

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Barrier Communications Corporation) File No.: EB-IHD-19-00029003
d/b/a BarrierFree) NAL/Acct. No.: 202032080031
) FRN: 0014608194

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 2, 2020

Released: September 2, 2020

By the Commission: Commissioner Rosenworcel approving in part, dissenting in part and issuing a statement; Commissioner Starks concurring and issuing a statement

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND..... 3
A. Legal Framework..... 3
B. Factual Background..... 10
III. DISCUSSION 26
A. BarrierFree Has Apparently Failed to File FCC Form 477 on Multiple Occasions 28
B. In the Four Instances When BarrierFree Did File FCC Form 477, the Data Apparently Was Inaccurate..... 32
C. BarrierFree’s LOI Response and its Supplemental LOI Response Are Apparently Non-Responsive and Inaccurate..... 36
IV. PROPOSED FORFEITURE 39
A. Proposed Forfeiture for Apparent Form 477 Filing Violations 40
B. Proposed Forfeiture for Apparent Non-Responses and Inaccurate Responses..... 43
V. CONCLUSION..... 45
VI. ORDERING CLAUSES..... 46

I. INTRODUCTION

1. Complete, accurate, and timely broadband deployment data are essential to the Commission’s mission. These data are essential because they inform the Commission’s efforts to close the digital divide and bring broadband to those areas most in need. Broadband deployment data are also essential to the Commission’s statutory obligation to assess whether advanced communications services are being deployed to all Americans in a timely manner, and provide valuable information to other federal agencies, state governments, and individual consumers. As such, broadband service providers must accurately submit coverage and subscribership data to the Commission every six months on the FCC Form 477, a requirement that has been in place since 2000.

2. Barrier Communications Corporation d/b/a BarrierFree (BarrierFree or Company), a fixed wireless broadband service provider, has apparently failed to file FCC Form 477 twenty-seven times and has apparently filed inaccurate FCC Form 477 data on four other occasions: in its March 2018 filing; its revised March 2018 filing; its September 2019 filing; and its March 2020 filing. On these four occasions, the Company vastly overstated its broadband deployment, its broadband subscribership, or

both, making it appear to the Commission and the public that broadband service was readily available in communities where BarrierFree did not offer service. Additionally, during the Commission's investigation of this matter, the Company apparently filed non-responsive and inaccurate responses to the Enforcement Bureau's Letters of Inquiry (LOIs). For these apparent violations, and taking into account the Company's lengthy history of cavalier disregard for the Commission's rules, we propose a \$163,912 forfeiture penalty—the statutory maximum.¹

II. BACKGROUND

A. Legal Framework

3. *FCC Form 477 Purpose and Requirements.* The FCC Form 477 collects information twice per year about broadband connections to end-user locations, wired and wireless local telephone services, and interconnected Voice over Internet Protocol (VoIP) services in all fifty states, Washington, D.C., and the Territories and possessions of the United States.² Data obtained from FCC Form 477 are used to “describe the deployment of broadband infrastructure and competition to provide local telecommunications services.”³ The Commission's Form 477 filing rules expressly incorporate the FCC Form 477 instructions and provide notice that failure to comply with them may lead to enforcement action.⁴

4. Since 2005, the Commission has required “all facilities-based providers” of fixed and mobile broadband connections to end-users and all providers of voice telephone service to submit counts of broadband and voice connections in FCC Form 477.⁵ Facilities-based broadband service providers obligated to file FCC Form 477 are entities that provide broadband service via licensed (including by a spectrum leasing agreement) or unlicensed spectrum and/or rely on provider-owned physical facilities that terminate at the end-user premises, and/or via facilities that the entity has obtained the right to use from other entities, and/or uses unbundled network elements (loops, special access lines, or other leased

¹ Where the Commission determines it is appropriate to propose a forfeiture for a violation, it must do so within a one-year statute of limitations (SOL). *See* 47 USC § 503(b)(6). The Commission may consider a history of violations, including expired violations, in determining and assessing a proposed forfeiture, including upward adjustments to the proposed forfeiture. *See* 47 USC § 503(b)(2)(E). BarrierFree and the Commission's Investigations and Hearings Division entered into a tolling agreement regarding Enforcement Bureau investigation EB-IHD-19-00029003. The agreement extends for 180 calendar days the SOL for any “possible statutory or rule . . . violations that would have otherwise expired after February 14, 2020.” Tolling Agreement, Executed between Barrier Communications Corporation d/b/a BarrierFree and Federal Communications Commission (executed Feb. 20, 2020) (Tolling Agreement). Here, the tolling agreement extended the SOL for BarrierFree's apparent violations as follows: for the Company's unfiled March 2019 FCC Form 477, extended to September 3, 2020; for its inaccurate revised March 2018, extended to September 2, 2020; for its inaccurate September 2019 filing, extended to March 1, 2021; and for its inaccurate March 2020 filing, extended to August 27, 2021. BarrierFree submitted its LOI Response on June 3, 2019 and Supplemental LOI on November 18, 2019. As a result of the tolling agreement, statute of limitations for these submissions is now November 27, 2020 and May 14, 2021. The agreement did not revive any expired violations. We address the out-of-time violations here because they illustrate the long history of non-compliance by the Company and we take this into account when determining upward adjustments to the proposed forfeiture.

² *See, e.g., FCC Form 477 Instructions for Filing as of December 31, 2019* at 4 (*December 31, 2019 FCC Form 477 Instructions*); *FCC Form 477 Instructions for Filings through June 30, 2019* at 4 (*June 30, 2019 FCC Form 477 Instructions*).

³ *Id.*

⁴ 47 CFR § 1.7001(b), (f). Section 1.7001 directs FCC Form 477 filers to make filings “in accordance with the Commission's rules and instructions to the FCC Form 477,” and warns that “[f]ailure to file the FCC Form 477 in accordance with the Commission's rules and the instructions to the Form 477 may lead to enforcement action pursuant to the Act and any other applicable law.” *Id.*

⁵ *Local Competition Broadband Reporting*, WC Docket No. 04-141, Report and Order, 19 FCC Rcd 22340, 22345, para. 8 (2004) (*2004 Broadband Reporting Order*) (emphasis in original); *FCC Announces Electronic Posting of OMB-Approved Form 477 for the September 1, 2005 Filing and Data Collection Workshop to be Held on June 29, 2005*, Public Notice, 20 FCC Rcd 10454 (WCB 2005) (*OMB-Approved Form 477 Public Notice*).

facilities that the provider uses to complete terminations to the end-user premises).⁶ Since 2014, fixed wireless facilities-based broadband providers have been required to file both “deployment” and “subscription” data on their FCC Form 477 filings.⁷

5. For fixed broadband deployment data, the Commission requires filers to submit a list of all census blocks where they are providing, or could provision within a typical service interval and without an extraordinary commitment of resources, broadband connections to end-users that allow for data transmission to and from the Internet with advertised speeds that exceed 200 kbps in at least one direction.⁸ The Commission specifically instructs providers to exclude from their data any blocks where providers “would rely on the ordering or installation of a not-yet-leased circuit.”⁹ In other words, they must only file data reflecting their actual deployment, and not speculative or pre-deployment information.

6. For fixed broadband subscription data, the Commission requires filers to submit the total number of in-service broadband connections as well as the number of mass-market or residential broadband connections in-service by last-mile technology and bandwidth for each census tract in which end-users, or customers, are located.¹⁰

7. The Commission’s rules provide notice as to when FCC Form 477 filings are due. An FCC Form 477 must be filed “each year on or before March 1st (reporting data required on FCC Form 477 as of December 31 of the prior year) and September 1st (reporting data required on FCC Form 477 as of June 30

⁶ 47 CFR § 1.7001(a)(2)(i)-(v), (b)(1).

⁷ See *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887, 9888, 9896-97, 9902-08, 9913-18, paras. 3, 20, 32-41, 56-68 (2013) (*2013 Modernizing the FCC Form 477 Order*); *Additional Information for Form 477 Filers on New Data Submission Interface*, WC Docket No. 11-10, Public Notice, 29 FCC Rcd 3174 (WCB 2014); *Wireline Competition Bureau Releases Data Specifications for Form 477 Data Collection*, WC Docket No. 11-10, Public Notice, 28 FCC Rcd 12665 (WCB 2013).

⁸ See, e.g., *December 31, 2019 FCC Form 477 Instructions* at 18; *June 30, 2019 FCC Form 477 Instructions* at 17. Census blocks are delineated by the U.S. Census Bureau once every ten years. The Bureau uses census blocks as the basic geographic unit for all geographic boundaries for which the Census Bureau tabulates data, such as census tracts. See U.S. Census Bureau, *What are Census Blocks?* (July 11, 2011) available at <https://www.census.gov/newsroom/blogs/random-samplings/2011/07/what-are-census-blocks.html> (last visited June 14, 2020).

⁹ See, e.g., *December 31, 2019 FCC Form 477 Instructions* at 18 (“Companies that would rely on the ordering or installation of a not-yet leased circuit . . . to provide service in a census block not currently served should **not** treat that census block as having service available”) (emphasis in original); *June 30, 2019 FCC Form 477 Instructions* at 17.

¹⁰ See, e.g., *December 31, 2019 FCC Form 477 Instructions* at 17-19; *June 30, 2019 FCC Form 477 Instructions* at 18. The FCC Form 477 Instructions define “end-user” as a “residential, business, institutional, or government entity that uses services for its own purposes and does not resell such service to other entities.” “Facilities-based providers of fixed broadband connections to end users” are instructed to report (1) broadband connections to end-user premises by census tract that enables the end-user to receive from and/or send information to the Internet at transfer rates exceeding 200 kbps in at least one direction; (2) connections that are delivering Internet access service purchased by the end-user on a month-to-month basis or long-term basis; and (3) the total number of in-service connections for each census tract, including in-service connections that are part of consumer service plans. See e.g., *December 31, 2019 FCC Form 477 Instructions* at 17, 19; *June 30, 2019 FCC Form 477 Instructions* at 18. Census tracts are “small, relatively permanent statistical subdivisions of a county.” Each census tract is assigned a unique numerical code. Since 1940, the census tract has been an “official geographic entity” for which the Census Bureau has published data. See U.S. Census Bureau, Geographic Products Branch, “Census Tracts,” available at <https://www2.census.gov/geo/pdfs/education/CensusTracts.pdf> at 3, 5 (last visited Apr. 26, 2020).

of the current year).¹¹ The Commission has previously underscored the importance of timely and accurate FCC Form 477 filings through enforcement advisories and enforcement action.¹²

8. *Duty to Respond to a Commission Order.* All entities subject to the Commission’s jurisdiction are responsible for knowing and abiding by the Commission’s rules,¹³ and, if they do not, they may be subject to investigation and enforcement action. Section 403 of the Communications Act of 1934, as amended (Act), grants the Commission broad authority to conduct investigations and to compel entities to provide information and documents sought during investigations.¹⁴ Section 0.111(a)(17) of the Commission’s rules delegates authority to the Enforcement Bureau to “conduct investigations . . . on its own initiative” of potential violations of the Act or the Commission’s rules.¹⁵ A Letter of Inquiry (LOI) issued to a party under investigation by the Bureau constitutes a Commission order, and a failure to respond to a Bureau LOI constitutes a violation of a Commission order,¹⁶ which can give rise to a forfeiture penalty under section 503 of the Act, regardless of the conclusion or outcome of the investigation itself.¹⁷

9. *Prohibition on Inaccurate or Incomplete Statements in An Investigatory Matter.* Section 1.17(a)(2) of the Commission’s rules provides that in any investigatory or adjudicatory matter no person subject to this rule shall, “[i]n any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is

¹¹ 47 CFR § 1.7002. From time-to-time the Commission has issued a Public Notice shifting the filing date beyond March 1st or September 1st because those dates coincide with a date that the Commission was officially closed (e.g., due to a weekend or Federal holiday) or because of maintenance of the electronic filing system.

¹² See *Rio Verde Wireless, LLC.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2196 (EB - IHD 2015), cancelled by, Order, 30 FCC Rcd 10597 (EB 2015) (consent decree admitting violations and paying civil penalty) (*Rio Verde Wireless NAL*); *FCC Enforcement Advisory – Providers Must File A Complete and Accurate Form 477 Report Every Six Months*, Public Notice, 30 FCC Rcd 10853 (EB 2015); *FCC Enforcement Advisory – Providers Are Reminded That They Must File Complete and Accurate Form 477 Reports Every Six Months*, Public Notice, 26 FCC Rcd 16769 (EB 2011).

¹³ It is well settled that ignorance of a rule does not excuse a violation. See, e.g., *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) (“[O]ne may not “claim ignorance of the law as a defense” (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) (*PTT Phone Cards Forfeiture Order*) (“PTT’s purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission’s] [r]ules to which it was subject.”); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para 3 (1991) (*Southern California Broadcasting MO & O*), recon. denied, 7 FCC Rcd 3454 (1992) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”) (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, DA 20-693, 2020 WL 3904511, * 4, para. 5 & n. 37 (EB 2020) (“It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.”) (internal cites omitted); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) (“It is well settled that ignorance of the [Commission’s] [r]ules does not excuse a violation.”) (internal cites omitted) (*Rufus Resources Forfeiture Order*).

¹⁴ 47 U.S.C. § 403 (“The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter.”).

¹⁵ 47 CFR § 0.111(a)(17).

¹⁶ See, e.g., *Aura Holdings of Wisconsin, Inc.*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 3688, 3696, para. 21 (2018) (*Aura Holdings NAL*) (“An LOI issued by the [Enforcement] Bureau constitutes a Commission order, and it is well established that a failure to respond to a Bureau LOI constitutes a violation of a Commission Order.”) (internal cites omitted), *forfeiture order issued*, 34 FCC Rcd 2540 (2019).

¹⁷ 47 U.S.C. § 503(b)(1)(B) (any person who is found, in accordance with procedures set forth in section 503, to have willfully or relatedly failed to comply with provisions of the Act or “any rule, regulation, or order issued by the Commission” shall be liable for a forfeiture penalty).

made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”¹⁸ “A false statement may constitute an actionable violation of section 1.17 of the Commission’s rules even absent an intent to deceive, if it is provided without a reasonable basis for believing that the statement is incorrect and not misleading.”¹⁹ When applying section 1.17(a)(2), the Commission has stated that “parties dealing with the Commission are obligated to exercise due diligence in preparing written submissions, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted [to the Commission].”²⁰ The Commission has found that an entity’s “failure to exercise such reasonable diligence would mean that the party did not have a reasonable basis for believing in the truthfulness of the information.”²¹

B. Factual Background

10. BarrierFree reports that it is a “[f]acilities-[b]ased [b]roadband provider”²² that formed in New York state on May 12, 2004.²³ The Company brings two-way fixed wireless broadband services to its end-users by leveraging Verizon’s network as backhaul.²⁴ BarrierFree’s subscribers are apparently concentrated in Suffolk County, New York. The Commission granted the Company a nationwide license in the 3650-3700 MHz spectrum band on January 10, 2012.²⁵

11. Beginning with the time BarrierFree began serving its first paying customer in May 2004,²⁶ it acknowledges that it did not file any of the 25 FCC Form 477 filings due from September 2005 through September 2017.²⁷ BarrierFree states that “[t]he Company thought that submitting [F]orm 477

¹⁸ 47 CFR § 1.17(a)(2).

¹⁹ *Aura Holdings NAL*, 33 FCC Rcd at 3692-93, para. 14.

²⁰ *Id.*

²¹ *Id.*

²² Response to Letter of Inquiry, from Jim Gerbig, Chief Operating Officer, BarrierFree, to Marlene H. Dortch, Secretary, FCC and Robert Krinsky, Enforcement Bureau, Response to Inquiry 12 (June 3, 2019) (on file in File No. EB-IHD-19-00029003) (June 3, 2019 LOI Response); see “BarrierFree Acknowledges Broadband Data Error, Expects Fix; FCC Reviewing,” *Communications Daily*, March 8, 2019 at 9-10 (Jim Gerbig identified as chief operating officer of BarrierFree) (on file in File No. EB-IHD-19-00029003).

²³ June 3, 2019 LOI Response, Response to Inquiry 1.

²⁴ June 3, 2019 LOI Response, Response to Inquiry 1 (“Through an ongoing partnership with Verizon Enterprise, BarrierFree is able to offer Internet products to end users anywhere that FiOS is offered by Verizon.”); June 3, 2019 LOI Response, Response to Inquiry 5 (“Through a partnership agreement with Verizon Enterprise, BarrierFree could reasonably provide Internet connection anywhere that a FiOS Fiber line is close. If BarrierFree were to begin working in states other than New York, an authorization to do business in those states would be obtained before commencing any such work.”).

²⁵ FCC, Universal Licensing System, “3650-3700 MHz License – WQOR705 – Barrier Communications Corporation,” available at <https://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=3342835> (last visited May 17, 2020) (BarrierFree ULS License Record). The FCC Universal Licensing System (ULS) is a free to use and publicly available database available at <https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system>.

²⁶ Response to Supplemental Letter of Inquiry, from Jim Gerbig, Chief Operating Officer, BarrierFree, to Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, Response to Inquiry 38 (Nov. 18, 2019) (on file in File No. EB-IHD-19-00029003) (Nov. 18, 2019 Supplemental LOI Response).

²⁷ June 3, 2019 LOI Response, Response to Inquiry 15 (listing BarrierFree’s FCC Form 477 filings at the time of its June 3, 2019 LOI Response, excluding its revised March 2018 filing); Nov. 18, 2019 Supplemental LOI Response, Response to Inquiry 27 (identifying FCC Form 477 filings between March 1, 2018 and September 1, 2019); “FCC Form 477 Filed for data as of December 31, 2019 for Barrier Communications Corporation, Fixed Broadband Subscription – Tract Detail” (filed Mar. 2, 2020 at 21:00:03) (on file in File No. EB-IHD-19-00029003) (*FCC Form 477 Filed for Fixed Broadband Subscription – Tract Detail data as of December 31, 2019*).

was voluntary and not compulsory.”²⁸ BarrierFree added, “[i]t was our belief that filing [F]orm 477 was not necessary, except if one wanted to apply for government grants.”²⁹

12. The Company apparently missed these filings in spite of the Commission’s ongoing activity on the Form 477 program throughout that period³⁰ as well as targeted outreach by Commission staff. Notably, on November 16, 2015, staff emailed that BarrierFree’s attempt at filing a Form 477 was an “Original-In Progress” and that “further action is needed For filings that are valid and remain unsubmitted, please keep in mind that your company may be referred to the Enforcement Bureau for non-compliance.”³¹ On Jan. 7, 2016, staff again emailed that BarrierFree’s filing status was still “Original-In Progress and further action is needed If this filing is valid but incomplete, please complete and submit as soon as possible. . . . For filings that are valid and remain un-submitted, please keep in mind that your company may be referred to the Enforcement Bureau for non-compliance.”³²

13. BarrierFree submitted its first FCC Form 477 on March 2, 2018, reporting widespread fixed broadband service availability in Washington, D.C. and several states in the Northeast and Mid-Atlantic regions. The Company reported broadband availability in every census block in Connecticut, Maryland, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, and Washington, D.C.³³ In other words, BarrierFree reported that it had circuits capable of providing broadband connections via either terrestrial fixed wireless or fiber in 1,471,577 census blocks in seven states and Washington, D.C., an area then including more than 61 million people.³⁴ For its part, BarrierFree describes itself as “a small . . . provider built to connect underserved communities in the NYC metro area—specifically Fire Island in Suffolk County[,] New York”³⁵ BarrierFree’s response to Bureau inquiries made no mention of actual deployment or subscribers in any of the other seven jurisdictions it reported serving.

²⁸ June 3, 2019 LOI Response, Response to Inquiry 17.

²⁹ June 3, 2019 LOI Response, Response to Inquiry 18.

³⁰ See, e.g., *FCC Releases Updated Form 477 Data on Fixed Broadband Deployment as of December 31, 2016*, WC Docket No. 11-10, Public Notice, 32 FCC Rcd 9441 (WCB 2017); *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Order, 32 FCC Rcd 6985 (WCB/WTB/IB 2017); *FCC Releases Data on Broadband Deployment as of December 31, 2014 Collected Through FCC Form 477*, WC Docket No. 11-10, Public Notice, 30 FCC Rcd 12504 (WCB/WTB 2015); *FCC to Hold Webinar on FCC Form 477 Compliance*, Public Notice, 26 FCC Rcd 9507 (WCB 2011); *Comment and Reply Comment Dates Established for the Form 477 Further Notice of Proposed Rulemaking*, WC Docket No. 07-38, Public Notice, 23 FCC Rcd 10426 (WCB 2008); *FCC Announces Electronic Posting of OMB-Approved Form 477 for the September 1, 2005 Filing and Data Collection Workshop to be Held on June 29, 2005*, 20 FCC Rcd 10454 (WCB 2005).

³¹ E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (Nov. 16, 2015, 8:58 AM ET) (on file in File No. EB-IHD-19-00029003).

³² E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (Jan. 7, 2016, 11:09 AM ET) (on file in File No. EB-IHD-19-00029003).

³³ “FCC Form 477 Filed for data as of December 31, 2017 for Barrier Communications Corporation” (filed Mar. 2, 2018 at 02:17:32) (on file in File No. EB-IHD-19-00029003) (*FCC Form 477 Filed for data as of December 31, 2017*).

³⁴ The U.S. Census Bureau estimated a total population of 61,074,069 in 2017 for these seven states and Washington, D.C. U.S. Census Bureau, “Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2019 (NST-EST2019-01),” available at <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited May 15, 2020); June 3, 2019 LOI Response, Response to Inquiry 1 (“BarrierFree included the census blocks . . . [to which] service could be provided by the company.”); June 3, 2019 LOI Response, Response to Inquiry 5 (“Through a partnership agreement with Verizon Enterprise, BarrierFree could reasonably provide Internet connection anywhere that a FiOS Fiber line is close. If BarrierFree were to begin working in states other than New York, an authorization to do business in those states would be obtained before commencing any such work.”).

³⁵ June 3, 2019 LOI Response, Response to Inquiry 1.

14. BarrierFree's March 2018 FCC Form 477 also reported more residential broadband connections in one Suffolk County, New York census tract than actual household units exist in that particular census tract. Specifically, BarrierFree represented that in census tract {[REDACTED]} (Census Tract A), Suffolk County, New York, it had {[REDACTED]}³⁶ residential broadband connections as of December 31, 2017,³⁷ but the relevant U.S. Census Bureau data indicated only {[REDACTED]} housing units in that tract at the time.³⁸ Thus, BarrierFree claimed nearly two-thirds more residential terrestrial fixed wireless connections in this tract than is technically possible.³⁹ Census Tract A is located on the north shore of Long Island, New York abutting the Long Island Sound, whereas Fire Island is an island off the south shore of Long Island in the Atlantic Ocean.⁴⁰

15. After this filing, Commission staff again reached out to BarrierFree. On June 5, 2018, staff notified BarrierFree of "certain items in your filing which are unusual and potentially inaccurate, and corrections may be necessary."⁴¹ On July 31, 2018, staff repeated that admonition.⁴²

16. On July 11, 2018, Commission staff issued a Public Notice reminding Form 477 filers that the next filing would be due no later than September 4, 2018.⁴³ On August 29, 2018, staff emailed BarrierFree that there was a "FILING DUE DATE APPROACHING."⁴⁴ On September 18, 2018, staff again informed BarrierFree that "FILING DUE DATE MISSED . . . POTENTIAL ENFORCEMENT ACTION: Please note that the Commission tracks filers who consistently file Form 477 after the

³⁶ Material set off by double brackets {[]} is confidential and is redacted from the public version of this document.

³⁷ "FCC Form 477 Filed for data as of December 31, 2017 for Barrier Communications Corporation, Fixed Broadband Subscription – Tract Detail" (filed Mar. 2, 2018 at 02:17:32) (on file in File No. EB-IHD-19-00029003).

³⁸ U.S. Census Bureau, "Selected Housing Characteristics, American Community Survey, 2017, 5-year Estimate, Census Tract {[REDACTED]}, Suffolk County, New York," available at {[REDACTED]}.

³⁹ See "FCC Form 477 Filed 6/2019 for Barrier Communications Corporation, Fixed Broadband Subscription – Tract Detail" (filed Sept. 1, 2019 at 01:05:39) (on file in File No. EB-IHD-19-00029003) (*FCC Form 477 Filed for Fixed Broadband Subscription – Tract Detail data as of June 30, 2019*); U.S. Census Bureau, "Selected Housing Characteristics, American Community Survey, 2018, 5-year Estimate, Census Tract {[REDACTED]}, Suffolk County, New York," available at {[REDACTED]}.

⁴⁰ *Id.*

⁴¹ E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (June 5, 2018, 11:41 AM ET) (on file in File No. EB-IHD-19-00029003).

⁴² E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (July 31, 2018, 2:52 PM ET) (notifying BarrierFree concerning "certain items in your filing which are unusual and potentially inaccurate, and corrections may be necessary.") (on file in File No. EB-IHD-19-00029003).

⁴³ Form 477 Data as of June 30, 2018 Are Due No Later than September 4, 2018, WC Docket No. 11-10, Public Notice, 33 FCC Rcd 6710, 2018 WL 3414752 (WCB July 11, 2018) (Sept. 4, 2018 FCC Form 477 Due Date Public Notice).

⁴⁴ E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (Aug. 29, 2018, 10:09 AM ET) (emphasis in original) (on file in File No. EB-IHD-19-00029003).

deadline. Failure to file FCC Form 477 in a timely manner may result in fines and penalties.”⁴⁵ And on October 15, 2018, staff reiterated that admonition.⁴⁶ BarrierFree admits it did not make that filing.⁴⁷

17. On January 31, 2019, Commission staff issued a Public Notice reminding Form 477 filers that the next filing would be due no later than March 8, 2019.⁴⁸ On February 19, 2019, staff again reached out, notifying BarrierFree that “FILING DUE DATE APPROACHING.”⁴⁹ On March 4, 2019, staff repeated that admonition.⁵⁰ On March 18, 2019, staff notified BarrierFree that “FILING DUE DATE MISSED POTENTIAL ENFORCEMENT ACTION: Please note that the Commission tracks filers who consistently file Form 477 after the deadline. Failure to file FCC Form 477 in a timely manner may result in fines and penalties.”⁵¹ On March 26, 2019, staff notified BarrierFree that its filing status was “Original-In Progress” and that “further action is needed If this filing is valid but incomplete, please complete and submit as soon as possible. . . . For filings that are valid and remain un-submitted, please keep in mind that your company may be referred to the Enforcement Bureau for non-compliance.”⁵² On April 3, staff notified BarrierFree that “FILING DUE DATE MISSED POTENTIAL ENFORCEMENT ACTION: Please note that the Commission tracks filers who consistently file Form 477 after the deadline. Failure to file FCC Form 477 in a timely manner may result in fines and penalties.”⁵³ And on April 11, 2019, staff warned BarrierFree yet again.⁵⁴ BarrierFree admits it did not make that filing.⁵⁵

⁴⁵ E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (Sept. 18, 2018, 9:56 AM ET) (emphasis in original) (on file in File No. EB-IHD-19-00029003).

⁴⁶ E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (Oct. 15, 2018, 9:21 AM ET) (notification that “FILING DUE DATE MISSED POTENTIAL ENFORCEMENT ACTION: Please note that the Commission tracks filers who consistently file Form 477 after the deadline. Failure to file FCC Form 477 in a timely manner may result in fines and penalties.” (emphasis in original)) (on file in File No. EB-IHD-19-00029003).

⁴⁷ Nov. 18, 2019 Supplemental LOI Response, Response to Inquiry 27.

⁴⁸ Form 477 Data as of December 31, 2018 Are Due No Later Than March 8, 2019, WC Docket No. 11-10, Public Notice, 34 FCC Rcd 135, 2019 WL 414196 (WCB/WTB/OEA Jan. 31, 2019) (March 8, 2019 FCC Form 477 Due Date Public Notice).

⁴⁹ E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (Feb. 19, 2019, 10:01 AM ET) (emphasis in original) (on file in File No. EB-IHD-19-00029003).

⁵⁰ E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (Mar. 4, 2019, 9:43 AM ET) (notification that “FILING DUE DATE APPROACHING” (emphasis in original)) (on file in File No. EB-IHD-19-00029003),

⁵¹ E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (Mar. 18, 2019, 8:59 AM ET) (emphasis in original) (on file in File No. EB-IHD-19-00029003).

⁵² E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (Mar. 26, 2019, 9:51 AM ET) (on file in File No. EB-IHD-19-00029003).

⁵³ E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (Apr. 3, 2019, 8:45 AM ET) (emphasis in original) (on file in File No. EB-IHD-19-00029003).

⁵⁴ E-mail from FCC Form 477 Team, to Jim Gerbig, Chief Operating Officer, BarrierFree (Apr. 11, 2019, 8:28 AM ET) (referencing BarrierFree filing with “status of “Original-In Progress” versus “Original Submitted” and “further action is needed If this filing is valid but incomplete, please complete and submit as soon as possible. . . . For filings that are valid and remain un-submitted, please keep in mind that your company may be referred to the Enforcement Bureau for non-compliance.”) (on file in File No. EB-IHD-19-00029003).

⁵⁵ Nov. 18, 2019 Supplemental LOI Response, Response to Inquiry 27.

18. Instead, on March 7, 2019, the Company filed a revision to its March 2018 filing.⁵⁶ That revision did not amend BarrierFree’s subscription data as relevant here. BarrierFree claimed nearly two-thirds more residential connections in Census Tract A than housing units in existence in that Census Tract.⁵⁷ Specifically, BarrierFree again represented that in Census Tract A it had { [REDACTED] } residential connections,⁵⁸ while the relevant U.S. Census Bureau data reflected only { [REDACTED] } housing units in Census Tract A.⁵⁹

19. The Company filed its next FCC Form 477 in September 2019.⁶⁰ Once again, BarrierFree included apparently conflicting and inaccurate broadband subscription data. For example, BarrierFree represented that it had { [REDACTED] } residential broadband connections in Census Tract A⁶¹ while the Census Bureau data estimate showed only { [REDACTED] } housing units at the time.⁶² That is, in its September 2019 filing, BarrierFree claimed to have more than ten times as many residential broadband connections as the number of housing units the Census Bureau estimated were located in Census Tract A.

20. In its March 2020 FCC Form 477 filing, BarrierFree reported the same numbers it had on its September 2019 Form 477, { [REDACTED] } residential broadband connections in Census Tract A,⁶³ while the relevant U.S. Census Bureau data was just { [REDACTED] } housing units at the time.⁶⁴ Thus, in its March 2020 filing, BarrierFree again claimed to have residential broadband connections that were more than ten times greater than the number of housing units the Census Bureau estimated in this tract.

⁵⁶ June 3, 2019 LOI Response, Response to Inquiry 16(d)(iv); “FCC Form 477 Filed for data as of December 31, 2017 (filing status: revised-submitted) for Barrier Communications Corporation, Filing Status: Revised-Submitted” (filed Mar. 7, 2019 at 04:33:57) (on file in File No. EB-IHD-19-00029003) (*Revised FCC Form 477 Filed for data as of December 31, 2017*).

⁵⁷ *Revised FCC Form 477 Filed for data as of December 31, 2017*; U.S. Census Bureau, “Selected Housing Characteristics, American Community Survey, 2018, 5-year Estimate, Census Tract { [REDACTED] }, Suffolk County, New York,” available at

{ [REDACTED] }.

⁵⁸ “FCC Form 477 for data as of December 31, 2017 (filing status: revised-submitted) for Barrier Communications Corporation, Fixed Broadband Subscription – Tract Detail” (filed Mar. 7, 2019 at 04:33:57) (on file in File No. EB-IHD-19-00029003).

⁵⁹ U.S. Census Bureau, “Selected Housing Characteristics, American Community Survey, 2017, 5-year Estimate, Census Tract { [REDACTED] }, Suffolk County, New York,” available at

{ [REDACTED] }.

⁶⁰ *FCC Form 477 Filed for Fixed Broadband Subscription – Tract Detail data as of June 30, 2019*. BarrierFree’s filing was on time. See *Form 477 Data as of June 30, 2019 Are Due No Later Than September 3, 2019*, Public Notice, 34 FCC Rcd 7065 (OEA 2019).

⁶¹ *FCC Form 477 Filed for Fixed Broadband Subscription – Tract Detail data as of June 30, 2019*.

⁶² U.S. Census Bureau, “Selected Housing Characteristics, American Community Survey, 2018, 5-year Estimate, Census Tract { [REDACTED] }, Suffolk County, New York,” available at

{ [REDACTED] }.

⁶³ *FCC Form 477 Filed for Fixed Broadband Subscription – Tract Detail data as of December 31, 2019*.

⁶⁴ U.S. Census Bureau, “Selected Housing Characteristics, American Community Survey, 2018, 5-year Estimate, Census Tract { [REDACTED] }, Suffolk County, New York,” available at

{ [REDACTED] }.

21. *The Bureau's Investigation.* On May 3, 2019, the Bureau issued an LOI to BarrierFree regarding BarrierFree's FCC Form 477 filing history.⁶⁵ In response to a direct question in the LOI concerning whether the Company held any Commission licenses,⁶⁶ permits, certifications, or authorizations, BarrierFree responded that it did not.⁶⁷ However, according to the Commission's Universal Licensing Service database, BarrierFree has held a nationwide license in the 3650-3700 MHz band since January 10, 2012.⁶⁸ When asked about this license in a Supplemental LOI issued November 4, 2019 (Supplemental LOI),⁶⁹ the Company admitted it does hold this license, but averred [{"REDACTED"}].⁷⁰

22. The LOI also directed BarrierFree to provide subscription data,⁷¹ however BarrierFree failed to include this information in its response.⁷² In its LOI Response, BarrierFree also claimed that it believed that submitting FCC Form 477 was "voluntary and not compulsory."⁷³ BarrierFree did not acknowledge that Commission staff sent repeated e-mails directly to Jim Gerbig, BarrierFree's chief operating officer, whom it identified as the point of contact for the Commission, at the e-mail address provided by BarrierFree.

23. In order to inform the Bureau's investigation of BarrierFree's simultaneous claims to be both a small company and yet also have deployed to census blocks covering more than 61 million people, the LOI directed BarrierFree to "[p]rovide copies of all Documents that serve as the basis for or otherwise support the responses" to the LOI.⁷⁴ BarrierFree failed to do so and its response remains incomplete. The Company failed to provide a contract supporting its response about its relationship with 8x8, Inc. from whom it received telephone numbers associated with the provision of its broadband service.⁷⁵ Although BarrierFree stated in its LOI response that it would be providing the requested financial documents,⁷⁶ the Company still has not submitted them to the Bureau.

24. The Supplemental LOI directed BarrierFree to explain the apparent discrepancies between the number of subscribers reported in its revised March 2018 and September 2019 filings and the number of housing units in Census Tract A.⁷⁷ The Company suggested it relied on the wrong Census

⁶⁵ Letter from Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Jim Gerbig, Chief Operating Officer, Barrier Communications Corporation d/b/a BarrierFree (May 3, 2019) (on file in File No. EB-IHD-19-00029003) (LOI).

⁶⁶ LOI at Inquiry 10.

⁶⁷ June 3, 2019 LOI Response, Response to Inquiry 10.

⁶⁸ BarrierFree ULS License Record.

⁶⁹ Letter from Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Jim Gerbig, Chief Operating Officer, Barrier Communications Corporation d/b/a BarrierFree, at Inquiry 33 (Nov. 4, 2019) (on file in File No. EB-IHD-19-00029003) (Supplemental LOI).

⁷⁰ Nov. 18, 2019 Supplemental LOI Response, Response to Inquiry 33; BarrierFree ULS License Record.

⁷¹ LOI at Inquiry 14.

⁷² June 3, 2019 LOI Response, Response to Inquiry 14.

⁷³ June 3, 2019 LOI Response, Response to Inquiry 17.

⁷⁴ LOI Inquiry 24.

⁷⁵ June 3, 2019 LOI Response, Response to Inquiry 11 ("BarrierFree obtains phone number assignments from dedicated IPX provided by 8x8.").

⁷⁶ June 3, 2019 LOI Response, Response to Inquiry 26 ("[T]hese documents . . . need to be reviewed by Counsel before providing. These documents can be provided after they have been reviewed."); June 24, 2019 LOI Response, Response to Inquiry 24 ("[T]hese documents are currently being reviewed by our CPA for accuracy. We are working with our CPA to ensure that all information is correct and can provide the returns at a later point when they are made available.").

⁷⁷ Nov. 4, 2019 Supplemental LOI Inquiry 37.

tract and stated that the correct tract “should be” census tract { [REDACTED] } (Census Tract B) in Suffolk County, New York.⁷⁸ Unlike Census Tract A, Census Tract B does cover a portion of Fire Island, where BarrierFree claims to provide service.⁷⁹ The most relevant U.S. Census Bureau housing unit estimate for the revised March 2018 filing for Census Tract B was { [REDACTED] } and for the September 2019 filing it was { [REDACTED] }—only about 600 more units than Census Tract A.⁸⁰

25. The Supplemental LOI once again directed BarrierFree to provide all supporting documents associated with the Company’s response.⁸¹ The Supplemental LOI specifically ordered BarrierFree to provide the names of vendors from whom the Company contracted for services associated with its broadband offering to end-users, including information about the services provided and the signed contracts.⁸² To date, BarrierFree still has not provided the requested financial documents or many of the other documents relied upon for its LOI and Supplemental LOI responses.

III. DISCUSSION

26. Violations of the FCC Form 477 filing requirements are significant because FCC Form 477 is a critical fact-gathering instrument that informs the Commission’s efforts to advance broadband availability. Moreover, in many instances service providers submitting FCC Form 477 data have the best, if not the only, reliable data about where their facilities are located and which areas they can serve. Reliable and timely data are essential to the mission of fostering the availability of broadband services across the United States, and failing to provide it materially impairs the Commission’s ability to assess broadband deployment and to measure subscribership upon which Commission policy is based.⁸³

27. On multiple occasions, BarrierFree has apparently failed to make required filings, has submitted incomplete filings, included inaccuracies in its filings, and failed to respond to Commission orders. Specifically, the Company has apparently failed to make twenty-seven FCC Form 477 filings in the period September 2005 through March 2020 and made four inaccurate FCC Form 477 filings (March 2018, revised March 2018, September 2019, and March 2020 filings). BarrierFree’s respective submissions to the Commission’s LOI and Supplemental LOI were apparently inaccurate and contained incomplete non-responses. Therefore, BarrierFree apparently willfully and repeatedly violated sections

⁷⁸ Nov. 18, 2019 Supplemental LOI Response to Inquiry 37. BarrierFree’s submission of census tract data for end-user connection to residences exclusively identified census tract { [REDACTED] } in Suffolk County, New York. In each instance, the number of end-user connection reported by BarrierFree exceeded the number of residential units in that particular census tract. When asked about this discrepancy in the Supplemental LOI (Inquiry 37), BarrierFree responded that the “[c]ensus tract listed [in BarrierFree’s FCC Form 477 submissions] should be Fire Island, New York census tract { [REDACTED] }.” Nov. 18, 2019 Supplemental LOI Response, Response to Inquiry 37.

⁷⁹ See U.S. Census Bureau, “2010 Census—Census Tract Reference Map: Suffolk County, NY,” available at https://www2.census.gov/geo/maps/dc10map/tract/st36_ny/c36103_suffolk/DC10CT_C36103_004.pdf.

⁸⁰ See U.S. Census Bureau, “Selected Housing Characteristics, American Community Survey, 2017, 5-year Estimate, Census Tract { [REDACTED] }, Suffolk County, New York,” available at

{ [REDACTED] }; U.S. Census Bureau, “Selected Housing Characteristics, American Community Survey, 2018, 5-year Estimate, Census Tract { [REDACTED] }, Suffolk County, New York,” available at { [REDACTED] }.

⁸¹ Nov. 4, 2019 Supplemental LOI at Inquiries 39-40.

⁸² Nov. 4, 2019 Supplemental LOI at Inquiry 29.

⁸³ See, e.g., 2019 Fifteenth Broadband Report NOI, 34 FCC Rcd at 10104, Statement by Chairman Ajit Pai (“Since I became Chairman in January 2017, the Commission’s top priority has been to close the digital divide. . . . As we advanced toward that goal, our policies must be based on facts, not assertions that fall apart when subject to even a bit of scrutiny.”).

1.7001, 1.7002, and 1.17(a)(2) of the Commission's rules and apparently violated Commission orders by failing to respond to LOIs.

A. BarrierFree Has Apparently Failed to File FCC Form 477 on Multiple Occasions

28. The Commission requires all facilities-based providers of fixed broadband connections to end-users to file FCC Form 477, regardless of the technology used to provide service.⁸⁴ As such a fixed broadband provider, BarrierFree is required to file FCC Form 477. Therefore, each of the 27 times BarrierFree failed to file FCC Form 477, it was in apparent violation of section 1.7002 of the Commission's rules.⁸⁵

29. BarrierFree's defense for the missed filings—that it thought FCC Form 477 filing was “voluntary and not compulsory” and “not necessary, except if one wanted to apply for government grants”⁸⁶—is unavailing. Entities within the Commission's jurisdiction are responsible for knowing the laws under which they are regulated.⁸⁷ Ignorance of the law is no defense, including for BarrierFree, which has been in business since 2004 and has held a Commission license since 2012. The Commission has plainly stated that “facilities-based providers of broadband service”⁸⁸ are required to file FCC Form 477 in a timely manner twice each year, and failure to file FCC Form 477 “may lead to enforcement action.”⁸⁹

30. And in any event, BarrierFree's claims of ignorance ring hollow. BarrierFree admits it has been aware of the FCC Form 477 process but thought that it was a voluntary submission process, despite obvious warnings such as a prominent link to a document titled “Who Must File Form 477?” on the Commission's Form 477 webpage.⁹⁰ BarrierFree does not point to, nor could it, any Commission document that could have given it the impression that submitting Form 477 was voluntary. Even more striking, agency staff had been in direct contact with BarrierFree concerning its filing obligations for several years. The requirement that the Company file FCC Form 477 has been in effect since 2005.⁹¹ Since that time, the Commission has adopted FCC Form 477 filing rules and associated orders, issued filing instructions and public notices pertaining to filing due dates, released enforcement advisories, and taken enforcement action for failure to make FCC Form 477 filings.⁹² Consequently, there can be no reasonable question concerning the existence of the obligation. Instead, by every appearance, BarrierFree willfully and repeatedly ignored its Form 477 filing obligations.

31. BarrierFree submitted a different, but equally failing, defense specifically for missing its March 2019 filing: It wanted the filing to be “accurate.”⁹³ All filings to the Commission are expected to be both accurate and timely, and no entity may grant itself a unilateral extension. It was incumbent on

⁸⁴ 47 CFR § 1.7001; *see, e.g., December 31, 2019 FCC Form 477 Instructions* at 17-19; *June 30, 2019 FCC Form 477 Instructions* at 17-18; *2013 Modernizing the FCC Form 477 Order*, 28 FCC Rcd at 9887, 9896-97, 9902-08, 9913-18, paras. 3, 20, 32-41, 56-68; *2004 Broadband Reporting Order*, 19 FCC Rcd at 22345, para. 8.

⁸⁵ 47 CFR § 1.7002.

⁸⁶ June 3, 2019 LOI Response, Responses to Inquiries 17-18.

⁸⁷ *See, e.g., Phone Cards Forfeiture Order*, 30 FCC Rcd at 14704, para. 10; *Southern California Broadcasting MO & O*, 6 FCC Rcd at 4387, para 3; *Rufus Resources Forfeiture Order*, 33 FCC Rcd at 6794, para. 5.

⁸⁸ 47 CFR § 1.7001(b)(1).

⁸⁹ 47 CFR § 1.7001(f).

⁹⁰ *See* <https://www.fcc.gov/economics-analytics/industry-analysis-division/form-477-resources>.

⁹¹ *2004 Broadband Reporting Order*, 19 FCC Rcd at 22345, para. 8; *OMB-Approved Form 477 Public Notice*.

⁹² *See Rio Verde Wireless NAL*, 30 FCC Rcd 2196.

⁹³ Nov. 18, 2019 Response to Supplemental LOI, Response to Inquiry 27. Note that in the Supplemental LOI response, BarrierFree erroneously states that the due date was March 1, 2019. The relevant public notice states March 8, 2019. *March 8, 2019 FCC Form 477 Due Date Public Notice*, 34 FCC Rcd 135 (WCB 2019).

BarrierFree to take appropriate steps to assemble any information it needed to make a timely and accurate filing, especially in light of the significant outreach directly to the Company from Commission staff that BarrierFree had been receiving by that time warning of the upcoming filing deadlines.

B. In the Four Instances When BarrierFree Did File FCC Form 477, the Data Apparently Was Inaccurate

32. On the four occasions when BarrierFree did file FCC Form 477, each filing was apparently inaccurate. Filers are required to provide accurate data in accordance with the Commission's rules and with the instructions for completing and filing FCC Form 477.⁹⁴ The Commission has been clear that fixed broadband providers must file deployment and subscription data, but that service is not considered available, and census blocks should not be listed as deployed, if providing service "would rely on the ordering or installation of a not-yet leased circuit."⁹⁵ Filings reflecting where a provider might deploy, where it plans to deploy, or where it aspires to deploy is speculation, not data.

33. Despite BarrierFree's admission that it did not own or lease circuits anywhere other than a single section of Fire Island in New York, the Company in its March 2018 FCC Form 477 filing falsely claimed to have deployed in the entirety of the following jurisdictions: Connecticut; Maryland; New Jersey; New York; Pennsylvania; Rhode Island; Virginia; and Washington, D.C.,⁹⁶ areas where more than 61 million people live. To reach all of these areas, BarrierFree would have to build or lease new circuits covering hundreds or thousands of times its actual service footprint. This is because BarrierFree leases just {[REDACTED]} to connect to the Internet, and {[REDACTED]} is used only to connect to a single section of Fire Island in New York.⁹⁷ BarrierFree has not demonstrated that it has circuits (owned, leased,

⁹⁴ 47 CFR § 1.7001(b) (requiring that "entities shall file with the Commission a completed FCC Form in accordance with the Commission's rules and instructions to the FCC Form 477, which require a "certification of Filing Accuracy."); *December 31, 2019 FCC Form 477 Instructions* at 32 ("Certification of Accuracy[:] Each Form 477 submission must include, in the Filer Identification information, the name of the official (corporate officer, managing partner, or sole proprietor) whose signature certifies that he/she has examined the information contained in this Form 477 and that, to the best of his/her knowledge, information and belief, all statements of fact contained in this Form 477 are true and correct. . . . Persons making willful false statements in a Form 477 can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e)."); *June 30, 2019 FCC Form 477 Instructions* at 32 ("Certification of Accuracy[:] Each Form 477 submission must include, in the Filer Identification information, the name of the official (corporate officer, managing partner, or sole proprietor) whose signature certifies that he/she has examined the information contained in this Form 477 and that, to the best of his/her knowledge, information and belief, all statements of fact contained in this Form 477 are true and correct. . . . Persons making willful false statements in a Form 477 can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e)."); 47 CFR § 1.7001(e) ("Respondents identified in paragraph (b) of this section shall file a revised version of FCC Form 477 if and when they discover a significant error in their filed FCC Form 477. For counts, a difference amounting to 5 percent of the filed number is considered significant. For percentages, a difference of 5 percentage points is considered significant."). See *Rio Verde Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2196 (EB - IHD 2015), *cancelled by*, Order, 30 FCC Rcd 10597 (EB 2015) (consent decree admitting violations and paying civil penalty) (*Rio Verde Wireless NAL*); *FCC Enforcement Advisory – Providers Must File A Complete and Accurate Form 477 Report Every Six Months*, Public Notice, 30 FCC Rcd 10853 (EB 2015); *FCC Enforcement Advisory – Providers Are Reminded That They Must File Complete and Accurate Form 477 Reports Every Six Months*, Public Notice, 26 FCC Rcd 16769 (EB 2011) ("The collection of accurate broadband information is a critical tool for the Commission to meet its statutory obligations and to promote the availability of broadband to every American.").

⁹⁵ See, e.g., *December 31, 2019 FCC Form 477 Instructions* at 18; *June 30, 2019 FCC Form 477 Instructions* at 17.

⁹⁶ *FCC Form 477 Filed for data as of December 31, 2017*.

⁹⁷ Verizon Communications, Inc., "Verizon's Response to November 7, 2019 Subpoena (File No. EB-IHD-19-00029003)," (filed Nov. 22, 2019) at 2 (on file in File No. EB-IHD-19-00029003) [REDACTED]

or otherwise) across the rest of New York, or anywhere at all in Connecticut, Maryland, New Jersey, Pennsylvania, Rhode Island, Virginia, or Washington, D.C. Therefore, in order to serve any customers in these areas, BarrierFree would have to build or lease new circuits in order to deploy broadband service to nearly the entire area it claimed in its March 2018 filing. In fact, the Company subsequently stated that it has only provided terrestrial fixed wireless broadband connections to end-users on a portion of Fire Island.⁹⁸ Thus, BarrierFree's deployment data was apparently inaccurate and in violation of the Commission's rules.

34. In addition, in each of its four filings BarrierFree claimed to serve many more residential connections (subscribers) than there were housing units in the reported census tracts. During a period in which census data show between {{[REDACTED]}} and {{[REDACTED]}} housing units in Census Tract A, BarrierFree claimed impossible numbers of residential terrestrial fixed wireless broadband connections: March 2018 filing ({{[REDACTED]}}), revised March 2018 filing ({{[REDACTED]}}), September 2019 filing ({{[REDACTED]}}), and March 2020 filing ({{[REDACTED]}}). Put another way, BarrierFree's March 2018 and revised March 2018 filings exceeded what was possible by more than one-and-a-half times, while its September 2019 and March 2020 filings exceeded what was possible by more than ten times. Moreover, this comparison between the census tract housing unit counts and the connections figures that BarrierFree reports understates the disparity between BarrierFree's filing and reality: The housing counts are best-case scenarios where 100% of the population of those tracts subscribe to BarrierFree's services. To make matters worse, BarrierFree's FCC Form 477 subscriber data make no geographic sense. Although BarrierFree claims its subscribers are on Fire Island, each of its four filings claim its subscribers are in Census Tract A, which is located not on Fire Island, but on the north shore of Long Island, New York abutting the Long Island Sound.⁹⁹ Thus, BarrierFree's subscription data was apparently inaccurate for each of its four filings. Even viewing the BarrierFree's subscription numbers in light of the the Company's later argument—that it mistakenly listed Census Tract A but meant Census Tract B—does not alter the analysis here. Although Census Tract B has somewhat more housing units than Census Tract A, BarrierFree's reported subscription numbers still significantly exceed the number of housing units in Census Tract B, by approximately 15% in its March 2018 filing and revised filing, and by more than 8 times in its September 2019 and March 2020 filings. Given the extreme disparities between those numbers, BarrierFree could not reasonably have believed that the reported numbers of connections bore any relationship to reality whatsoever in either Census Tract where it claimed to have customers.

35. BarrierFree's proffered justifications for its apparently inaccurate filings are unpersuasive. BarrierFree claims its March 2018 deployment data are accurate because it has access to lines in the seven states and Washington, D.C. due to a business relationship with Verizon.¹⁰⁰ However, the Bureau's investigation has uncovered no evidence that BarrierFree owns or leases any lines for the delivery of terrestrial wireless broadband service other than for the purpose of serving a portion of the Fire Island section of Suffolk County, NY. As discussed at length above, BarrierFree had no reasonable basis on which it could have believed it could report broadband service as being "available" in any census block outside the limited portions of Fire Island where it currently has customers. At best, BarrierFree's March

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⁹⁸ June 3, 2019 LOI Response, Response to Inquiries 1; Nov. 18, 2019 Supplemental LOI Response, Response to Inquiry 37a.

⁹⁹ Census tract {{[REDACTED]}}, which is also designated by the Census Bureau as {{[REDACTED]}} on its map of Census tracts in Suffolk County, New York, is shown to be located along the northern part of Suffolk County abutting Long Island Sound and the {{[REDACTED]}}. This tract is not on Fire Island; instead this Census Bureau map shows three different census tracts with different numerical designations that are on Fire Island. See U.S. Census Bureau, "2010 Census – Census Tract Reference Map: Suffolk County, NY," available at https://www2.census.gov/geo/maps/dc10map/tract/st36_ny/c36103_suffolk/DC10CT_C36103_004.pdf (last visited June 11, 2020).

¹⁰⁰ June 3, 2019 LOI Response, Response to Inquiries 1 and 5.

2018 filing represented where it *might* deploy, *if* a potential customer asked¹⁰¹—and indeed, BarrierFree apparently admitted that it was not even legally authorized to provide service outside the state of New York, let alone actively providing and marketing services in Connecticut, Maryland, New Jersey, Pennsylvania, Rhode Island, Virginia, or Washington, D.C.¹⁰²

C. BarrierFree’s LOI Response and its Supplemental LOI Response Are Apparently Non-Responsive and Inaccurate

36. *LOI and Supplemental LOI Responses were Non-Responsive.* It is long settled that a Commission licensee’s failure to respond to an LOI from the Bureau violates a Commission order.¹⁰³ Such violations might not always entail a party’s total failure to respond; numerous decisions recognize that parties may violate Commission orders by providing, as here, incomplete responses to Bureau inquiries.¹⁰⁴ Here, BarrierFree’s LOI response and Supplemental LOI response each apparently failed to respond to a Commission Order because each was incomplete as to various factual information at the core of our investigation. The LOI directed BarrierFree to provide the number of broadband connections in-service, i.e., its subscription data, and BarrierFree has still not done so.¹⁰⁵ The subscription data go to the heart of the investigation into the accuracy of BarrierFree’s certified Form 477 data: Given the striking disparity between the subscription data BarrierFree previously reported and the significantly smaller populations of the areas it claims to serve, it was incumbent upon BarrierFree to provide the Bureau with the correct information. BarrierFree has likewise failed to produce requested financial records. And, despite the LOI’s directive to produce all relevant documents and agreements in support of its responses, BarrierFree only provided unsigned drafts of several contracts. BarrierFree’s Supplemental LOI response also remains incomplete. Notwithstanding the Supplemental LOI’s direction to do so, BarrierFree failed to provide all of the documents it relied upon to respond to the Supplemental LOI, and still has not provided

¹⁰¹ See *FCC Form 477 Filed for data as of December 31, 2017*; June 3, 2019 LOI Response, Response to Inquiry 1 (“Through an ongoing partnership with Verizon Enterprise, BarrierFree is able to offer Internet products to end users anywhere that FiOS is offered by Verizon.”).

¹⁰² June 3, 2019 LOI Response, Response to Inquiry 5 (“Through a partnership agreement with Verizon Enterprise, BarrierFree could reasonably provide Internet connection anywhere that a FiOS Fiber line is close. If BarrierFree were to begin working in states other than New York, an authorization to do business in those states would be obtained before commencing any such work.”).

¹⁰³ See, e.g., *ABC Fulfillment Services LLC D/B/A HobbyKing USA LLC and Hobbyking.com; and Indubitably, Inc. D/B/A HobbyKing Corp., HobbyKing USA LLC, HobbyKing, and HobbyKing.com*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530, 5538, para. 16 (“Companies that receive LOIs must timely file complete and accurate responses to the Bureau’s questions. Failure to timely and fully respond to the Bureau’s inquiries violates the Act. The Commission has repeatedly taken enforcement action against entities that disregard orders to provide information related to potential violations of the Act or the Commission’s rules.” (internal cites omitted)), *aff’d*, Forfeiture Order, FCC 20-101, 2020 WL 4282131 (2020); *Google, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (EB 2012) (proposing \$25,000 penalty for failure to respond fully to LOI) (forfeiture paid) (*Google*); *SBC*, 17 FCC Rcd at 7597-98, paras. 19-20 (holding that Bureau’s directive that carrier provide a sworn statement verifying its response to the LOI is a Commission order that the carrier was not permitted to ignore).

¹⁰⁴ See, e.g., *Communications Options, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13680, 13686, paras. 16, 17 (EB 2007) (forfeiture proposed for, *inter alia*, failure to submit an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer with personal knowledge of the representation provided in the LOI response, verifying the truth and accuracy of the information submitted), *aff’d*, Forfeiture Order, 23 FCC Rcd 3969, 3972-73, paras. 8, 9 (EB-IHD 2008) (failure to file “prompt sworn responses” represents misconduct that “inhibits [the Commission’s] ability to adequately detect and deter potential rule violations in areas of critical importance to the Commission”) (*Communications Options*); *SBC*, 17 FCC Rcd at 7589-91, 7600, paras. 2-3, 28 (holding that a common carrier’s deliberate failure to provide a sworn statement verifying its LOI response until weeks after the Bureau had directed the carrier to respond warranted a \$100,000 forfeiture penalty); *Digital Antenna*, at 7600-02, paras. 3, 5, 7 (holding that a manufacturer of cellular and PCS boosters was apparently liable for violation of a Commission order when it failed to provide complete responses to Bureau LOIs, including by failing to submit the required sworn statements).

¹⁰⁵ LOI at Inquiry 14; June 3, 2019 LOI Response, Response to Inquiry 14.

requested financial documents or many of the other documents relied upon in its LOI and Supplemental LOI responses.¹⁰⁶ It has also still not produced all signed contracts.¹⁰⁷ As with its LOI response, BarrierFree's apparent failure to provide a complete response to either the LOI or Supplemental LOI has the continued effect of obstructing our investigation, inferences, and conclusions. We therefore find that it has failed to respond to two Commission Orders. BarrierFree's omission of this information obscures the nature of BarrierFree's business, obstructs the Commission's effort to investigate the Company's FCC Form 477 filing record and therefore constitutes a failure to respond.

37. *LOI and Supplemental LOI Responses were Inaccurate.* BarrierFree apparently violated section 1.17(a)(2) of the Commission's rules by providing material factual information that was incorrect without a reasonable basis for believing it was true in its response to the Bureau's LOI. Here, BarrierFree falsely stated that it held no Commission licenses even though the Company has been a spectrum licensee in the 3650-3700 MHz band since 2012.¹⁰⁸ Submitting such false and misleading material information to the Commission has the effect of obscuring the nature of the Company's businesses and its regulatory status before the Commission, misleading enforcement efforts and could be construed as willfully seeking to evade lawful enforcement actions against Commission regulatees such as BarrierFree. A more charitable view may be that BarrierFree somehow did not know that it was a Commission licensee. But even if BarrierFree's own records were for some reason incomplete, the Commission's Universal Licensing System is readily available for public search to verify the Company's status as a licensee. Minimal diligence on the part of BarrierFree would have revealed that it has held a spectrum license for nearly a decade. Instead, its LOI Response remains incorrect and the correct information is still omitted.¹⁰⁹

38. BarrierFree also apparently violated section 1.17(a)(2) by providing material factual information that was incorrect without a reasonable basis for believing it in its response to the Supplemental LOI. Regarding our inquiries about its apparently inaccurate Census Tract A data, BarrierFree responded that the actual census tract where it claimed to have active subscribers "should be" Census Tract B not Census Tract A.¹¹⁰ However, minimal diligence by BarrierFree would have revealed that neither Census Tract A nor Census Tract B could possibly be correct, as BarrierFree's claimed subscribership substantially exceeded the census data for residential housing units in both tracts. Furthermore, BarrierFree apparently had no reasonable basis for believing it. After all, the Company's very next FCC Form 477 filings, filed nearly four months after its response, once again claimed Census Tract A. BarrierFree diverted Commission time and resources with its Census Tract B response, when even BarrierFree didn't rely on it for its March 2020 filing. Thus, once again, BarrierFree apparently submitted incorrect material factual information in a purported response to a Commission order that had the effect of misleading the Commission.

IV. PROPOSED FORFEITURE

39. Section 501(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of the [Act] or of any rule, regulation, or order issued by the Commission."¹¹¹ For the two types of violations at issue here, section

¹⁰⁶ LOI Inquiries 24, 26; Supplemental LOI Inquiries 39-40.

¹⁰⁷ Nov. 4, 2019 Supplemental LOI at Inquiry 29.

¹⁰⁸ See BarrierFree ULS License Record.

¹⁰⁹ BarrierFree still has not filed a correction to its inaccurate LOI response concerning whether it holds a license. LOI Response, Response to Inquiry 10. The LOI "Instructions" provided as part of the LOI sent to BarrierFree require that the Company "supplement its responses (a) if the Company learns that, in some material respect, the documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive documents or information are acquired by or become known to the Company after the initial production." LOI at 9.

¹¹⁰ November 18, 2019 Response to Supplemental LOI, Response to Inquiry 37a.

¹¹¹ 47 U.S.C. § 503(b)(1)(D).

503(b)(2)(D) of the Act authorizes us to assess a forfeiture of up to \$20,489 for each violation or each day of a continuing violation, up to a statutory maximum of \$153,669 for a single act or failure to act.¹¹² In exercising our forfeiture authority we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹¹³ In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.¹¹⁴ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional or repeated, or that cause substantial harm or generate substantial economic gain for the violator.¹¹⁵

A. Proposed Forfeiture for Apparent Form 477 Filing Violations

40. Section 1.80(b) of the Commission’s rules establishes a base forfeiture of \$3,000 for failure to file a required form or information for each violation or each day of a continuing violation. We are empowered to adjust a forfeiture penalty accounting for the “nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹¹⁶

41. Given the critical need to ensure accurate broadband services data and the fundamental role that FCC Form 477 data plays in policymaking and broadband subsidy funding decision-making, we recognize that violations of FCC Form 477 filing obligations are especially serious. Here, BarrierFree has a lengthy history of cavalier disregard for the FCC Form 477 filing requirements.¹¹⁷ It has missed 27 filings altogether. All 27 are violations of our rules, including the 26 for which the statute of limitations has run,¹¹⁸ and are compelling evidence of a history of violations. BarrierFree’s degree of culpability is particularly high because even when Commission staff directly made contact on multiple occasions to inform BarrierFree of its obligations to file FCC Form 477, it showed continued contempt for its obligations and chose to disregard several subsequent filing deadlines. Moreover, BarrierFree has shown a troubling lack of candor and given conflicting explanations for its repeated failure to file despite actual notice of its filing obligations.

42. And, of the four filings it did actually submit, BarrierFree made repeated inaccurate material statements. For example, the deployment and subscription data BarrierFree submitted is so divorced from reality that it suggests a willful effort to deceive the Commission. Considering that BarrierFree has an extensive history of prior offenses, including dozens of violations that exceed the statute of limitations, is particularly culpable, and shows a consistent disregard for the Commission’s rules, an upward adjustment is justified. If such inaccurate deployment or subscription data were included in final versions of Commission reports and analysis, the results would be a significant distortion of actual deployment and subscription figures for the United States. In fact, BarrierFree’s incorrect deployment data had real and detrimental effect on preliminary Commission analysis in a draft broadband data report. Although ultimately, the draft was revised to remove BarrierFree’s incorrect data.¹¹⁹ Thus,

¹¹² 47 U.S.C. § 503(b)(2)(D). *See generally* Amendment of Section 1.80 of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, 34 FCC Rcd 12824, 2019 WL 7370226 (EB Dec. 27, 2019); *see generally also* Federal Communications Commission, Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 85 Fed. Reg. 2318 (Jan. 15, 2020).

¹¹³ 47 U.S.C. § 503(b)(2)(E).

¹¹⁴ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

¹¹⁵ *Id.*

¹¹⁶ 47 CFR § 1.80(b)(8).

¹¹⁷ 47 CFR § 1.7001.

¹¹⁸ *See supra* note 1.

¹¹⁹ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2019 Broadband Deployment Report, 34 FCC Rcd 3857 (2019).

based on these factors, as well as the gravity of impact that such material inaccuracies have on guiding broadband policy and monetary decision-making, we propose the statutory maximum amount of \$20,489 for BarrierFree's apparently missed March 2019 filing, and apparently inaccurate revised March 2018, September 2019, and March 2020 filings for a total of \$81,956.¹²⁰

B. Proposed Forfeiture for Apparent Non-Responses and Inaccurate Responses

43. BarrierFree willfully submitted an LOI response and Supplemental LOI response that were each marred by apparent incomplete and incorrect information. For failures to respond to Commission communications, the Commission has set a \$4,000 base forfeiture for each violation.¹²¹ Here, BarrierFree's June 3, 2019 LOI response submission and November 18, 2019, Supplemental LOI response submission are still incomplete. Omissions that have the effect of obstructing our investigations are particularly egregious. Because of the repeated willful, and egregious violations, we propose the statutory maximum for each non-responsive LOI submission, for a total of \$40,978. We further note that in cases such as this one, where there is such an extreme disregard and lengthy series of flagrant misrepresentations to Commission staff, the statutory maximum forfeiture does not fully capture the seriousness of the conduct in question.

44. Where a party submits incorrect material factual information, the Commission's rules set the forfeiture for misrepresentation or lack of candor in an investigatory matter at the statutory maximum.¹²² BarrierFree willfully included incorrect material factual information in its LOI response and also in its Supplemental LOI response. Thus, here we propose a forfeiture of \$40,978 for BarrierFree's two apparent violations of section 1.17(a) of the Commission's rules.

V. CONCLUSION

45. We have determined that BarrierFree apparently violated sections 1.7001, 1.7002 and 1.17(a)(2) of the Commission's rules, and defied Commission orders. We deem BarrierFree to be apparently liable for a forfeiture of \$163,912. Furthermore, we direct BarrierFree to submit, not later than 30 calendar days after the release of this NAL, full and complete responses to all outstanding requests from the Commission for information.

VI. ORDERING CLAUSES

46. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and 1.80 of the Commission's rules,¹²³ Barrier Communications Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred sixty-three thousand, nine hundred twelve dollars (\$163,912) for apparently willfully and repeatedly violating sections 1.17(a)(2), 1.7001, and 1.7002 of the Commission's rules and defying Commission orders by not fully responding to an LOI and Supplemental LOI.¹²⁴

47. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,¹²⁵ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, BarrierFree **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a

¹²⁰ 47 U.S.C. § 503(b)(2)(D). *See generally Amendment of Section 1.80 of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 34 FCC Rcd 12824, 2019 WL 7370226 (EB Dec. 27, 2019); *see generally also* Federal Communications Commission, Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 85 Fed. Reg. 2318 (Jan. 15, 2020). These four violations were preserved by the Tolling Agreement, while the others have expired. Tolling Agreement, Executed between Barrier Communications Corporation d/b/a BarrierFree and Federal Communications Commission (executed Feb. 20, 2020).

¹²¹ 47 CFR § 1.80(b).

¹²² 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

¹²³ 47 U.S.C. § 503(b); 47 CFR § 1.80.

¹²⁴ 47 CFR §§ 1.17(a)(2), 1.7001, 1.7002.

¹²⁵ 47 CFR § 1.80.

written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 50 below.

48. Barrier Communications Corporation, shall send electronic notification of payment to Robert B. Krinsky, Enforcement Bureau, Federal Communications Commission, at Robert.Krinsky@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),¹²⁶ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹²⁷

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).¹²⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensingdatabases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

49. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, D.C. 20554.¹²⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRES@fcc.gov.

50. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant

¹²⁶ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

¹²⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRES@fcc.gov.

¹²⁸ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹²⁹ See 47 CFR § 1.1914.

to sections 1.16 and 1.80(f)(3) of the Commission's rules.¹³⁰ The written statement must be mailed to Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption. The written statement shall also be e-mailed to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov and to Robert B. Krinsky at Robert.Krinsky@fcc.gov.

51. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

52. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail, return receipt requested, and first-class mail to Omar Perez, Barrier Communications Corporation d/b/a BarrierFree, P.O. Box 3308, New York, NY 10008-3308.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹³⁰ 47 CFR §§ 1.16, 1.80(f)(3).

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL
APPROVING IN PART AND DISSENTING IN PART**

Re: *In the Matter of Barrier Communications Corporation d/b/a BarrierFree*, EB-IHD-19-00029003

It is no secret that the Federal Communications Commission has a big data problem. It may be the nation's communications expert but it doesn't know with precision where broadband is and is not across the country. This is unfortunate, especially now when having access to high-speed service during a public health crisis is so critical. During this pandemic broadband is required for much of day-to-day work, education, healthcare, and more. But for too long the FCC has fumbled efforts to fix its broadband data and put off initiatives to improve its maps, making it more difficult to close the digital divide—both during this pandemic and beyond.

Regrettably, today's enforcement action is another episode in this continuing mess.

The story begins with a company called BarrierFree. BarrierFree is a facilities-based broadband provider with subscribers primarily in Suffolk County, New York. On 27 separate occasions BarrierFree failed to file Form 477 with the FCC. Form 477 is the form the FCC uses to determine what services are being offered by carriers across the country. It is the primary tool the FCC uses to assess the state of broadband service and subscription in communities nationwide. So the failure to file—on 27 separate occasions—is a serious violation of FCC policy. But even on those occasions when BarrierFree filed Form 477 with the agency, the data submitted was riddled with problems. In fact, at one point the company claimed it offered service to 61 million Americans, including every census block in Connecticut, Maryland, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, and Washington, DC. This would make it the fourth-largest provider of broadband in the country—from a company that provides service largely in one county in New York.

This should have set off alarm bells at the FCC. In fact, agency staff reached out to the company nearly a dozen times over multiple years, including after this suspect data was filed. Despite these efforts behind the scenes, on February 19, 2019, the FCC used the erroneous data filed by BarrierFree in a press release, claiming great progress in closing the nation's digital divide. When an outside party pointed out this was based on fraudulent information, the FCC was forced to revise its claim.

What a mess. I support today's Notice of Apparent Liability which imposes penalties for inaccurate data filed with the FCC. But I dissent because this enforcement action falls short. As the record demonstrates, BarrierFree failed to file with the FCC on 27 separate occasions. But on 26 of those occasions today's action gives the company a pass. This hardly feels like the vigorous enforcement our data-gathering efforts need. Instead of cleaning up this mess, giving the company a pass on so many filings only sweeps their transgressions under the rug.

I asked my colleagues to consider modifying this Notice of Apparent Liability in order to properly impose penalties for these 26 past failures to file. I recognize that the decision before us suggests that the statute of limitations has expired for these violations. But in other FCC contexts—for example, failure to file hearing aid compatibility reports or reports under the Lifeline program—this agency has treated the failure to file a required form as an ongoing violation until it is cured. Why wouldn't we do so here? Nothing in the law prevents us from

adjusting our approach now to align it with how the agency addresses other filing failures. At a minimum, we should have admonished the carrier before us to send a clear message that failing to file essential data with the agency and filing false data both result in penalty. After all, getting accurate data is especially vital with respect to broadband reporting. Without it, our initiatives to close the digital divide are simply never going to succeed.

The ongoing pandemic has revealed that we have big broadband problems in this country. Addressing them starts with getting honest and accurate information about where service is and is not throughout the country. I remain hopeful that the FCC can turn a new page and correct our data and fix our maps, but I worry about the signals this enforcement action sends today. Giving a carrier a pass for failing to file information with the FCC 26 times is not a vigorous response to the deficiencies that plague our broadband data. For this reason, I approve in part and dissent in part.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS
CONCURRING**

Re: *In the Matter of Barrier Communications Corporation d/b/a BarrierFree*, EB-IHD-19-00029003

I support today's decision to impose the statutory maximum, but that limitation means that the forfeiture proposed here cannot be, in my opinion, severe enough to adequately address the harm BarrierFree caused and deter future violations. Correcting the problems BarrierFree caused took resources away from other Commission priorities, and, as I explained in [my dissent](#) from the 2019 *Broadband Deployment Report*, BarrierFree's massive overstatement of its deployment led to inaccurate public statements from the Chairman's office.¹

Going forward, the Commission's experience with BarrierFree should reinforce the need for robust verification and challenge processes. If our existing processes worked, the Commission would have identified BarrierFree's errors much sooner. The company's submission contained numerous anomalies that should have raised red flags. To name just one: in its first broadband service report to the FCC, BarrierFree stated that, as of December 2017, it provided high-speed broadband service in an area where 62 million people live. If Barrier Free's reporting was correct (and it was not), that would have meant the company went from providing no service to being the fourth largest ISP in the United States in less than a year. That should have set off alarms. As the Commission works toward the September 21, 2020 deadline required by the Broadband DATA Act for new mapping rules, I will continue to advocate for rigorous verification and challenge to catch these errors before incorrect data is released and restore public confidence in our broadband deployment data.

¹ Statement of Commissioner Geoffrey Starks, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 18-238, 2019 Broadband Deployment Report, FCC 19-44 (rel. May 29, 2019).