

SUMMARY

ARKANSAS ECONOMIC DEVELOPMENT COMMISSION

Arkansas Rural Connect Coronavirus Emergency Rule

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To: Arkansas Legislative Council & Arkansas Bureau of Legislative Research

From: Steven Porch, Chief Legal Officer, Arkansas Department of Commerce

Date: May 5, 2020

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LEGISLATIVE AUTHORITY FOR RULE

This emergency rule is issued by the Director of the Arkansas Economic Development Commission (“Director”). Ark. Code Ann. § 15-4-209(b) (5) 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 issue administrative rules under Ark. Code Ann. § 15-4-209(b) (5) as a service offered by AEDC. Secondly, this Emergency Rule is issued under Ark. Code Ann. § 25-15-204(c), the Director finds that imminent peril to the public health, safety, or welfare or compliance with a federal law or regulation requires adoption of a rule upon less than thirty (30) days' notice.

BACKGROUND AND PURPOSE OF RULE

The funding round of Arkansas Rural Connect (ARC) is occurring under circumstances that were not anticipated when the Arkansas Rural Connect program was developed. The COVID-19 pandemic has severely impacted the citizens of Arkansas and the world. COVID-19 has necessitated the imposition of new public health guidelines that encourage, and in some cases require, citizens to practice “social distancing,” staying at least 6 feet away from other people as much as possible. COVID-19 has brought about an urgent and immediate need for broadband internet access. Normal day to day activities can no longer be done safely. Broadband enables workers to telework, patients to use telemedicine services, K-12 and college students and unemployed workers in need of reskilling to participate in distance education, religious people to participate in online worship services, and all citizens to shop online, interact with friends through Skype and other video chat tools, and keep up with the latest news and public health guidelines.

While the COVID-19 pandemic has negatively impacted the state’s economy, the federal government has instituted a major relief effort entitled the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act provides substantial allocations of funding to states for coronavirus response, broadly defined. Guidance provided by the US Treasury describes allowable uses of CARES Act funding. In general, CARES Act money cannot be used for regular budget support, and must be used for coronavirus response, but this includes both public health related measures and economic

relief to address the “second-order effects” of the crisis. All CARES Act funds must be spent before the end of December 30, 2020.

The Arkansas Rural Connect program promotes broadband deployment in rural areas of Arkansas that lacks meaningful and efficient broadband services. The ARC program and its purposes align with allowable uses of CARES Act funds. However, Arkansas Rural Connect is designed as a medium- to longer-term investment program, requiring deployment only by late in 2022, which lies well outside the CARES Act spending window.

Due to the urgent need for broadband, necessitated by the COVID-19 pandemic, this emergency rule is needed to disperse funds immediately and to accelerate deployment to the extent possible.

EXPLANATION OF THE PROPOSED RULE

ACCELERATED APPLICATION REVIEW

This Emergency Rule accelerates review, approval and funding for the following ARC Rural Connect applicants: completed application submissions will receive an expedited review while the funding window is still open. Special attention will be given to qualified projects that are able to deploy in less than a year, preferably 6 to 8 months, if not sooner, to at least 90% of the locations targeted by the project. This 90% deployment rate is flexible, but preferred, and must be clearly stated in your application. The same is true with the ARC rules \$3,000 cap per unserved location connection. This \$3,000 cap is flexible, but preferred. All approved applications must meet eligibility criteria under the ARC rules. Due to the urgency of deploying broadband to underserved areas during the COVID-19 pandemic, some of the deadlines in the Arkansas Rural Connect program timeline may be moved forward to facilitate faster decision-making. Due to the need for expediency, the scoring rubric described in the ARC rules may or may not be used in making award decisions. The Broadband Office and technical review team will evaluate applications until funding ends.

DISTRIBUTION OF FUNDS

Due to COVID-19, approved projects will immediately receive disbursement of funds up to the maximum amount of funding allowable under the ARC program. Depending on the project, the Broadband Manager with the approval of the Secretary of the Arkansas Department of Commerce, can increase the maximum amount of funding per project under the ARC program. This funding mechanism contrasts with the usual fiscal rules of the Arkansas Rural Connect program and helps to ensure that projects will not be delayed by cash flow constraints on the part of awardees. In other respects, including submittal of receipts and payment of penalties for non-performance or early termination of service, awardee ISPs shall be subject to the same obligations as other ARC participants.