

Unlocking Rural Broadband



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Statewide, the consensus is that broadband is the tool to transform the economies of rural Arkansas, but the issue has been how to cost-effectively deploy it. A perception exists that the federal American Rescue Plan and Bipartisan Infrastructure Law, along with state grant funds, provides sufficient funding to finance universal rural broadband deployment. The truth is those resources are likely insufficient.

However, there might be an existing tool, used as part of a capital stack, along with private-sector investment, federal monies and grants, to finance the infrastructure for universal rural broadband in Arkansas more rapidly. Recent legislation may have cracked the code on cost effectively deploying broadband to rural Arkansas. Act 795 of 2021 (Act 795), sponsored by Representative Lanny Fite (R-Benton) and Senator Kim Hammer (R-Benton), authorized the creation of “broadband improvement districts.”

Act 795 allows improvement districts, horizontal property regimes and rural development authorities to enter into public-private partnerships with experienced private entities to form broadband improvement districts. Act 795 also allows broadband improvement districts to finance public capital facilities or projects, including broadband internet service. The concept of creating broadband improvement districts is an innovative idea and the inclusion of rural development authorities as participants in broadband improvement districts within Act 795 could be the true game-changer.

Rural development authorities are entities created under Arkansas law to assist rural areas with a vast range of economic development projects. The legislature has declared economic development to be a public purpose and granted rural development authorities extensive powers to accomplish this purpose.

Several factors make rural development authorities a compelling option for broadband projects. Rural development authorities generally have broader authority than the other entities authorized to establish broadband improvement districts under Act 795. Additionally, these rural development authorities usually cover larger geographic areas. Lastly, and most importantly, rural development authorities have a proven track record, as many rural development authorities are operational around the state.

A noteworthy power of rural development authorities is their ability to finance public capital facilities or projects with bonds. Those bonds are backed by the revenues and assets of a project and are not considered a debt of any other entity, such as a city or county. Rural development authorities also have the ability to lease the built-out broadband infrastructure to a private partner to pay down the debt. In a nutshell, the rural development authority could issue bonds, as part of a capital stack, to finance the broadband infrastructure, leasing that infrastructure to an ISP or other private entity, using those lease payments to pay the debt.

There are several potential investor benefits with rural development authority bonds. First, there is a significant possibility that the interest component of bonds issued by a rural development authority for a broadband project could be tax-exempt to the investor of those bonds. Typically, under federal tax law,

bonds that finance projects with a significant private interest would be taxable for federal income tax purposes. But a key provision of the Bipartisan Infrastructure Law allows for qualified broadband projects in rural areas to be financed with bonds on a tax-exempt basis. There are requirements and restrictions that must be followed, but many broadband projects across the state will likely be eligible for the tax-exempt financing.

With rising interest rates, the possibility of increased taxes at the federal level and investors' desire to finance projects with Environmental, Societal, Governance (ESG) connotations, the debt issued by a rural development authority for broadband projects could be attractive.

Harnessing the power of rural development authorities and broadband improvement districts could be a key component in accomplishing the goal of universal rural broadband. Connecting rural Arkansas to the larger world would allow citizens to obtain more healthcare options, educational opportunities and access, along with providing local businesses resources for economic growth.

Editor's note: John Bryant is an attorney at Mitchell, Williams, Selig, Gates and Woodyard, P.L.L.C. Will Gruber is an experienced attorney and legal advisor on local government law. The opinions expressed are those of the authors.

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