**DRAFT RULES**

**OF**

**GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS**

**CHAPTER 110-36**

**ACHIEVING CONNECTIVITY EVERYWHERE (ACE) PROGRAM**

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**110-36-1-.01 Purpose**

The purpose of the Achieving Connectivity Everywhere (ACE) Program is to amend Titles 32, 36 and 50 of the Official Code of Georgia Annotated as the General Assembly recognizes that access to broadband services in today’s society is essential to everyday life. Access to broadband services has been deemed a necessary service as fundamental as electricity, gas or phone service. There is a growing need for the government of this state to provide the much needed infrastructure to the homes and businesses without access to broadband services due to their location in rural and other unserved areas. Furthermore, the General Assembly declared that ensuring broadband services deployment will have a positive effect on education, health care, public safety, business and industry, government services, and leisure activities throughout the entire state. The General Assembly also finds and declares that guaranteeing an equitable deployment of broadband services throughout the state is a public necessity, one of the basic functions of government, and a benefit of the state.

*Authority O.C.G.A. §50-39-80*

**110-36-1-.02 Definitions**

(1) **'Broadband network project'** means any deployment of broadband services

(2) **'Broadband services'** means a wired or wireless terrestrial service that consists of the capability to transmit at a rate of not less than 25 megabits per second in the downstream direction and at least 3 megabits per second in the upstream direction to end users and in combination with such service provides:

(a) Access to the Internet; or

(b) Computer processing, information storage, or protocol conversion.

(3) **'Broadband services provider'** means any provider of broadband services or a public utility or any other person or entity that builds or owns a broadband network project.

(4) **'Commissioner'** means the Commissioner of the Georgia Department of Community Affairs.

(5) **'Days'** means calendar days.

(6) **'Department'** means the Georgia Department of Community Affairs.

(7) **'Development authority'** means any authority created by law or by constitutional amendment for one or more counties or municipalities, or any combination thereof, for the purpose of promoting the development of trade, commerce, industry, and employment opportunities, or for other purposes.

(8) **'Eligible applicant'** means any or all public bodies, designated by the Department of Community Affairs pursuant to paragraph (2) of subsection (b) of O.C.G.A. § 50-39-81, as political subdivisions qualified to apply for funds under this article.

(9) **'Eligible designee'** means any municipality, county or consolidated government.

(10) **'Local authority'** means any public corporation or authority created by or pursuant to a local or special Act of the General Assembly or a local or special amendment to the Constitution.

(11) **Location'** means any residence, dwelling, home, business, or building.

(12) **'Political subdivision'** means a county, municipal corporation, consolidated government, or local authority.

(13) **'Qualified broadband provider'** means an entity that is authorized to apply for or that obtains a certificate of authority issued pursuant to O.C.G.A. §46-5-163 that:

(a)(i) Has, directly or indirectly, been providing broadband services to at least 1,000 locations; and

(ii) Has been conducting business in the state for at least three years with a demonstrated financial, technical and operational capability to operate a broadband services network; or

(b) Is able to demonstrate financial, technical, and operational capability to operate a broadband services network.

(14) **'Served area’** means a census block that is not designated by the Department of Community Affairs as an unserved area.

(15) **'Unserved Area'** means a census block in which broadband services are not available to 20 percent or more of the locations as determined by the Department of Community Affairs.

*Authority O.C.G.A. §50-39-1*

**110-36-1-.03 Broadband Ready Community Certification**

1. Eligible applicants must apply for the Broadband Ready Community certification in a format and matter prescribed by the Department. The Department shall promulgate the process and forms required and make such forms available on its website no later than February 1, 2019.
2. Eligible applicants may apply at any time after the Department has made requisite forms available.

(a) Eligible applicants include counties and municipal governments.

(i) Counties may apply for designation for unincorporated areas.

(ii) Municipalities may apply for designation within their corporate limits.

(iii) Counties and municipalities may apply jointly if all jurisdictions adopt the model ordinance with identical verbiage, including, but not limited to, one single point of contact for all jurisdictions, identical fee schedules, an identical approval/denial and notification timeline, and any other element required within the adopted ordinance. Failure of any jurisdiction to follow the adopted ordinance will jeopardize the Broadband Ready Community Certification for all jurisdictions jointly designated with the offending local government.

1. In order to be eligible to apply for and receive certification as a Broadband Ready Community, eligible designees must submit the following to the Department:

(a) An official application form promulgated by the Department;

(b) Verification that the eligible designee’s comprehensive plan has included approved language regarding the promotion of the deployment of broadband services;

(c) A copy of a locally-adopted ordinance, or model ordinance developed by the Department, which satisfies program requirements and, at a minimum, contains:

(i) A designated single point of contact for all matters related to a broadband network project;

(ii) A defined process which will be used by such political subdivision to determine whether an application is complete and notifying the applicant about such determination in writing within a certain time period after receiving such application; provided, however, that any delay in the processing of an application that is outside the control of such political subdivision and that is directly caused by or attributable to a natural disaster, a state of emergency, a mandated federal review or approval, the receipt of multiple applications by the same or different applicants within a relatively short period of time, another political subdivision’s review or approval, or through fault of the applicant shall not count toward the days allotted within such time period;

(iii) A process for political subdivisions who receive incomplete applications, requiring the written notification provided for above to specify in detail the required information that is incomplete;

(iv) Certification that if such political subdivision does not make the written notification required above, requiring such political subdivision to consider an application to be complete;

(v) Delineation of the time period following receipt of an application that is complete by which the political subdivision must approve or deny such application and provide the applicant notification of such approval or denial;

(vi) Certification that any fee imposed by such political subdivision to review an application, issue a permit, or perform any other activity related to a broadband network project is reasonable, cost-based, and nondiscriminatory to all applicants; and

(vii) Any other information or specifications as may be required by the Department.

(3) If a political subdivision enacts an ordinance that differs from the model ordinance developed by the Department, the political subdivision shall, when applying for certification under O.C.G.A. §50-39-40, provide the department with a copy of its adopted ordinance and a written statement that describes the ordinance enacted by the political subdivision and how such ordinance differs from the Department’s model ordinance.

(4) Applications shall be reviewed and, when appropriate, designations shall be made within 30 days of receipt of the completed application.

(a) For applicants who have not adopted the model ordinance, designations shall be made within 60 days of receipt of a completed application, ensuring the required 30-day public notice process is followed.

(5) Certifications shall be granted for the period from approval through December 31 for each year in which certification is granted.

(6) Annual recertification documents, on forms promulgated by the Department, must be transmitted to the Department by November 15, 2019 and annually thereafter.

(a) Designated Broadband Ready Communities who fail to meet this deadline will have a grace period and be notified by the Department. Such communities will then have until January 15 to submit appropriate documentation to the Department.

(b) Failure to submit the information by January 15 will result in the community’s Broadband Ready Community certification being revoked for that year. If the information for a joint certification is not received by the date for revocation, all jurisdictions shall lose certification for that year.

*Authority O.C.G.A. §50-39-40 and* §50-39-41

**110-36-1-.04 Broadband Ready Community Decertification**

1. Designated Broadband Ready Communities may be decertified by the Department if:

(a) The community imposes an unreasonable or non-cost based fee to review an application or issue a permit for a broadband network project. An application fee in excess of $100.00 shall be considered unreasonable unless such political subdivision can provide documentation justifying such fee based on a specific cost. The Department shall be final arbiter in determining the reasonableness of cost for the purposes of decertification;

(b) The community imposes a moratorium of any kind on the approval of applications or issuance of permits for broadband network projects or on construction related to broadband network projects;

(c) The community discriminates among broadband service providers with respect to any action described in O.C.G.A. §50-39-42 or otherwise related to a broadband network project, including granting access to public rights of way, infrastructure and poles, river and bridge crossings, or any other physical asset owned or controlled by such political subdivision; or

(d) As a condition for approving an application or issuing a permit for a broadband network project, requires the applicant to:

(i) Provide any service or make available any part of the broadband network project to such political subdivision; or

(ii) Except for reasonable and cost based fees allowed, make any payment to or on behalf of such subdivision.

(e) A broadband services provider requests that the Department decertify a political subdivision for failure to act in accordance with the ordinance required for certification under O.C.G.A. §50-39-41, modifies such ordinance so that such ordinance no longer complies with subsection (a) of O.C.G.A. §50-39-41, or violates any provision of O.C.G.A. §50-39-42. Such request may be made at any time.

(f) A broadband services provider alleges that an application fee under an ordinance for certification under O.C.G.A. §50-39-41 is unreasonable, the Department shall determine whether or not the fee charged by the political subdivision is reasonable.

(g) In the proceeding for making such determination, the political subdivision shall have the burden of proving the reasonableness of any action undertaken by such political subdivision as part of the application process and the reasonableness of the costs of such actions.

(h) Upon receipt of any request for decertification, the following steps shall apply:

(i) After obtaining necessary information to evaluate claims that application fees are unreasonable, the Department shall conduct said proceeding within 60 days of the claim being filed with the Department. The Department shall investigate the validity of the complaint, require documentation from the broadband services provider and the political subdivision, as well as make a determination as to whether the political subdivision has failed to comply with the ordinance. The Department shall be the final arbiter for this determination.

(ii) Upon receipt of a complaint from a broadband services provider, the Department shall have 60 days to render a judgment through a proceeding for such purpose.

(iii) Decertified political subdivisions shall immediately cease using all forms of marketing and/or promotion, whether digitally, in print, or otherwise, upon receipt of decertification notice by the Department.

(iv) Decertified political subdivisions shall not be eligible to apply for reinstatement for twelve months following the decertification action.

*Authority O.C.G.A. §50-39-42 and 50-39-43*

**110-36-1.-05 Broadband Ready Community Site Designation**

1. In order to encourage economic development and attract technology enabled growth in Georgia, the Department of Community Affairs shall, with the Department of Economic Development, create and administer the ‘Georgia Broadband Ready Community Site Designation Program.’ Such program shall designate facilities and developments that have, at the time of application, broadband services or access to broadband services at the facility or development at a rate of not less than 1 gigabit per second in the downstream to end users that can be used for business, education, health care, government or other public purposes as a Georgia Broadband Ready Community Site. Access shall be defined as broadband services currently serving the facility/development or on a parcel immediately adjacent to the facility/development seeking designation.
2. All applicants proposing facilities or sites be designated shall have been transmitted to the Georgia Department of Economic Development in advance of making application for designation and provide documentation of such notification within the application.
3. The Department shall promulgate forms and procedures necessary to develop a designation and redesignation process.
4. The Department shall, with appropriate stakeholders, collaborate to develop an application process that allows for the designation of Broadband Ready Community Site Programs. Such application shall require, at a minimum, a community point of contact, a facility/site point of contact, name and contact information for the broadband provider serving the facility/site, verification of the rate of broadband service at the facility/site.

(a) The rate of broadband availability for all facilities or sites for which designation is sought shall be calculated and verified at the facility or on the site seeking designation.

1. It shall be incumbent upon the applicant to prove that the site or facility for which it seeks designation have available broadband services at a rate of not less than 1 gigabit per second in the downstream to end users.
2. Application forms, instructions and deadlines shall be made available on the Department’s website no later than March 1, 2019.
3. Applications may be submitted at any time.
4. The Department shall issue certification to facilities/sites provided the applicant demonstrates that the facility/site satisfactorily meets all program requirements.
5. Designations shall be valid for a period of up to two calendar years. Deadlines for two-year redesignation are due to the Department no later than November 15 of the expiring year. A grace period will be provided; however, failure to provide required documentation for redesignation by January 15, immediately following the expiration of the designation, shall result in the community not retaining the designation of a Broadband Ready Community Site for that calendar year.

*Authority O.C.G.A. §50-39-61 and §50-39-62.*

**110-36-1-.06 Broadband Mapping**

(1) The Department of Community Affairs shall determine those areas in the state that are served and unserved with broadband service and shall publish such findings.

(2) On or before July 1, 2018, the Department shall determine whether such a map does or does not exist. Should no map exist as of July 1, 2018 meeting the broadband definition, then such a map shall be created by the Department or an agent designated by the Department.

(3) The Department shall consult with the Federal Communications Commission in determining if a map showing the unserved areas, as determined by the Department, exists.

(4) Any map created by the Department or its agent shall take into consideration any information received pursuant to O.C.G.A. §50-39-21(c) and (d), as well as O.C.G.A. §50-39-22.

(5) On or before January 1, 2019, the Department shall publish on its website a map showing the unserved areas in the state.

(6) If the Department determines that such a map does exist that was not created by the Department or an agent of the Department, thin its website may link to such existing map in lieu of republishing such a map.

(7) All local governments shall cooperate with the Department and any agent designated by the Department by providing requested information as to addresses and locations of broadband services and other emerging communications technologies within their jurisdiction.

(8) The Department and any agent designated by the Department may request information from all broadband services providers in the state in developing a map or making the determination as to the percentage of locations within a census block to which broadband services are not available.

*Authority O.C.G.A. §50-39-20, §50-39-21 and §50-39-22*

**110-36-1-.07 Challenging Served and Unserved Locations**

1. An entity that is authorized to apply for or that obtains a certificate of authority pursuant to O.C.G.A. §45-5-163, a broadband services provider, or a political subdivision may file a petition with the Department along with data specifying locations or census blocks which the petitioner alleges should be designated differently than as shown on the map published on the Department’s website pursuant to O.C.G.A. §50-39-21.
2. The Department shall promulgate forms and instructions for challenging served and unserved locations. Such forms shall be maintained on the Department’s website. Challenges may be submitted at any time.
3. Upon receipt of such petition and data, the Department shall provide notice of the petition on the Department’s website and shall notify all known broadband service providers furnishing broadband services in such census block or any census block in which any such locations are positioned.
4. Such broadband providers shall have 45 days after the date such notice is sent to furnish information to the Department showing whether the locations that are the subject of the petition currently have broadband services available.
5. The Department shall determine whether the designation of such locations or census blocks should be changed and shall issue such determination within 75 days of the date the notice is sent to the broadband services provider(s).
6. Any determination made by the Department pursuant to this Code section shall be final and not subject to review and any such determination shall not be a contested case under Chapter 13 of Title 50, ‘Georgia Administrative Procedure Act.’

*Authority O.C.G.A. §50-39-22*

**110-36-1-.08 Confidentiality of Data**

1. All information provided by a broadband services provider pursuant to O.C.G.A. §50-39-3 shall be presumed to be confidential, proprietary, a trade secret as such term is defined in O.C.G.A. §10-1-761, and subject to exemption from disclosure under state and federal law and shall not be subject to disclosure under O.C.G.A. 50-18-4, except in the form of a map where information that could be used to determine provider-specific information about the network of the broadband services provider is not disclosed.
2. Except as otherwise provided in this chapter, such provider-specific information shall not be released to any person other than to the submitting broadband services provider, the Department, the Georgia Technology Authority, agents designated to assist in developing the map provided for in Article 2 of this chapter, employees of the Department or the Georgia Technology Authority, and attorneys employed by or under contract with the Department or the Georgia Technology Authority without express permission of the submitting broadband services provider.
3. Such information shall be used solely for the purposes stated under this chapter.

*Authority O.C.G.A. §50-39-3*