

Congress of the United States
Washington, DC 20515

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April 2, 2019

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street NW
Washington, DC 20554

Dear Chairman Pai:

We write to express concern that the Federal Communications Commission's (FCC) draft 2019 Broadband Deployment Report (Report) may contain serious data inaccuracies that would undermine the validity of its findings. We note that the FCC has already issued an apparently-erroneous press release, dated February 19, that seems to reflect these inaccuracies. We urge you to immediately correct any faulty deployment data or flawed analysis in the draft Report; delay publishing the Report until all necessary changes have been made; and withdraw the Commission's February 19 press release, if the FCC has reason to believe it was inaccurate.

In today's 21st-century world, high-speed broadband Internet access is critical to daily life. With a firm understanding of that importance, Congress tasked the Commission with "encourag[ing] the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."¹ To ensure the that Commission took this obligation seriously, Congress required the Commission to report on its progress each year.²

We understand that the draft 2019 Report is currently circulating amongst the FCC commissioners' offices and has not yet been released to the public. However, in anticipation of releasing the final Report, the Commission issued a press release on February 19, 2019.³ In it, the Commission claimed that the draft Report

shows that since last year's report, the number of Americans lacking access to a home broadband connection has dropped by over 25%, from 26.1 million Americans at the end of 2016 to 19.4 million at the end of 2017. Moreover, the majority of those gaining access to such high-speed connections, approximately

¹ 47 U.S.C. § 1302(a).

² 47 U.S.C. § 1302(b).

³ "Report: America's Digital Divide Narrows Substantially," FCC Press Release (Feb. 19, 2019).

5.6 million, live in rural America, where broadband deployment has traditionally lagged.⁴

About two weeks later, the media advocacy non-profit Free Press sent a letter to the Commission questioning the validity of that reported narrowing of the digital divide and arguing that the FCC's claims were based on faulty deployment data from a new provider, BarrierFree.⁵ As you know, the FCC requires many providers to file data on where they provide coverage using Form 477. According to Free Press, BarrierFree's December 2017 Form 477 filing indicated that the company had gone from being non-existent to being the fourth largest provider in the country in about six months.⁶ The company claimed, incorrectly, to offer fiber-to-the-home (FTTH) service with downstream speeds of nearly a gigabit per second to every Census block in seven states (CT, MD, NJ, NY, PA, RI, and VA) and Washington D.C., which have a combined population of more than sixty million people.⁷

Subsequently, BarrierFree's Chief Operating Officer, Jim Gerbig, confirmed that the company had indeed made a mistake, and that their Form 477 filing does not reflect the company's current level of broadband deployment.⁸ He stated that with the government shutdown in January, BarrierFree was unable to submit revised documents before the press release went live, but that it is working with the FCC to correct its 477 data for the December 2017 filing.⁹ We are deeply troubled by the FCC's failure to withdraw or correct its published claims in light of this information.

The FCC's apparent use of BarrierFree's faulty data also raises serious questions as to what steps the Commission is taking to validate the data it receives from providers generally. Given the importance of the Report to policies pursued by the Commission, it is critical that the underlying data be accurate and carefully vetted.¹⁰ In order to understand both the impact of the

⁴ Id.

⁵ Letter from Derek Turner, Research Director, to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 5, 2019).

⁶ Id.

⁷ Id.

⁸ Jon Brodtkin, "Ajit Pai's Rosy Broadband Deployment Claim May be Based on Gigantic Error," *Ars Technica* (Mar. 7, 2019) at <https://arstechnica.com/tech-policy/2019/03/ajit-pais-rosy-broadband-deployment-claim-may-be-based-on-gigantic-error/>.

⁹ Id.

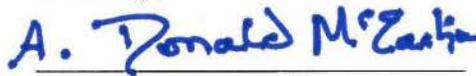
¹⁰ Id. (quoting Commissioner Starks "Without getting to the bottom of this, the FCC should not proceed with its current draft broadband report.").

erroneous data on the Report and the FCC's process for validating provider information, we request complete answers to the questions below within three weeks of receipt of this letter.

1. When and how did the FCC learn that BarrierFree's Form 477 submission was incorrect?
2. When were the Chairman and the Commissioners told by FCC staff that BarrierFree's Form 477 submission was incorrect?
3. Was the FCC aware of the erroneous data before circulating the draft Report internally?
4. Was your office aware of the erroneous data before putting out the February 19, 2019 press release?
5. If you knew that BarrierFree's data submissions were incorrect, why did your office circulate the Report?
6. BarrierFree submitted its Form 477 data in December 2017, and the data were clearly erroneous—for example, according to its submission, BarrierFree went from serving no one to serving 15% of all Census blocks that were listed as unserved in the June 2017 Form 477 data at speeds that are matched only by Verizon's FTTH service, *even though BarrierFree's own website does not market FTTH service at any speed*—but somehow the FCC failed to notice this grievous error. What is the process by which the FCC staff evaluate and validate Form 477 data, and what changes is the FCC planning to ensure that the staff do not fail to notice erroneous filings like BarrierFree's in the future?
7. Does the FCC have reason to believe that any other Form 477 data it has received may be inaccurate? If so, please provide a complete list of the providers, the number of Census blocks potentially implicated by provider, and the location of the Census blocks. In addition, what steps has the FCC taken and what steps will it take to correct and update data it believes may be inaccurate?

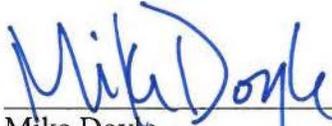
Thank you for your attention to this matter. If you have any questions, please contact Justin Goldberger at justin.goldberger@mail.house.gov.

Sincerely,

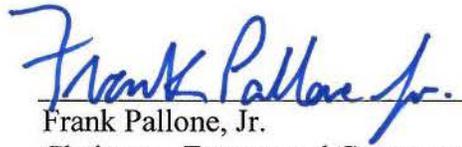


A. Donald McEachin
Member of Congress

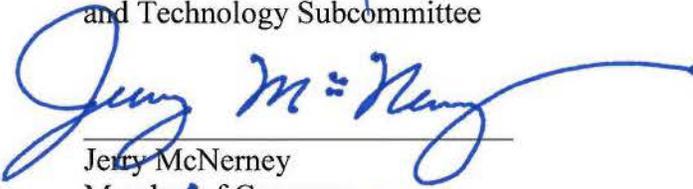
CC: Commissioner Geoffrey Starks
Commissioner Jessica Rosenworcel
Commissioner Brendan Carr
Commissioner Michael O'Rielly



Mike Doyle
Chairman, Communications
and Technology Subcommittee



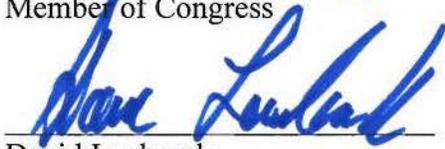
Frank Pallone, Jr.
Chairman, Energy and Commerce
Committee



Jerry McNerney
Member of Congress



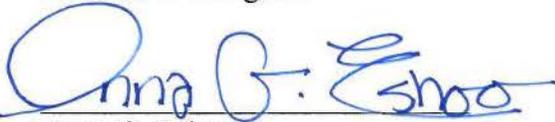
Yvette D. Clarke
Member of Congress



David Loebsack
Member of Congress



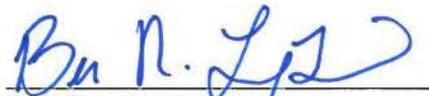
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