

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

Transfer of Control via Stock Purchase Agreement        )  
Of Bright Fiber Inc. (U-7287-C) TO Race                )  
Telecommunications, Inc. (U-7060-C and                )  
Modifications to the CASF Grant for the Bright        )  
Fiber Project Approved by Resolution T-17495         )

**COMMENTS OF COLFAXNET, LLC ON DRAFT RESOLUTION T-17633**

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**APPENDICES AND EXHIBITS**

None – ColfaxNet adopts revised findings and ordering paragraphs as proposed by SmarterBroadband, Inc. in its Comments on Draft Resolution T-17633

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**COMMENTS OF COLFAXNET, LLC ON DRAFT RESOLUTION T-17633**

ColfaxNet, LLC (“ColfaxNet”), pursuant to Rule 14.5 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, respectfully submits these comments regarding Draft Resolution T-17633 (“Draft Resolution”). ColfaxNet maintains that the proposed California Advanced Services Fund (“CASF”) Infrastructure Account grant to Race Telecommunications, Inc. (“Race”) under the Draft Resolution is based on, archaic, incomplete, and erroneous data and on flawed conclusions, accordingly. ColfaxNet urges the Commission to bifurcate the transfer of control from Bright Fiber, Inc. (“Bright Fiber”) to Race from the proposed amended CASF grant and initiate a new proceeding to consider the amended CASF grant based on current data and public interest considerations.

**I. INTRODUCTION**

Colfax Net, LLC is a small facilities-based broadband and telecommunications service provider serving residents in Placer and Nevada County including the city of Colfax and surrounding areas of Placer and Nevada Counties, an area within the proposed Race CASF Grant service area, and a participant in this proceeding. ColfaxNet has been serving this area for more than 17 years, and is fully knowledgeable of the conditions and challenges associated with the deployment of infrastructure and provision of broadband services in this area. The Company has also been an active participant in the original Bright Fiber CASF grant proceeding.

Draft Resolution T-17633<sup>1</sup> proposes *inter alia* to grant Race – a successor to Bright Fiber’s CASF Infrastructure Account grant originally approved in Resolution T-17495. As set forth in the Draft Resolution, the proposed CASF grant to Race, now as the parent corporation of Bright Fiber, is based on archaic, incomplete, and erroneous data and the resulting flawed logic. A CASF grant to Race as addressed in the Draft Resolution stands to benefit Bright Fiber, fund a network infrastructure that is ill suited to the rugged environment of proposed service area and susceptible to outages and in constant need of repair and replacement, and will unfairly subsidize a competitor where broadband services are already available. ColfaxNet urges the Commission to initiate a new proceeding specifically to evaluate the merits of Race’s proposed network based on complete, current, independently verified data, and adopt SmarterBroadband, Inc.’s proposed amendments to the Draft Resolution.<sup>2</sup>

## **II. DISCUSSION**

### **A. The Draft Resolution Does Not Establish the Basis for Amending Resolution T-17495 Under the Advice Letter Process.**

The Draft Resolution adopts Staff’s recommendation that the transfer of control be approved under the advice letter process.<sup>3</sup> Staff’s proposed amendments to the original Bright Fiber CASF grant under Resolution T-17495 are also adopted under the advice letter process. The basis for adoption of a CASF grant under the advice letter process without a separate review was never established. The Draft Resolution acknowledges that commenters had argued that, “changes to the CASF grant are subject to separate review by the Commission’s CASF staff and do not fall within the scope of Race’s Advice Letter seeking approval of the transfer of control of Bright Fiber to Race.”<sup>4</sup> Nevertheless, the Draft Resolution

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<sup>1</sup> Resolution T-17633 Approves the Transfer of Control via Stock Purchase Agreement of Bright Fiber Inc. (U-7287-C to Race Telecommunications, Inc. (U-7060-C) Submitted by Race Telecommunications in Advice Letter No. 6 and Modifications to the CASF Grant for the Bright Fiber Project Approved by Resolution T-17495, Draft, (December 3, 2018) [“Draft Resolution”].

<sup>2</sup> Comments of Smarterbroadband, Inc. on Draft Resolution T-17633, Appendix A (December 27, 2018)

<sup>3</sup> Draft Resolution at 5.

<sup>4</sup> *Id.*

adopts the transfer of control and amendments to Resolution T-17495 under the advice letter process without basis.<sup>5</sup>

**B. The Draft Resolution Accepts Race’s Proposed Amendments to the Original Bright Fiber Network Deployment Proposal Seemingly Verbatim, Without Apparent Independent Corroboration of Critical Changes that Jeopardize Network Reliability.**

The Draft Resolution adopts Staff’s recommendation that “based on Race’s *commitment* to complete the project and build without increasing the grant amount,” the transfer of control should be approved.<sup>6</sup> Staff predicates its recommendation to approve Race’s project modifications and the CASF grant on Race’s representations in concluding that: the grant is needed to complete the original Bright Fiber network deployment, the proposed Race budget will not require increased grant funding, there is a the lack of wireline broadband competitors serving the project area, wireless provider networks are technically limited due from line-of-sight constraints, and in consideration of the risk of the proposed project not being completed.<sup>7</sup> The basis for staff’s conclusions are not explicitly addressed or supported.

The Draft Resolution states, “In its response, Race indicated that changes to the CASF project build are necessary and that these changes would be reviewed by the Commission’s CASF staff consistent with the CASF grant transfer rules.”<sup>8</sup> It is unclear to what extent these changes have been reviewed.<sup>9 10</sup>

The Draft Resolution acknowledges “staff’s inability to independently verify service levels” leaving Staff recommendations unsupported.<sup>11</sup> Staff has implicitly rejected evidence regarding the challenges of

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 7. Emphasis supplied.

<sup>7</sup> *Id.* at 7

<sup>8</sup> *Id.* at 3.

<sup>9</sup> During the discussion of the original grant application process adopted in T-17495 Mr. Paul originally assured the Commission, without substantiation, that the existing utility poles and utility attachments were “antiquated”, “unorthodox” and “aged” and unsuitable to install the new fiber optic system to and therefore that an underground system was a necessity. *See*, Resolution T-17495 at 6. In the intervening three plus years, the condition of existing utility poles has not changed, if not deteriorated. Now, Race now plans to use primarily overhead construction – at a significantly higher cost – using these same existing poles, suggesting that existing utility poles are appropriate to attach the new fiber optic facilities when overhead construction was not formerly an option.

<sup>10</sup> *Id.* at 7, “Race proposes to revise the primarily underground project previously authorized by the Commission in Resolution T-17565 to a project with 75 percent aerial installation, relying on attaching the fiber to existing utility poles.” These are the same poles that the Commission found to be “aged”, “unorthodox” and “antiquated” necessitating the underground construction Bright Fiber originally proposed. Either Race’s or Mr. Paul’s assertions have been incorrect, but both assertions have been accepted at seemingly face value without an evaluation the condition of the existing facilities.

overhead construction in the proposed service area. As has been addressed in this proceeding, overhead construction will be much more vulnerable to wild fires common in this area. Much of the proposed service territory is designated “High Fire Hazard Severity Zone” while the rest is designated “Very High Fire Hazard Severity Zone.”<sup>12</sup> Cases in point are the Santa Rosa and Paradise overhead network facilities that were decimated by the recent wildfires in those areas. This is a very different territory than the areas Race currently serves and is familiar with. None of these factors appear to have been considered.

Staff’s conclusions are, as staff admits, based on circumstantial and/or dated “evidence,” and field observations, now more than five and three years old. This approach is inconsistent with the requirements of PU code 281(b)(2) to which Staff cites.<sup>13</sup> Staff’s admission of an inability to independently verify service levels is also inconsistent with PU code Sections 281(f)(1), (f)(2),<sup>14</sup> and ultimately with Section 281(4)(A)(ii):

Except as provided in clause (iii), the commission shall not approve funding for a project to deploy broadband to a delineated unserved area if the existing facility-based broadband provider demonstrates to the commission, in response to the commission’s annual offer, that it will deploy broadband or upgrade existing broadband service throughout the project area.

As a result, evidence of ColfaxNet’s – and others’ – network deployment in the proposed service area were not considered. According to Staff, “the lack of broadband Internet service noted in Resolution T-17495 remains the case today, with no wireline broadband providers serving the project area. While the fixed wireless broadband providers in the area may have added customers, fixed wireless service will continue to encounter the same line-of-sight constraints noted by the Commission when it approved the

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<sup>11</sup> An acknowledgment repeated from Resolution T-17495; Resolution T-17495 at 9.

<sup>12</sup> (See, [http://frap.fire.ca.gov/webdata/maps/nevada/fhszs\\_map.29.pdf](http://frap.fire.ca.gov/webdata/maps/nevada/fhszs_map.29.pdf))

<sup>13</sup> Pursuant to Public Utilities Code §281(b)(1)(B), (B) For purposes of this section, “unserved household” means a household for which no facility-based broadband provider offers broadband service at speeds of at least 6 megabits per second (mbps) downstream and one mbps upstream.” Resolution T-17495 already established that ColfaxNet and Smarter Broadband already met the 6 mbps threshold (Resolution T-17945, page 12, Table 2, attached to the Draft Resolution).

<sup>14</sup> PU code §281(f)(1): “The commission shall award grants from the Broadband Infrastructure Grant Account on a technology-neutral basis, including both wireline and wireless technology. PU code §281(f)(2): “The commission shall consult with regional consortia, stakeholders, local governments, existing facility-based broadband providers, and consumers regarding unserved areas and cost-effective strategies to achieve the broadband access goal through public workshops conducted at least annually no later than April 30 of each year through year 2022.”

grant.”<sup>15</sup> ColfaxNet committed hundreds of hours to performing extensive testing, all documented using the Commission’s GIS and GPS mapping systems as requested by the Commission that proved the exact opposite. ColfaxNet performed tests in more than 40 locations within its portion of the original Bright Fiber CASF grant footprint. Further, ColfaxNet also submitted a confidential map of its existing customers and transmitter locations to staff. ColfaxNet also provided a spreadsheet of the GPS coordinates and broadband Internet speed readings for 35 of the test locations. Staff had led ColfaxNet to believe its test results were beneficial to Staff’s overall analysis. Staff was invited to on site testing, but elected not to participate. Staff’s conclusions regarding the lack of alternative providers are based on “simulated” hypothetical assessments of ColfaxNet’s ability to serve the area and not real world assessments.

**C. CASF Grants Should Not Subsidize Competition.**

Staff’s recommendation to issue a CASF grant to Race based on a stated lack of competitive alternatives is factually incorrect. As a result, a CASF grant would effectively constitute an unfair Commission subsidy of Race’s broadband network giving Race a significant competitive advantage over current providers in its service territory, that would ultimately undermine further competitive network deployments in the area. As noted, ColfaxNet’s and other broadband provider have sought to demonstrate that they operate effective networks in most of Race’s proposed service area. Yet the evidence provided by ColfaxNet and others - and therefore the requirements of PU code 281(b)(2) - has on its face been ignored.

**III. CONCLUSION**

The Draft Resolution is predicated on Staff’s acceptance of Race’s commitments and representations against a backdrop of Staff’s expressed inability to independently verify service levels and its election to disregard relevant technical and market data provided by ColfaxNet and others. Adoption

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<sup>15</sup> Draft Resolution at 7 citing to Resolution T-17495 at pp. 9-10, ““While fixed wireless carriers claim to serve, or claim they shortly will serve, much of the proposed Bright Fiber Project area, line-of-site considerations in this area and staff’s inability to independently verify service levels leave these claims unsupported. Because staff cannot verify the claims from fixed wireless as required under PU code 281(b)(2), staff has concluded that the majority of territory in the region is underserved for the reasons outlined below.”

of Staff's recommendations will be based on archaic, incomplete, and erroneous data resulting in the flawed conclusions stated in the Draft Resolution. For the foregoing reasons, ColfaxNet urges the Commission to bifurcate the Race's transfer of control and to conduct a separate evaluation of Race's proposed network deployment under a new CASF grant application process.

Respectfully submitted this December, 28 2018,

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