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Addendum to Arkansas Rural Connect Coronavirus Rule

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SECTION 1. BACKGROUND

The Director of the Arkansas Economic Development Commission (“Director”) issues this Rule to respond to urgent, telecommunication needs in this State for communities impacted by the COVID-19 pandemic. On or about February 21, 2020, the Director issued the Arkansas Rural Connect Broadband Rule (hereafter, the “Broadband Rule”) to implement the Arkansas Rural Connect Program (hereafter, “Arkansas Rural Connect,” or “Arkansas Rural Connect Program,” or “ARC”). This Broadband Rule was promulgated prior to the issuance of State and Federal public health guidelines responding to the COVID-19 pandemic.

The COVID-19 pandemic has severely impacted the citizens of this State. COVID-19 has brought about an urgent and immediate need for broadband internet access. Broadband enables workers to telework, patients to use telemedicine services, K-12 and college students and unemployed workers in need of reskilling to participate in distance education, religious people to participate in online worship services, and all citizens to shop online, interact with friends through Skype and other video chat tools, and keep up with the latest news and public health guidelines.

The federal government has instituted a major relief effort under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The State benefited from the CARES Act but still was in need. The federal government then passed the American Rescue Plan Act (ARPA). These funds allowed states to broaden and strengthen its broadband infrastructure in unserved or underserved areas. All ARPA Fiscal Recovery Funds (“ARPA Funds”) must be obligated by December 31, 2024. The period of performance will run until December 31, 2026.

The Arkansas Rural Connect program promotes broadband deployment in rural areas of Arkansas that lack meaningful and efficient broadband services. The ARC program and its purposes align with allowable uses of ARPA Funds.

Due to the urgent need for broadband for distance learning, telemedicine and the need for telework, necessitated by the COVID-19 pandemic, this addendum to the ARC Coronavirus Rule is being issued so that funds may be disbursed immediately and to accelerate the continued deployment of broadband network infrastructure in rural Arkansas, to the extent possible.

SECTION 2. AUTHORITY

This Rule is authorized to be issued by the Director of the Arkansas Economic Development Commission (“AEDC”) under Ark. Code Ann. § 15-4-209(b) (5) which provides that AEDC may promulgate rules necessary to implement the programs and services offered by AEDC. On or about August 9, 2019, Governor Asa Hutchinson authorized a transfer of funding for the implementation and administration of the ARC Program to AEDC. Pursuant to Ark. Code Ann. § 15-4-209(a)(1), AEDC is authorized to administer grants to assist with economic development in the state. The ARC Program is therefore authorized to administer ARC grants and to issue administrative rules under Ark. Code Ann. § 15-4-209(b) (5) as a service offered by AEDC.

SECTION 3. PURPOSE AND QUALIFICATION FOR RECEIVING ARPA FUNDS

This purpose of this addendum is to conform the ARC Program with the Interim Final Rule for Coronavirus State and Local Fiscal Recovery Funds¹ and any subsequently promulgated rules and guidance issued by the United States Department of Treasury (the “Federal Rules”) whenever ARPA Funds are the source of funding for ARC grants. The ARC Broadband Rule and the ARC Coronavirus Rule will govern the terms of any grants issued using ARPA Funds except when the terms of the ARC Coronavirus Rule and ARC Broadband Rule conflict with the applicable Federal Rules, in which case the Federal Rules will control and be incorporated into the ARC program grant agreement with the ISP.

Under the Federal Rules, projects funded in whole or in part with ARPA Funds must be able to provide synchronous bandwidths of 100mbps download and 100mbps upload. Where impractical due to geographical, topographical or financial constraints the upload speed can be between 20mbps and a 100mbps in such instances. The internet service provider (“ISP”) must submit a letter detailing why the upload speeds cannot be obtained at 100mbps and the Department of Commerce AEDC Broadband Office (“Commerce Broadband Office”) will determine if the ISP letter is approved for the requested bandwidth modification. Those projects with an approved request for bandwidth modification must be scalable to 100mbps upload speed.

Guidance issued by the U.S. Treasury in connection with the promulgation of its interim final rule indicates that a fiber optic or wireline infrastructure may be used to build out broadband networks using ARPA Funds. The Commerce Broadband Office has requested clarification from the U.S. Treasury as to whether fixed wireless infrastructure may be used when funded with ARPA Funds. In the absence of confirmation from U.S. Treasury that ARPA Funds may be used to deploy fixed wireless infrastructure, the Commerce Broadband Office will not approve any ARC Program applications which rely on fixed wireless infrastructure.

¹ 31 C.F.R. § 35.6 (2021).

SECTION 4. DEADLINES, UNSERVED AND UNDERSERVED AREAS

Broadband infrastructure builds, using ARPA funds, must be completed no later than December 31, 2023. The Commerce Broadband Office will determine the dates by which awarded projects shall be completed within these allowed deadlines. Priority attention will be given to projects that 1) contain detailed and aggressive timelines for completing the project and 2) provide confirmation that the Mayor or County Judge, as co-applicant for the project, have been provided proposed pricing for the broadband services covered by the project. ARPA funds must be used in unserved and underserved areas in Arkansas. For purposes of ARPA funds, unserved and underserved areas are rural incorporated and unincorporated cities or communities where residents lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25mbps download and 3mbps upload.

SECTION 5. MAPS

The Commerce Broadband Office, at its discretion, may request from the applicants maps and other information necessary to make informed decisions as to the proper unserved or underserved locations in Arkansas to expend funds. Applicants that accept funding under this Rule shall follow all the requirements under the ARC rules.

Again, each project deployment shall be completed by the date specified by the Broadband Office, but in any event, each project funded with ARPA funds shall be completed no later than December 31, 2023.

SECTION 6. EFFECTIVE DATE

This Rule is effective ten days upon filing of the approved final rule with the Arkansas Secretary of State.

MIKE PRESTON
DIRECTOR
ARKANSAS ECONOMIC DEVELOPMENT COMMISSION

DATE