provider, that the above-identified company, consistent with the representations in the table below, either:
 - a. Offered or Facilitated 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 below-identified census blocks as of June 30, 2018; or
 - b. Did **NOT** offer or Facilitate 25/3 Broadband in the below-identified census blocks as of June 30, 2018.

Whether your company's prior reporting to the FCC was correct or in error.
2. If submitted by or on behalf of a person other than a Communication's Service Provider (e.g., consumer, business, farm), the above-identified entity or individual, consistent with the representations in the table below, either:
 - a. Did or could receive 25/3 Broadband in the below-identified census blocks as of June 30, 2018; or
 - b. Did **NOT** and could **NOT** (within a reasonable time upon request, at a reasonable price) receive 25/3 Broadband in the below-identified census blocks as of June 30, 2018.

CENSUS BLOCK ID IN WHICH 25/3 BROADBAND OFFERED OR FACILITATED (OR NOT) (please attach additional pages if necessary)	PRIOR REPORTING TO FCC (only use this column if you are submitting this form on behalf of a Communications Service Provider)			25/3 Broadband OFFERED OR FACILITATED AS OF June 30, 2018
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response

	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response

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 attach additional pages and 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.**)

E. SIGNATURE*

Authorized Signature: _____	Date:	
Printed Name: _____		
Title: _____		

***PLEASE READ BEFORE SIGNING:** By affixing my signature above, 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 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.

From: matt.behrens@iowa.gov on behalf of [Grants, OCIO](#)
To: [Dawson, Luke \[AG\]](#); [Wilke-Brown, Patrick \[OCIO\]](#)
Subject: Fwd: NET Broadband Response to OCT 15 Letter
Date: Wednesday, November 6, 2019 1:39:12 PM
Attachments: [NET Letter 102919.pdf](#)
[FCC Form 477 Deployment File Instructions.pdf](#)
[NET Affirmation.pdf](#)

----- Forwarded message -----

From: **Dan Davis** <ddavis@consortiaconsulting.com>
Date: Tue, Oct 29, 2019 at 8:50 AM
Subject: NET Broadband Response to OCT 15 Letter
To: ociogrants@iowa.gov <ociogrants@iowa.gov>

Please see the attached letter with the FCC Form 477 instructions from NET Broadband in response to the letter from the OCIO dated October 15, 2019. Also attached is a signed Affirmation from NET. Thank you for your attention to this matter.

Dan Davis

Consortia Consulting, Inc.

Phone: 402.441.1672

www.consortiaconsulting.com





216 North Main
Everly, Iowa 51338

Provided by email to: ociogrants@iowa.gov

October 29, 2019

Office of the Chief Information Officer of the State of Iowa
c/o Matt Behrens
1305 E. Walnut Street, Level B
Des Moines, IA 50309

Dear Mr. Behrens,

I am responding to your letter dated October 15, 2019 concerning the availability of Broadband service in certain Census Blocks within the State of Iowa. The letter indicates that Heartland Telecommunications Company of Iowa d/b/a/ Premier Communications has appealed data we submitted indicating broadband service availability at or above 25 mbps of download speed and 3 mbps upload speed ("25/3") in the indicated Census Blocks as of December 31, 2017. To resolve this matter, the Office requests our firm provide certain information concerning our service in the affected Census Blocks.

NET Broadband, a subsidiary of Evertek Enterprises, Inc., submitted information as required by the FCC's Form 477.¹ The data, as correctly noted in footnote 1 of your letter, was based on an "as of date" of December 31, 2017. As also noted in footnote 1, your office was correct to assume that NET remained capable of providing comparable service roughly six (6) months later, which assumption was reflected in the final, officially published version of the map, and which is now being challenged by Heartland.

In order for your office to make an accurate determination as to whether any Communications Services Provider offered or Facilitated 25/3 Broadband as of June 30, 2018, to the Census Blocks identified in Exhibit A, your office requests that we confirm our company offered such service in the Census Blocks so identified.

Based on language as posted to the Empower Rural Iowa Broadband Grant Program website and the Notice of Funding Availability,² and based on the attached FCC Form 477 instructions, we

¹ See the Attached FCC Form 477 Instructions for reporting Fixed Broadband Deployment.

² The Notice of Funding Availability provides the following language: OFFICIAL NOTICE: The Office of the Chief Information Officer has released a new broadband map of the State of Iowa, published below. As required by Iowa Code section 8B.10(1), as amended by 2019 House File 772, Division II (2019 Iowa Acts, chapter 159, Division II), the Office periodically determines whether a communications service provider offers or facilitates broadband service at or above 25 megabits per second upload and 3 megabits per second download ("25/3") across the State of Iowa. The most recent data sets available from the Federal Communications Commission (as June 30, 2018, but published September 10, 2019) have

confirm that the attached instructions were followed and such services are provided in the identified Census Blocks.

Sincerely,



Roxanne White,
General Manager
Evertex Enterprises, Inc.

been used as the basis for the Office's determination. Since these data sets are made available by the Federal Communications Commission at the United States Census Block level, and as required by state law, the Office's determination is made on that basis.

**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:	NET Broadband		
Address:	216 N. Main		
City:	Everly	State:	IA Zip: 51338

B. DESIGNATED CONTACT INFORMATION (if submitted on behalf of an entity or individual)

Contact Name	Roxanne White	Phone #	(712)834-2255	Email:	rwhite@evertek.net
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C. CERTIFICATION/ATTESTATION/AFFIRMATION

In signing and submitting this form, the above-identified company, and its duly authorized representative signing on behalf thereof, or you as an individual if you are not submitting this form on behalf of an entity, hereby affirms, attests, and certifies under penalty of perjury that, as represented in the table below:

1. If submitted on behalf of a Communications Service Provider, that the above-identified company, consistent with the representations in the table below, either:
 - a. Offered or Facilitated 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 below-identified census blocks as of June 30, 2018; or
 - b. Did **NOT** offer or Facilitate 25/3 Broadband in the below-identified census blocks as of June 30, 2018.

Whether your company's prior reporting to the FCC was correct or in error.


2. If submitted by or on behalf of a person other than a Communication’s Service Provider (e.g., consumer, business, farm), the above-identified entity or individual, consistent with the representations in the table below, either:
 - a. Did or could receive 25/3 Broadband in the below-identified census blocks as of June 30, 2018; or
 - b. Did **NOT** and could **NOT** (within a reasonable time upon request, at a reasonable price) receive 25/3 Broadband in the below-identified census blocks as of June 30, 2018.

CENSUS BLOCK ID IN WHICH 25/3 BROADBAND OFFERED OR FACILITATED (OR NOT) (please attach additional pages if necessary)	PRIOR REPORTING TO FCC (only use this column if you are submitting this form on behalf of a Communications Service Provider)			25/3 Broadband OFFERED OR FACILITATED AS OF June 30, 2018
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response

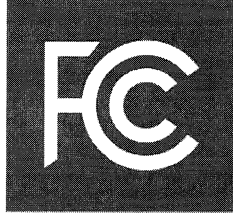
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response
	<input type="checkbox"/> In Error	<input type="checkbox"/> Correct	<input type="checkbox"/> No Response	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Response

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 attach additional pages and 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.)

E. SIGNATURE

Authorized Signature: 	Date: 10-25-19
Printed Name: Roxanne White	
Title: General Manager	

***PLEASE READ BEFORE SIGNING:** By affixing my signature above, 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 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.



FCC Form 477
Local Telephone Competition and
Broadband Reporting

Instructions

Data as of December 31 due March 1
Data as of June 30 due September 1

OMB Control No. 3060-0816

After completing the **Filer Identification** information, click **Save & Continue** to reach the **Submission Menu** screen. The Submission Menu contains links to data-entry screens for the several sections of the form.

5.3 Fixed Broadband Deployment

Information in this section is reported by *facilities-based providers* of fixed *broadband connections* to *end users*. For more information on these terms, see Who Must File This Form? and the Glossary. Additional information can be found in a separate document, Fixed Broadband Deployment Terms. Note that, for convenience, the terms *broadband connection* and *broadband service* are used interchangeably in these instructions.

Report a list – uploaded as a delimited, plain text / CSV file – of all census blocks in which the filer (including affiliates) makes *broadband connections available* to *end-user premises*, along with the associated information on technology of transmission (see Technology of Transmission Codes for Deployment of Fixed Services table in Codes to Use in Data Upload Files section), maximum upload and download speeds (in Mbps, with a maximum of 3 decimal places), and consumer versus business/government service, as specified in a separate document, How Should I Format My Fixed Broadband Deployment Data? This document provides detailed information on the required fields and how to format them in a delimited, plain text / CSV file for upload. A Sample Fixed Broadband Deployment CSV File and an Excel Template are also available for download.

- **Available**: For purposes of this form, fixed *broadband connections* are *available* in a census block if the provider does, or could, within a service interval that is typical for that type of connection—that is, without an extraordinary commitment of resources—provision two-way data transmission to and from the Internet with *advertised speeds* exceeding 200 kbps in at least one direction to *end-user premises* in the census block. **Clarification Notes, added September 10, 2014**: (1) Companies that would rely on the ordering or installation of a not-yet-leased circuit (including unbundled network elements defined in 47 C.F.R. § 51.319, TDM-based connections, or packet-based connections) to provide service in a census block not currently served should **not** treat that census block as having service available. (2) Dark fiber acquired under an Indefeasible Right of Use (IRU) should be considered the “owned” facilities of the company that acquired the IRU when the dark fiber is used as part of that entity’s own system.
- **Satellite Providers**: Satellite providers that believe their deployment footprint can be best represented by every block in a particular state or set of states may abbreviate their upload file by submitting only one block-level record for each state included in the footprint and providing a note in the Explanations and Comments section. For more information, see the separate document, How Should I Format My Fixed Broadband Deployment Data? (section 4).