



WASHINGTON, DC

January 4, 2019

VIA EMAIL (PENNEY.LEGAKIS@CPUC.CA.GOV)

Penney Legakis, PAL Coordinator
Communications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

**Re: Response of SmarterBroadband, Inc. to Reply Comments of Race
Telecommunications, Inc. (U-7060-C) and Bright Fiber Network, Inc.
on Draft Resolution T-17633**

Dear Ms. Legakis:

SmarterBroadband, Inc. (“SBB”) hereby responds to the unauthorized Reply Comments jointly filed on January 2, 2019 by Race Telecommunications, Inc. (“Race”) and Bright Fiber Network, Inc. (“BFN”) in connection with the Commission’s Draft Resolution T-17633 to approve the transfer of BFN to Race.¹ SBB limits its response to those matters raised in the letter that purport to address SBB’s Comments filed on December 27, 2018.²

SBB notes that the Race/BFN filing is deficient. Neither the December 7, 2018 Notice of Availability (“Notice”)³ nor the Commission’s Rules authorizes the filing of Reply Comments.⁴ Contrary to the statement in the email accompanying the Reply Comments, Race/BFN did not

¹ SBB’s undersigned counsel is serving this response by email on each party listed on the Service List accompanying the Notice of Availability. Given the large number of parties on the Service List, SBB is not attaching the Service List hereto in order to reduce the number of pages.

² The Commission’s Daily Calendar provides a Comment deadline of December 31, 2018. *See* <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M255/K640/255640569.PDF> (last visited Jan. 3, 2019).

³ *See* <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M235/K428/235428237.PDF> (last visited Jan. 3, 2019).

⁴ *See* the Commission’s Rules of Practice and Procedure, Rule 14.5 (authorizing the filing of Comments regarding draft resolutions, but not the filing of Reply comments). To the extent that leave is required for consideration of this response, SBB respectfully requests same.



“request leave to file Reply Comments” – it simply submitted and served the letter without making any showing, much less establishing the “extraordinary circumstances” that might be required by the Notice. As such, the Reply Comments should be stricken.

To the extent the Commission nevertheless considers the Reply Comments, the Commission should acknowledge Race/BFN’s implicit admission that the proposed revisions to BFN’s CASF grant constitute a new application that should be subject to staff review and public challenge based on market conditions, technology and laws that exist in 2018. As a result, the Draft Resolution relies on faulty and outdated information that should not be considered for Commission vote.

First, Race/BFN insist that the dramatically revised grant proposal must be approved based on outdated standards, asserting that the Commission already considered arguments related to SBB’s expanded deployment in the context of BFN’s 2013 grant application. This argument ignores the fact that Race/BFN now seeks Commission approval for a vastly different proposal *five years later*. Challenges to BFN’s original application, whether rejected, modified or accepted, are irrelevant to the scope of the new 2018 Race/BFN proposal. And, because CASF staff removed households from the project area based on earlier challenges, at a minimum the same approach should be relevant here. The Commission should not simply ignore the substantially changed circumstances that have unfolded during the years that BFN failed to proceed with its once-planned 2013 network.

Second, Race/BFN contend that it is “irrelevant that fixed wireless technology has advanced since 2015” because it “would introduce new evidence outside the record.”⁵ But it is Race/BFN that has introduced “new evidence” through its radical shift from underground to aerial fiber and its revised budgeting for prevailing wages. Indeed, Race/BFN’s efforts to justify – *in its Reply Comments* – the benefits of its newly reconfigured network shows how Race/BFN seek to avoid any public scrutiny of its proposed project.

Third, Race/BFN argue that, because the budget for its 2013 application did not rely on prevailing wage law that became effective in January 2015 – before the Commission approved the original grant application – it should simply be permitted to revise its budget to incorporate the higher labor costs and divert those increased costs from deployment. In the process, to make the numbers work, Race/BFN proposes to deploy aerial fiber at less cost in order to preserve the same level of funding for the project area. That turns logic on its head. The better result would be to scale back the project so that it includes deployment of underground fiber only to areas unserved as of the date of the most recent Commission map, with no increase in the grant amount.⁶

⁵ Reply Comments at 3.

⁶ SBB stands by statements in its Comments that aerial fiber is much more susceptible to deployment and environmental challenges, especially wildfires.



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For these reasons and those expressed in SBB's Comments, it would be premature for the Commission to adopt the Draft Resolution. Instead, Race/BFN's revised proposal should be treated as a new grant proposal subject to CASF review and public challenge.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Stephen E. Coran', with a long horizontal flourish extending to the right.

Stephen E. Coran

David S. Keir

Counsel to SmarterBroadband, Inc.

cc (by email): Service List