

# ARKANSAS REGISTER

## Transmittal Sheet

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Statutory Authority for Promulgating Rules \_\_\_\_\_

Rule Title: \_\_\_\_\_

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### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

*Renee M. Doty*  
Signature

Phone Number

E-mail Address

Title

Date



Michael Preston  
Secretary of Commerce,  
Executive Director  
Arkansas Economic  
Development Commission

## **Arkansas Rural Connect Broadband Grant Program Emergency Rule**

### **EXECUTIVE SUMMARY**

#### **Purpose and emergency need**

The Arkansas Economic Development Commission and the Arkansas Broadband Office have promulgated an emergency rule that amended the Arkansas Rural Connect Broadband Grant Program (ARC). The purpose of the rule is to revise the procedure for disbursing ARC funds so that grant recipients will receive grant funds in quarterly installments based on expenses incurred and submitted to the Arkansas Broadband Office and verified by UAMS.

AEDC and the Arkansas Broadband Office have determined that an emergency rule is necessary to continue to disburse funds to rural areas of Arkansas for the deployment of broadband infrastructure. Broadband is a critical tool for Arkansans to access telemedicine, distance learning, and telework.

#### **Key points**

- The emergency rule allows the Arkansas Broadband Office to award grant funds to recipients in quarterly installments. This reverts the disbursement process to what it was at the inception of the ARC program and before the CARES Act.
- There are no upfront payments.
- These installments will be based on expenses incurred by the grantees and submitted to the Arkansas Broadband Office for reimbursement after review and verification by UAMS.
- The Arkansas Broadband Office will promulgate a permanent rule through the Administrative Procedures Act.

#### **Effective date**

The emergency rule is effective on November 19, 2021.

# **ARKANSAS RURAL CONNECT BROADBAND GRANT PROGRAM**

## **Emergency Rule**

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### **Section 1. 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.
- (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.

G. Notwithstanding any other provision of this ARC Rule, the Arkansas Rural Connect Coronavirus Rule (as amended), the Supplemental Arkansas Rural Connect Coronavirus

Rule, or any addenda relating thereto, grants made under the ARC Grant Program receiving approval of appropriation by the Arkansas Legislative Council, or by the Joint Budget Committee if the Arkansas General Assembly is in session, on or after November 19, 2021 shall be disbursed to awardees in accordance with this Section 5 of the ARC Rule.

## **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 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).
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## **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	$\frac{\left( \$3,000 - \frac{\text{state grant requested}}{\text{number of unserved households connected}} \right)}{\$3,000}$
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 Emergency Rule is effective November 19, 2021.



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Mike Preston  
Director  
Arkansas Economic Development Commission



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DATE

## **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

DEPARTMENT \_\_\_\_\_  
DIVISION \_\_\_\_\_  
PERSON COMPLETING THIS STATEMENT \_\_\_\_\_  
TELEPHONE NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_ EMAIL: \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

### **SHORT TITLE OF THIS RULE**

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;
- b) The reason for adoption of the more costly rule;
- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ \_\_\_\_\_

\$ \_\_\_\_\_

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ \_\_\_\_\_

\$ \_\_\_\_\_

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?
- Yes      No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.