

Arkansas Legislature Provides Local Governments With New Broadband Options



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In February, the Arkansas Legislature unanimously approved Act 67 which amends the Telecommunications Regulatory Reform Act of 2013 (the “Act”). These amendments significantly increase local government options with respect to the development of broadband and related services.

Generally, prior to the approval of Act 67, governmental entities in Arkansas were prohibited under the Act from providing basic local exchange, voice, data, broadband, video, or wireless telecommunications services, except in certain limited instances. These restrictions played a large part in causing many areas of the State to be without these services. Broadband Now Research in its March, 2020 publication, reported that Arkansas ranks 41 among the 50 states in broadband access with only 54.3% of the State having broadband access.

Act 67 opens the door for Arkansas governmental entities to build and operate the infrastructure necessary to provide telecommunication services, effective immediately. Previously, only cable and telephone companies were authorized to provide such services unless a governmental entity owned and operated an electric utility system or television signal distribution system or the governmental entity applied for and received a grant to build the facilities for providing these services. Because of the lower population density of the unserved areas, the cost to governmental entities to build and operate these facilities in unserved areas is typically greater than the income the governmental entity would receive from providing such services.

With the passage of Act 67, governmental entities may now take the first step towards securing facilities to provide certain telecommunication services in unserved areas. Governmental entities may now purchase, build, own, operate, convey, lease, rent, assign, dispose of and contract for facilities and apparatus to provide the following services: (1) voice services, (2) data services, (3) broadband services, (4) video services, or (5) wireless telecommunications services. The Act, as amended defines “governmental entity” to include “without limitation all Arkansas state agencies, commissions, boards, authorities, and all Arkansas public educational entities, including school districts, and political subdivisions, including incorporated and unincorporated cities and towns and all institutions, agencies or instrumentalities of municipalities, consolidated utility districts and county governments.” Act 67 added consolidated utility districts to the definition of governmental entity.

Act 67 specifically authorizes governmental entities to issue bonds or other indebtedness to finance the acquisition and construction of the facilities and apparatus necessary to provide such services. Act 67 provides that if governmental entities finance a telecommunication project through special tax or general obligation bond initiatives, the governmental entity is required to take several steps. First, the

governmental entity must partner, contract or affiliate with an experienced operator of the type of facilities to be acquired or constructed by the governmental entity. The governmental entity is required to conduct the due diligence required by the industry for the project and required by law for bonds or indebtedness to be used to finance the project. A public hearing must be held after the governmental entity provides at least 10 days prior notice. Lastly, an election must be held in accordance with applicable law related to the bond initiative used by the governmental entity to finance the project.

Overall, Act 67 presents governmental entities with the freedom to take broadband access issues into their own hands by not only purchasing and constructing facilities and apparatus to provide such services but also to issue bonds and other indebtedness as a means of financing these projects. For small or rural governmental entities, being able to provide telecommunication services will increase economic growth by attracting residents and businesses who demand these services to move into and do business in their areas.

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