

**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 |) | Draft Resolution T-17633 |
| Modifications to the CASF Grant for the Bright |) | |
| Fiber Project Approved by Resolution T-17495 |) | |

COMMENTS OF SMARTERBROADBAND, INC. ON DRAFT RESOLUTION T-17633

Stephen E. Coran
David S. Keir

Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036
(202) 416-6744
scoran@lermansenter.com
dkeir@lermansenter.com

December 27, 2018

SUBJECT INDEX

| | | |
|------|--|---|
| I. | INTRODUCTION | 1 |
| II. | DISCUSSION..... | 2 |
| A. | The CD’s Findings Concerning Fixed Wireless Efficacy and Deployment in Nevada County Are Based on Outdated Information..... | 2 |
| 1. | The Draft Resolution Ignores Changes in Fixed Wireless Coverage. | 2 |
| 2. | The Draft Resolution Fails to Consider the Challenges of Deploying Aerial Fiber. | 2 |
| 3. | The Draft Resolution Contradicts CASF and FCC Practices and Policies..... | 3 |
| B. | The CD Fails Entirely to Address Race’s Abandonment of Underground Fiber Deployment That Was Originally Deemed “Essential.” | 4 |
| C. | The CD Erroneously Cites the Impact of Statutory Prevailing Wage Requirements as a Changed Circumstance..... | 5 |
| III. | CONCLUSION..... | 5 |

APPENDICES AND EXHIBITS

Appendix A – Recommended Changes to Draft Resolutions T-17633

Exhibit 1 – SmarterBroadband Coverage and Customer Maps 2015 and 2018

Exhibit 2 – List of Links to Various CASF Grants

Exhibit 3 – Fire Hazard Severity Zones

Exhibit 4 – Camp Fire Photographs

TABLE OF AUTHORITIES

California Public Utility Code and Rules

| | |
|--|---|
| CPUC Rules of Practice and Procedure, Rule 14.5..... | 1 |
|--|---|

California Public Utilities Commission Decisions

| | |
|------------------------------------|------|
| CPUC Resolution T-17495..... | 1, 5 |
| CPUC Draft Resolution T-17633..... | 1-5 |

Federal Communications Commission Decisions

| | |
|--|---|
| Public Notice, “ <i>Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018,</i> ” AU Docket No. 17-182 and WC Docket No. 10-90 (rel. Aug. 28, 2018)..... | 3 |
|--|---|

**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) | Draft Resolution T-17633 |
| Modifications to the CASF Grant for the Bright) | |
| Fiber Project Approved by Resolution T-17495) | |

COMMENTS OF SMARTERBROADBAND, INC. ON DRAFT RESOLUTION T-17633

Pursuant to Rule 14.5 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, SmarterBroadband, Inc. (“SBB”), by counsel, hereby comments on Draft Resolution T-17633. Draft Resolution T-17633 proposes to resolve two related matters: (1) the proposed transfer of control of the certificate of public convenience and necessity originally granted to Bright Fiber Inc. (“BFN”) to Race Telecommunications, Inc. (“Race”), and (2) the proposed modifications to the California Advanced Services Fund (“CASF”) grant for the BFN project originally approved in 2015 by Resolution T-17495. SBB understands that the Commission may vote on this Draft Resolution at its January 10, 2019 meeting.¹

I. INTRODUCTION

Draft Resolution T-17633 proposed by the Communications Division (“CD”) should be modified or set aside based on its failure to adequately address multiple critical factual issues. First, the proposed decision relies on staff analysis conducted in 2015 to support the conclusion in 2018 that fixed wireless technology is inadequate to provide service to the area that Race intends to serve. This approach fails to consider fully or accurately the ability of fixed wireless to serve such areas or the actual current provision of fixed wireless service to these areas. Second, the proposed decision accepts without discussion Race’s assertion that cost imperatives now require a change from 100% underground fiber to 75% aerial fiber even though BFN initially stated that underground deployment was “essential” due to weather factors and infrastructure issues. Third, to the extent that the Draft Resolution cites the adoption in 2014 of prevailing wage requirements for public works projects as a changed circumstance, this assertion

¹ Appendix A hereto contains SBB’s proposed revised findings and ordering paragraphs of Draft Resolution T-17633.

is clearly erroneous, as the Commission cited this specific requirement in the 2015 BFN grant. For all these reasons, the Draft Resolution must either be rejected or significantly modified.

II. DISCUSSION

A. The CD's Findings Concerning Fixed Wireless Efficacy and Deployment in Nevada County Are Based on Outdated Information.

Based on a lengthy footnote that recapitulates five full paragraphs from the 2015 grant of the original BFN CASF funding, the CD concludes that generalized "line of sight constraints" make fixed wireless connectivity generally unsuitable for use in the areas that Race now proposes to serve with predominantly aerial fiber installation. This discussion is deficient on its face in that it simply re-adopts an analysis that was relied upon more than three years ago without considering the current state of service in the subject area and categorically rejects consideration of fixed wireless connectivity as capable of meeting local consumer needs.

1. The Draft Resolution Ignores Changes in Fixed Wireless Coverage.

By simply reciting three-year-old conclusions, the CD entirely overlooks significant changes in broadband service that have occurred in Nevada County over that time. This is a particularly glaring omission given that the 2015 order specifically addressed the provision of existing service and accordingly reduced the geographic scope of the original 2013 BFN funding request to eliminate from the project portions on the county already receiving service. If the Commission were appropriately to consider these changed circumstances in connection with the significant changes Race proposes to the BFN project, it would find significant increases in broadband availability throughout the project area. As evidenced by the SBB service maps attached hereto as Exhibit 1, many new areas and customers now have access to service via its network than had access to this service in 2015. These changes definitively alter the extent to which significant portions of the project area can be considered unserved or underserved.

2. The Draft Resolution Fails to Consider the Challenges of Deploying Aerial Fiber.

The CD's reiteration of the 2015 discussion expressing concern over the purported limitations of fixed wireless providers to reach certain areas of Nevada County focuses primarily on difficulties in achieving line-of-sight transmission between towers and antennas located at each customer's premises. The principal reasons given for this difficulty are the irregular terrain and dense forests of the area, which cause signal attenuation, scattering, diffraction and

absorption.² The Draft Resolution includes language from SBB's website noting the existence of these potential obstruction issues, and that provision of service in such circumstances may require "installing additional equipment," sometimes "at the customer's expense."³ Disregarded in the CD's analysis, however, are two additional important facts. First, fixed wireless technology has continued to evolve in recent years such that line-of-sight restrictions are no longer as stringent.⁴ Second, wired deployment may also encounter significant difficulties in providing service due to terrain and infrastructure factors, which could require significant additional buildout or trenching. In many circumstances, the costs associated with adding a wireless repeater (or other "additional equipment," as SBB's website notes) or removing foliage may be considerably less than the costs associated with adding new wired infrastructure on utility poles or through extensive excavation to install new underground conduit.

3. The Draft Resolution Contradicts CASF and FCC Practices and Policies.

The CD ignores the fact that CASF has awarded grant funds to providers of fixed wireless broadband service for projects covering areas with terrain and foliage similar to Nevada County. For example, CASF has awarded Cal.net, Inc. ("Cal.net") millions of dollars in grant funds to provide fixed wireless service to rural areas of California.⁵ Moreover, the Federal Communications Commission ("FCC") recently concluded its Connect America Fund ("CAF") Phase II reverse auction. Fixed wireless providers were the winning bidders for about half of the \$1.5 billion in support for high-cost unserved areas.⁶ This includes more than \$50 million to Cal.net for areas in Northern California and more than \$80 million to California Internet, L.P. for areas in Southern California.⁷ Further, AT&T is using fixed wireless technology to deploy CAF-

² Draft Resolution T-17633 at 7-8 n.8.

³ *Id.* at 8.

⁴ See The Carmel Group, *Ready for Takeoff: Broadband Wireless Access Providers Prepare to Soar with Fixed Wireless* (2017), available at http://www.wispa.org/Portals/37/Docs/Press%20Releases/2017/TCG's_2017_BWA_FINAL_REPORT.pdf (last visited Dec. 26, 2018).

⁵ Exhibit 2 lists links to various CASF broadband grants, many of which include fixed wireless technology.

⁶ Public Notice, "Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018," AU Docket No. 17-182 and WC Docket No. 10-90 (rel. Aug. 28, 2018) at Attachment A. The auction winners with a history of providing fixed wireless broadband include AMG Technology Investment Group LLC, ArisWave Consortium, Cal.net, Inc., California Internet, L.P., Crystal Automation Systems, Inc., Inventive Wireless of Nebraska, LLC, Newmax, LLC and Wisper ISP, Inc..

⁷ *Id.* This represents more than \$130 million of the \$149 million in support designated for California.

supported service in many rural areas of the country.⁸ The FCC would not have risked ratepayer USF contributions if it had concerns about the ability of recipients to meet build-out and performance obligations with fixed wireless technology. The CD fails entirely to justify its proposed departure from past Commission practices and FCC policies.

B. The CD Fails Entirely to Address Race’s Abandonment of Underground Fiber Deployment That Was Originally Deemed “Essential.”

The Draft Resolution notes that estimated costs to install underground fiber have increased considerably since 2015 such that “[t]o contain costs, Race proposes to revise the project so that it is a 75 percent aerial installation, relying on attaching the fiber to existing utility poles.”⁹ The CD recommends simply granting this request by revising the project description. Nowhere, however, does the CD explain why it should delete from the earlier order the critical language explaining the original justification for deploying more expensive underground fiber. In 2015, the Commission explained that BFN proposed to deploy exclusively underground fiber due to its resiliency and cited BFN’s contention that “underground deployment is essential because of weather factors, tree density, the obsolescence of existing poles and unorthodox pole attachments (e.g., wires attached to trees).” No explanation is even offered, for this dramatic reversal, and there has been no significant change in local climatic, vegetation and infrastructure conditions since 2015 (in contrast to the expanded fixed wireless footprint discussed above).

Recent events only underscore the vulnerability of communications infrastructure that relies on aerial wires strung along miles of poles, typically made of wood. In dry conditions, the Sierra Nevada foothills are extremely vulnerable to wild fires of the same type and scale the recently ravaged the area near Paradise, California. A recent story in the Washington Post notes that Nevada County “has similar topographic features to Paradise,” and that Nevada City is “one of 188 California communities designated for extreme wildfire danger.”¹⁰ As shown in the attached map of Nevada County produced by the California Department of Forestry and Fire

⁸ See, e.g., Erin Scarborough, “Connecting Rural America: Delivering Fixed Wireless Internet Through New Technologies” (Sept. 26, 2018), *available at* https://about.att.com/story/2018/fixed_wireless_rural_america.html (last visited Dec. 26, 2018).

⁹ Draft Resolution T-17633 at 6.

¹⁰ Tim Craig, “‘Living under a time bomb’; California communities scramble to avoid becoming the next wildfire tragedy,” *Washington Post* (Dec. 12, 2018), *available at* https://www.washingtonpost.com/news/national/wp/2018/12/12/feature/living-under-a-time-bomb-california-communities-scramble-to-avoid-becoming-the-next-wildfire-tragedy/?utm_term=.ced14bde7d13 (last visited Dec. 26, 2018).

Protection, most of the BFN grant area is considered be at “high” or “very high” risk for wildfires, and the hazard has only increased in the decade since the map was initially produced.¹¹ The impact of a wildfire on aerial wireline infrastructure can be catastrophic, as depicted by photographs of the area around Paradise taken after the recent “Camp Fire.”¹²

C. The CD Erroneously Cites the Impact of Statutory Prevailing Wage Requirements as a Changed Circumstance.

In its August 31, 2018 filing, Race stated that the cost of the BFN project was adversely impacted by new prevailing wage requirements imposed on CASF projects. The law referenced by Race was actually adopted in 2014 and became effective in January 2015, well *before* the BFN CASF grant was adopted. Indeed, Resolution T-17495 explicitly stated that the revised funding request it approved then reflected several changes, including “updated labor costs” occasioned by “Section 1720 of the California Labor Code, which was amended in 2014 to define CASF-subsidized projects as ‘public works,’ subjecting them to prevailing wage requirements.”¹³ In its September 27, 2018 response, SBB explained that “no part of the increased costs associated with the current Race proposal are properly attributable to this change in the law, and Race can only justify revised budgeting for labor costs based on incremental changes in the prevailing wage itself over the past three years.” Despite this clear statement of the facts, the Draft Resolution simply re-asserts incorrectly that the increase in project costs is “due to factors such as ... the legislative mandate, *instituted after the Commission approved the Bright Fiber grant*, that all CASF Infrastructure projects must pay prevailing wages.”¹⁴ As explained above, this statement is directly contradicted by Resolution T-17495 itself, which is an attachment to the Draft Resolution. The Draft Resolution therefore cannot be adopted as drafted.

III. CONCLUSION

The Draft Resolution should be modified or rejected as set forth in Appendix A. It relies on outdated information about fixed wireless technology and deployment, ignores the challenges and lack of resiliency associated with aerial fiber deployment, and contradicts state and federal practices and policies in supporting broadband deployment to unserved areas. The Draft Resolution also misstates California regarding the application of prevailing wage requirements.

¹¹ See Exhibit 3, “Fire Hazard Severity Zones in SRA: Nevada County (adopted by CAL FIRE on Nov. 7, 2007).”

¹² See Exhibit 4.

¹³ See Resolution T-17495, Bright Fiber Network, Inc. (U-7287C), at 7 & n.17 (Dec. 3, 2015).

¹⁴ Draft Resolution T-17633 at 6 (emphasis added).

Respectfully submitted this 27th day of December, 2018.

SmarterBroadband, Inc.

By: /s/ Stephen E. Coran
/s/ David S. Keir

Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036
(202) 416-6744
scoran@lermansenter.com
dkeir@lermansenter.com

Appendix A

Recommended Changes to Draft Resolution T-17633

FINDINGS (AS PROPOSED BY SBB)

16. In ~~acquiring~~ seeking to acquire Bright Fiber, Race has proposed revisions to the project that require modifications to Resolution T-17495.

17. Staff recommends ~~approval~~ rejection of Race Advice Letter No. 6.

~~18. Staff recommends approving the modifications to Resolution T-17495 noted in Appendix A.~~

~~19. The project as proposed by Race is categorically exempt from CEQA review pursuant to the following exemptions: CEQA Guidelines Section 15303—New Construction or Conversion of Small Structures, involving construction, installation, and/or conversion of limited numbers of new and/or existing facilities/structures; CEQA Guidelines Section 15304—Minor Alterations to Land, involving minor trenching and backfilling where the surface is restored; and CEQA Guidelines Section 15301—Existing Facilities—involving minor alterations of existing public or private structures, including utility facilities.~~

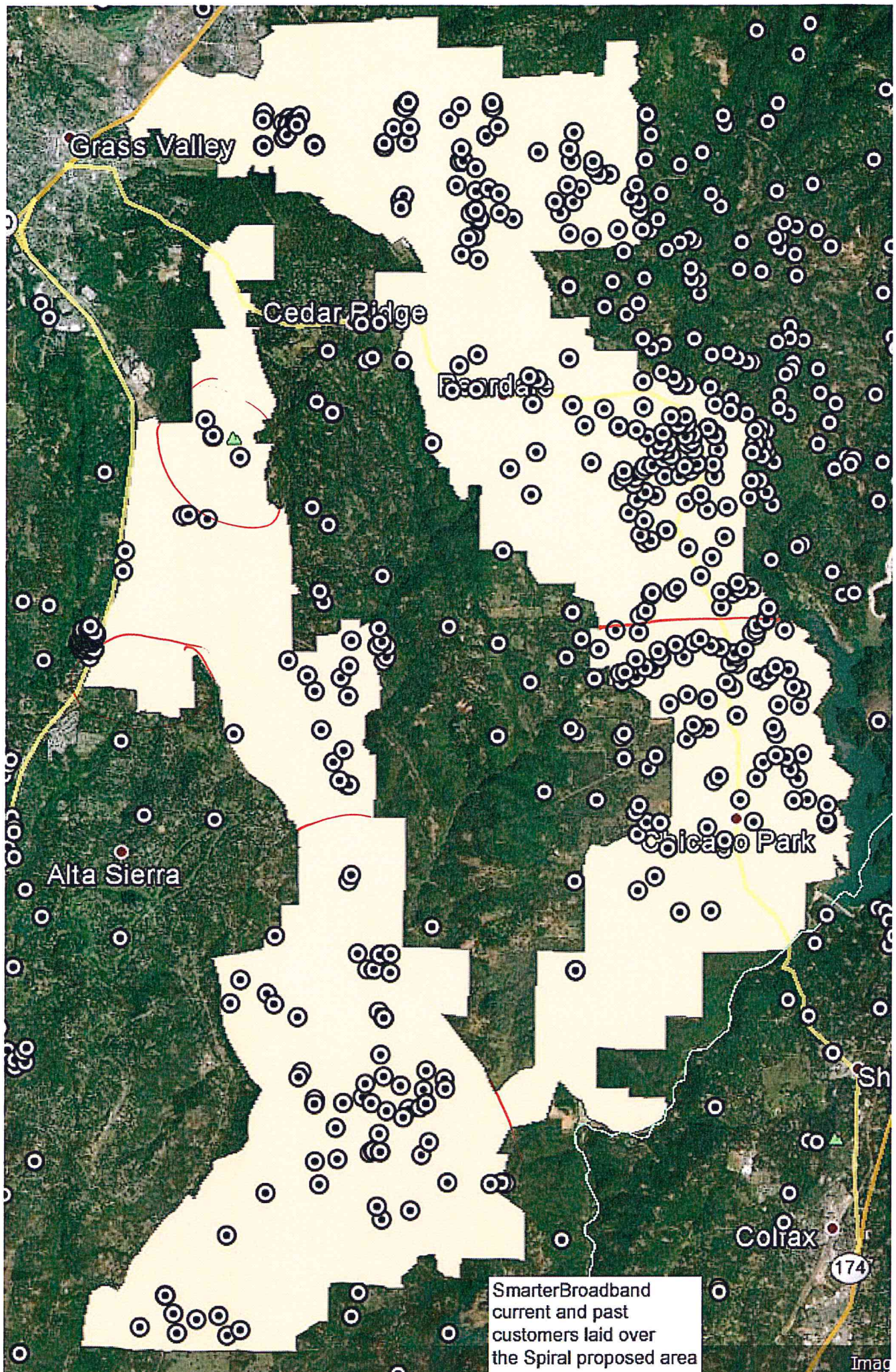
ORDERING PARAGRAPHS (AS PROPOSED BY SBB)

THEREFORE, IT IS ORDERED that:

1. 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, Inc. in Advice Letter No. 6 is ~~approved~~ denied.
2. Resolution T-17495 is ~~modified as indicated in Appendix A herewith~~ vacated.

Exhibit 1

SmarterBroadband Coverage and Customer Maps 2015 and 2018



SmarterBroadband
Customers 2018
TOTAL 656
in Project Area

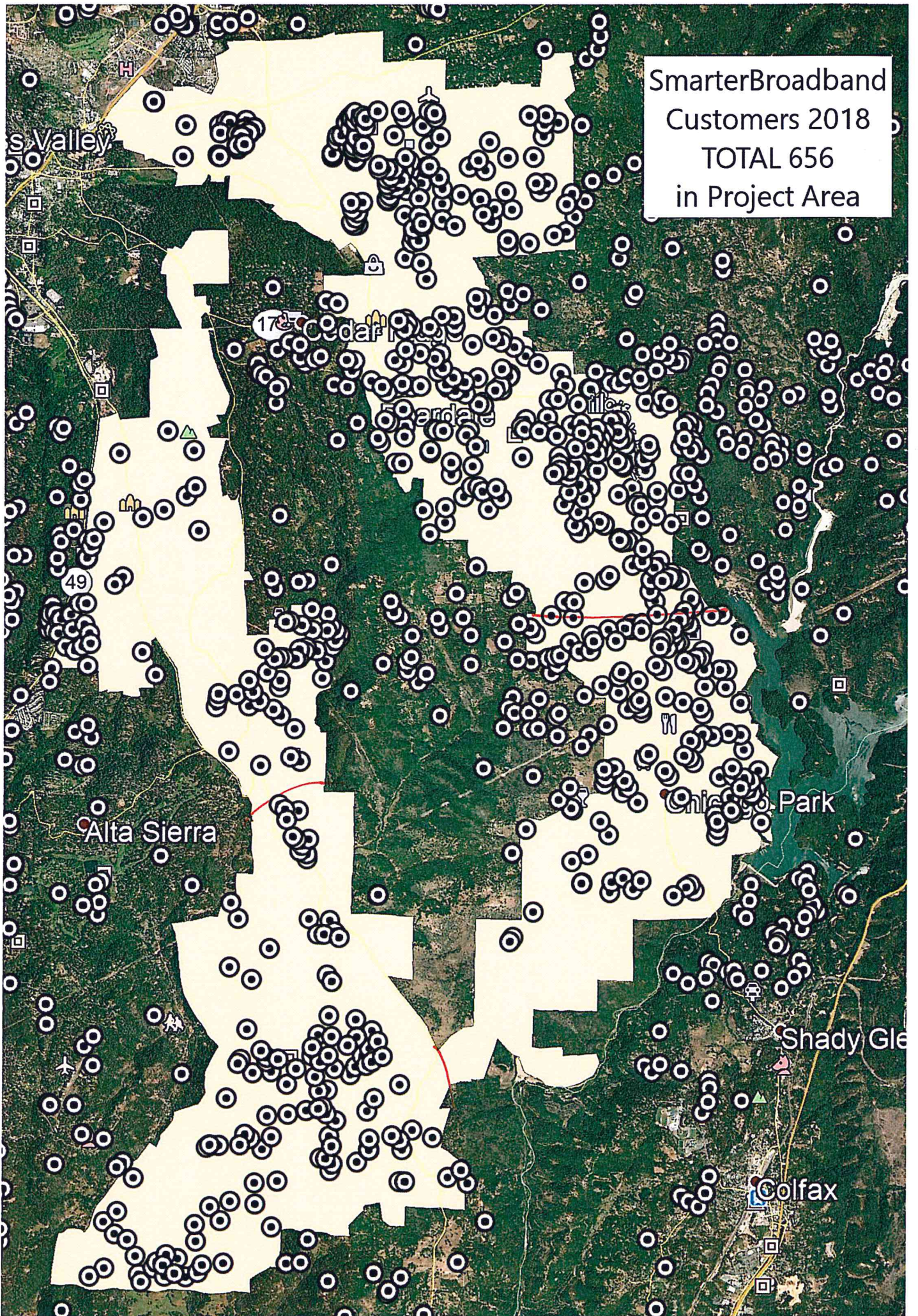


Exhibit 2

List of Links to Various CASF Grants

| Project Name | Project Type | Link |
|--|---|---|
| Klamath River Rural Broadband Initiative Project | Fiber and Wireless | http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M079/K379/79379916.PDF |
| Redwood Telephone - Open Community Fiber Network | Fiber and Wireless | http://docs.cpuc.ca.gov/PUBLISHED/FINAL_RESOLUTION/123081.htm |
| MCC Telephony - Kernville Interconnect Project | Fiber-Coaxial | http://docs.cpuc.ca.gov/PUBLISHED/FINAL_RESOLUTION/106884.htm |
| Shasta County Telecom - Shasta County Underserved | Fixed Wireless - Full network, backhauling from Level 3. | http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M097/K000/97000670.PDF |
| Cal.net - El Dorado North Broadband Project | Fixed wireless - Last-mile fixed wireless from Cal.net towers. | http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M220/K289/220289796.PDF |
| Cal.net - Tuolumne and Mariposa Project | Fixed wireless - Last-mile fixed wireless from Cal.net towers. | http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M171/K293/171293428.PDF |
| Cal.net - Amador Calaveras and Alpine Project | Fixed wireless - Last-mile fixed wireless from Cal.net towers. | http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M169/K866/169866700.PDF |
| Frontier subsidiary - Petrolia Project | Fixed wireless - Last-mile fixed wireless from Cal.net towers. | http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M163/K983/163983528.PDF |
| Anza Electric - Connect Anza Phase 2 Project | Fixed Wireless - Last-mile wireless upgrade for their existing equipment. | http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M153/K450/153450700.PDF |
| Anza Electric - Connect Anza Project | Hybrid - Main line fiber, some last-mile fiber, 40-60% fixed wireless. | http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M216/K666/216666060.PDF |
| California Valley Broadband - California Broadband | Hybrid - Mostly fiber, ~170 trailers to be served with wireless. | http://docs.cpuc.ca.gov/PUBLISHED/FINAL_RESOLUTION/117613.htm |
| Telenational Comm /Mother Lode - Mother Lode BB | Wireless | http://docs.cpuc.ca.gov/PUBLISHED/FINAL_RESOLUTION/117607.htm |
| California Valley Broadband Project | Wireless | http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/112800.pdf |
| Plumas Sierra - Last Mile Project | Wireless | http://docs.cpuc.ca.gov/PUBLISHED/FINAL_RESOLUTION/111467.htm |
| Nevada County Connected Middle Mile Project | Wireless | http://docs.cpuc.ca.gov/PUBLISHED/FINAL_RESOLUTION/110471.htm |
| Inyo Networks: Last Mile Project | Wireless | http://docs.cpuc.ca.gov/PUBLISHED/FINAL_RESOLUTION/109167.htm |
| Rapid Link / Mother Lode - Mother Lode Broadband | Wireless | http://docs.cpuc.ca.gov/Published/Final_resolution/104195.htm |
| Broadband Associates International - Highway 299 | Wireless (Backbone only) | http://docs.cpuc.ca.gov/Published/Final_resolution/977733.htm |
| Foresthill Telephone Company - Big Dipper Project | Wireless (Backbone only) | http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M078/K063/78063226.PDF |
| Siskiyou Econ Dev Council- Middle Mile Project | Wireless (Backbone only) | http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/120415.DOC |
| WillitsOnline - Westport Project | Wireless (backbone) / DSL | http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M081/K479/81479858.PDF |

Exhibit 3

Map of Fiore Hazard Severity Zones

FIRE HAZARD SEVERITY ZONES IN SRA

Adopted by CAL FIRE on November 7, 2007

Adopted by CAL FIRE on November 7, 2007



The State of California and the Department of Forestry and Fire Protection make no representations or warranties regarding the accuracy of data or maps. Neither the State nor the Department shall be liable under any circumstances for any direct, special, incidental, or consequential damages with respect to any claim by any user or third party on account of, or reliance on, the use of data or maps.

Obtain FRAP maps, data, metadata and publications on the Internet at <http://mapinfo.ca.gov>. For more information, contact CAL FIRE FRAP, PO Box 24226, Sacramento, CA 95824-0226, (916) 327-3303.

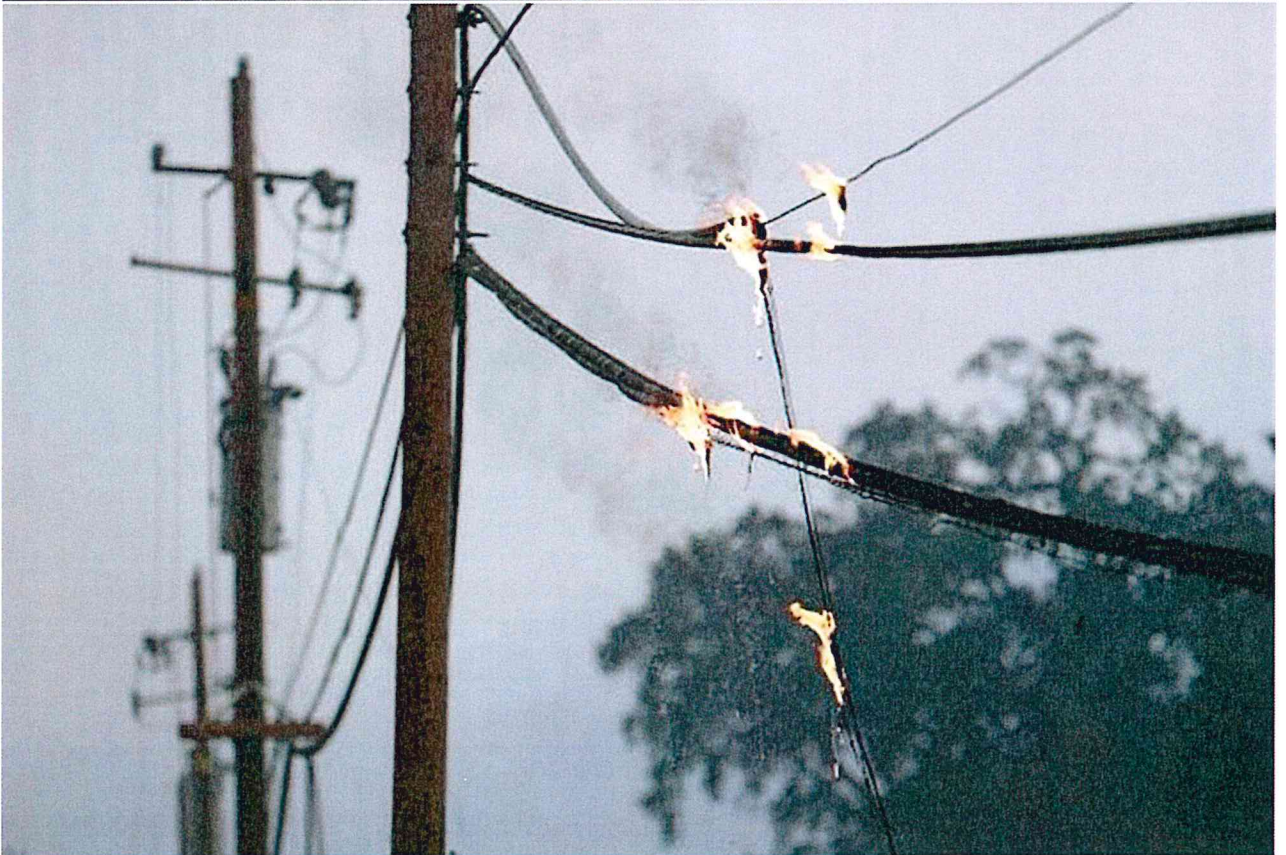
Arnold Schwarzenegger, Governor,
State of California
Mike Chrisman, Secretary for Resources,
The Resources Agency
Ruben Grijalva, Director,
Department of Forests and Fire Protection

| MAP ID: FHZS_WP | DATA SOURCES |
|---|--------------|
| CAL FIRE Fire Hazard Severity Zones (FHZS06_3) | |
| CAL FIRE State Responsibility Areas (SRA05_5) | |
| CAL FIRE Incorporated Cities (Incorp07_3) | |
| US 1:100,000 USGS Land Characteristics (CAL FIRE) | |

Exhibit 4

Photographs of Camp Fire







CERTIFICATE OF SERVICE

I hereby certify that I have, this 27th day of December, 2018, served a copy of the “Comments of SmarterBroadband, Inc. on Draft Resolution T-17633” on each email address provided on the service list for the California Public Utilities Commission Notice of Availability dated December 7, 2018 regarding Draft Resolution T-17633.

/s/ Stephen E. Coran
Stephen E. Coran