



## Arkansas Rural Connect Rules

### Post Hearing Comments Summary

The Office of Broadband Manager (“OBM”) is submitting a mark-up copy of the rule (Attached ARC Exhibit “1”) and a clean copy of the final rule. See Attached ARC Exhibit “2”. The mark-up copy of the ARC rules show the modifications made as a result of the public comments. A total of four comments were received during the thirty-day comment period. Two were received by e-mail during the public comment period, one was submitted at the public hearing, and one was provided in a face-to-face meeting with the Broadband Manager and later submitted by e-mail at the Broadband Manager’s request.

The four public comments received during the second thirty-day public comment period are summarized below, with OBM’s responses.

Elizabeth Bowles’ comments are summarized as follows:

1. Companies that have been financially vetted by federal agencies and awarded funds can bypass baseline requirements.
2. The language pertaining to early project closure “is vague in that it implies that should the service become obsolete or unnecessary, the municipality could... elect at its discretion to penalize the ISP.”
3. ARC rules should be technology neutral, as they are now, and not feature a preference for fiber to the home or gigabit speeds, as some advocate.

Dr. Smith’s responses are as follows:

1. While this might save time at the application stage, it would be complex to implement. It may be worth revisiting it in the future, but we worry that it might prove too difficult to establish and fix in rule the range of federal programs whose financial vetting processes should be accepted as sufficient warrants for the state to deem a company grant eligible. That said, ARC grant applicants are encouraged to submit documentation related to their financial vetting by and receipt of funds from federal agencies, to facilitate our own decisions regarding financial eligibility.
2. We do not agree that the language of the rules ever implied that ISPs could be penalized because a municipality, at its own discretion, might deem an ARC grant-funded broadband service obsolete or unnecessary.

3. As recommended, the ARC rules remain technology neutral and make no explicit preference for fiber technology or gigabit speeds, though local public officials may have such preferences and act on them through project rankings, as explained below.

CenturyLink's comments are summarized as follows:

1. Some terms, such as "Census-Designated Place," "project closure," "ISP," and "town" would benefit from clearer definition, greater consistency of usage, and/or appropriate internal references linking disparate passages in which these are mentioned.
2. The rules were praised for including a well-defined maximum grant per household connected, providing alternatives to submitting financial statements, and giving the ASBO discretion to make adjustments to complement federal programs.
3. The requirement that applicants demonstrate the financial sustainability of projects after deployment be removed, since it impinges on internal business judgments and forces disclosure of confidential information.
4. Instead of targeting November 2022 as the completion date for deployments, the deployment deadline should be a specified time interval, e.g., 24 months, after awards are announced.

In response, the OBM made several minor language adjustments to address (1), but did not accept recommendations (3) and (4).

More substantively, concerning (3), the provision requiring scrutiny of projects' financial sustainability reflects the OBM's desire to drive lasting expansions of broadband coverage, rather than temporary expansions that won't outlast a transient subsidy. However, CenturyLink's concerns are noted, and the OBM will remain on the alert for evidence that ARC requirements demonstrating financial sustainability are excessively burdensome.

Concerning (4), since we expect that the release of an RFA and the opening of an application window will proceed expeditiously and not leave applicants unduly in doubt about the length of time that will be available for deployment after grant awards are announced. However, if further rounds of ARC funding are made available after a significant lapse of time, it will be essential to adjust the deployment deadline, and a sliding deadline that depends on the date when grant awards are announced may be an appropriate solution.

Citizen John Duncan wrote that Hot Springs Village should be allowed to participate in the grant, because it is larger than many towns. Though received during the second thirty-day public comment period, this comment seems to be a response to a previous version of the rules. The current ARC rules would not preclude Hot Springs Village from participating on the basis of its lack of incorporated status.

Julie Mullenix's comments, on behalf of the Arkansas Rural Broadband Association, during the January 9, 2020, public hearing are summarized as follows:

1. ARC grant program should provide higher score to networks that deploy fiber to homes than those with fixed wireless.

2. ARC grant program should not exempt companies with a five-year track record from getting Professional Engineer (PE) stamp.
3. ARC Grant Program should implement a testing requirement for its ISPs. This, according to Mullenix, would prevent companies from under sizing middle-mile and backbone transport facilities or distribution systems to cut expenses.
4. ARC grant program needs protection that providers will pay back funds if they fail to meet deployment and service requirements during the ten-year grant period.
5. ARC grant program should allow a period for providers to contest grant awards and verify their services.
6. ARC grant program should require each ISP to follow FCC requirements for annual broadband performance obligations and service rates.

The OBM appreciates Ms. Mullenix's comments and responds as follows:

1. While the ARC rules do not favor fiber explicitly and directly, they can favor fiber indirectly by giving local public officials the power to influence project selection by ranking projects in order of preference. To the extent that fiber projects are feasible within the budget constraints of the program, local public officials are encouraged to take into account the superior performance that some broadband technologies can plausibly claim to offer, now and perhaps even more in the future if bandwidth demand continues to escalate, and rank projects accordingly. Inasmuch as local public officials accept the case for the superiority of fiber, and rank fiber projects ahead of fixed wireless projects, and find ARC grants to be sufficient, perhaps in conjunction with private co-investment, to fund them, fiber projects may be able to out-compete fixed wireless projects even if the latter are cheaper. The ARC rules are designed not to prejudge the merits of different technologies, but rather to reveal provider costs and local preferences through the competitive grantmaking process and arrive at the best solution.
2. The OBM learned through its consultations with various ISPs, especially in the cable TV industry, that for many well-established providers it is not common practice to get a PE stamp before making major investments in new capacity. Moreover, the OBM itself intends to engage a technical review team with engineers on staff, which will perform a technical vetting of projects, reducing the need for a PE stamp. The PE stamp requirement is retained as an extra safeguard for smaller, less experienced companies as a compromise, but it does not seem necessary for well-established providers.
3. The OBM appreciates the recommendations with respect to testing requirements, but does not think a rule change is needed in order to implement something along these lines. We would draw attention to section 11(C) of the rules, which state, with respect to how the completion of project deployment shall be verified, that "the responsible public officials shall collect, or cause to be collected, with the advice of the [Arkansas State Broadband Office, i.e., OBM] as needed,

information sufficient to affirm that the project appears to be complete and broadband service has been made available to at least 95% of project footprint residents, [after which] the ASBO shall review this information as well as evidence from its own desk research, and if the evidence is sufficient, shall announce that the project has completed the main deployment phase, and authorize the release of any remaining disburseable grant funds.” The OBM could, at its discretion, advise local public officials to conduct speed and latency tests as described by the Arkansas Rural Broadband Association, and assist them to do so. While there might arguably be benefits specifying this in detail beforehand, broadband mapping is an area where best practices and best available data sources seem likely to evolve rapidly in the near future, so it seems wiser to wait on providing detailed guidance.

4. A letter of credit from grant awardees might give the state a bit more protection from ISPs defaulting on penalties owed for non-compliance than the current rules provide. However, considerable safeguards against abuse of taxpayer money are already in place in the rules, including requirements for applicant ISPs to submit financial statements or alternative documentation, requirements for applicants to demonstrate the financial sustainability of projects, a need to persuade local public officials that applicant ISPs are worthy partners, arrangements to pay out grant funds only as reimbursement for verified deployment-related expenses, and withholding of 20% of grant funds until deployment is verified to be complete. The risk that providers will cease to provide a valued and needed broadband service after deployment is complete is relatively small in any case, since we will only approve projects for which the anticipated revenues from operation exceed the anticipated costs. Requiring a letter of credit would disproportionately burden and might even exclude less highly capitalized companies which, however, might be desirable partners for the state because of their technology and cost structure. If, in future, a letter of credit may be warranted, we will make the needed changes. But at the present time, we deem that existing safeguards are sufficient and an additional letter of credit is not needed.
5. The OBM recognizes the importance of protecting providers from being overbuilt using state broadband grant funds. But the rules deal with this problem in a different way, namely, by asking all the ISPs in the state to submit maps of their coverage areas before the grant application window opens, so that we can make served areas ineligible. At the present time, we deem that to allow grant awards also to be contested *ex post* would impose undue risk on grant applicants and discourage participation, and that the provisions already in the rules sufficiently address the underlying problem. This assumption can be revisited in future as the results of ARC funding rounds are observed.
6. FCC requirements with respect to broadband performance and pricing are complex, and the OBM does not have sufficient expertise in this area to assess their applicability to ARC grant awardees and then monitor their compliance with them. Also, since FCC rules may change over the duration of an ARC grant project, to impose such requirements on ARC grant awardees would create new risks for them, since the FCC might raise standards in a way that grant awardees could not comply with without substantial new investments. The ARC program has set its own goals for service quality rather than outsourcing this to the FCC.

A complete transcription of the January 9, 2020, public hearing, summarized above, is attached as ARC Exhibit "3". The four public comments are attached as ARC Exhibit "4".

**ARC**  
**EXHIBIT**  
**“1”**

## **DRAFT RULE**

### **ARKANSAS RURAL CONNECT BROADBAND GRANT PROGRAM**

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#### **Section I. Purpose**

The purpose of this proposed Rule is to help implement policies advanced in the “Arkansas State Broadband Plan,” (hereafter, the “Broadband Plan Report”) as issued by the Office of Arkansas Governor, Asa Hutchinson, on May 15, 2019. The proposed rule is intended to establish requirements for governmental entities to participate in the Arkansas Rural Connect Broadband Grant Program (hereafter, “ARC,” or the “ARC Program”) in order to provide or expand broadband services consistent with the Broadband Plan Report, resulting in increased educational opportunities, healthcare opportunities, and economic development opportunities and ensuring all Arkansans have equal access to the services they can use to improve their quality of life, their community, and this State.

## **Section 2. Introduction**

As broadband access becomes more necessary to normal modern life, there is growing concern about a digital divide, whereby some areas are cut off from opportunities for economic development by a lack of adequate broadband service. To help close that digital divide, the ARC Program is being instituted to help communities incentivize providers to deploy adequate broadband service to their residents. The program will provide funds to internet service providers (ISPs) to serve target municipalities at the request of those municipalities. ARC funds will be allocated on a competitive and transparent basis, with efforts made to maximize the impact of scarce state funds.

## **Section 3. Authority**

This proposed Rule is 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 the economic development in the State. The ARC Program is therefore authorized to administer the ARC grant and authorized to establish administrative rules under Ark. Code Ann. § 15-4-209(b) (5) as a service offered by AEDC.

## **Section 4. Definitions**

- (1) "25/3" means minimum speed 25 Mbps download/3 Mbps upload.
- (2) "AEDC" means the Arkansas Economic Development Commission.
- (3) "ARC" means Arkansas Rural Connect.
- (4) "ASBO" means Arkansas State Broadband Office.
- (5) "Available" means, in the case of broadband service, that a provider stands ready to provide broadband service to a location within thirty (30) days of a request for service being made
- (6) "Broadband" means, for purposes of these rules, an internet connection by fiber optic cable, coaxial copper wire, DSL, or fixed wireless with at least 25/3 speeds, latency less than 100 ms, and no data usage caps or throttling below 150 Gb per month
- (7) "Community" means a municipality, unincorporated community, or county
- (8) "ESRI Shapefile" means a geospatial vector data format that can be utilized by ESRI or other GIS software
- (9) "Interdependent projects" means projects which are part of a set of projects involving the same ISP, each of which the ISP commits to implement only if all of the projects in the set get funded, and will be assumed for purposes of project selection to be less desirable to

implement if some of the projects in the set are not funded. This may occur, for example, if deployment involves creating shared assets that need to recover costs from multiple projects to be economically justifiable. The ASBO will take note of the interdependent nature of the projects, and avoid approving any interdependent project if the other projects in the interdependent set are not also funded.

(10) “ISP” means Internet Service Provider, [its successors or assigns](#)

(11) “Location” means any structure that is legally fit for occupancy as a commercial or residential dwelling.

(12) “Mbps” means megabits per second

(13) “Municipality” means a legally incorporated municipality under Arkansas law

(14) “Project cost” is the entire capital cost of a broadband project

(15) “Project footprint” is the geographic territory within which a project will provide broadband coverage

(16) “Project organizers” means public officials, ISPs, civic groups, or anyone else who takes a leading role in developing an Arkansas Rural Connect broadband project. While projects may be catalyzed, initiated, organized and developed, in principle, by anyone, the set of people who can actually submit applications for Arkansas Rural Connect grants is more limited, as explained in Section 7.

(17) “RFA” means Request for Applications

(18) “State grant” is the amount of money that grant applicants request from Arkansas Rural Connect in order to close the business case for a project, and which they will receive from the State if their project is approved and deployment proceeds as anticipated.

(19) “Unincorporated community” means a population center with historic boundaries that are understood in local custom and amenable to mapping, but which is not legally incorporated as a municipality. Census-Designated Places [recognized by the United States Census Bureau](#) are automatically recognized as unincorporated communities, while other unincorporated communities’ status and boundaries must be established by maps and narratives, as explained in 6.H.1.

Commented [NS1]: Clause added for clarification on the advice of CenturyLink.

(20) “Unserved” means that a location lacks access to broadband service by fiber optic cable, coaxial copper wire, DSL, or fixed wireless at any price.

## Section 5. Arkansas Rural Connect Grant Program Funding

A. The AEDC may utilize any funds appropriated to the AEDC for purposes of expanding high-speed broadband services to rural communities. Likewise, the AEDC may utilize those funds in conjunction with the ARC Grant Program to provide grants to ISPs, in return for

commitments from applicants to make broadband service, as defined by these rules, available to residents of those communities.

B. Funds will be used to reimburse ISPs on a proportional basis for capital expenditures on approved projects, such that they will be owed by the State an amount of money equal to their capital expenditures on the project, multiplied by the ratio of the approved State grant to the total project cost, and capped at the grant award, with 80% of this debt paid as quarterly reimbursements and the remaining 20% upon completion of the deployment and the achievement of project goals.

C. To receive reimbursement, ISPs shall submit receipts for all reimbursable expenses, and a concise quarterly project narrative of less than 1,000 words, accompanied, if necessary, by photographs, maps, tables, or timelines, explaining their investment activities. Quarterly project narratives and receipts are due within sixty (60) days of the end of the quarters ending on March 31, June 30, September 30, and December 31 of each year. The receipts shall be labeled with unique numbers, and the project narrative should allude to receipts by number and explain, in the context of the project, the purpose of the expenditure. The narrative shall be sufficiently detailed to be verified by physical inspection of the sites where investment activities took place. It shall also update the ASBO on the number of locations connected to broadband and the likelihood that the project will be completed on schedule. Known delays in the project timeline should be noted. Within thirty (30) days of the receipt of these materials, the ASBO shall either approve the reports or request more information. Funds shall be disbursed to ISPs within fourteen (14) days of the approval of the quarterly project narrative.

D. Allowable expenses do not include the following: (1) ongoing pole attachment fees, as distinct from Make Ready expenses, which are allowable, (2) full purchase price of capital equipment that is used for the build phase of the project and that will have value for other construction work after the project is complete, (3) operating expenses not related to the project build, or (4) any other operating expenses that will be incurred on an ongoing basis after project completion.

E. Allowable expenses are costs directly related to the construction of broadband infrastructure, including but not limited to the following: (1) Make Ready expenses for attaching broadband facilities to poles, (2) reimbursement for rental or depreciation costs for capital equipment that represent the real opportunity cost of using that capital equipment for construction activities on the project, (3) wages of workers physically deploying infrastructure, (4) engineering costs related to project design, (5) legal costs related to the acquisition of rights needed for broadband deployment, and (6) the costs of fiber optic cable, modems, and other necessary plant for the delivery of 25/3 broadband services, (7) costs of obtaining construction permits, (8) purchases of indefeasible rights of use in dark fiber, and (9) installation and testing of broadband. Also allowable are expenses for conducting outreach and training for customers and potential customers living in the project footprint, to educate them on the value of the internet and how to use it and encourage them to subscribe.

F. Participating municipalities, unincorporated communities, and counties shall assist ISPs in the acquisition of rights needed for broadband deployment, including all leases, permits, or easements necessary for the purpose of construction and placement of broadband infrastructure on public property. In connection therewith, participating municipalities and counties shall not charge ISPs fees for pole attachments or permits.

## **Section 6. Process Overview**

A. Each round of ARC grant funding will begin when the ASBO releases an RFA. The RFA will include a list of major dates for the round, including:

1. A deadline for receiving from ISPs maps of broadband coverage from them that is either currently available or scheduled to become available under the terms of federal or State programs from which they have accepted funding. (Approximately 4 weeks after RFA announcement)
2. The planned date of the release by the ASBO of a map of the areas in Arkansas currently enjoying broadband coverage or scheduled to receive broadband coverage with federal support. (Approximately 8 weeks after RFA announcement)
3. The date when an application window opens. (Approximately 12 weeks after RFA announcement)
4. The date when an application window closes. (Approximately 20 weeks after RFA announcement)
5. The date when grant awards will be announced. (Approximately 32 weeks after RFA announcement)

The ASBO may adjust the dates at the time of the RFA announcement to work around major holidays. The ASBO may postpone dates and deadlines especially when unforeseen circumstances arise. The ASBO shall give fourteen (14) days' notice at its discretion.

B. At the same time as the RFA announcement, the ASBO will request that ISPs operating in Arkansas submit maps of the areas in which they either provide broadband coverage (25/3, low latency, no data usage caps or throttling < 150 Gb/month, as stated in Section [III.4](#). Definitions) or have made commitments to governmental agencies like the USDA, the FCC, or the ASBO (in the event of subsequent rounds of ARC grant funding) to establish broadband coverage in return for financial support. The goal of this data collection is to target funds to areas that currently lack and are not publicly scheduled to receive broadband service. For ISPs which do not submit broadband coverage maps, the ASBO will use data from the most recent release of the FCC Form 477 data to map their coverage. ISPs are not required to submit broadband coverage maps, and are encouraged not to do so if the most recent release of FCC Form 477 data to the public adequately describes their current broadband coverage. But ISPs that have expanded their broadband coverage footprint too recently for the expansion to be captured in public FCC Form 477 data are encouraged to submit coverage maps, both in the public interest,

to prevent subsidies being targeted to areas of lesser need, and in their own private interest, to avoid a risk of facing a publicly subsidized competitor.

C. After ISPs submit maps of current broadband coverage and government-backed commitments to broadband deployment, the ASBO will combine this information with FCC Form 477 data to create a map of current and scheduled broadband coverage in the state of Arkansas. This will assist mayors and county judges to ascertain whether the municipalities, unincorporated communities, and counties they represent will be eligible for ARC broadband grant funding. Municipalities, unincorporated communities, and counties are eligible for ARC broadband grant funding if (a) ~~at least no more than~~ 80% of their populations are ~~unserved~~, (b) they have at least 500 people, and (c) they have at least 200 people unserved. For more details on service area eligibility, see 7.A.

**Commented [NS2]:** This is the most important typo, the one that makes the eligibility criteria inconsistent, noticed by CenturyLink.

D. Project organizers who aspire to bring broadband to an unserved area with the help of an ARC grant shall develop an implementation plan, with a budget, and define roles for all stakeholders. The necessary stakeholders in every project are a local government, county or municipal, as represented by a public official, which may be a mayor or county judge in the case of an incorporated municipality or a county judge in the case of an unincorporated community or county, and the ISP or ISPs who will deliver retail service to consumers. Other stakeholders might include businesses or nonprofits that commit to provide funding or purchase service. The public official shall first serve as a spokesman for the preferences and the economic development ambitions of the community that will receive broadband service, then later, if a grant is awarded, assist the ASBO in monitoring the ISP's performance. The ISP or ISPs, and not the public official, will be responsible for building the facilities and providing broadband service to customers. Other allocations of responsibilities between local governments and ISPs may be considered by the ASBO on a case by case basis.

E. Each ARC grant project shall identify a specific municipality, unincorporated community, or county that will receive broadband coverage. The public official who co-applies for the grant must represent that community. To be eligible, the municipality, unincorporated community, or county applying for an ARC grant shall have:

- At least 500 people.
- At least 20% of its population currently lacking broadband coverage.
- At least 200 people lacking broadband coverage.

Interdependent projects involving the same ISP (see section 6.P and following) are exempt from these eligibility criteria as applied at the level of a single community. Instead, the criteria will be applied to the combined territories of the communities covered by the interdependent projects. Communities with less than 500 people may apply through their counties or by developing joint projects with other communities.

F. Each ARC grant project shall have a well-defined planned geographic service area, henceforward the "project footprint." The project footprint shall include the entire territory of the municipality, unincorporated community, or county targeted for service that currently

lacks broadband coverage. It may also include other contiguous areas that help to strengthen the business case for the project. The project shall include a plan to make broadband service available to all locations in the project footprint, where service is considered available if a location can be connected within thirty (30) days of a request for service being made.

G. Project footprints may be defined which extend beyond the boundaries of the municipality, unincorporated community, or county that is applying, and such extended project footprints can expand the range of allowable expenses under the grant. However, enlarging the project footprint will not raise the cap for the grant request or make the project more competitive for funding. It is expected that extending project footprints to include anchor clients or areas of consumer density that happen to be located outside the borders of a town or county will sometimes attract paying stakeholders, help to make the project financially self-supporting after deployment, and/or provide the convenience of making the grant project footprint coincide with the technical project footprint. Residents of an extended project footprint not resident in the applicant community will enjoy the same rights to broadband coverage as residents of the applicant community.

H. If the project footprint corresponds exactly to the legal boundaries of a municipality or county, or with the established boundaries of a Census-Designated Place, no proposed coverage map shall be submitted with the application. But maps in KML or ESRI Shapefile format are required as part of the application in the following cases:

1. For unincorporated communities that are not coextensive with Census-Designated Places, maps shall be provided indicating where the boundaries of the unincorporated community are, along with a narrative of less than 1,000 words describing the character and history of the unincorporated community.
2. Where a community is partially served with broadband, project organizers may submit maps distinguishing areas that already enjoy broadband coverage currently, and where, therefore, the ISP applying for ARC grant funding will not be obligated to provide broadband coverage, from areas where broadband coverage is currently lacking and will be provided by the applicant ISP as a result of the proposed project.
3. Where a project involves more than one co-applicant ISPs, maps must be provided clearly displaying which ISP will have a service obligation at each point in the project footprint.
4. Where project organizers choose to extend the project footprint beyond the borders of the applicant municipality, unincorporated community, or county, maps should be provided which clearly establish the boundaries of the project footprint.

I. Project organizers shall estimate the total capital expenditures that will be needed in order to implement the project and document these projected costs for inclusion in an application.

J. Project organizers shall also estimate the ongoing operating expenses that are anticipated in order to provide broadband coverage after deployment is complete, as well as the revenues that can be expected. Based on these estimates, they shall forecast whether the project will be financially self-supporting after deployment is complete. If not, the project is not suitable for ARC grant funding. If so, the expected revenues and costs of the project after deployment shall be documented for inclusion in an application.

K. Project organizers may make efforts to secure resources locally to help support the project. A municipality or county wanting to apply for Arkansas Rural Connect funding may assess what funds it has available that might be contributed to the project. Local businesses and other anchor clients may be contacted to see whether they might join the project in the role of stakeholders and commit funds. The ISP itself shall consider whether the anticipated net income resulting from the project justifies the ISP in making a commitment to private co-investment, and if so, how much. Funds distributed through federal universal service programs, if they have not already obligated the ISP receiving them to deploy broadband as defined here (especially 25/3 speeds), may also contribute to the overall financing of an ARC grant project, reducing the state grant needed.

L. As project capital costs and net income after deployment are calculated and local funding sources are identified, project organizers shall consider the size of the State grant that will be needed to make the project acceptable to all parties and arrive at a decision before applying. As general guidance for project organizers in setting the State grant request, ARC seeks to make, for each project, the minimum State grant needed to close the business case and make all stakeholders willing to participate. But the ASBO will not attempt to verify whether the State grants requested actually correspond to this minimum, relying instead on the competitive character of the overall grantmaking process to discipline the size of grant requests. While the project narrative provided with the application shall include at least a brief description of how the State grant request was set, and obvious improprieties might potentially be disqualifying, project organizers may exercise considerable discretion.

M. Project organizers shall estimate the number of currently unserved households living in the target municipality, unincorporated community, or county that will receive broadband coverage as a result of the project. This number of households should then be multiplied by \$3,000, yielding the maximum State grant that can be applied for by the target community. Also, ARC grant requests cannot exceed the maximum of two million dollars (\$2,000,000) or 20% of the total funding available for a round. If the State grant deemed necessary to make the project viable is greater than the relevant maximum, project organizers may either look for other funding sources or abandon the project.

N. Each project must include exactly one municipality, unincorporated community or county as an applicant, and at least one but potentially multiple ISPs. Each eligible municipality, unincorporated community or county may submit multiple (up to three) applications. Each application shall be for one project, i.e., one strategy (even if it involves more than one ISP) for achieving the goal of broadband service to all locations. At most one project per municipality, unincorporated community or county can be approved.

O. If a municipality, unincorporated community, or county applies for multiple projects, it shall choose which projects it wants most, second most, and third most, and indicate the rank order of each project with respect to its preferences. The ASBO's selection process will fund, for each community, the most preferred project that can be funded within the budget constraint for the ARC round. If applications are received both from a county and from municipalities and/or unincorporated communities within a county, the countywide project will be prioritized, and projects for municipalities and unincorporated communities within it will be eligible for funding only if the countywide project is rejected.

P. If an ISP wants to launch a project that would cover multiple eligible municipalities, unincorporated communities, and/or counties, it shall divide the project into sub-projects that each cover a single eligible municipality, unincorporated community or county, and then consider whether the sub-projects would be worth implementing if they were funded separately. If the sub-projects are commercially feasible as separate projects, the ISP may choose, if the public officials representing the affected communities are willing, to co-submit separate applications for each sub-project. Otherwise, the ISP may choose to alert the public officials of the interdependent character of proposed projects, and, with their agreement, co-submit the projects as interdependent projects. The interdependent projects option may also be used to achieve eligibility for ARC grants by combining communities that are too small to be eligible on their own.

Q. When an ISP co-applies with multiple communities on interdependent projects, the ISP shall indicate to the community that the project is interdependent with one or more other projects, such that they cannot be funded and executed separately. The community, if it still wishes to apply for that project, shall then indicate on the application that the project is interdependent with other projects, and which other projects it is interdependent with. The ISP will have the opportunity to view the community's portion of an application before it is submitted, and it shall check to confirm that the community has accurately represented whether the project is interdependent, and with which other projects it is interdependent. The ASBO's project selection process, described below, will then ensure that projects which form an interdependent set are either all approved or all rejected.

R. In choosing whom to apply with and how to rank projects, public officials representing municipalities, unincorporated communities and counties shall prioritize a reasonable conception of the public interest of those communities over any private interests they might have in the ISPs. They shall disclose all ownership, family ties, campaign contributions or other substantial ties they may have to the ISPs applying for grants which might be suspected of biasing them in favor of one ISP over others, and shall not co-apply with an ISP on behalf of a community if their private interest in that ISP is substantial. Public officials co-applying for ARC grants shall provide a narrative explanation of less than 1,000 words about how they developed the application, emphasizing efforts to make the process transparent, competitive, and in the public interest. This narrative shall be submitted with the application.

S. All official stakeholders in the project, at the application stage, shall indicate their awareness of ARC rules, read and affirm the accuracy of all information in the application, and

declare their consent and commitment to perform the roles allotted to them in the implementation plan.

T. If there is doubt whether a municipality, unincorporated community, or county meets the eligibility criteria for ARC grants, based on data about population and/or the quality of current internet service, applicants may submit, along with their applications, evidence that they believe will help to establish their eligibility for an ARC grant-funded project. The ASBO maps of current broadband coverage described in 6.C will help applicants anticipate whether their eligibility can be assumed or will need to be established with the help of extra evidence.

U. After the application window closes, the ASBO will arrange for eligibility review, as explained in 9.B, process review, as explained in Section 9.C, and technical review, as explained in Section 9.D, of all applications received to ensure that projects are feasible and implementation plans are sufficient to achieve project objectives. Applications that pass technical review, and which are the most preferred project from their county or, in case of no county projects, their municipality or unincorporated community, will then be ranked in ascending order of the project score, as calculated using the rubric in 9.E.

V. An iterative process will eliminate projects that lie outside the budget constraint or are interdependent with other eliminated projects. The process shall substitute for eliminated projects, where available, less preferred projects according to the ranking provided by the county or, where countywide projects were not proposed or have been eliminated, by municipalities or unincorporated communities. This process shall culminate in a list of awardable projects with grant requests totaling to less than the available funds. Section 9.F elaborates on this, and full details of the selection process for the round will be provided along with the announcement of grant awards.

W. When interdependent projects are awarded funding, they shall be treated as a single project to the extent possible for purposes of reporting requirements, certifying completion of deployment, assessing penalties, etc.

X. After grant awards are announced, ISPs will begin to deploy, collecting receipts and submitting them to AEDC for proportional reimbursement on a quarterly basis, along with a project narrative, as explained in sections 5.B and 5.C.

Y. When broadband coverage is available to at least 95% of the locations in the project footprint, and all other project objectives have been achieved, the ISP may alert the ASBO and the municipality, unincorporated community, or county of the fact, and initiate the process by which deployment is certified to be complete and the remaining reimbursements are released. The responsible public official shall then collect, or cause to be collected, information to confirm that deployment has been completed and broadband service is available to at least 95% of locations. If necessary, the ASBO shall provide a process how to collect this information. At this point, the portion of the reimbursement that has been held back by AEDC to ensure project completion may be released to the ISP. The ISP may wait to establish service to the remaining 5% of the locations in the project footprint until it is getting positive net income from

the project, but it shall not transfer any net income from the project to shareholders or other projects, reinvesting it instead, until 100% of locations have been served.

Z. After deployment is complete, the ASBO may request reports on project status from the ISP up to twice per year, as explained in section 11.G, and the municipality, unincorporated community, or county shall submit biannual reports to the ASBO, as explained in section 11.H.

AA. If service is never established, or is suspended, without a waiver from the ASBO, penalties will be assessed against the ISP, as described in Section 8.C.5.

AB. Full project closure will occur on January 1, 2030 for all ARC projects, unless otherwise specified in the application materials, and obligations to report and to provide service will cease at that time. If the ISP and the co-applicant public official agree to a different project closure date in the original application, project closure without penalties may occur at an agreed upon date earlier, but not later, than January 1, 2030.

## **Section 7. Eligibility Criteria**

A. Municipalities, unincorporated communities, and counties, or interdependent sets of these jurisdictions as described in section 6.P and following, will be eligible for ARC grant funding if they meet the following criteria:

- No more than 80% of the population currently has broadband coverage.
- The population is at least 500.
- The population unserved with broadband is at least 200.

The determination of eligibility shall be made, in the absence of special data collection efforts, using the best available data sources that are consistent across geographies and sufficiently granular, which at the time of writing are the FCC Form 477 data for broadband coverage and the most recent Census data for the block level. Where special data collection efforts are organized in order to establish ARC grant eligibility, the ASBO shall assess the validity of the data and make an eligibility determination with full disclosure of its reasons for finding an area eligible or ineligible, by the criteria, on the basis of the evidence provided in combination with public data sources.

B. ISPs will be eligible to participate in ARC grant funded projects if they:

- Have a one-year track record of providing broadband coverage (meaning at least 25/3 speeds, at least 150 Gb of data usage per month without throttling, and no more than 100 ms latency, see Definitions) to at least 500 retail customers.
- Have enough working capital to carry on construction activities in pursuite of project goals in advance of quarterly reimbursement from AEDC, as demonstrated by appropriate financial statements (see section 8.C.7).

**Section 8. Application Submittal Process**

A. Each application shall be initiated by the municipality, represented by a mayor or county judge, or unincorporated community or county, represented by a county judge, that stands to gain broadband service as a result of the project. Applications shall include the following documents.

B. Municipalities, unincorporated communities and counties will be required to submit:

1. The name of the community applying to get service.
2. The rank of the application in the community's order of preference if multiple applications would qualify for funding, since no more than one application can be funded for each community.
3. The provider or providers to whom residents will be able to apply for consumer broadband service after the project is completed.
4. Any caveats about the interdependence of projects that may be applicable.
5. A statement of any cost sharing or facilitation that the community commits to do in order to assist the deployment process.
6. If applicable, statements from any nonprofits or local businesses of any financial or other support that they have offered to provide to assist the project.
7. If applicable, statements of any commitments that the ISP has made on pricing in return for the community agreeing to co-apply for ARC grant funding.
8. The name and office of the public official who will submit biannual reports to the ASBO.
9. Disclosure of any conflicts of interest on the part of public officials representing the community.
10. A narrative explanation of less than 1,000 words about how the community developed the application, emphasizing efforts to make the process transparent, competitive, and in the public interest.
11. A declaration of the project closure date if it is earlier than January 1, 2030.
12. An affirmation that all the information submitted by co-applicants has been reviewed and is acceptable.

C. ISPs shall be required to submit:

1. An implementation plan that explains how broadband will be deployed to reach all residences in the townmunicipality, unincorporated community or county, including the technology that will be used.
2. A project timeline that includes a date of anticipated completion of project closure deployment and establishment of service availability no later than November 2022.
3. A map of the project footprint if it extends beyond the community's legal boundaries or involves multiple ISPs serving different parts of the town.
4. A narrative of less than 500 words describing the company's experience providing consumer broadband service, which may include total numbers of customers served and revenues earned. The purpose of this narrative is to establish that a company has a one-year track record of providing consumer broadband.
5. Unless otherwise specified in accordance with section 6.AB, aA commitment to continue providing broadband service through January 1, 2030 after the project is complete, or pay penalties in accordance with a predetermined schedule, unless the ASBO, in consultation with the relevant local government, agrees that it is in the public interest to waive the penalties because the service has been overbuilt and/or become obsolete or superfluous. The penalties are as follows:
  - a. If service ceases to meet standards, between 1/1/2029 and 1/1/2030, the minimum of 5% of the total ARC grant and the total funds disbursed by ARC for the project
  - b. If service ceases to meet standards, between 1/1/2028 and 1/1/2029, the minimum of 10% of the total ARC grant and the total funds disbursed by ARC for the project
  - c. If service ceases to meet standards, between 1/1/2027 and 1/1/2028, the minimum of 15% of the total ARC grant and the total funds disbursed by ARC for the project
  - d. If service ceases to meet standards, between 1/1/2026 and 1/1/2027, the minimum of 25% of the total ARC grant and the total funds disbursed by ARC for the project
  - e. If service ceases to meet standards, between 1/1/2025 and 1/1/2026, the minimum of 35% of the total ARC grant and the total funds disbursed by ARC for the project
  - f. If service ceases to meet standards, between 1/1/2024 and 1/1/2025, the minimum of 55% of the total ARC grant and the total funds disbursed by ARC for the project
  - g. If service ceases to meet standards before 1/2024, the minimum of 75% of the total ARC grant and the total funds disbursed by ARC for the project

**Commented [NS3]:** CenturyLink noticed that the phrase "project closure" was used inconsistently.

**Commented [NS4]:** On CenturyLink's advice, this clarifies that the permission elsewhere stipulated for the project closure date to be shifted forward at the time of application by the mutual agreement of the community and the ISP affects this point.

- h. If service never meets standards, the minimum of the total ARC grant and the total funds disbursed by ARC for the project

Service may cease to meet standards either by being canceled altogether, by ceasing to provide the required speeds, latencies, and data caps, or by ceasing to offer service to at least 95% of households. Penalties can be triggered by sustained degradation of network performance due to intensive utilization.

6. An affirmation that all the information provided by the co-applicant public official, inasmuch as it relates directly to the ISP's intended activities under the project, is correct and acceptable. This requirement is intended to prevent any misunderstandings of the project between the ISP and public officials representing the communities to be served.
7. Except in the cases below specified, financial statements for the three most recent years, with CEO and CFO certification, including the following:
  - a. Balance Sheet
  - b. Income Statement
  - c. Depreciation Schedule
  - d. Debt Schedule
  - e. Accounts Receivable Aging
  - f. Accounts Payable Aging

The financial statement for the most recent year must be (a) **audited** for grant requests exceeding \$2 million, and (b) either audited or **reviewed** for grant requests exceeding \$500,000. For grant requests under \$500,000, financial statements shall be provided but ASBO shall have discretion to accept financial statements that have not been audited or reviewed as sufficient evidence of the company's working capital adequacy. These financial statements may demonstrate to the ASBO that the ISP has sufficient unencumbered resources to pay for planned investment activities under the ARC project, in advance of receiving reimbursements from grant funds, with a reasonable buffer of cash and other liquid assets in case of cost overruns. Note that the ASBO cannot guarantee that financial statements of ISPs applying for ARC grant projects will enjoy immunity from being required to be released to members of the public under Freedom of Information Act requests. Alternatively, ISPs may provide the following in lieu of complete financial statements.

- *Option 1.* (a) An estimate of the working capital needs of the project, and (b) a sworn statement by the CFO of the ISP and a third-party CPA that the ISP has at least that amount of unencumbered funds.
- *Option 2.* Documentation showing that the ISP has provided internet service to at least 1,000 subscribers in Arkansas for at least five years. Note that such

documentation can also be used to establish the ISP's capacity to deploy broadband so as to remove the need to get a Professional Engineer stamp (see 9.G).

8. Disclosure of any conflicts of interest that might affect, or be suspected to affect, the decisions of the public officials involved in the project.

D. Stakeholders listed as co-applicants on a grant other than public officials representing the applicant communities and ISPs shall submit the following documents:

1. A declaration that they have read all the application materials and affirm their accuracy.
2. A declaration of their commitment to perform the roles allotted to them in the implementation plan.
3. Evidence of their capacity to perform the roles allotted to them in the implementation plan.
4. Disclosure of any conflicts of interest that might affect stakeholders' support of the project.

## **Section 9. Application Review and Approval Process**

A. The application review and approval process will consist of four (4) stages.

B. First, the ASBO will determine, for each application or set of interdependent applications, the eligibility of the municipality, unincorporated community, county, or group of these for which a project is proposed. It will use the best generally available and sufficiently granular data sources, which at the time of writing are the FCC Form 477 data for broadband coverage, and the most recent Census data for population. If other evidence related to eligibility is provided with the application, it will be assessed at this time. On this basis, a determination will be made by the ASBO about whether the project covers an eligible area or not. Projects from ineligible areas will be eliminated from consideration.

C. Second, the ASBO will conduct a process review by studying the project development process documentation in an effort to discern possible conflicts of interest, examine the financial information about the applicant ISP to confirm that they have sufficient working capital to carry out the project in advance of reimbursement, and have a one-year track record of delivering consumer broadband service. The ASBO may eliminate projects where public officials representing municipalities, unincorporated communities or counties appear not to have acted in the public interest, or one or more ISP applicants appear to be undercapitalized or insufficiently experienced.

D. Third, technical reviewers selected by the ASBO will examine the implementation plan and budget for the project, as well as information on the service track record and financial situation of the ISP, and affirm or deny that the project is feasible and

sufficient to achieve project objectives, and that the budget is appropriate. Technical reviewers may request more information from ISPs in order to assist with their determination.

E. The ASBO will assign a score to each project, using the following rubric:

Points	Measure	Calculation method
60	Grant request per household connected	$\left( \$3,000 - \frac{\text{state grant requested}}{\text{number of unserved households connected}} \right) \div \$3,000$
25	Current service deficiency	25 if 90% of project footprint is unserved by 10/1 Else 0
15	Poverty	$15 \times (100 - \text{Percentile of income per capita})$ Example: poorest town receives 15, richest town receives 0

The project score for each project will be the sum of the points awarded for cost effectiveness, current service deficiency, and poverty.

F. For each application that passes technical and process review, the ASBO will calculate the percentage of the maximum state grant that the project will request. It will then perform the following process iteratively:

1. Compile a candidate list of all non-eliminated projects that are ranked by applicant counties, or municipalities and unincorporated communities that are partly or wholly located in counties that did not apply for ARC grants or have been eliminated, as their most preferred among non-eliminated projects, in ascending order of project score. If multiple projects have equal project scores, they will be ranked in descending order of the number of locations to be served.
2. Compute, for each project, the cumulative grant request for that project and all those ahead of it in the queue.
3. Eliminate all projects for which the cumulative grant request exceeds the available budget for the ARC round.
4. Eliminate all projects which are interdependent with eliminated projects.
5. Check whether each eliminated project comes from a municipality, unincorporated community or county that also has less preferred projects, and if so, place less preferred projects into the candidate list, to replace eliminated projects.
6. Also, if a county project is eliminated and there are no other project proposals from that county, check whether any municipalities or unincorporated towns fully or

partly contained within that county have projects, and if so, add the most preferred projects from each municipality or unincorporated town to the list.

7. If the total grant request for all projects remaining in the candidate list is less than the budget constraint, stop. Otherwise, return to step 1.

This process will result in a list of projects for which the grant requests are less than the budget for the ARC round, and which will tend to economize state tax dollars and maximize their impact.

G. After each ARC grant is approved, the ISP receiving the grant will have 45 days to send it to a licensed Professional Engineer for confirmation that the plans are technically adequate. The resulting PE stamp shall be provided to the ASBO before any further grant funds are disbursed. Projects that fail to win PE approval will be canceled, but the grant recipient can still pay the PE from the grant funds before the remainder of the funds reverts to Arkansas Rural Connect. ISPs can be exempted from the PE stamp requirement if they provide documentation that they have provided broadband coverage to at least 1,000 subscribers in the state for at least five (5) years.

#### **Section 10. Federal Complementarity**

A. In addition to state and private efforts to deploy broadband, the federal government is making extensive, well-funded efforts to promote rural broadband deployment, principally through the FCC and the USDA. It is likely that federal funding for rural broadband in Arkansas in the next decade will much exceed any funding from the State.

B. In order to make ARC broadband grants impactful, many state officials recognize the need to consider the ways that ARC will interact with federal funds. There are plausible scenarios in which ARC broadband grants leverage federal funds, and plausible scenarios in which ARC broadband grants crowd out federal funds. Announcements of new federal programs, rules, dates and deadlines, etc., are hard to predict, and coordination between state and federal programs is difficult and may be incompatible with due process at the state level.

C. In view of the difficulty of explicit coordination, the ASBO shall have discretion to adjust program rules relating to project footprints, technological specifications, and service obligations, on a case by case basis, in consultation with and in the interests of affected communities and ISPs, in order to make the ARC program as complementary as possible to federal programs that fund rural broadband.

#### **Section 11. Project Monitoring and Dispute Resolution**

A. During the build phase of the project, the ISP shall not be required to deliver broadband service to premises in the project footprint.

B. During the build phase of the project, the ISP shall be required to submit quarterly reports to the ASBO reporting their activities in fulfillment of grant objectives. These reports will be submitted within sixty (60) days of the quarters ending on March 31, June 30, September 30 and December 31 of each year, and reviewed as explained in section 5.C.

C. When the ISP has completed deployment to 95% of locations in the project footprint, it shall notify the ASBO and the municipality, unincorporated community or county of that fact. At that time, the ASBO shall do a desk assessment of whether the ISP is in fact advertising the services that it promised to deliver so that citizens living in the project footprint could discover and sign up for the service. The responsible public officials shall collect, or cause to be collected, with the advice of the ASBO as needed, information sufficient to affirm that the project appears to be complete and broadband service has been made available to at least 95% of project footprint residents, and it shall publish the contact info of an official tasked with hearing complaints from citizens who believe that their homes are still not being offered service as required by the ARC grant. The ASBO shall review this information as well as evidence from its own desk research, and if the evidence is sufficient, shall announce that the project has completed the main deployment phase, and authorize the release of any remaining disburseable grant funds.

D. After deployment to 95% of locations has been completed, the ISP may cease broadband deployment activities within the project footprint until its cumulative revenues exceed its cumulative operating costs within the project footprint. If this never happens prior to full project closure on 1/1/2030, the ISP will never be required under the terms of the ARC grant to make broadband service available to the remaining 5% of locations. But if revenues exceed operating costs in the project footprint, resulting in positive net income, this net income shall be reinvested in deployment to the remaining 5% of locations, until 100% of the locations in the project footprint have broadband service available. When 100% of locations have broadband service available, any further net income is at the ISP's disposal to return to owners as profit or invest in other projects.

E. If the ISP fails to deploy to 95% of locations in the project footprint by November 2022, the ISP is obligated to return all ARC grant funds disbursed to it for that project, unless this requirement is waived by the ASBO. The ASBO may waive up to 80% of penalties if a substantial proportion of locations in the project footprint have received broadband coverage, and the ISP exerted bona fide best efforts to achieve project goals but was prevented from doing so by adverse circumstances.

F. From the completion of deployment until project closure, the ASBO shall continue to conduct desk research from time to time to ensure that 25/3 broadband service is still available from the grant-funded ISP within ARC project footprints.

G. From the completion of deployment until project closure, the ASBO may request a report from an ISP concerning any ARC project up to twice a year. Upon receiving such a request, the ISP shall provide, within 90 days: (1) a confirmation that 25/3 broadband service is still available in the project footprint, (2) information about pricing schedules, (3) numbers of

subscribers, (4) take rates, (5) information about any known service interruptions, and (6) any other information the ISP may deem relevant.

II. From the completion of deployment until project closure, each municipality, unincorporated community, or county shall submit biannually to the ASBO a report that may include (1) an overall judgment of whether the ISP is fulfilling its service obligations, (2) complaints about non-provision or poor quality service that may have validity, and (3) information about service interruptions that are known to have occurred. They are also encouraged to include (4) positive feedback from the public about the ARC project and (5) instances of the economic development impact of the ARC project. Such reports shall be submitted within 30 days of the ends of the six-month periods from January to June and July to December of each year.

I. In case of succession in the offices of mayor or county judge for a community that has received an ARC grant funded project, the mayor or county judge shall notify his or her successor of his or her rights and obligations as the responsible public official for an ARC grant project area.

J. Early project closure may be requested by the ISP or initiated by the ASBO based on evidence that broadband service is no longer being provided by the ISP to 95% or more of the locations in the project footprint. If early project closure occurs, the ASBO and the municipality, unincorporated community or county, as represented by a mayor or county judge, shall consult and decide whether or not the ISP may be required to pay penalties as described in Section 7.C.5. If they determine that it is in the public interest for the service to be terminated because it is obsolete or superfluous and is no longer desired by customers, they may agree to waive penalties.

K. No penalties will be assessed against an ISP that ceases to provide broadband in an ARC grant funded project footprint due to ownership changes, if the successor entity continues to provide the service.

## **Section 12. Severability Clause**

A. Any section or provision of this rule held by a court to be invalid or unconstitutional will not affect the validity of any other section or provision.

## **Section 13. Effective Date**

This Rule is effective after review and approval by the Arkansas Legislative Council, ten (10) days after filing of the approved Rule with the Arkansas Secretary of State.

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Mike Preston  
Director  
Arkansas Economic Development Commission

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DATE

**ARC**  
**EXHIBIT**  
**“2”**

# DRAFT RULE

## ARKANSAS RURAL CONNECT BROADBAND GRANT PROGRAM

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### **Section 1. Purpose**

The purpose of this proposed Rule is to help implement polices advanced in the “Arkansas State Broadband Plan,” (hereafter, the “Broadband Plan Report”) as issued by the Office of Arkansas Governor, Asa Hutchinson, on May 15, 2019. The proposed rule is intended to establish requirements for governmental entities to participate in the Arkansas Rural Connect Broadband Grant Program (hereafter, “ARC,” or the “ARC Program”) in order to provide or expand broadband services consistent with the Broadband Plan Report, resulting in increased educational opportunities, healthcare opportunities, and economic development opportunities and ensuring all Arkansans have equal access to the services they can use to improve their quality of life, their community, and this State.

## **Section 2. Introduction**

As broadband access becomes more necessary to normal modern life, there is growing concern about a digital divide, whereby some areas are cut off from opportunities for economic development by a lack of adequate broadband service. To help close that digital divide, the ARC Program is being instituted to help communities incentivize providers to deploy adequate broadband service to their residents. The program will provide funds to internet service providers (ISPs) to serve target municipalities at the request of those municipalities. ARC funds will be allocated on a competitive and transparent basis, with efforts made to maximize the impact of scarce state funds.

## **Section 3. Authority**

This proposed Rule is 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 the economic development in the State. The ARC Program is therefore authorized to administer the ARC grant and authorized to establish administrative rules under Ark. Code Ann. § 15-4-209(b) (5) as a service offered by AEDC.

## **Section 4. Definitions**

- (1) “25/3” means minimum speed 25 Mbps download/3 Mbps upload.
- (2) “AEDC” means the Arkansas Economic Development Commission.
- (3) “ARC” means Arkansas Rural Connect.
- (4) “ASBO” means Arkansas State Broadband Office.
- (5) “Available” means, in the case of broadband service, that a provider stands ready to provide broadband service to a location within thirty (30) days of a request for service being made
- (6) “Broadband” means, for purposes of these rules, an internet connection by fiber optic cable, coaxial copper wire, DSL, or fixed wireless with at least 25/3 speeds, latency less than 100 ms, and no data usage caps or throttling below 150 Gb per month
- (7) “Community” means a municipality, unincorporated community, or county
- (8) “ESRI Shapefile” means a geospatial vector data format that can be utilized by ESRI or other GIS software
- (9) “Interdependent projects” means projects which are part of a set of projects involving the same ISP, each of which the ISP commits to implement only if all of the projects in the set get funded, and will be assumed for purposes of project selection to be less desirable to

implement if some of the projects in the set are not funded. This may occur, for example, if deployment involves creating shared assets that need to recover costs from multiple projects to be economically justifiable. The ASBO will take note of the interdependent nature of the projects, and avoid approving any interdependent project if the other projects in the interdependent set are not also funded.

(10) “ISP” means Internet Service Provider, its successors or assigns

(11) “Location” means any structure that is legally fit for occupancy as a commercial or residential dwelling.

(12) “Mbps” means megabits per second

(13) “Municipality” means a legally incorporated municipality under Arkansas law

(14) “Project cost” is the entire capital cost of a broadband project

(15) “Project footprint” is the geographic territory within which a project will provide broadband coverage

(16) “Project organizers” means public officials, ISPs, civic groups, or anyone else who takes a leading role in developing an Arkansas Rural Connect broadband project. While projects may be catalyzed, initiated, organized and developed, in principle, by anyone, the set of people who can actually submit applications for Arkansas Rural Connect grants is more limited, as explained in Section 7.

(17) “RFA” means Request for Applications

(18) “State grant” is the amount of money that grant applicants request from Arkansas Rural Connect in order to close the business case for a project, and which they will receive from the State if their project is approved and deployment proceeds as anticipated.

(19) “Unincorporated community” means a population center with historic boundaries that are understood in local custom and amenable to mapping, but which is not legally incorporated as a municipality. Census-Designated Places recognized by the United States Census Bureau are automatically recognized as unincorporated communities, while other unincorporated communities’ status and boundaries must be established by maps and narratives, as explained in 6.H.1.

(20) “Unserved” means that a location lacks access to broadband service by fiber optic cable, coaxial copper wire, DSL, or fixed wireless at any price.

## **Section 5. Arkansas Rural Connect Grant Program Funding**

A. The AEDC may utilize any funds appropriated to the AEDC for purposes of expanding high-speed broadband services to rural communities. Likewise, the AEDC may utilize those funds in conjunction with the ARC Grant Program to provide grants to ISPs, in return for

commitments from applicants to make broadband service, as defined by these rules, available to residents of those communities.

B. Funds will be used to reimburse ISPs on a proportional basis for capital expenditures on approved projects, such that they will be owed by the State an amount of money equal to their capital expenditures on the project, multiplied by the ratio of the approved State grant to the total project cost, and capped at the grant award, with 80% of this debt paid as quarterly reimbursements and the remaining 20% upon completion of the deployment and the achievement of project goals.

C. To receive reimbursement, ISPs shall submit receipts for all reimbursable expenses, and a concise quarterly project narrative of less than 1,000 words, accompanied, if necessary, by photographs, maps, tables, or timelines, explaining their investment activities. Quarterly project narratives and receipts are due within sixty (60) days of the end of the quarters ending on March 31, June 30, September 30, and December 31 of each year. The receipts shall be labeled with unique numbers, and the project narrative should allude to receipts by number and explain, in the context of the project, the purpose of the expenditure. The narrative shall be sufficiently detailed to be verified by physical inspection of the sites where investment activities took place. It shall also update the ASBO on the number of locations connected to broadband and the likelihood that the project will be completed on schedule. Known delays in the project timeline should be noted. Within thirty (30) days of the receipt of these materials, the ASBO shall either approve the reports or request more information. Funds shall be disbursed to ISPs within fourteen (14) days of the approval of the quarterly project narrative.

D. Allowable expenses do not include the following: (1) ongoing pole attachment fees, as distinct from Make Ready expenses, which are allowable, (2) full purchase price of capital equipment that is used for the build phase of the project and that will have value for other construction work after the project is complete, (3) operating expenses not related to the project build, or (4) any other operating expenses that will be incurred on an ongoing basis after project completion.

E. Allowable expenses are costs directly related to the construction of broadband infrastructure, including but not limited to the following: (1) Make Ready expenses for attaching broadband facilities to poles, (2) reimbursement for rental or depreciation costs for capital equipment that represent the real opportunity cost of using that capital equipment for construction activities on the project, (3) wages of workers physically deploying infrastructure, (4) engineering costs related to project design, (5) legal costs related to the acquisition of rights needed for broadband deployment, and (6) the costs of fiber optic cable, modems, and other necessary plant for the delivery of 25/3 broadband services, (7) costs of obtaining construction permits, (8) purchases of indefeasible rights of use in dark fiber, and (9) installation and testing of broadband. Also allowable are expenses for conducting outreach and training for customers and potential customers living in the project footprint, to educate them on the value of the internet and how to use it and encourage them to subscribe.

F. Participating municipalities, unincorporated communities, and counties shall assist ISPs in the acquisition of rights needed for broadband deployment, including all leases, permits, or easements necessary for the purpose of construction and placement of broadband infrastructure on public property. In connection therewith, participating municipalities and counties shall not charge ISPs fees for pole attachments or permits.

## **Section 6. Process Overview**

A. Each round of ARC grant funding will begin when the ASBO releases an RFA. The RFA will include a list of major dates for the round, including:

1. A deadline for receiving from ISPs maps of broadband coverage from them that is either currently available or scheduled to become available under the terms of federal or State programs from which they have accepted funding. (Approximately 4 weeks after RFA announcement)
2. The planned date of the release by the ASBO of a map of the areas in Arkansas currently enjoying broadband coverage or scheduled to receive broadband coverage with federal support. (Approximately 8 weeks after RFA announcement)
3. The date when an application window opens. (Approximately 12 weeks after RFA announcement)
4. The date when an application window closes. (Approximately 20 weeks after RFA announcement)
5. The date when grant awards will be announced. (Approximately 32 weeks after RFA announcement)

The ASBO may adjust the dates at the time of the RFA announcement to work around major holidays. The ASBO may postpone dates and deadlines especially when unforeseen circumstances arise. The ASBO shall give fourteen (14) days' notice at its discretion.

B. At the same time as the RFA announcement, the ASBO will request that ISPs operating in Arkansas submit maps of the areas in which they either provide broadband coverage (25/3, low latency, no data usage caps or throttling < 150 Gb/month, as stated in Section 4. Definitions) or have made commitments to governmental agencies like the USDA, the FCC, or the ASBO (in the event of subsequent rounds of ARC grant funding) to establish broadband coverage in return for financial support. The goal of this data collection is to target funds to areas that currently lack and are not publicly scheduled to receive broadband service. For ISPs which do not submit broadband coverage maps, the ASBO will use data from the most recent release of the FCC Form 477 data to map their coverage. ISPs are not required to submit broadband coverage maps, and are encouraged not to do so if the most recent release of FCC Form 477 data to the public adequately describes their current broadband coverage. But ISPs that have expanded their broadband coverage footprint too recently for the expansion to be captured in public FCC Form 477 data are encouraged to submit coverage maps, both in the public interest,

to prevent subsidies being targeted to areas of lesser need, and in their own private interest, to avoid a risk of facing a publicly subsidized competitor.

C. After ISPs submit maps of current broadband coverage and government-backed commitments to broadband deployment, the ASBO will combine this information with FCC Form 477 data to create a map of current and scheduled broadband coverage in the state of Arkansas. This will assist mayors and county judges to ascertain whether the municipalities, unincorporated communities, and counties they represent will be eligible for ARC broadband grant funding. Municipalities, unincorporated communities, and counties are eligible for ARC broadband grant funding if (a) no more than 80% of their populations are served, (b) they have at least 500 people, and (c) they have at least 200 people unserved. For more details on service area eligibility, see 7.A.

D. Project organizers who aspire to bring broadband to an unserved area with the help of an ARC grant shall develop an implementation plan, with a budget, and define roles for all stakeholders. The necessary stakeholders in every project are a local government, county or municipal, as represented by a public official, which may be a mayor or county judge in the case of an incorporated municipality or a county judge in the case of an unincorporated community or county, and the ISP or ISPs who will deliver retail service to consumers. Other stakeholders might include businesses or nonprofits that commit to provide funding or purchase service. The public official shall first serve as a spokesman for the preferences and the economic development ambitions of the community that will receive broadband service, then later, if a grant is awarded, assist the ASBO in monitoring the ISP's performance. The ISP or ISPs, and not the public official, will be responsible for building the facilities and providing broadband service to customers. Other allocations of responsibilities between local governments and ISPs may be considered by the ASBO on a case by case basis.

E. Each ARC grant project shall identify a specific municipality, unincorporated community, or county that will receive broadband coverage. The public official who co-applies for the grant must represent that community. To be eligible, the municipality, unincorporated community, or county applying for an ARC grant shall have:

- At least 500 people.
- At least 20% of its population currently lacking broadband coverage.
- At least 200 people lacking broadband coverage.

Interdependent projects involving the same ISP (see section 6.P and following) are exempt from these eligibility criteria as applied at the level of a single community. Instead, the criteria will be applied to the combined territories of the communities covered by the interdependent projects. Communities with less than 500 people may apply through their counties or by developing joint projects with other communities.

F. Each ARC grant project shall have a well-defined planned geographic service area, henceforward the "project footprint." The project footprint shall include the entire territory of the municipality, unincorporated community, or county targeted for service that currently

lacks broadband coverage. It may also include other contiguous areas that help to strengthen the business case for the project. The project shall include a plan to make broadband service available to all locations in the project footprint, where service is considered available if a location can be connected within thirty (30) days of a request for service being made.

G. Project footprints may be defined which extend beyond the boundaries of the municipality, unincorporated community, or county that is applying, and such extended project footprints can expand the range of allowable expenses under the grant. However, enlarging the project footprint will not raise the cap for the grant request or make the project more competitive for funding. It is expected that extending project footprints to include anchor clients or areas of consumer density that happen to be located outside the borders of a town or county will sometimes attract paying stakeholders, help to make the project financially self-supporting after deployment, and/or provide the convenience of making the grant project footprint coincide with the technical project footprint. Residents of an extended project footprint not resident in the applicant community will enjoy the same rights to broadband coverage as residents of the applicant community.

H. If the project footprint corresponds exactly to the legal boundaries of a municipality or county, or with the established boundaries of a Census-Designated Place, no proposed coverage map shall be submitted with the application. But maps in KML or ESRI Shapefile format are required as part of the application in the following cases:

1. For unincorporated communities that are not coextensive with Census-Designated Places, maps shall be provided indicating where the boundaries of the unincorporated community are, along with a narrative of less than 1,000 words describing the character and history of the unincorporated community.
2. Where a community is partially served with broadband, project organizers may submit maps distinguishing areas that already enjoy broadband coverage currently, and where, therefore, the ISP applying for ARC grant funding will not be obligated to provide broadband coverage, from areas where broadband coverage is currently lacking and will be provided by the applicant ISP as a result of the proposed project.
3. Where a project involves more than one co-applicant ISPs, maps must be provided clearly displaying which ISP will have a service obligation at each point in the project footprint.
4. Where project organizers choose to extend the project footprint beyond the borders of the applicant municipality, unincorporated community, or county, maps should be provided which clearly establish the boundaries of the project footprint.

I. Project organizers shall estimate the total capital expenditures that will be needed in order to implement the project and document these projected costs for inclusion in an application.

J. Project organizers shall also estimate the ongoing operating expenses that are anticipated in order to provide broadband coverage after deployment is complete, as well as the revenues that can be expected. Based on these estimates, they shall forecast whether the project will be financially self-supporting after deployment is complete. If not, the project is not suitable for ARC grant funding. If so, the expected revenues and costs of the project after deployment shall be documented for inclusion in an application.

K. Project organizers may make efforts to secure resources locally to help support the project. A municipality or county wanting to apply for Arkansas Rural Connect funding may assess what funds it has available that might be contributed to the project. Local businesses and other anchor clients may be contacted to see whether they might join the project in the role of stakeholders and commit funds. The ISP itself shall consider whether the anticipated net income resulting from the project justifies the ISP in making a commitment to private co-investment, and if so, how much. Funds distributed through federal universal service programs, if they have not already obligated the ISP receiving them to deploy broadband as defined here (especially 25/3 speeds), may also be contributed to the overall financing of an ARC grant project, reducing the state grant needed.

L. As project capital costs and net income after deployment are calculated and local funding sources are identified, project organizers shall consider the size of the State grant that will be needed to make the project acceptable to all parties and arrive at a decision before applying. As general guidance for project organizers in setting the State grant request, ARC seeks to make, for each project, the minimum State grant needed to close the business case and make all stakeholders willing to participate. But the ASBO will not attempt to verify whether the State grants requested actually correspond to this minimum, relying instead on the competitive character of the overall grantmaking process to discipline the size of grant requests. While the project narrative provided with the application shall include at least a brief description of how the State grant request was set, and obvious improprieties might potentially be disqualifying, project organizers may exercise considerable discretion.

M. Project organizers shall estimate the number of currently unserved households living in the target municipality, unincorporated community, or county that will receive broadband coverage as a result of the project. This number of households should then be multiplied by \$3,000, yielding the maximum State grant that can be applied for by the target community. Also, ARC grant requests cannot exceed the maximum of two million dollars (\$2,000,000) or 20% of the total funding available for a round. If the State grant deemed necessary to make the project viable is greater than the relevant maximum, project organizers may either look for other funding sources or abandon the project.

N. Each project must include exactly one municipality, unincorporated community or county as an applicant, and at least one but potentially multiple ISPs. Each eligible municipality, unincorporated community or county may submit multiple (up to three) applications. Each application shall be for one project, i.e., one strategy (even if it involves more than one ISP) for achieving the goal of broadband service to all locations. At most one project per municipality, unincorporated community or county can be approved.

O. If a municipality, unincorporated community, or county applies for multiple projects, it shall choose which projects it wants most, second most, and third most, and indicate the rank order of each project with respect to its preferences. The ASBO's selection process will fund, for each community, the most preferred project that can be funded within the budget constraint for the ARC round. If applications are received both from a county and from municipalities and/or unincorporated communities within a county, the countywide project will be prioritized, and projects for municipalities and unincorporated communities within it will be eligible for funding only if the countywide project is rejected.

P. If an ISP wants to launch a project that would cover multiple eligible municipalities, unincorporated communities, and/or counties, it shall divide the project into sub-projects that each cover a single eligible municipality, unincorporated community or county, and then consider whether the sub-projects would be worth implementing if they were funded separately. If the sub-projects are commercially feasible as separate projects, the ISP may choose, if the public officials representing the affected communities are willing, to co-submit separate applications for each sub-project. Otherwise, the ISP may choose to alert the public officials of the interdependent character of proposed projects, and, with their agreement, co-submit the projects as interdependent projects. The interdependent projects option may also be used to achieve eligibility for ARC grants by combining communities that are too small to be eligible on their own.

Q. When an ISP co-applies with multiple communities on interdependent projects, the ISP shall indicate to the community that the project is interdependent with one or more other projects, such that they cannot be funded and executed separately. The community, if it still wishes to apply for that project, shall then indicate on the application that the project is interdependent with other projects, and which other projects it is interdependent with. The ISP will have the opportunity to view the community's portion of an application before it is submitted, and it shall check to confirm that the community has accurately represented whether the project is interdependent, and with which other projects it is interdependent. The ASBO's project selection process, described below, will then ensure that projects which form an interdependent set are either all approved or all rejected.

R. In choosing whom to apply with and how to rank projects, public officials representing municipalities, unincorporated communities and counties shall prioritize a reasonable conception of the public interest of those communities over any private interests they might have in the ISPs. They shall disclose all ownership, family ties, campaign contributions or other substantial ties they may have to the ISPs applying for grants which might be suspected of biasing them in favor of one ISP over others, and shall not co-apply with an ISP on behalf of a community if their private interest in that ISP is substantial. Public officials co-applying for ARC grants shall provide a narrative explanation of less than 1,000 words about how they developed the application, emphasizing efforts to make the process transparent, competitive, and in the public interest. This narrative shall be submitted with the application.

S. All official stakeholders in the project, at the application stage, shall indicate their awareness of ARC rules, read and affirm the accuracy of all information in the application, and

declare their consent and commitment to perform the roles allotted to them in the implementation plan.

T. If there is doubt whether a municipality, unincorporated community, or county meets the eligibility criteria for ARC grants, based on data about population and/or the quality of current internet service, applicants may submit, along with their applications, evidence that they believe will help to establish their eligibility for an ARC grant-funded project. The ASBO maps of current broadband coverage described in 6.C will help applicants anticipate whether their eligibility can be assumed or will need to be established with the help of extra evidence.

U. After the application window closes, the ASBO will arrange for eligibility review, as explained in 9.B, process review, as explained in Section 9.C, and technical review, as explained in Section 9.D, of all applications received to ensure that projects are feasible and implementation plans are sufficient to achieve project objectives. Applications that pass technical review, and which are the most preferred project from their county or, in case of no county projects, their municipality or unincorporated community, will then be ranked in ascending order of the project score, as calculated using the rubric in 9.E.

V. An iterative process will eliminate projects that lie outside the budget constraint or are interdependent with other eliminated projects. The process shall substitute for eliminated projects, where available, less preferred projects according to the ranking provided by the county or, where countywide projects were not proposed or have been eliminated, by municipalities or unincorporated communities. This process shall culminate in a list of awardable projects with grant requests totaling to less than the available funds. Section 9.F elaborates on this, and full details of the selection process for the round will be provided along with the announcement of grant awards.

W. When interdependent projects are awarded funding, they shall be treated as a single project to the extent possible for purposes of reporting requirements, certifying completion of deployment, assessing penalties, etc.

X. After grant awards are announced, ISPs will begin to deploy, collecting receipts and submitting them to AEDC for proportional reimbursement on a quarterly basis, along with a project narrative, as explained in sections 5.B and 5.C.

Y. When broadband coverage is available to at least 95% of the locations in the project footprint, and all other project objectives have been achieved, the ISP may alert the ASBO and the municipality, unincorporated community, or county of the fact, and initiate the process by which deployment is certified to be complete and the remaining reimbursements are released. The responsible public official shall then collect, or cause to be collected, information to confirm that deployment has been completed and broadband service is available to at least 95% of locations. If necessary, the ASBO shall provide a process how to collect this information. At this point, the portion of the reimbursement that has been held back by AEDC to ensure project completion may be released to the ISP. The ISP may wait to establish service to the remaining 5% of the locations in the project footprint until it is getting positive net income from

the project, but it shall not transfer any net income from the project to shareholders or other projects, reinvesting it instead, until 100% of locations have been served.

Z. After deployment is complete, the ASBO may request reports on project status from the ISP up to twice per year, as explained in section 11.G, and the municipality, unincorporated community, or county shall submit biannual reports to the ASBO, as explained in section 11.H.

AA. If service is never established, or is suspended, without a waiver from the ASBO, penalties will be assessed against the ISP, as described in Section 8.C.5.

AB. Full project closure will occur on January 1, 2030 for all ARC projects, unless otherwise specified in the application materials, and obligations to report and to provide service will cease at that time. If the ISP and the co-applicant public official agree to a different project closure date in the original application, project closure without penalties may occur at an agreed upon date earlier, but not later, than January 1, 2030.

**Section 7. Eligibility Criteria**

A. Municipalities, unincorporated communities, and counties, or interdependent sets of these jurisdictions as described in section 6.P and following, will be eligible for ARC grant funding if they meet the following criteria:

- No more than 80% of the population currently has broadband coverage.
- The population is at least 500.
- The population unserved with broadband is at least 200.

The determination of eligibility shall be made, in the absence of special data collection efforts, using the best available data sources that are consistent across geographies and sufficiently granular, which at the time of writing are the FCC Form 477 data for broadband coverage and the most recent Census data for the block level. Where special data collection efforts are organized in order to establish ARC grant eligibility, the ASBO shall assess the validity of the data and make an eligibility determination with full disclosure of its reasons for finding an area eligible or ineligible, by the criteria, on the basis of the evidence provided in combination with public data sources.

- B. ISPs will be eligible to participate in ARC grant funded projects if they:
- Have a one-year track record of providing broadband coverage (meaning at least 25/3 speeds, at least 150 Gb of data usage per month without throttling, and no more than 100 ms latency, see Definitions) to at least 500 retail customers.
  - Have enough working capital to carry on construction activities in pursuit of project goals in advance of quarterly reimbursement from AEDC, as demonstrated by appropriate financial statements (see section 8.C.7).

## **Section 8. Application Submittal Process**

A. Each application shall be initiated by the municipality, represented by a mayor or county judge, or unincorporated community or county, represented by a county judge, that stands to gain broadband service as a result of the project. Applications shall include the following documents.

B. Municipalities, unincorporated communities and counties will be required to submit:

1. The name of the community applying to get service.
2. The rank of the application in the community's order of preference if multiple applications would qualify for funding, since no more than one application can be funded for each community.
3. The provider or providers to whom residents will be able to apply for consumer broadband service after the project is completed.
4. Any caveats about the interdependence of projects that may be applicable.
5. A statement of any cost sharing or facilitation that the community commits to do in order to assist the deployment process.
6. If applicable, statements from any nonprofits or local businesses of any financial or other support that they have offered to provide to assist the project.
7. If applicable, statements of any commitments that the ISP has made on pricing in return for the community agreeing to co-apply for ARC grant funding.
8. The name and office of the public official who will submit biannual reports to the ASBO.
9. Disclosure of any conflicts of interest on the part of public officials representing the community.
10. A narrative explanation of less than 1,000 words about how the community developed the application, emphasizing efforts to make the process transparent, competitive, and in the public interest.
11. A declaration of the project closure date if it is earlier than January 1, 2030.
12. An affirmation that all the information submitted by co-applicants has been reviewed and is acceptable.

C. ISPs shall be required to submit:

1. An implementation plan that explains how broadband will be deployed to reach all residences in the municipality, unincorporated community or county, including the technology that will be used.
2. A project timeline that includes a date of anticipated completion of project deployment and establishment of service availability no later than November 2022.
3. A map of the project footprint if it extends beyond the community's legal boundaries or involves multiple ISPs serving different parts of the town.
4. A narrative of less than 500 words describing the company's experience providing consumer broadband service, which may include total numbers of customers served and revenues earned. The purpose of this narrative is to establish that a company has a one-year track record of providing consumer broadband.
5. Unless otherwise specified in accordance with section 6.AB, a commitment to continue providing broadband service through January 1, 2030 after the project is complete, or pay penalties in accordance with a predetermined schedule, unless the ASBO, in consultation with the relevant local government, agrees that it is in the public interest to waive the penalties because the service has been overbuilt and/or become obsolete or superfluous. The penalties are as follows:
  - a. If service ceases to meet standards, between 1/1/2029 and 1/1/2030, the minimum of 5% of the total ARC grant and the total funds disbursed by ARC for the project
  - b. If service ceases to meet standards, between 1/1/2028 and 1/1/2029, the minimum of 10% of the total ARC grant and the total funds disbursed by ARC for the project
  - c. If service ceases to meet standards, between 1/1/2027 and 1/1/2028, the minimum of 15% of the total ARC grant and the total funds disbursed by ARC for the project
  - d. If service ceases to meet standards, between 1/1/2026 and 1/1/2027, the minimum of 25% of the total ARC grant and the total funds disbursed by ARC for the project
  - e. If service ceases to meet standards, between 1/1/2025 and 1/1/2026, the minimum of 35% of the total ARC grant and the total funds disbursed by ARC for the project
  - f. If service ceases to meet standards, between 1/1/2024 and 1/1/2025, the minimum of 55% of the total ARC grant and the total funds disbursed by ARC for the project
  - g. If service ceases to meet standards before 1/2024, the minimum of 75% of the total ARC grant and the total funds disbursed by ARC for the project

- h. If service never meets standards, the minimum of the total ARC grant and the total funds disbursed by ARC for the project

Service may cease to meet standards either by being canceled altogether, by ceasing to provide the required speeds, latencies, and data caps, or by ceasing to offer service to at least 95% of households. Penalties can be triggered by sustained degradation of network performance due to intensive utilization.

6. An affirmation that all the information provided by the co-applicant public official, inasmuch as it relates directly to the ISP's intended activities under the project, is correct and acceptable. This requirement is intended to prevent any misunderstandings of the project between the ISP and public officials representing the communities to be served.
7. Except in the cases below specified, financial statements for the three most recent years, with CEO and CFO certification, including the following:
  - a. Balance Sheet
  - b. Income Statement
  - c. Depreciation Schedule
  - d. Debt Schedule
  - e. Accounts Receivable Aging
  - f. Accounts Payable Aging

The financial statement for the most recent year must be (a) **audited** for grant requests exceeding \$2 million, and (b) either audited or **reviewed** for grant requests exceeding \$500,000. For grant requests under \$500,000, financial statements shall be provided but ASBO shall have discretion to accept financial statements that have not been audited or reviewed as sufficient evidence of the company's working capital adequacy. These financial statements may demonstrate to the ASBO that the ISP has sufficient unencumbered resources to pay for planned investment activities under the ARC project, in advance of receiving reimbursements from grant funds, with a reasonable buffer of cash and other liquid assets in case of cost overruns. Note that the ASBO cannot guarantee that financial statements of ISPs applying for ARC grant projects will enjoy immunity from being required to be released to members of the public under Freedom of Information Act requests. Alternatively, ISPs may provide the following in lieu of complete financial statements.

- *Option 1.* (a) An estimate of the working capital needs of the project, and (b) a sworn statement by the CFO of the ISP and a third-party CPA that the ISP has at least that amount of unencumbered funds.
- *Option 2.* Documentation showing that the ISP has provided internet service to at least 1,000 subscribers in Arkansas for at least five years. Note that such

documentation can also be used to establish the ISP's capacity to deploy broadband so as to remove the need to get a Professional Engineer stamp (see 9.G).

8. Disclosure of any conflicts of interest that might affect, or be suspected to affect, the decisions of the public officials involved in the project.

D. Stakeholders listed as co-applicants on a grant other than public officials representing the applicant communities and ISPs shall submit the following documents:

1. A declaration that they have read all the application materials and affirm their accuracy.
2. A declaration of their commitment to perform the roles allotted to them in the implementation plan.
3. Evidence of their capacity to perform the roles allotted to them in the implementation plan.
4. Disclosure of any conflicts of interest that might affect stakeholders' support of the project.

## **Section 9. Application Review and Approval Process**

A. The application review and approval process will consist of four (4) stages.

B. First, the ASBO will determine, for each application or set of interdependent applications, the eligibility of the municipality, unincorporated community, county, or group of these for which a project is proposed. It will use the best generally available and sufficiently granular data sources, which at the time of writing are the FCC Form 477 data for broadband coverage, and the most recent Census data for population. If other evidence related to eligibility is provided with the application, it will be assessed at this time. On this basis, a determination will be made by the ASBO about whether the project covers an eligible area or not. Projects from ineligible areas will be eliminated from consideration.

C. Second, the ASBO will conduct a process review by studying the project development process documentation in an effort to discern possible conflicts of interest, examine the financial information about the applicant ISP to confirm that they have sufficient working capital to carry out the project in advance of reimbursement, and have a one-year track record of delivering consumer broadband service. The ASBO may eliminate projects where public officials representing municipalities, unincorporated communities or counties appear not to have acted in the public interest, or one or more ISP applicants appear to be undercapitalized or insufficiently experienced.

D. Third, technical reviewers selected by the ASBO will examine the implementation plan and budget for the project, as well as information on the service track record and financial situation of the ISP, and affirm or deny that the project is feasible and

sufficient to achieve project objectives, and that the budget is appropriate. Technical reviewers may request more information from ISPs in order to assist with their determination.

E. The ASBO will assign a score to each project, using the following rubric:

Points	Measure	Calculation method
60	Grant request per household connected	$\left( \$3,000 - \frac{\textit{state grant requested}}{\textit{number of unserved households connected}} \right) / \$3,000$
25	Current service deficiency	25 if 90% of project footprint is unserved by 10/1 Else 0
15	Poverty	$15 \times (100 - \text{Percentile of income per capita})$ Example: poorest town receives 15, richest town receives 0

The project score for each project will be the sum of the points awarded for cost effectiveness, current service deficiency, and poverty.

F. For each application that passes technical and process review, the ASBO will calculate the percentage of the maximum state grant that the project will request. It will then perform the following process iteratively:

1. Compile a candidate list of all non-eliminated projects that are ranked by applicant counties, or municipalities and unincorporated communities that are partly or wholly located in counties that did not apply for ARC grants or have been eliminated, as their most preferred among non-eliminated projects, in ascending order of project score. If multiple projects have equal project scores, they will be ranked in descending order of the number of locations to be served.
2. Compute, for each project, the cumulative grant request for that project and all those ahead of it in the queue.
3. Eliminate all projects for which the cumulative grant request exceeds the available budget for the ARC round.
4. Eliminate all projects which are interdependent with eliminated projects.
5. Check whether each eliminated project comes from a municipality, unincorporated community or county that also has less preferred projects, and if so, place less preferred projects into the candidate list, to replace eliminated projects.
6. Also, if a county project is eliminated and there are no other project proposals from that county, check whether any municipalities or unincorporated towns fully or

partly contained within that county have projects, and if so, add the most preferred projects from each municipality or unincorporated town to the list.

7. If the total grant request for all projects remaining in the candidate list is less than the budget constraint, stop. Otherwise, return to step 1.

This process will result in a list of projects for which the grant requests are less than the budget for the ARC round, and which will tend to economize state tax dollars and maximize their impact.

G. After each ARC grant is approved, the ISP receiving the grant will have 45 days to send it to a licensed Professional Engineer for confirmation that the plans are technically adequate. The resulting PE stamp shall be provided to the ASBO before any further grant funds are disbursed. Projects that fail to win PE approval will be canceled, but the grant recipient can still pay the PE from the grant funds before the remainder of the funds reverts to Arkansas Rural Connect. ISPs can be exempted from the PE stamp requirement if they provide documentation that they have provided broadband coverage to at least 1,000 subscribers in the state for at least five (5) years.

## **Section 10. Federal Complementarity**

A. In addition to state and private efforts to deploy broadband, the federal government is making extensive, well-funded efforts to promote rural broadband deployment, principally through the FCC and the USDA. It is likely that federal funding for rural broadband in Arkansas in the next decade will much exceed any funding from the State.

B. In order to make ARC broadband grants impactful, many state officials recognize the need to consider the ways that ARC will interact with federal funds. There are plausible scenarios in which ARC broadband grants leverage federal funds, and plausible scenarios in which ARC broadband grants crowd out federal funds. Announcements of new federal programs, rules, dates and deadlines, etc., are hard to predict, and coordination between state and federal programs is difficult and may be incompatible with due process at the state level.

C. In view of the difficulty of explicit coordination, the ASBO shall have discretion to adjust program rules relating to project footprints, technological specifications, and service obligations, on a case by case basis, in consultation with and in the interests of affected communities and ISPs, in order to make the ARC program as complementary as possible to federal programs that fund rural broadband.

## **Section 11. Project Monitoring and Dispute Resolution**

A. During the build phase of the project, the ISP shall not be required to deliver broadband service to premises in the project footprint.

B. During the build phase of the project, the ISP shall be required to submit quarterly reports to the ASBO reporting their activities in fulfillment of grant objectives. These reports will be submitted within sixty (60) days of the quarters ending on March 31, June 30, September 30 and December 31 of each year, and reviewed as explained in section 5.C.

C. When the ISP has completed deployment to 95% of locations in the project footprint, it shall notify the ASBO and the municipality, unincorporated community or county of that fact. At that time, the ASBO shall do a desk assessment of whether the ISP is in fact advertising the services that it promised to deliver so that citizens living in the project footprint could discover and sign up for the service. The responsible public officials shall collect, or cause to be collected, with the advice of the ASBO as needed, information sufficient to affirm that the project appears to be complete and broadband service has been made available to at least 95% of project footprint residents, and it shall publish the contact info of an official tasked with hearing complaints from citizens who believe that their homes are still not being offered service as required by the ARC grant. The ASBO shall review this information as well as evidence from its own desk research, and if the evidence is sufficient, shall announce that the project has completed the main deployment phase, and authorize the release of any remaining disburseable grant funds.

D. After deployment to 95% of locations has been completed, the ISP may cease broadband deployment activities within the project footprint until its cumulative revenues exceed its cumulative operating costs within the project footprint. If this never happens prior to full project closure on 1/1/2030, the ISP will never be required under the terms of the ARC grant to make broadband service available to the remaining 5% of locations. But if revenues exceed operating costs in the project footprint, resulting in positive net income, this net income shall be reinvested in deployment to the remaining 5% of locations, until 100% of the locations in the project footprint have broadband service available. When 100% of locations have broadband service available, any further net income is at the ISP's disposal to return to owners as profit or invest in other projects.

E. If the ISP fails to deploy to 95% of locations in the project footprint by November 2022, the ISP is obligated to return all ARC grant funds disbursed to it for that project, unless this requirement is waived by the ASBO. The ASBO may waive up to 80% of penalties if a substantial proportion of locations in the project footprint have received broadband coverage, and the ISP exerted bona fide best efforts to achieve project goals but was prevented from doing so by adverse circumstances.

F. From the completion of deployment until project closure, the ASBO shall continue to conduct desk research from time to time to ensure that 25/3 broadband service is still available from the grant-funded ISP within ARC project footprints.

G. From the completion of deployment until project closure, the ASBO may request a report from an ISP concerning any ARC project up to twice a year. Upon receiving such a request, the ISP shall provide, within 90 days: (1) a confirmation that 25/3 broadband service is still available in the project footprint, (2) information about pricing schedules, (3) numbers of

subscribers, (4) take rates, (5) information about any known service interruptions, and (6) any other information the ISP may deem relevant.

H. From the completion of deployment until project closure, each municipality, unincorporated community, or county shall submit biannually to the ASBO a report that may include (1) an overall judgment of whether the ISP is fulfilling its service obligations, (2) complaints about non-provision or poor quality service that may have validity, and (3) information about service interruptions that are known to have occurred. They are also encouraged to include (4) positive feedback from the public about the ARC project and (5) instances of the economic development impact of the ARC project. Such reports shall be submitted within 30 days of the ends of the six-month periods from January to June and July to December of each year.

I. In case of succession in the offices of mayor or county judge for a community that has received an ARC grant funded project, the mayor or county judge shall notify his or her successor of his or her rights and obligations as the responsible public official for an ARC grant project area.

J. Early project closure may be requested by the ISP or initiated by the ASBO based on evidence that broadband service is no longer being provided by the ISP to 95% or more of the locations in the project footprint. If early project closure occurs, the ASBO and the municipality, unincorporated community or county, as represented by a mayor or county judge, shall consult and decide whether or not the ISP may be required to pay penalties as described in Section 7.C.5. If they determine that it is in the public interest for the service to be terminated because it is obsolete or superfluous and is no longer desired by customers, they may agree to waive penalties.

K. No penalties will be assessed against an ISP that ceases to provide broadband in an ARC grant funded project footprint due to ownership changes, if the successor entity continues to provide the service.

## **Section 12. Severability Clause**

A. Any section or provision of this rule held by a court to be invalid or unconstitutional will not affect the validity of any other section or provision.

## **Section 13. Effective Date**

This Rule is effective after review and approval by the Arkansas Legislative Council, ten (10) days after filing of the approved Rule with the Arkansas Secretary of State.

---

Mike Preston  
Director  
Arkansas Economic Development Commission

---

DATE

**ARC**  
**EXHIBIT**  
**“3”**

PUBLIC HEARING

IN THE MATTER OF  
TO CONSIDER THE ADOPTION OF  
PROPOSED RULE  
"ARKANSAS RURAL CONNECT  
BROADBAND GRANT PROGRAM"

---

HEARING PROCEEDINGS

JANUARY 9, 2020

at 8:31 A.M.

---

APPEARANCES

MR. STEVEN PORCH  
MR. JAMES HUDSON  
ARKANSAS DEPARTMENT OF COMMERCE  
900 WEST CAPITOL AVENUE, SUITE 400  
LITTLE ROCK, ARKANSAS 72201

ALSO PRESENT:

DR. NATHAN SMITH  
MR. CLINT MOORE

---

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## PROCEEDINGS

JANUARY 9, 2020

1  
2  
3 MR. HUDSON: We'll bring the hearing to  
4 order. My name is Jim Hudson. I'm the general  
5 counsel and EVP of operations for the Arkansas  
6 Economic Development Commission. Up here with  
7 me I have Nathan Smith, who is the head of our  
8 broadband office; as well as Clint Moore, who  
9 works in the broadband office. As well, we  
10 have Steven Porch, who is the senior counsel  
11 for the Arkansas Department of Commerce.

12 The only item on our agenda today is to  
13 discuss the proposed rule by AEDC concerning  
14 the Arkansas Rural Connect Broadband Grant  
15 Program. The purpose of this proposed rule is  
16 to help implement policies to advance the  
17 Arkansas State Broadband Plan as issued by the  
18 Office of Arkansas Governor Asa Hutchinson on  
19 May 15, 2019.

20 The proposed rule is intended to establish  
21 requirements for governmental entities to  
22 participate in the Arkansas Rural Connect  
23 Broadband Grant Program in order to provide or  
24 expand broadband services consistent with the  
25 Broadband Plan Report, resulting in increased

1 educational opportunities, healthcare  
2 opportunities, and economic development  
3 opportunities, and ensuring all Arkansans have  
4 equal access to services they can use to  
5 improve their quality of life, their community,  
6 and this state. The proposed rule, today,  
7 incorporates revisions to the previous proposed  
8 rule based on comments received by the public.

9 At this point, we will open up the hearing  
10 to any comments or questions that you may have.  
11 I'm looking at the sign-in sheet and it appears  
12 at this point nobody has expressed an interest  
13 to speak. I'll go ahead and give you another  
14 opportunity if that's something you're  
15 interested in doing.

16 Good morning, folks. Come on in. We have  
17 just convened the hearing, and at this point  
18 we're soliciting any opportunities people may  
19 want to take to speak to us and give us  
20 comments on the proposed rule. The proposed  
21 rule is available on the Arkansas Economic  
22 Development Commission website. That website  
23 is arkansasedc.com. The public comment period  
24 ended two days ago; is that correct?

25 MR. PORCH: Yes, it ended Monday.

1 MR. HUDSON: It ended on Monday. So at  
2 this point, the only opportunity to present  
3 public comments are at the hearing today.

4 Well, it appears to the Chair that there  
5 was no desire to make any public comments, so  
6 we are going to go ahead and take a recess.  
7 I'm going to stay for a little bit to see if  
8 other people may show up, and if others show  
9 up, we'll reconvene, so Madame Court Reporter,  
10 please stick around. And if no one else shows  
11 up, then we will adjourn the public hearing.  
12 So I encourage you to read the proposed rule,  
13 become familiar with it. And with that, we'll  
14 stand in recess. Thank you for your attendance  
15 today.

16 (WHEREUPON, after a break was taken, the  
17 proceedings resumed as follows, to wit:)

18 MR. HUDSON: Madame Court Reporter, go  
19 ahead and go back on the record for us.

20 If you don't mind, introduce yourself and  
21 who you represent, and we will have you proceed  
22 with comments.

23 MS. MULLENIX: Thank you. I'm Julie  
24 Mullenix and I represent the Arkansas Rural  
25 Broadband Association. We may have about

1 eleven telecommunications providers across the  
2 state.

3 The comments that we are submitting this  
4 morning do not address the State's choice of  
5 political subdivisions that will be eligible to  
6 apply for grant funding, or the State's choice  
7 of required rules for eligibility. Instead,  
8 the comments are focused on several other areas  
9 that we would ask that you consider in the  
10 rules.

11 First, is the longevity of deployment.  
12 Networks built with Arkansas funds should meet  
13 future broadband deployment speed standards and  
14 requirements. According to the rules in  
15 Section 8, networks must sustain service for up  
16 to eight years following the project closure.  
17 In November 2022, networks should ensure  
18 Arkansans are able to experience higher  
19 bandwidth capabilities that are competitive  
20 with national broadband speeds.

21 The FCC previously funded locations on the  
22 10/1 speed requirement. Today, the FCC  
23 standard is 25/3. Currently, there is draft  
24 federal legislation to increase the standard  
25 speed to 100/100, and in ten years, this

1 requirement may be 500/500 or higher.

2 The grant process should provide higher  
3 scores to networks that deploy fiber to homes  
4 than those with fixed wireless systems. This  
5 would allow a state to provide connection  
6 speeds of one gig with no additional equipment  
7 upgrades. In addition, we believe the State  
8 should provide higher scores to companies that  
9 can provide the symmetrical speeds needed to  
10 meet the State's growing demands for internet-  
11 based services.

12 The second issue we wanted to make a  
13 comment on was the proof of deployment  
14 acceptable standards. And, Dr. Smith, I do  
15 have a copy of these for you.

16 DR. SMITH: Thank you.

17 MS. MULLENIX: Section 9 states, an  
18 internet service provider can be exempted from  
19 the professional engineer stamp requirement if  
20 it offers documentation that its provided  
21 broadband coverage to at least 1,000  
22 subscribers in Arkansas for at least five  
23 years.

24 We believe the state should require  
25 networks to meet the total number of locations

1 within the application area. If not, the state  
2 may experience delay deployment, slow speed  
3 realization, or higher consumer prices. A  
4 professional engineer should verify the grant  
5 application includes the necessary equipment,  
6 such as towers to properly serve the entire  
7 area. We don't believe there should be an  
8 exemption for this requirement.

9 The third issue, testing requirements.  
10 Today, every fixed wireless and fiber provided  
11 that receives federal funding is required to  
12 evaluate customers' experience against test  
13 locations in the U.S. to ensure it is complying  
14 with designated speed requirements.

15 Likewise, we believe the state should  
16 implement a testing requirement for its  
17 internet service providers. This would prevent  
18 companies from undersizing, middle mile, and  
19 background transfer facilities, or distribution  
20 systems to cut expenses.

21 According to Arkansas Rural Connect, the  
22 state does not currently have resources for  
23 this. However, we propose each entity that  
24 receives ARC funding submit a list of locations  
25 served each quarter to program administrators.

1 Administrators could then select a certain  
2 number of locations through a random sample  
3 process for speed and latency testing. If a  
4 location is unable or unwilling to complete the  
5 testing requirements, an alternate location  
6 will be selected.

7 These results will be provided by an entity  
8 to Arkansas Rural Connect for analysis. If an  
9 established percentage of households fail,  
10 Arkansas Rural Connect will investigate the  
11 project to determine if the internet service  
12 provided has complied with the certified  
13 engineering designs and deployment obligations.

14 The next issue, proof of ability to repay  
15 for noncompliance. Federal grant options  
16 require providers to obtain a letter of credit  
17 for the FCC to use if the internet service  
18 provider does not meet deployment obligations.  
19 Arkansas also needs protection that providers  
20 will pay back funds if they fail to meet  
21 deployment and service requirements during the  
22 ten-year grant period. Merely looking at a  
23 company's financial status does not guarantee  
24 it will be able to reimburse state funds.

25 The next issue is, designate a period to

1 contest the grant award. To ensure state funds  
2 are used in underserved areas and not in areas  
3 with other providers, or locations where  
4 companies have received or will receive federal  
5 funds, Arkansas Rural Connect should allow a  
6 period for providers to contest grant awards  
7 and verify their services. This process could  
8 delay an award for a short period. However, it  
9 will ensure funds are being properly used and  
10 in conjunction with federal support programs.

11 That's the entirety of our comments.

12 MR. HUDSON: Thank you, Ms. Mullenix.  
13 We'll receive the written comments in the  
14 record, as well?

15 MS. MULLENIX: Yes, sir.

16 MR. HUDSON: Thank you for providing a copy  
17 of those. Do you have any questions  
18 particularly for Dr. Smith, or just want to  
19 submit the comments at this point?

20 MS. MULLENIX: I just wanted to submit the  
21 comments.

22 MR. HUDSON: Dr. Smith, do you have any  
23 questions?

24 DR. SMITH: Let me see. So there was some  
25 remarks on random sample for latency testing --

1 speed and latency testing. I'm not sure if  
2 it's fair to ask you to answer this  
3 extemporaneously, but would that require a  
4 rules change, do you think, or is that just  
5 something that we can do administratively  
6 within the framework of these rules? Because,  
7 of course, it does -- that is the role for the  
8 State Broadband Office to verify project  
9 completion. So we certainly welcome your  
10 expertise in discussing how to implement that.  
11 But I wasn't -- I didn't know if you'd be  
12 interesting maybe -- it's fine if you don't  
13 know whether that would require a rules change.

14 MS. MULLENIX: I don't have a copy of the  
15 language of the rules before me, and I'm sure  
16 you would want your legal team to look at that.

17 MR. HUDSON: Why don't we do this. You can  
18 consult with your clients. We'll keep the  
19 record open to receive a response to that  
20 question Dr. Smith asked you, and it will help  
21 us to be able to draft our response to the  
22 suggested change.

23 MS. MULLENIX: Certainly. Thank you.

24 MR. HUDSON: Any other discussion? Any  
25 other questions, Dr. Smith?

1 DR. SMITH: Let me think about it for a  
2 second. There was a lot of thought that was  
3 put into that. About the professional engineer  
4 stamp, we will have engineers also review the  
5 projects during the application stage, as well.  
6 So, in a way, that professional engineer stamp  
7 is sort of an extra check. But we're currently  
8 working on contract with a company that has  
9 communication engineers on staff that will also  
10 review them before we award the grants. So  
11 that may allay some of your concerns in that  
12 area.

13 Yeah, some of this is just tradeoffs  
14 between -- different position you can take  
15 under the tradeoffs, but we'll discuss it and  
16 decide what to do on these.

17 MS. MULLENIX: Thank you, Dr. Smith.

18 DR. SMITH: But thank you very much for  
19 your thoughtful comments.

20 MR. HUDSON: Thank you, Ms. Mullenix. We  
21 appreciate your contribution today.

22 MS. MULLENIX: Thank you.

23 MR. HUDSON: Is there anyone who would like  
24 to make comments at this time?

25 Chair seeing no one, we will stand

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adjourned. Thank you for your attendance today.

(WHEREUPON, the proceedings were concluded  
in this matter at 9:04 a.m.)

\* \* \* \* \*

## CERTIFICATE

STATE OF ARKANSAS        )  
   ) ss  
 COUNTY OF PULASKI        )

I, Faith Grigsby, CCR, Certified Stenomask Reporter before whom the foregoing testimony was taken, do hereby certify that the witness was duly sworn by me; that the testimony of said witness was taken by me and was thereafter reduced to typewritten form under my supervision; that the deposition is a true and correct record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in the outcome of this action.

I FURTHER CERTIFY, that I have no contract with the parties within this action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

WITNESS MY HAND AND SEAL this 9th day of January, 2020.

-----  
 FAITH GRIGSBY  
 Arkansas State Supreme Court  
 Certified Court Reporter #686

**ARC**  
**EXHIBIT**  
**“4”**

## ***ARC Public Comments***

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<b><i>Arkansas Rural Broadband Association.....</i></b>	<b><i>11</i></b>

## ***Aristotle***

Dear Broadband Manager,

Please find below Aristotle's comments to the proposed rules for the ARC Grant Program. I raised this in our in-person meeting before the holidays, but I wanted to submit them in writing as well.

First, as discussed, we urge you to add to the financial vetting provisions a fourth category that allows those companies which have already been vetted and approved by a Federal agency, such as the FCC and/or the USDA, to bypass the other financial baseline requirements. This would alleviate workload for both the ISP and the ASBO in that financial disclosure statements would not need to be recreated for the ARC grant. It is also our position that once a Federal agency has vetted an ISP, that ISP has passed the bar as to whether it is a going concern, so no additional financial assessment should be necessary.

Second, Aristotle is concerned that the language pertaining to project closure is vague in that it implies that should the service become obsolete or unnecessary, the municipality could still elect at its discretion to penalize the ISP. While I do understand that this was not the intent of this provision and that the intent was in fact to allow the ISP and municipality jointly to determine that the project should be terminated where no longer needed or obsolete, thus alleviating reporting requirements, and any penalties waived. I believe it is also the intent that should the municipality elect not to move forward for any reason, the penalties would be waived if the ISP had performed in its obligations. If the language in the rule could be modified to make clear that penalties should not be assessed in the case where the ISP has met its obligations but the service is nonetheless no longer needed or wanted, that would help to make this language clearer.

Finally, I understand that in the public meeting this morning, comments were made that advocated for a minimum speed of 1 gig and a preference for fiber to the home. These requirements would effectively gut the ARC program given the expense of fiber technologies and would effectively eliminate participation from companies utilizing other technologies and/or hybrid solutions. Obviously, the ARC grant should be technology neutral, and the money from those grants will extend to more areas than if fiber to the home is the sole technological choice. For example, the State of New York ran an initial \$400 million broadband grant program with an absolute preference for fiber, but they quickly learned that the expense meant that only 10% of the state would receive coverage. In the second round of the New York broadband grant program, New York allowed other technologies to be utilized. The State was able to award grants to the remaining 90% of the State with the same amount of money. Additionally, while the FCC and other federal agencies do encourage deployments at higher speeds than 25/3, there is a 25/3 tier in all federal programs. The current structure of the ARC program will enable more Arkansans to receive high-speed service and more quickly than would be possible with a fiber-to-the-home-only solution. As such, it should be left as it is.

I appreciate your consideration of these comments.

Best regards,

Elizabeth

L. Elizabeth Bowles  
President & CEO  
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2100 Broadway  
Little Rock, AR 72206  
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[ebowles@aristotle.net](mailto:ebowles@aristotle.net)

# CenturyLink

Dear Ms. Smith,

Attached are CenturyLink's comments to the updated Arkansas Rural Connect Broadband Grant Program draft rule. As always, please do not hesitate to contact us should you have any questions or need further information regarding the attached.

Sincerely,

**Brook Landry Villa**

Associate General Counsel

CenturyLink



Brook Laundry Villa  
Assistant General Counsel  
(225) 333-3021  
Brook.Villa@CenturyLink.com

January 6, 2020

Arkansas Department of Commerce  
Attn: Nathan Smith, Ph.D.  
[broadband@arkansas.gov](mailto:broadband@arkansas.gov)

**RE: CenturyLink Comments Regarding the Updated Arkansas Rural  
Connect Broadband Grant Program Draft Rule**

Dear Mr. Smith:

Thank you for your continuing work on Arkansas Rural Connect Broadband Grant Program and Updated Arkansas Rural Connect Broadband Grant Program Rule (the "Updated Rule"). CenturyLink appreciates the opportunity to comment further and provide feedback on the Updated Rule. Please note in the comments below, underlined language is new, and stricken language would be deleted from the Updated Rule.

**1. Definition of "Census-Designated Places"**

The Updated Rule contains several references to, but no definition for, the term "Census-Designated Places." To avoid any confusion, CenturyLink suggests the following clarification to Section 4 of the Updated Rule:

(19) "Unincorporated community" means a population center with historic boundaries that are understood in local custom and amenable to mapping, but which is not legally incorporated as a municipality. Census-Designated Places recognized by the United States Census Bureau are automatically recognized as unincorporated communities, while other unincorporated communities' status and boundaries must be established by maps and narratives, as explained in 6.H.1.

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Baton Rouge, LA 70801

[www.centurylink.com](http://www.centurylink.com)

**2. Definition of “ISP”**

The Updated Rule contemplates project closure on January 1, 2030, almost ten years in the future. Given this timeframe and recognizing business entities are constantly evolving – merging, consolidating, acquiring, selling, etc., CenturyLink suggests the following revision to the definition of ISP:

(10) “ISP” means Internet Service Provider, its successors or assigns.

**3. Eligibility for an ARC Grant**

The ARC grant funding eligibility criteria are set forth in three different sections of the Updated Rule. With regard to the threshold percentage of the population having access to broadband coverage, those sections appear to conflict:

- a. Section 6(C) requires at least 80% of a population to be unserved;
- b. Section 6(E) requires 20% of a population to lack broadband coverage; and
- c. Section 7(A) prohibits more than 80% of the population having broadband coverage.

As you can see, it is unclear whether 80% or 20% of the population must be unserved to qualify for an ARC grant. Accordingly, CenturyLink recommends that these sections be revised for consistency.

**4. Financially Self-Supporting Projects**

Section 6(J) requires projects to be financially self-supporting after deployment. To demonstrate the financial self-sufficiency, the expected revenues and costs of the project after deployment must be included in the application. While CenturyLink fully understands and appreciates the ASBO’s underlying concern, it respectfully recommends deleting the last sentence of this section. First, this should be an internal business judgment on the part of providers when

evaluating whether to participate in the grant program. Second, this decision may be based on underlying confidential and propriety information which cannot be shared as part of the application process. Finally, other sections of the Updated Rule address a provider's financial competence and viability and the repercussions of a provider's failure to provide service after project deployment but prior to projection completion; these provisions make the documenting of expected revenues and costs of the project after deployment superfluous.

**5. Maximum Grant Funding Per Household**

To calculate the maximum State grant for which a community can apply, the Updated Rule allows \$3,000 per household. Section 6(M). CenturyLink appreciates the specificity provided by the ASBO in setting a maximum sum certain per household. Such information will allow providers much needed guidance in making a business decision on whether to apply for grant funds.

**6. Implementation Plans**

Section 8(C) contains the application submission requirements for ISPs. The Updated Rule allows geographical locations, other than towns, to apply for grant funding. Indeed, municipalities, unincorporated communities and counties are now eligible. As such, CenturyLink suggests the following revision to Section 8(C)(1):

C. ISPs shall be required to submit:

1. An implementation plan that explains how broadband will be deployed to reach all residences in the ~~town~~ municipality, unincorporated community or county including the technology that will be used.

**7. Anticipated Project Closure Date**

The Updated Rule contemplates an anticipated project closure date of no later than November 2022. See Section 8(C)(2) and Section 11(E). As the program is currently structured,

grant awards will not be announced until approximately 32 weeks after RFA announcement. See Section 6(A)(5). This timeline translates to, at best, grant awards being announced mid to end of 2020, allowing only two years, or less, for project completion. While CenturyLink appreciates and shares the urgency and immediacy of the broadband initiative, it recommends tying the project closure date to a specified amount of time, such as 24 months, after grant awards are announced. This revision will allow automatic readjustments in the project, closure date to account for any unanticipated delays or postponements in the RFA associated deadlines set forth in Section 6(A).

Further, the Updated Rule uses the term “project closure” to mean the deadline for both project deployment, currently November 2022 (see Section 8(C)(2)), and the deadline that the obligation to provide service and reporting ceases, currently January 1, 2030 unless otherwise agreed (see Section 6(AB)). To avoid any unnecessary confusion, CenturyLink suggests replacing “project closure” with the term “project deployment” in those instances where the Updated Rule is referencing the current November 2022 deadline. Incorporating both of the above suggestions, Section 8(C)(2) would read as follows:

A project timeline that includes a date of anticipated project closure deployment of no later than November 2022 24 months after grant awards are announced as set forth in Section 6.A.5.

**8. Commitment to Provide Broadband Service Until January 1, 2030**

As part of the application submission process, Section 8(C)(5) requires ISPs to commit to continue providing broadband service through January 1, 2030. However, Section 6(AB) allows an ISP and a co-applicant public official to agree to an earlier deadline for full project closure without penalties. To align these provisions, CenturyLink recommends the following revision to Section 8(C)(5):



Unless otherwise specified in accordance with section 6.AB, aA commitment to continue providing broadband service through January 1, 2030 after the project is complete, or pay penalties in accordance with a predetermined schedule, unless the ASBO, in consultation with the relevant local government, agrees that it is in the public interest to waive the penalties because the service has been overbuilt and/or become obsolete or superfluous. The penalties are as follows:

\* \* \*

**9. Alternatives to Providing Financial Statements**

The Updated Rule allows ISPs to provide certain data and information in lieu of providing complete financial statements. See Section 8(C)(7). CenturyLink fully supports this approach as it allows the ASBO to assess the financial competency of ISPs while simultaneously permitting ISPs to protect sensitive and propriety information.

**10. Complementing Federal Programs**

Section 10 provides flexibility to the ASBO to ensure the ARC program is as complementary as possible to federal programs. CenturyLink agrees that such flexibility is a necessary component of the program as it will allow all available resources to be utilized to support broadband deployment.

CenturyLink looks forward to working with you on the ARC grant program and this rule-making project. Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Brook L. Villa

**Brook Landry Villa**  
Associate General Counsel  
CenturyLink  
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(225) 205-7819  
Brook.Villa@centurylink.com

## John Duncan

*In an e-mail received on December 6, 2019:*

Allow Hot Springs Village to participate in the grant. We are larger than many towns.

John Duncan

# Arkansas Rural Broadband Association

The below comment was physically submitted at the public hearing on January 9<sup>th</sup> by Julie Mullienix on behalf of the Arkansas Rural Broadband Association.

Below are general comments regarding the Arkansas Rural Connect Broadband Grant Program (ARC)'s draft rules. Please note this feedback does not address the state's choice of the political subdivisions that will be eligible to apply for grant funding or the state's choice of required rules for eligibility. Instead, these comments are focused on following areas:

## **Longevity of Deployment**

Networks built with Arkansas funds should meet future broadband deployment speed standards and requirements. According to the rules in Section 8, 5, networks must sustain service for up to eight years following project closure in November 2022. Networks should ensure Arkansans are able to experience higher bandwidth capabilities that are competitive with national broadband speeds.

The Federal Communications Commission (FCC) previously funded locations on the 10/1 megabyte (meg) speed requirement. Today, the FCC standard is 25/3 meg. Currently, there is draft federal legislation to increase the standard speed to 100/100 meg. In 10 years, this requirement may be 500/500 meg or higher.

The ARC grant process should provide higher scores to networks that deploy fiber to homes than those with fixed wireless systems. This would allow the state to provide connection speeds of one gig with no additional equipment upgrades. In addition, ARC should provide higher scores to companies that can provide the symmetrical speeds needed to meet the state's growing demands for Internet-based services.

## **Proof of Deployment Acceptable Standards**

Section 9, G states an Internet Service Provider (ISP) can be exempted from the professional engineer (PE) stamp requirement if it offers documentation that it has provided broadband coverage to at least 1,000 subscribers in Arkansas for at least five years.

Instead, the ARC should require networks to meet the total number of locations within the application area. If not, the state may experience delayed deployment, slow speed realization or higher consumer prices. A PE should verify the grant application includes the necessary equipment (e.g., towers) to properly serve the entire area. There should be no exemption for this requirement.

## **Testing Requirements**

Today, every fixed wireless and fiber provider that receives federal funding is required to evaluate customers' experience against test locations in the U.S. to ensure it is complying with designated speed requirements. Likewise, the ARC should implement a testing requirement for its ISPs. This would prevent companies from undersizing middle-mile and backbone transport facilities or distribution systems to cut expenses.

According to the ARC, the state does not currently have the resources for this. However, we propose each entity that receives ARC funding submit a listing of locations served each quarter to program administrators. Administrators will then select a certain number of locations, through a random sample process, for speed and latency testing. If a location is unable or unwilling to complete the testing requirements, an alternate location will be selected. These results will be provided by the entity to the ARC for analysis. If an established percentage of households fail, the ARC will investigate the project to determine if the ISP has complied with the Certified Engineering designs and deployment obligations.

#### **Proof of Ability to Repay for Non-Compliance**

Federal grant auctions require providers to obtain a letter of credit for the FCC to use if the ISP does not meet deployment obligations. Arkansas also needs protection that providers will pay back funds if they fail to meet deployment and service requirements during the 10-year grant period. Merely looking at the company's financial status does not guarantee it will be able to reimburse state funds.

#### **Designated Period to Contest Grant Award**

To ensure state funds are used in underserved areas and not in areas with other providers or locations where companies have received or will receive federal funds, the ARC should allow a period for providers to contest grant awards and verify their services. This process could delay an award for a short period. However, it will ensure funds are being properly used and in conjunction with federal support programs.

#### **Consumer Price Protections with Minimum Usage Allowances**

There should be a requirement for each ISP to follow FCC requirements for annual broadband performance obligations and service rates. This will help mitigate any adoption issues and ensure rural Arkansans receive services at rates comparable to urban consumers.