

**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.