

ARC Public Comments

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Aristotle

Dear Broadband Manager,

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

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

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

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

I appreciate your consideration of these comments.

Best regards,

Elizabeth

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CenturyLink

Dear Ms. Smith,

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

Sincerely,

Brook Landry Villa

Associate General Counsel

CenturyLink



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January 6, 2020

Arkansas Department of Commerce
Attn: Nathan Smith, Ph.D.
broadband@arkansas.gov

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

Dear Mr. Smith:

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

I. Definition of "Census-Designated Places"

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

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

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2. Definition of “ISP”

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

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

3. Eligibility for an ARC Grant

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

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

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

4. Financially Self-Supporting Projects

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

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

5. Maximum Grant Funding Per Household

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

6. Implementation Plans

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

C. ISPs shall be required to submit:

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

7. Anticipated Project Closure Date

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



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

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

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

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

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



Unless otherwise specified in accordance with section 6 AB, 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:

* * *

9. Alternatives to Providing Financial Statements

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

10. Complementing Federal Programs

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

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

Sincerely,

/s/ Brook L. Villa

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John Duncan

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

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

John Duncan

Arkansas Rural Broadband Association

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

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

Longevity of Deployment

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

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

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

Proof of Deployment Acceptable Standards

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

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

Testing Requirements

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

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

Proof of Ability to Repay for Non-Compliance

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

Designated Period to Contest Grant Award

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

Consumer Price Protections with Minimum Usage Allowances

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