

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application for Rehearing of)
Resolution T-17495 by Smarter) Application 16-01-004
Broadband, Inc.) Filed January 5, 2016
_____)

**Bright Fiber Response to
Application for Rehearing of T-17495**

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**Bright Fiber Response to
Application for Rehearing of Resolution T-17495 by Smarter Broadband, Inc.**

Pursuant to Rule 16.1(d) of the Commission’s Rules of Practice and Procedure, Bright Fiber Network, Inc. (Bright Fiber) hereby timely responds to the application for rehearing filed by Smarter Broadband, Inc. (SBB) relating to Resolution T-17495 (Resolution), which was approved by the Commission on December 3, 2105 and issued on December 7, 2015. Resolution T-17495 approved for funding a grant and loan application from the California Advanced Services Fund (CASF) program of the Commission in the amount of \$16,156,323 from the Broadband Infrastructure Grant Account and \$500,000 from the Broadband Infrastructure Revolving Loan Account for the fiber-to-the-premise project in rural Nevada County, California. The project will provide all customers within the project area with broadband infrastructure capable of achieving speeds of 1 Gbps on both downloads and uploads, well above the Commission’s current defined “served” threshold broadband speed of 6 Mbps download and 1.5 Mbps upload. As shown by the hundreds of supporting letters and emails from residential and business customers plus community leaders in the project area and by the findings of the

Commission staff itself noted in the Resolution,¹ there is a great need for reliable broadband in the rural area. The approved project will be nothing short of transformational for the community in terms of economic development, education, health care, social services, and emergency service communications redundancy. This is recognized by an opinion editorial piece in the Union, the local newspaper, published after the approval of Resolution T-17495. See Attachment A.

Pursuant to Rule 16.1 (c) of the Commission's Rules of Practice and Procedure, applications for rehearing face a high bar. An order or decision of the Commission must be "unlawful or erroneous" and must make "specific references to the record or law" so that the Commission can correct "legal error." The application for rehearing fails to meet that high standard of review.

I. SBB Errs in Asserting that the Bright Fiber Project Area is Served; Staff Acted Properly by Removing Households from Project Who Received Served Speeds

SBB admits it had notice of the Bright Fiber application and SBB has been a party to the proceeding since it filed a challenge to the Bright Fiber application in 2013. Contrary to SBB's assertions that the Commission staff did not complete the study of served vs. unserved, the Commission's staff did clearly thoroughly consider the claims of SBB and take action on its challenge in preparing the Resolution. The Resolution at page 4 clearly states that SBB's claims were taken under consideration and addressed, and that Communications Division staff asked SBB for additional information to ensure the households claimed by SBB to have served speeds in fact did actually receive service at those served speeds. The Resolution notes that SBB cooperated in providing data, and that staff verified that 193 existing SBB customers did get

¹ T-17495, at 14-15.

service at served speeds or higher. These 193 households were removed from the eligible households in the Bright Fiber project area.

Further, the Resolution at pages 4-5 notes that the Commission staff waited to check on whether the federal project being funded by the US Department of Agriculture (USDA) Rural Utilities Service (RUS) Broadband Initiatives Project (BIP) grant in September 2010 would provide service at served speeds to the 6% of the SBB BIP project area that overlaps the Bright Fiber project. Bright Fiber notes that its project area of 21 square miles represents an overlap of only 6% of the larger SBB project area, which constitutes 435 square miles.

In applicant's view, the Bright Fiber project grant was delayed by staff until December 3, 2015, waiting for SBB to file its final completion report with USDA RUS. The Resolution at pages 4-5 notes that the final completion report was not submitted by SBB to RUS; thus the Commission staff properly concluded there is no evidence that the consumers in the overlap area actually receive broadband at served levels from SBB.

As a historical matter, on December 14, 2010, SBB appeared before the Board of Supervisors of the County of Nevada to present on its federal RUS BIP project. The minutes of the meeting are attached as Attachment B. As to item 14, at page 9 of the Minutes, SBB's Adam Brodel describes the BIP project and notes that with the \$2.5 million of ARRA grant money, SBB will build five new towers, collocate on three more towers, and add 50 access points. He notes the federal grant allows a three year timeframe but he testifies to be completed by end of year two. It is now *over five years* after that presentation to the Board. Bright Fiber's CEO John Paul recently inquired with the County of Nevada Community Planning Development Agency Planning Department about whether SBB had obtained environmental review of its federal project pursuant to the California Environmental Quality Act or prepared an Environmental

Impact Report on its RUS project. Because Brodel testified that the SBB project involved the building of five new towers, one could expect to see review of the environmental impact of the project. See Attachment C for a letter from Janeane Martin of the County of Nevada Community Development Agency who states that the Planning Department searched its records for CEQA and/or EIR permitting projects for SBB and was not able to find any such project or action. See Attachment D with a correlative letter from Nevada County Supervisor Nate Beason with the same conclusion.

Thus, Bright Fiber raises an area of inquiry as to whether SBB really completed its BIP project, particularly in the small 6% overlap area with the Bright Fiber project. As the Resolution noted, no SBB completion report has been timely filed with the RUS. It was appropriate for the Commission's staff to conclude in the Resolution that only the SBB households it could verify receive the served speeds.

II. The Commission's Approach on Served Speeds As to Fixed Wireless Operators Is Appropriate for this Challenging Geographic Service Area and Within its Discretion

SBB also challenges the Commission's change to the method of defining Served and Underserved as to fixed wireless providers. SBB's challenge should be dismissed. What the Commission has decided in the Resolution at pages 8-10 is the equivalent of a broadband "equal rights act" for households in areas where fixed line-of-sight signals from a wireless provider's tower are inaccessible. Just because one house can receive a line-of-sight signal should not disqualify other nearby houses who cannot receive such a signal due to terrain, foliage, or lack of line-of-sight with the wireless provider's tower. As noted in the Resolution, the project area terrain "is both irregular, with many hills and valleys as is typical in the Sierra foothills, and heavily forested." As a result, the Resolution correctly notes that wireless signal propagation is

poor due to the leaves, branches and tree trunks in such areas. The Resolution at page 9 notes that SBB's own websites warns that coverage may not be possible due to obstructions from hills and trees.

The Resolution at page 9 states that the Commission staff studied propagation models from fixed wireless providers in the area which showed very limited coverage areas for line-of-sight transmission towers in the 2 GHz and up ranges needed for fast wireless broadband. Lower bands at and below 900 MHz showed better coverage but do not deliver the served speeds. Staff was justified in deciding that as to wireless providers, the areas were underserved, given the terrain factors in this particular project area. This type of detailed study where the staff traveled to the Bright Fiber project area twice (Resolution at 14) is unusual in CASF decisions, and shows the careful attention of the staff before recommending this project to the full Commission.

III. The Commission Should Ignore SBB's Arguments that Other Fixed Wireless Providers' Coverage Should Be Considered.

SBB argues that other fixed wireless providers' coverage should be considered as to unserved areas as to the Bright Fiber project. Broadband providers in the project area are served with notice of the CASF applications and have a chance to file challenges under CASF rules. Bright Fiber complied with the CASF rules and it is clear in the Resolution that a handful of challenges were filed as to the project, each of which was carefully considered by the staff and dealt with as evidence in the Resolution.

IV. SBB's Double Funding Argument Lacks Factual Underpinnings.

Bright Fiber urges the Commission to ignore SBB's arguments of "double funding." To have double funding, SBB would first have to prove from a factual point of view that it can actually provide service at served speeds to every household in the overlap area with the Bright

Fiber project area. It had its chance to do so and failed. Further, there is no evidence that SBB actually built the BIP project so far; no USDA RUS final report has been filed, and no County records exist of any project environmental review for the five new towers and other facilities that were promised as part of the federal BIP grant. Until SBB can show it provides actual service to the overlap area, staff was correct to consider the area “underserved.”

V. Conclusion

Bright Fiber reminds this Commission that two of the areas that will be served in the project are “priority areas” designed by the Gold Country Broadband Consortium – Chicago Park and Peardale. (Resolution at 16). The decision by the Commission to build this project was proper. The project will have a transformational impact on the community.

Wherefore, for the reasons set forth above, Resolution T-17495 should be upheld.

Dated: This 15th day of January, 2016, at San Francisco, California.

Respectfully submitted,

/s/ Rachelle Chong

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