

New NY Broadband Grant Program Request For Proposal FAQs

- 1. Q.** Is the Application Deposit of \$100,000 per application or is it per vendor?

A. The Application Deposit will be per-vendor, not per-application. However, if multiple applications by an individual vendor are funded, the vendor will be required, as a condition of the Deposit, to enter into Grant Disbursement Agreements (GDAs) for each project. Failure to do so for any one project, in accordance with the proposed terms, will result in forfeiture of the Application Deposit. Detailed instructions on the Application Deposit will be posted on ESD website prior to March 1, 2016.
- 2. Q.** Question 23 of the Phase 1 Application Questions requests that maps of proposed service areas be submitted as .shp files. Can they be submitted as .kmz files?

A. The Broadband Program Office (BPO) will only accept .shp files.
- 3. Q.** Please provide details on the Time Warner Cable (TWC) Buildout.

A. On January 8, 2016, the NYS Public Service Commission (PSC) issued an Order approving the TWC/Charter Communications (Charter) merger subject to enforceable conditions. Among the conditions, TWC/Charter have agreed to upgrade their network across the State to deliver Internet download speeds of at least 100 Mbps by the end of 2018, and 300 Mbps by the end of 2019, including in the currently Unserved Chatham Market; to connect approximately 145,000 currently Unserved and Underserved Housing Units and businesses within the TWC/Charter NYS Franchise Areas; and to offer other consumer benefits. The Order is available on the PSC's website.
- 4. Q.** I received a copy of your memo about Underserved and Unserved areas. Looking at the excel files; it appears that there are no Census Tracts in Tompkins County that are either Unserved or Underserved. Is that correct? It feels incorrect to me, as I am unaware of any residential broadband options in the county that reach the 100mb download speed.

A. As discussed in the New NY Broadband Program RFP Guidelines (the RFP Guidelines), certain areas have been omitted from consideration for this first allocation of Program funding (*see Section IV A 4*). Tompkins County is part of the TWC NYS Franchise Area. The existing TWC/Charter NYS Franchise Areas have been excluded from the Program at this time due to the companies' pending merger and the PSC's January 8th Order approving the merger with conditions, which includes TWC/Charter's agreement to upgrade their statewide network and connect approximately 145,000 currently Unserved or Underserved Housing Units and businesses within their NYS Franchise Areas. Areas within the existing TWC/Charter NYS Franchise Areas that are not addressed by the PSC's agreement will be included in future Program funding rounds.

Additionally, as a general note, the BPO presents eligible areas in Census Block (CB), rather than Census Tract form.

5. **Q.** With the announcement of the TWC/Charter merger, does this change the framework for the program? Would those in TWC territories be ineligible to apply?

A. See response to Question 4, above.

6. **Q.** In looking over the Unserved CB file published by the BPO, I see that the CB's are based on the FCC 477 file that was filed for the time period ending 6/30/15. We have launched DOCSIS 3.0 cable modem technology throughout the system and 25 Mbps download/3 Mbps upload broadband speeds via cable modem, and so these speeds are available to all areas of our service area. We have customers that are subscribing to and receiving this service. How do we go about updating this information and status of our system?

A. The BPO will consider challenges to the designation of any Census Block currently eligible for the Program. Providers must submit a mappable shapefile (.shp format) of the service area, documentation demonstrating that the Census Block(s) are currently served at the Governor's speed goals, or that Unserved CB's are in fact Underserved, and an affidavit attesting to that fact. The BPO requests that providers submit their challenges prior to February 15, 2016. Any changes to the eligibility of a Census Block will be published on the BPO's website.

7. **Q.** Page 11 of the RFP Guidelines indicates that applicants are required to offer a broadband product with at least 25/4 Mbps speed. Should the required speed be 25/3 (as opposed to 25/4) since the FCC benchmark speed for broadband is 25/3?

A. The speed designation of 25/4 is correct. To participate in the Program, applicants must agree that their broadband service offerings for consumers in the funded Service Areas, for a period of five (5) years from completion of the project, will include the following pricing tier as a service option to residential users, (excluding businesses and other institutional users): Minimum Internet speeds of at least 25/4 Mbps (download/upload), at a monthly rate not to exceed \$60, including connection fees, equipment fees, and/or surcharges. This pricing requirement, as well as the speed requirements of the Program, are based on Governor Cuomo's speed goals and are not related to the FCC benchmark.

8. **Q.** It is a competition based on the greatest potential for economic development. Doesn't this eliminate sparsely populated rural areas where the cost per house hold will be much higher to install internet where there isn't any vs. upgrading a metro area to 100Mbps?

A. As noted in the RFP Guidelines, all Unserved and Underserved areas of New York State are eligible for bidding, and, further, there will be separate reverse-auctions for each REDC Region to reflect different geographies. Applications to address Eligible Unserved CB's and Eligible Underserved CB's will also be ranked separately (*i.e.*, an application to serve Unserved CB's will not be ranked against an application to serve Underserved CB's).

9. **Q.** Why does the Program prohibit applications from mixing fiber and fixed wireless?

A. As noted in the RFP Guidelines, each application must utilize only one technology solution. To the extent an applicant wishes to utilize multiple solutions, each technology must be submitted through a separate application. The primary reason for this requirement is that the costs and performance characteristics associated with deployment using each technology are different

and, given the disparate geographies covered by various applications, it would not be possible to compare applications on an equal basis if each one had different technology constraints.

- 10. Q.** The 50% cost match will eliminate much of Westerlo. Currently, Mid-Hudson Cable is willing to install internet at a 35/mile household density. Given the Program’s 50% match, won't that still leave the say 6/mile household density unprofitable?

A. As noted in the RFP Guidelines, the Governor’s goal for private investment in funded projects is 50% of total Eligible Project Costs or greater. The Program will consider proposals offering co-investments below 50%, but not lower than 20%, of eligible project costs.

- 11. Q.** The 2,500 households minimum to be served per proposal seems a real killer. Westerlo only has 3,300 residents and far fewer than 2500 household. Why this restriction?

A. Each application must serve a minimum of 2,500 Units OR all eligible Unserved or Underserved CB's within an REDC Region. For purposes of the RFP Guidelines, “Units” include HU’s (as defined by the U.S. Census Bureau), commercial properties, governmental buildings, healthcare facilities, K-12 schools, libraries, EOC’s, institutions of higher education, and other community institutions. Additionally, applicants may request a Waiver from this requirement in the event of compelling circumstances. Waivers are discussed in Section V of the RFP Guidelines and will be granted at the discretion of the President and CEO of Empire State Development.

- 12. Q.** I am requesting a clarification of what areas in Columbia County are eligible for Phase I funding. As I understand the RFP Guidelines, Fairpoint, Charter and Time Warner areas are ineligible is that correct? Also Verizon service territory eligible or ineligible?

A. A list of CB’s eligible for the Program is provided on the BPO’s website and can be sorted by County. As discussed in the RFP Guidelines, the Time Warner Cable/Charter NYS Franchise Areas, and unclaimed Connect America Fund (CAF) territories are ineligible for Phase 1. The Fairpoint CAF areas have not been excluded.

- 13. Q.** Some municipalities have authoritatively documented fully Unserved address points that do not reside within the CB's identified in this RFP (nor are they adjacent to the CB's noted). How does one participate in the Governor's initiative when Unserved addresses outside of the authorized CB's are authoritatively identified?

A. As noted in the RFP Guidelines, the BPO designated Eligible CB’s based on the FCC's December 2014 Form 477 data, which reflects the fastest Internet speed available in a Census Block. Certain areas have been omitted from consideration for this first allocation of Program funding (*see Section IV A 4* of the RFP Guidelines).

Additionally, applicants with evidence of the existence of Unserved Units within an ineligible Census Block may seek a waiver to serve these Units. Waivers are discussed in Section V of the RFP Guidelines, and will be granted at the discretion of the President and CEO of Empire State Development.

- 14. Q.** Would it be accurate to say that if an application serves a single address within an Unserved CB, that the entire CB will be labeled as served, just as the present broadband map does?

A. Under the New NY Broadband Program, projects must offer service throughout the entirety of a Census Block that an applicant proposes to serve. The BPO will not utilize a “one-served, all-served” methodology in determining whether an application meets the minimum speed and service territory requirements of the Program.

15. Q. What happens to the \$100,000 Application Deposit if an applicant wins an award and signs the Grant Disbursement Agreement? Is the Deposit returned to the applicant?

A. The Application Deposit will be returned. Detailed instructions on the Application Deposit will be posted on ESD website prior to March 1, 2016.

16. Q. If a project area is focused in one municipality (*e.g.*, town, village) and the area to be served contains both Unserved and Underserved units, and the approach used to serve the units will be a combination of fiber and DSL, would this require 4 different applications to serve just one community? I.e. one application for the fiber portion serving Unserved, one for fiber serving Underserved, one for DSL serving Unserved, and one for DSL serving Underserved.

A. This is correct.

17. Q. Question #15 of the Threshold Questions relates to providing BPO with an “unsubordinated security interest in tangible assets funded by the Program”. What are the criteria for determining whether such an interest will be required?

A. The BPO anticipates that all applicants to the Program will be required to provide the BPO with a security interest in the funded assets.

18. Q. Will the Broadband Office work with the FCC to free up “Universal Fund” monies to be used to match broadband funds when other sources have been exhausted or do not exist?

A. The State of New York anticipates coordinating with the FCC to ensure that all available funding resources are used to deploy broadband to those New York communities where high-speed Internet is most needed.

19. Q. Are areas that did accept CAF funding still eligible to apply into the New NY Broadband Program?

A. Yes, such areas are still eligible. As stated in the RFP Guidelines, only unclaimed Connect America Fund (CAF) territories are ineligible for the Program at this time.

20. Q. Is “building out areas with seasonal homes” a reason to seek a waiver?

A. While applicants may seek a waiver in connection with meeting one or more of the Program Requirements, the BPO will consider requests for a waiver on a case-by-case basis. Waivers are discussed in Section V of the RFP Guidelines and will be granted at the discretion of the President and CEO of Empire State Development.

Please note, however, that seasonal homes do qualify as “Units” under our RFP Guidelines (*i.e.*, a home, whether occupied or not, counts as one (1) Unit). An applicant need not seek a waiver for the sole purpose of including such Units in their application.

21. Q. Can you take out a loan and secure it as the company's equity match?

A. No. As stated in the RFP Guidelines, a portion of the applicant’s financial commitment – at least 10% of total Eligible Project Costs – must be equity capital injected into the project by the applicant. Equity capital is defined as cash invested into the project by the applicant or by investors, and should be auditable through the applicant’s financial statements or accounts, if so requested by ESD. Equity capital may include funds raised through the sale of equity stakes in the applicant. Equity capital cannot be borrowed money secured by the assets in the project, or grants from a government source.

22. Q. Can you make two applications mutually dependent? Both Unserved and Underserved?

A. No. Each application to the Program will be independently ranked in the reverse-auction and may not be submitted contingent on the selection of another application. Further, unless granted a Waiver, as discussed in Section V of the RFP Guidelines, applications may not propose to serve a combination of Eligible Unserved and Underserved CB's.

23. Q. Does the BPO have any insight on the best way to count commercial businesses within CB's?

A. The BPO has no preferred methodology for counting commercial businesses within Eligible CB's. However, in those instances where an applicant’s understanding of the total Units located, and to be addressed, within a CB differs from data available to the BPO on that CB, the BPO may, at its discretion, request additional information from the applicant to support the number of Units to be served.

24. Q. Is the BPO willing to look at waivers before they are submitted?

A. No. Waiver requests should be submitted through the NYS Consolidated Funding Application Portal as part of an application.

25. Q. What consideration, if any, has been taken in the RFP Guidelines for multi-unit dwellings?

A. Each separate living unit within a multi-unit dwelling, whether vacant or occupied, counts as one (1) Unit under the Program Guidelines, for both purposes of satisfying the 2,500 Unit requirement and for calculating the dollars-per-Unit cost of an application.

26. Q. Is there an appeal process after the denial of a waiver?

A. Applicants may not appeal waiver denials.

27. Q. At the Stakeholder Forum, it was stated that federal E-rate funds can be used to satisfy the required Co-Investment (except for the required 10% equity capital). Can federal CAFII funds be used to satisfy the required Co-Investment if the units to be upgraded to 100 Mbps (or 25 Mbps in remote areas) are also part of an applicant’s CAFII plans?

A. The Program encourages applicants to leverage federal CAF funding, and such funding may be counted as part of the applicant's required Co-Investment, as discussed in Section IV B of the RFP Guidelines. However, such funds may not be used to satisfy the requirement that a portion of the applicant's financial commitment - 10% of eligible project costs - take the form of equity capital. Additionally, projects must be fully-financed, as discussed in Section IV G of the RFP Guidelines. Given the nature of CAF awards, which are disbursed over time to support the ongoing operating costs associated with broadband deployments, applicants would need to demonstrate that such CAF funds would be available for the up-front capital expenses eligible under the New NY Broadband Program.

28. Q. Looking at the Eligible CB's in my Exchange Area, there are ineligible areas that I know to be Unserved. Do I include these in my bid design and just make a note explaining why I have included them?

A. As discussed in Section IV A the RFP Guidelines, applications to the Program must address Eligible CB's. To the extent you believe a CB has been excluded in error, you may contact the BPO with evidence of the Unserved status of that CB.

To the extent an applicant wishes to address Unserved or Underserved Units adjacent to at least one Eligible CB that the applicant proposes to serve, the applicant may propose inclusion of such Units as an Adjoining Service Area. Adjoining Service Areas are discussed in Section VIII of the RFP Guidelines. Additionally, applicants with evidence of the existence of Unserved Units within an ineligible CB may seek a waiver to serve these Units. Waivers are discussed in Section V of the RFP Guidelines, and will be granted at the discretion of the President and CEO of Empire State Development.

29. Q. May an individual applicant submit multiple applications involving one or more of the same Eligible CB's?

A. Yes, an individual applicant may issue more than one application proposing to address the same Eligible CB's. However, each application will be evaluated independently.

30. Q. I currently provide Internet service in areas eligible for the Program and would like to apply for Program funding to upgrade my entire network to deliver speeds of 100 Mbps. However, the minimum service territory requirement of 2,500 Units, or all Unserved or Underserved Census Blocks within an REDC Region, represents a real barrier for me. Will ESD seriously consider my waiver request?

A. Yes. ESD will consider waiver requests, and encourages applicants to seek waivers where meeting a Program Requirement would pose a hardship. Waivers are discussed in Section V of the RFP Guidelines, and will be granted at the discretion of the President and CEO of ESD.

31. Q. For the "adjoining census blocks" that are partially served and ones that a company/bidder is interested in including in their application (with appropriate affidavit), is it ok that those blocks are or could be a TWC franchise area?

A. No. Adjoining Service Areas may not include Units within the TWC-Charter NYS Franchise Areas, which have been excluded from the Program at this time.

32. Q. Are there waiver opportunities at lower speeds?

A. The Program is designed to ensure that every New Yorker has access to high-speed broadband at Internet download speeds of at least 100 Mbps, and 25 Mbps in the most remote areas of the State. The BPO will not consider requests for waivers of the Program's speed goals in this first round of the Program.

33. Q. Can schools leverage awarded Smart School Funds as part of a project match?

A. The Program allows applications to utilize additional sources of capital funding, including Smart Schools funding, and such funding may be counted as part of the applicant's required Co-Investment, as discussed in Section IV B of the Program Guidelines. However, such funds may not be used to satisfy the requirement that a portion of the applicant's financial commitment - 10% of eligible project costs - take the form of equity capital.

34. Q. If the BPO changes the Required Pricing Tier for future funding rounds of the Program, will such changes extend to existing awardees selected in prior rounds?

A. Yes. The BPO may modify the Required Pricing Tier for future rounds of the Program. To the extent that such modified pricing terms are more favorable to grant recipients than those currently outlined in the RFP Guidelines, the BPO will make such modified pricing terms available to existing awardees selected through prior rounds. Such terms will replace and supersede the pricing requirements currently outlined in the RFP Guidelines.

35. Q. Are we required to build out to homes that do not have access to electricity?

A. No. Any homes without access to electric service are exempted from the requirement to serve all Units in a Census Block.

36. Q. Under the RFP Guidelines, only customer drops of 150 ft or "Standard drop length" are eligible project costs. This is from the CATV specification. Our experience is that fiber drops in rural areas are typically much longer. Our average drop length in our RUS project was over 800 ft. Can this additional cost be covered under the Program?

A. Only customer drops of 150 ft, measured as the offset from the road to the typical termination point on the customers' premises, not the distance from a remote pedestal, are eligible project costs under the RFP Guidelines. Additional costs for drops in excess of 150 ft must be financed by the applicant.

37. Q. We have a question regarding the financial pro forma statements, question #56 of the application. For those companies who are submitting applications covering census blocks that have been deemed as unserved (due to the inability of the network to provide broadband speeds at 25/4) and where they are currently providing services today, the project area would include existing revenues and expenses due to providing services to established customers. As

we are developing the 5 year pro forma - income statement, balance sheet and cash flow statement - should the application financials reflect the existing revenues/expenses or should they reflect just the new services?

A. The pro forma financials should reflect the new service. However, if the applicant is part of a larger entity, then the applicant is requested to provide projections on a combined basis as well.

38. Q. According to the RFP Guidelines, projects funded under the Program will be assigned a Minority and Women-Owned Business Enterprise (MWBE) and a Service-Disabled Veteran-Owned Business (SDVOB) utilization goal. May applicants start engaging MWBE and SDVOB vendors in advance of submitting an application?

A. Yes, the BPO encourages applicants to connect with MWBE and SDVOB vendors as early as possible in developing their proposals.

Please consult the New York State Directory of certified MWBE firms for information on vendors in your Region - <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>.

A list of certified SDVOB firms is published on the NYS Office of General Services' website - http://ogs.ny.gov/core/docs/CertifiedNYS_SDVOB.pdf.

39. Q. Can an applicant change responses that have been uploaded to the Portal? We are trying to determine whether we need to prepare our application materials offline and upload everything at once, or whether we can update our application as we go and make changes as necessary.

A. Yes, the CFA Portal allows users to start, save, and modify an application prior to submission. However, once submitted, an applicant will not be permitted to edit their application. For questions on using the CFA Portal, please consult the CFA Application Manual, available here - https://www.ny.gov/sites/ny.gov/files/atoms/files/2015_CFA_Application_ManualFINAL.pdf

40. Q. Does the BPO offer any guidance on submitting applications in multiple REDCs? Will the BPO select more than one project within each REDC? Can an individual applicant be selected in more than one REDC? Also, how much funding is allocated for each REDC?

A. An individual applicant may submit multiple applications and seek to address either Unserved or Underserved Census Blocks in more than one NYS Economic Development Regions, subject to the Minimum Service Area requirements stated in Section IV (A) of the RFP Guidelines. An individual applicant may be selected in more than one Region.

There is no maximum dollar amount allocated to any Region in this first funding round of the Program, and, subject to the terms of the RFP Guidelines, the BPO may select more than one application per REDC, depending on the quality and quantity of qualifying, commercially-reasonable applications received.

41. Q. Regarding the requirement that a portion of applicant’s financial commitment – at least 10% of eligible project costs – take the form of “Equity,” our company has a current line of credit that we have not drawn all of the money on. Does the money have to be physically sitting in our account to count as available cash or can it reside at the bank until we need it? As confirmation, this is not a Line of Credit (LOC) against the grant or any assets of the grant, it is a current line secured by our business/company.

A. Yes. A current line of credit may be applied to satisfy the equity requirement, provided that the LOC is not secured by the grant or any assets in the grant.

42. Q. Does the \$100,000 application fee count towards the 10% amount?

A. No, the \$100,000 Application Deposit may not be applied toward the equity portion of an applicant’s required Co-Investment.

43. Q. We are seeking to include an Adjoining Service Area in our application. However, if the BPO disallows that Adjoining Service Area, how will our application be evaluated?

A. As stated in Section VIII of the RFP Guidelines, proposed Adjoining Service Areas must be outside Eligible Census Blocks and the BPO will only permit inclusion of an Adjoining Service Area where it is satisfied, based on the applicant’s evidence, that the Units identified are, in fact, Unserved or Underserved. Accordingly, as part of their application, where an applicant seeks to include an Adjoining Service Area, the applicant must separately provide two proposed grant funding scenarios: (1) an award that assumes inclusion of the Adjoining Service Area and (2) an award that assumes exclusion of the Adjoining Service Area. Where the BPO does not accept a proposed Adjoining Service Area, it will evaluate the application based on the requested award amount that excludes the Adjoining Service Area.

44. Q. What is the process for submitting waivers?

A. Waiver requests should be submitted through the CFA Portal as part of an application, in response to CFA Questions 5254 and 5255. Applicants requesting a waiver will be asked to provide a written justification for the waiver and any documents supporting the waiver request.

45. Q. Question 56 in the Phase 1 Application Questions asks for financial data including Break Even Ratio. Could you please provide the details that go into the calculation of the Break Even Ratio?

A. As part of your Pro Forma Financial Submission, please provide a calculation of your company’s forecasted steady state revenues, divided by your company’s total costs (debt service and operating costs), (the “break-even ratio”), and any assumptions underlying that calculation.

46. Q. My company would like to provide service along a road that divides two Eligible Census Blocks (*i.e.*, homes on one side of the road belong to one Census Block, and homes on the other side belong to the second). Can we include Units on both sides of the road in our application?

A. An applicant may only serve Units on both sides of the road if the applicant serves both Eligible Census Blocks in their entirety. Under the RFP Guidelines, applicants may not divide or partially-serve Eligible Census Blocks.

47. Q. The RFP indicates that the \$60 per month price for the 25/4 product must include fees and surcharges. Are the surcharges to be included limited to just the ones that exist at the time of the application, or do they include any future surcharges that the State or federal government may require in the future? Also, does the \$60 monthly rate need to include installation and customer premises equipment (CPE) costs?

A. This requirement does not extend to future surcharges that may be levied.

With respect to CPE costs, the \$60 monthly rate must include standard modem equipment fees, but may exclude costs associated with the use of a wireless (WiFi) router.

The \$60 monthly rate described above need not include a one-time installation fee. Such a fee may not exceed \$49 (regardless of whether the fee is paid in one or over several installments), except where providing service to a customer would require the Grantee to make a connection in excess of 300 feet, measured as the offset from the road to the typical termination point on the customer's premises. In such cases, the Grantee will be permitted to charge a custom installation fee in excess of \$49.

Please note that the Required Pricing Tier's \$60 monthly rate is effective as of December 2015 and may be increased annually by the provider at a rate reflecting the rate of inflation as measured by the Consumer Price Index (CPI) or a rate to be published by the BPO, whichever is greater. Further, the BPO may modify the Required Pricing Tier for future funding rounds of the Program. To the extent that such modified pricing terms are more favorable to grant recipients than those outlined herein, the BPO will make such modified pricing terms available to existing awardees selected through prior funding rounds, and such terms will replace and supersede these requirements.

The BPO has updated the Program's Grant Disbursement Agreement (GDA) to reflect these pricing terms. The updated GDA can be found on the BPO's website, at the following link--
<http://nysbroadband.ny.gov/sites/default/files/documents/new-ny-broadband/ApplicationDepositFeeMemoAttachmentA.pdf>.

48. Q. Regarding Adjoining Service Areas, under Question 27 of the Application, applicants are asked to provide documentary evidence establishing that Units in such areas are, in fact, Unserved or Underserved. What type of evidence should applicants submit?

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A. The BPO encourages applicants to provide address-level data on current broadband availability to Units proposed as Adjoining Service Areas. Indeed, the BPO may request such data from all applicants proposing Adjoining Service Areas.

49. Q. Will grant awards through the New NY Broadband Program be taxable?

A. Applicants should consult with their tax advisors concerning the tax status of grants awarded through the Program. The BPO makes no representation as to the tax treatment of any grant award issued.