



DEPARTMENT OF COMMERCE

ASA HUTCHINSON | Governor MICHAEL PRESTON | Secretary

October 10, 2019

Arkansas Secretary of State
State Capitol Building
Little Rock, AR 72201
Attn. Arkansas Register

Re: PROPOSED RULE, "ARKANSAS RURAL CONNECT BROADBAND GRANT PROGRAM"

Dear Secretary:

Arkansas Act 1478 of 2003 adds to requirements for adoption and re-adoption of public agency rules and regulations. In that regard, the new Act:

- (a) Requires notice of proposed Rule "ARKANSAS RURAL CONNECT BROADBAND GRANT PROGRAM," as well as the Public Rule Hearing at the Arkansas Economic Development Commission, to be published by the Arkansas Secretary Of State on the Internet for thirty (30) days pursuant to Ark. Code Ann. § 25-15-218 of the Arkansas Administrative Procedure Act, as amended; and
(b) Requires AEDC filing of its adopted and proposed rules and notices with the Arkansas Secretary Of State in an electronic format acceptable to the Secretary.

In that regard, AEDC has scheduled a public hearing as to proposed adoption of the above described Rule. Enclosed are the AEDC Notices of Public Hearing and a copy of the proposed rule.

Please arrange to publish the information in a format acceptable to the Secretary for at least 30 days in advance. Can you send us confirmation that we can use in the transcript as a public hearing exhibit?

An electronic filing will be made within the statutorily required 7 days. Thanks for your help.

Sincerely,

[Handwritten signature]

Steven Porch
Chief Legal Officer
Arkansas Department of Commerce
501-682-1121

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Enclosures

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AR REGISTER DIV.
STATE OF ARKANSAS



# DEPARTMENT OF COMMERCE

ASA HUTCHINSON | Governor    MICHAEL PRESTON | Secretary

## 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) “ESRI Shapefile” means a geospatial vector data format that can be utilized by ESRI or other GIS software.
- (6) “Interdependent projects” means that an ISP is unwilling to implement a set of projects separately if not all of them get funded. This may occur if deployment involves creating shared assets that need to recover costs from multiple projects to be economically justifiable.
- (7) “ISP” or Internet Service Provider means an eligible telecommunications provider that provides broadband internet access.
- (8) “Mbps” means megabits per second
- (9) “Project organizers” means municipal 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, valid applications can only be submitted by municipal public officials with ISP representatives, who must take responsibility for delivering the project, regardless of who initially organized it.
- (10) “RFA” means Request for Applications
- (11) “Unserved” means that a location lacks access to 25/3 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 legally 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 at the request of eligible municipalities, in return for commitments from the ISPs to make 25/3 broadband service, as defined by these rules, available to residents of those municipalities.

B. Funds will be used to reimburse ISPs on a proportional basis for capital expenditures on approved projects. The proportion of capital expenditures that will be reimbursed will be determined for each project at the time that it is approved, and will be equal to the grant awarded, divided by the cost of the project, times 80%. Up to 80% of the grant can be disbursed prior to project completion. The remaining 20% of grant funds matched with reimbursable costs

will be disbursed upon project completion. Project completion must occur by November 2022, and no requests for disbursements of ARC grant funds will be accepted after February 1, 2023.

C. To receive reimbursement, ISPs must 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 30 days of the end of the quarters ending on March 31, June 30, September 30, and December 31 of each year. The receipts should 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 should be sufficiently detailed to be verified by physical inspection of the sites where investment activities took place. It should also update the ASBO on the number of locations connected to 25/3 broadband and the likelihood that the project will be completed on schedule. Known delays in the project timeline should be noted. Within 30 days of the receipt of these materials, the ASBO should either approve the reports or request more information. Funds should be disbursed to ISPs within 14 days of the approval of the quarterly project narrative.

D. Since funds will only be disbursed based on receipts, it follows that if the costs of deployment prove to be lower than was anticipated in the grant application, the funds disbursed to the grant recipient by Arkansas Rural Connect will be proportionally reduced. Since funds disbursed cannot exceed grants awarded, any cost overruns must be borne entirely by the ISP or ISPs doing the build.

E. Allowable expenses do not include the following: (1) pole attachment fees, (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.

F. Allowable expenses include the following: (1) 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, (2) wages of workers physically deploying infrastructure, (3) engineering costs related to project design, (4) legal costs related to the acquisition of rights needed for broadband deployment, and (5) the costs of fiber optic cable, modems, and other necessary plant for the delivery of 25/3 broadband services.

#### **Section 6. Process Overview**

A. Each round of ARC grant funding will begin when the ASBO releases an RFA. The RFA will include the preliminary list of municipalities eligible to apply for projects, the maximum state grants that can be awarded for each municipality, and the overall budget constraint for all grants awarded during the round.

B. Eligibility criteria will be developed by the ASBO, using the best data sources available, so as to channel funding to underserved communities across the state. Factors affecting eligibility will include municipal population, the share of the population currently unserved by 25/3 broadband, and geography. At least one municipality from each county will be eligible to apply for the ARC grant, unless data sources show that all the municipalities in the county are sufficiently served. For the sake of transparency, details of the eligibility determination process will be published along with the list of eligible towns as part of the RFA for the round.

C. Maximum state grants will be calculated by the ASBO by multiplying the population that would be able to connect to 25/3 service as a result of the project, as estimated by

the ASBO, by a per capita maximum state grant. The per capita maximum state grant will depend on the following weighted factors:

1. A connectivity needs index (30%)
2. Ability to pay as indicated by per capita income (30%)
3. Distance to the nearest location where fiber optic service is available (30%)
4. Population density in the municipality (10%)

D. The sum of all maximum state grants will exceed the budget for the ARC round in order to make projects reveal true cost by competing. Municipal eligibility will depend on 25/3 broadband service not being available to an announced minimum percentage of the residents of a town, based on the best available data sources. Efforts will be made to alert all local stakeholders in each eligible municipality, including municipal leaders and ISPs, to the municipality's eligibility for an ARC grant.

E. After the list of eligible municipalities is announced, ISPs are encouraged, in the interest of economizing state tax dollars, to study the list, identify any where they already offer 25/3 broadband service, and challenge the eligibility of these municipalities by submitting evidence showing how many locations they already offer 25/3 service to. ISPs may also challenge the eligibility of municipalities where 25/3 broadband service is not yet available, but is scheduled to become available by November 2022 under the terms of federal grants or loans that they have been awarded.

F. If time and capacity permit, the ASBO may announce a challenge process for towns that, though not initially deemed eligible, wish to make the case that they are in fact inadequately served and deserve to be eligible for Arkansas Rural Connect grant funding.

G. If the ASBO discovers that a sufficiently large percentage of the population of a municipality already has access to 25/3 broadband service, or will be provided with 25/3 broadband service by November 2022 by federally funded projects, that municipality will be removed from the eligible list. After such challenges have been processed, a final list of eligible municipalities will be published.

H. Project organizers should develop an implementation plan, with a budget, and define roles for all stakeholders. The necessary stakeholders in every project are the municipal government 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 project footprint must include all areas of the municipality that are unserved by 25/3 broadband at the time when the application window opens, but may extend beyond it. Project objectives can vary with local needs and provider capabilities but must include the provision of 25/3 broadband to all unserved locations in the project footprint.

I. Project organizers should make efforts to secure resources locally to help support the project, and then request the smallest ARC grant that is sufficient to complete the business case for the project and to secure the consent and commitment of the ISP to initiate construction. Possible funding sources include funds owned by the municipality, funds the ISP is willing to commit in expectation of a reasonable return on investment, and funds that major community stakeholders are willing to provide.

J. Each project must include exactly one municipal applicant, and at least one but potentially multiple ISPs. Each eligible municipality may submit multiple (up to three) applications. Each application should be for one project, i.e., one strategy (even if it involves more than one ISP) for achieving the goal of 25/3 broadband service to all locations. At most one project per municipality can be approved.

K. If a municipality applies for multiple projects, it should 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 municipality, the most preferred project that can be funded within the budget constraint for the ARC round.

L. Each project must have a planned project footprint, which must include the entire unserved territory of the applicant municipality, but may also include nearby contiguous areas.

M. If multiple ISPs are included on an application, maps should be provided indicating which parts of the project footprint will be served by which ISP.

N. If an ISP wants to launch a project that would cover multiple eligible municipalities, it should divide the project into sub-projects that each cover a single eligible municipality, 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 to submit separate applications for each sub-project. Otherwise, the ISP may choose to submit interdependent projects, as explained below.

O. When an ISP co-applies with multiple municipalities on interdependent projects, the ISP should indicate to the municipality that the project is interdependent with one or more other projects, such that they cannot be funded and executed separately. The municipality, if it still wishes to apply for that project, should 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 municipality's portion of an application before it is submitted, and it should check to confirm that the municipality 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.

P. In choosing whom to apply with and how to rank projects, municipal decision makers should prioritize the public interest 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. Municipal applicants should provide a narrative explanation of less than 1,000 words about how the municipality developed the application, emphasizing efforts to make the process transparent, competitive, and in the public interest. This narrative should be submitted with the application.

Q. 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.

R. After the application window closes, the ASBO will arrange for process review, as explained in Section 9(A)(1), and technical review, as explained in Section 9(A)(2), 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 municipality, will then be ranked in ascending order of the ratio of the ARC grant requested to the maximum state grant allowable.

S. An iterative process will eliminate projects that lie outside the budget constraint or are interdependent with other eliminated projects, while substituting less preferred projects according to the ranking provided by the municipality, where available, for eliminated projects, culminating in a list of awardable projects with grant requests totaling to less than the available funds. Section 9(A)(3) elaborates on this, and full details of the selection process for the round will be provided along with the announcement of grant awards.

T. All the stages described so far will be governed by a set of dates and deadlines which the ASBO will announce simultaneously with the RFA. These dates and deadlines will include the following:

1. If applicable, the deadline for ineligible municipalities to submit challenges to their ineligibility.
2. If applicable, the date when an augmented eligible municipality list, including successful challenges, will be published.
3. The deadline for submitting challenges to municipal eligibility. (Approximately 4 weeks after the initial or augmented eligible municipality list is announced)
4. The date when the final eligible list will be announced. (Approximately 3 weeks after the deadline for submitting challenges)
5. The opening of the application window. (Approximately 3 weeks after the final eligible list is announced)
6. The closing of the application window. (Approximately 7 weeks after the opening of the application window)
7. The date when grant awards will be announced. (Approximately 10-12 weeks after the closing of the application window)

The ASBO may, at its discretion, extend or postpone these dates and deadlines during the ARC funding round. The dates and deadlines may be scheduled to work around major holidays or to coincide with deadlines for related federal programs, based on consultations with ISPs and other stakeholders.

U. 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 (C).

V. When deployment is complete, 25/3 service is available to all premises, and all other project objectives have been achieved, the ISP should alert the ASBO and the municipality of the fact. The municipal government should then collect information to confirm that deployment has been completed and 25/3 broadband service is available to all premises. If necessary, the municipal government can consult with the ASBO about 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.

W. After deployment is complete, the ASBO may request reports on project status from the ISP up to twice per year, as explained in Section 10(E), and the municipality shall submit biannual reports to the ASBO, as explained in Section 10(F).

X. Full project closure will occur on January 1, 2030 for all ARC projects, and obligations to report and to provide service will cease at that time. Project closure may occur sooner, as explained in Section 10(G), though the ISP must pay specified penalties, unless these are waived by the ASBO and the municipality.

## **Section 7. Eligibility Criteria**

A. To be eligible for ARC funding:

1. Projects must commit to serve eligible municipalities.
2. Projects must request in grant funding from ARC no more than the maximum state grant declared for that municipality and that funding round.
3. Projects must include as an applicant the municipality which will receive broadband service.
4. Projects must include as an applicant one or more ISPs with at least a one-year track record of providing broadband to a substantial number of retail consumers, with sufficient working capital to complete the planned build in advance of access to reimbursements from ARC, as demonstrated by appropriate financial statements (see Section 8(C)(6)).
5. Projects must include a declaration of the project's geographic footprint, with maps documenting the project footprint if it consists in anything other than a single ISP serving the entire municipal territory. If maps are not submitted as ESRI Shapefiles, the ASBO will create ESRI Shapefiles describing the project footprint, and applicants must review these and confirm that they accurately describe the intended project footprint.
6. Projects must include an implementation plan which is feasible and technically sufficient to achieve stated project objectives to the satisfaction of technical reviewers selected by the ASBO.
7. Projects must include a budget that reasonably anticipates the costs of the project, to the satisfaction of technical reviewers selected by the ASBO.
8. Projects must include declarations by all applicants and named stakeholders of their intention to perform their roles in the project as described in the implementation plan, if the project is approved for ARC grant funding.

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

A. Each application shall be initiated by the municipality that stand to gain broadband service as a result of the project. The Arkansas State Broadband Office shall create an online



application portal in due course, and also provide paper or PDF application forms as needed if the application has not yet been launched or for use where poor internet access makes the use of an online application portal infeasible or unduly difficult. Applications shall include the following documents.

B. Municipalities will be required to submit:

1. The name of the municipality applying to get service.
2. The rank of the application in the municipality's order of preference if multiple applications would qualify for funding, since no more than one application can be funded for each municipality.
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 map of the project footprint if it extends beyond the municipality's legal boundaries or involves multiple ISPs serving different parts of the town.
6. A statement of any cost sharing or facilitation that the municipality commits to do in order to assist the deployment process.
7. 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.
8. If applicable, statements of any commitments that the ISP has made on pricing in return for the municipality agreeing to co-apply for ARC grant funding.
9. The name and office of the public official who will submit biannual reports to the ASBO.
10. Disclosure of any conflicts of interest on the part of municipal decision makers.
11. A narrative explanation of less than 1,000 words about how the municipality developed the application, emphasizing efforts to make the process transparent, competitive, and in the public interest.
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 town, including the technology that will be used.
2. A project timeline that includes a date of anticipated project closure no later than November 2022.
3. 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.

4. 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 municipality and the ASBO agree that it is in the public interest to waive the penalties because the service has been overbuilt and become obsolete or superfluous. The penalties are as follows:
  - a. If service is suspended between 1/1/2029 and 1/1/2030, 5% of the total ARC grant
  - b. If service is suspended between 1/1/2028 and 1/1/2029, 10% of the total ARC grant
  - c. If service is suspended between 1/1/2027 and 1/1/2028, 15% of the total ARC grant
  - d. If service is suspended between 1/1/2026 and 1/1/2027, 25% of the total ARC grant
  - e. If service is suspended between 1/1/2025 and 1/1/2026, 35% of the total ARC grant
  - f. If service is suspended between 1/1/2024 and 1/1/2030, 55% of the total ARC grant
  - g. If service is suspended before 1/1/2024, 75% of the total ARC grant
5. An affirmation that all the information provided by the municipality is correct and acceptable.
6. 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 should 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 should 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.

7. Disclosure of any conflicts of interest that might affect municipal decision makers.

D. Stakeholders listed as co-applicants on a grant other than municipalities 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 three stages.

1. First, 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 municipal decision makers appear not to have acted in the public interest, or one or more ISP applicants appear to be undercapitalized or insufficiently experienced.

2. Second, 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.

3. 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:

(a) Compile a candidate list of all non-eliminated projects that are ranked by applicant municipalities as their most preferred among non-eliminated projects, in ascending order of the share of the maximum state grant requested. If multiple projects request equal shares of the maximum state grant, they will be ranked in descending order of the number of locations to be served.

(b) Compute, for each project, the cumulative grant request for that project and all those ahead of it in the queue.

(c) Eliminate all projects for which the cumulative grant request exceeds the available budget for the ARC round.

(d) Eliminate all projects which are interdependent with eliminated projects.

(e) Check whether each eliminated project comes from a municipality that also has less preferred projects, and if so, place less preferred projects into the candidate list, to replace eliminated projects.

(f) 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.

B. 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.

#### **Section 10. Project Monitoring and Dispute Resolution**

A. During the build phase of the project, the ISP shall not be required to deliver 25/3 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 30 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, it shall notify the ASBO and the municipality 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. Municipal public officials shall collect information sufficient to affirm that the project appears to be complete and 25/3 broadband service has been made available to all 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 deployment phase, and authorize the release of any remaining disburseable grant funds.

D. 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.

E. 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.

F. From the completion of deployment until project closure, each municipality shall submit biannually to the ASBO a report that should 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. Municipalities 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.

G. Early project closure may be requested by the ISP or initiated by the ASBO based on evidence that 25/3 broadband service is no longer being provided by the ISP throughout the project footprint. If early project closure occurs, the ASBO and the municipality shall consult and decide whether the ISP should be required to pay penalties as described in Section 8(C)(4). If both the ASBO and the municipality 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.

**Section 11. 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 12. 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