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DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
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December 7, 2023

Opinion 23-0078

Chance Henry
President
Acadia Parish Police Jury
P.O. Box A
Crowley, Louisiana 70527

Dear Mr. Henry:

90-A-1 Public Funds & Contracts

La. R.S. 45:844.40 *et seq.*
La. R.S. 51:2370.1 *et seq.*

The Acadia Parish Police Jury may partner with private entities to fund broadband build-out projects within the parish pursuant to the GUMBO program without being subjected to the Fair Competition Act. The funding of an eligible broadband project through the GUMBO program exempts a local government entity expending such funds from the prerequisites contained within the Fair Competition Act regarding the offering of covered services.

You have requested an opinion of the Attorney General concerning the use of American Rescue Plan Act ("ARPA") funds by the Acadia Parish Government for broadband build-out within Acadia Parish. You state that the Acadia Parish Police Jury has allocated \$3,000,000.00 of its ARPA funds towards funding broadband build-out projects, and there are currently two private companies that will be carrying out these projects. The Police Jury plans to expend these ARPA funds pursuant to the Granting Unserved Municipalities Broadband Opportunities ("GUMBO") program by committing a twenty percent (20%) match to these companies for their proposed projects. You have concerns, however, that the funding of broadband projects by the Police Jury will trigger the Local Government Fair Competition Act ("the Fair Competition Act") and all of the requirements a local government must adhere to before offering broadband services.

The Local Government Fair Competition Act was enacted by the Louisiana Legislature in 2004 to ensure that cable television services, telecommunication services, and other advanced services are provided to citizens through fair competition in order to provide the widest possible diversity of information and news sources to the general public.¹ "Advanced services" is defined within the Fair Competition Act as "high speed internet access capability in excess of 144 kilobits per second both upstream and downstream."² Recognizing that the term "broadband" commonly refers to high-speed internet access that is always on and faster than the traditional dial-up access,³ the Fair Competition Act requires local governments, before offering broadband services to its citizens, to comply with a number of requirements including, but not limited to, preliminary hearings, feasibility studies, and an election on whether the service should be provided.⁴

¹ La. R.S. 45:844.42(1).

² *Id.*

³ *Types of Broadband Connections; Federal Communications Commission*, fcc.gov. 6/23/14. Retrieved 8/18/23.

⁴ See, La. R.S. 45:844.48, 844.49, 844.50, 844.51(A)(2), and 844.55(D).

In determining whether a local government is actually providing one of the covered services under the Fair Competition Act, and thereby triggering its requirements, the act states that a local government is providing a covered service if the local government provides the service (1) directly or indirectly, including through an authority or instrumentality acting on behalf of the local government or for the benefit of the local government, (2) by itself, (3) through a partnership or joint venture, or (4) by contract, resale, or otherwise.⁵ Essentially, any effort by a local government to participate in any way in the offering of broadband services to its citizens would subject such an offering to the requirements of the Fair Competition Act.

Notwithstanding the Fair Competition Act, in 2021, the Louisiana Legislature enacted the GUMBO program, which is a multi-phase, broadband infrastructure competitive grant program whereby local governments in Louisiana can partner with private internet providers to apply for grants to facilitate the deployment of broadband services to unserved areas of the state.⁶ The GUMBO program allows private internet providers to submit applications to receive grant funding that will go towards broadband build-out projects to any eligible area within the state, i.e., rural areas lacking high speed internet access.⁷ The GUMBO program also provides local governments the ability to provide funding to grant recipients to help further facilitate the deployment of broadband access to its citizens.⁸

The Police Jury's intention to partner with private entities to provide broadband access to its citizens is precisely what the legislature envisioned when establishing the GUMBO program. However, such an action by the Police Jury, namely providing a covered service through a partnership, would ordinarily invoke the requirements of the Fair Competition Act. The Louisiana Legislature, realizing the obstacle local governments would face when utilizing the GUMBO program, created an exception to the Fair Competition Act whenever a broadband project is being funded by a local government pursuant to the GUMBO program. This exception is established by La. R.S. 51:2370.8(B)(1), and provides the following:

A local government may contribute funding or in-kind contributions for use on an eligible project under the provisions of this Part. The contribution of funding by local government for an eligible project under the provisions of this Part shall not be considered a partnership for providing a covered service under the Local Government Fair Competition Act.

With this exception, local governments may participate in the GUMBO program by providing funding to various eligible projects involving private internet providers without invoking the Fair Competition Act and all of its requirements that must be met prior to offering a covered service such as broadband. We point out that this exception only applies if a local government is utilizing the procedures established through the GUMBO

⁵ La. R.S. 45:844.47(B).

⁶ La. R.S. 51:2370.1 *et seq.*

⁷ La. R.S. 51:2370.3.

⁸ La. R.S. 51:2370.8.

program and any other attempt to provide broadband services, or the funding thereof, outside of the GUMBO program may be subject to the Fair Competition Act.

Based on your request, the Police Jury, by utilizing the provisions contained within the GUMBO program, including the exception noted above, is free to partner with private entities to facilitate the deployment and offering of broadband services to Acadia Parish without invoking the requirements of the Fair Competition Act. However, we point out that any involvement of the Police Jury in an offering of a covered service without adhering to the GUMBO program would likely be subject to the Fair Competition Act and all of its requirements.

Lastly, your request states that the funding the Police Jury will be providing is coming from a portion of ARPA funds received by Acadia Parish that has been allocated by the Police Jury for this specific purpose. While the U.S. Treasury's Final Rule on ARPA funds specifically states that one of the approved uses of ARPA funds received by local governments is to make necessary investments in water, sewer, or broadband infrastructure,⁹ we emphasize that it is not the origin or type of funds used that allows a local government to benefit from the above-noted exception to the Fair Competition Act. Simply utilizing the procedures made available through the GUMBO program protects a local government from such Fair Competition Act requirements regardless of the type of funding being provided. There is no provision of ARPA that expressly preempts state laws regarding broadband deployment. The use of ARPA funds for broadband infrastructure investment, by itself, is not an exception to the Fair Competition Act. As such, it is the opinion of this office that funds expended for broadband build-outs or offerings of broadband services through the GUMBO program are done so to the benefit of the local government expending such funds and exempts that local government from the requirements contained within the Fair Competition Act.

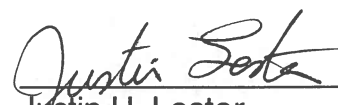
Considering the foregoing, it is the opinion of this office that the Acadia Parish Police Jury may partner with private entities to fund broadband build-out projects within the parish pursuant to the GUMBO program without being subjected to the Fair Competition Act. The funding of an eligible broadband project through the GUMBO program exempts a local government expending such funds from the prerequisites contained within the Fair Competition Act regarding the offering of covered services.

⁹ American Rescue Plan Act of 2021 § 9901, Pub. L. No. 117-2, codified at 42 U.S.C. § 802 *et seq.*

We trust that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

Yours very truly,

JEFF LANDRY
ATTORNEY GENERAL

BY: 
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Assistant Attorney General