New NY Broadband Program Phase 3
Pre-Application Census Block Challenges

To the extent an Internet service provider currently offering broadband service to all locations in any one or more Eligible Census Blocks (CBs), as identified on any of the New NY Broadband Program’s Phase 3 Lists of Eligible CBs, wishes to request that ESD remove such CB(s) from Phase 3, they must submit a challenge (“Challenge”) with the following information, no later than **4:30pm on April 13, 2017** (the “Challenge Deadline”). Challenges must be submitted electronically to ESD at the following address: [newnybroadband@esd.ny.gov](mailto:newnybroadband@esd.ny.gov), and marked with the subject line “Challenge.” No Challenges in connection with Phase 3 will be accepted after the Challenge Deadline.

A Challenger must provide:

1. A list of CBs to be included in their Challenge, identified by CB ID Number, in Microsoft Excel Format, noting the speed offered by the provider in that CB, and the percentage of Housing Units in that CB that have access to that speed. The list should conform to the headings provided in Exhibit B. For example:

<table>
<thead>
<tr>
<th>Census Block ID</th>
<th>Max Speed Provided by Your Company</th>
<th>Percent of the Housing Units in this block that you provide this speed to</th>
<th>BPO List that this Block Appears On</th>
</tr>
</thead>
<tbody>
<tr>
<td>36XXXXXXXXXXXXX</td>
<td>100 Mbps</td>
<td>100%</td>
<td>List A - Unserved</td>
</tr>
</tbody>
</table>

   **AND**

2. An affidavit, in the form of Exhibit A, certifying that the following statements are true:

   a. The Challenger, as of the date of the Challenge, provides broadband service within all of the CBs identified, AND

   b. The Challenger currently offers broadband service at download speeds of 100 Mbps, within a normal serving interval, and without special construction charges, to all addresses within the CB having access to electric utility service, and will continue to offer such service, without grant support from the State of New York, for a period of five (5) years from the date of the certification.

Successful Challengers will be required to enter into a binding agreement with ESD, stipulating to above certifications, within 14 days of the Challenge’s resolution.
ESD may remove CB(s) from Phase 3 pending its final determination of a Challenge, and execution of an agreement with a successful Challenger. However, where a successful Challenger refuses to enter into an agreement with ESD consistent with their Challenge, ESD reserves the right to reinstate such CB(s) to the Program in future funding rounds, and to bar the Challenger from submitting Challenges in such future rounds.

In evaluating Challenges, ESD will consider the most current FCC Form 477 Filing, as well as the Challenger’s own submitted data, and reserves the right to request additional information from Challenger, based on the scope of the Challenge in question. ESD also reserves the right to reject a Challenge where it cannot establish the existence of qualifying broadband service levels to its satisfaction based on the information provided.
EXHIBIT A

CHALLENGE AFFIDAVIT

State of New York

County of ____________________

The undersigned affiant, ____________________, being first duly sworn, hereby deposes and says:

1. I am over the age of eighteen, suffer no legal disabilities, have personal knowledge of the facts set forth below, and am an officer of ____________________ (the “Company”) duly authorized to execute this affidavit.

2. I hereby affirm that the Company currently offers broadband Internet service at download speeds of 100 Mbps, within a normal serving interval and without special construction charges, to all addresses having access to electric utility service within each Census Block referenced on the attached List of Challenged Census Blocks, and will continue to offer such service, without grant support from the State of New York, for a period of five (5) years from the date of this affidavit.

3. I hereby affirm that the Company is prepared to enter into an Agreement with Empire State Development memorializing the commitment above.

This the ____ day of _______, 2017.

______________________________
Title __________________________

Sworn to before me this ____ day
of ____________, 2017.

X_______________________________
(Notary Public)
**EXHIBIT B**

LIST OF CHALLENGED CENSUS BLOCKS

(Note: On submission, please provide a spreadsheet in Microsoft Excel format with the fields displayed below.)

<table>
<thead>
<tr>
<th>Census Block ID</th>
<th>Max Speed Provided by Your Company</th>
<th>Percent of the Housing Units in this block that you provide this speed to</th>
<th>BPO List that this Block Appears On</th>
</tr>
</thead>
<tbody>
<tr>
<td>36XXXXX4235XXX</td>
<td>100 Mbps</td>
<td>100%</td>
<td>List A - Unserved</td>
</tr>
</tbody>
</table>