Ajit Pai touted false broadband data despite clear signs it wasn’t accurate

Enlarge / FCC Chairman Ajit Pai and FCC Commissioner Jessica Rosenworcel at a Senate Commerce Committee hearing in Washington, D.C., on Wednesday, June 24, 2020.

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Federal Communications Commission Chairman Ajit Pai touted inaccurate broadband-availability data in order to claim that his deregulatory agenda sped up deployment despite clear warning signs that the FCC was relying on false information.

Pai claimed in February 2019 that the number of Americans lacking access to fixed broadband at the FCC benchmark speed of 25Mbps downstream and 3Mbps upstream dropped from 26.1 million people at the end of 2016 to 19.4 million at the end of 2017, and he attributed the improvement to the FCC “removing barriers to infrastructure investment.” The numbers were included in a draft version of the FCC’s congressionally mandated annual broadband assessment, and Pai asked fellow commissioners to approve the report that concluded the broadband industry was doing enough to expand access.

But consumer-advocacy group Free Press subsequently pointed out that the numbers were skewed by an ISP called BarrierFree suddenly “claim[ing] deployment of fiber-to-the-home and fixed wireless services (each at downstream/upstream speeds of

940mbps/880mbps) to census blocks containing nearly 62 million persons." This is an implausible assertion and would have meant BarrierFree went from serving zero people to nearly 20 percent of the US population in just six months. BarrierFree admitted the error when contacted by Ars at the time, saying that "a portion of the submission was parsed incorrectly in the upload process."

Pai corrected the data to acknowledge that 21.3 million Americans still lacked broadband but didn't change his conclusion that broadband was "being deployed to all Americans in a reasonable and timely fashion." (Even that 21.3-million figure was likely an undercount because the FCC counts an entire census block as served even if only one home in the census block can get service.)

This week, the FCC released more details on BarrierFree's apparent history of violating rules requiring ISPs to submit "Form 477" broadband-deployment data every six months, and it shows that numerous warning signs were spotted by FCC staff long before Pai touted the inaccurate data. The FCC on Tuesday issued a Notice of Apparent Liability that proposed a $163,912 fine for BarrierFree, kicking off a process that gives BarrierFree a chance to respond to the allegations and fight the proposed penalty.

Although the FCC is trying to fine BarrierFree for submitting inaccurate data, the commission is not penalizing the ISP for failing to submit over 10 years' worth of required Form 477 reports.

"The Pai FCC slept on BarrierFree's repeated violation of FCC rules," Free Press Research Director Derek Turner told Ars, calling the FCC's attempt to downplay its own role in spreading inaccurate data "shameful."

FCC staff flagged “inaccurate” data in 2018

BarrierFree began serving customers in Suffolk County, New York, in May 2004 but did not submit any of the required Form 477 filings for more than a decade because, it later told the FCC, it thought the filings were voluntary unless an ISP was applying for government grants, the FCC said in the Notice of Apparent Liability.

FCC staff emailed BarrierFree in November 2015, saying that the ISP’s attempt to finally submit a Form 477 report was incomplete and “further action is needed.” FCC staff contacted BarrierFree again in January 2016, saying that “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.”

BarrierFree finally submitted a complete Form 477 filing in March 2018, reporting widespread deployment in Northeast and Mid-Atlantic states despite only serving customers in one part of New York. The filing set off alarm bells among FCC staff for several reasons, such as the ISP claiming that it had more residential broadband connections in one Long Island census tract than the number of actual household units in the tract.

Here’s what happened next, according to the FCC:

> *On June 5, 2018, [FCC] staff notified BarrierFree of “certain items in your filing which are unusual and potentially inaccurate, and corrections may be necessary.” On July 31, 2018, staff repeated that admonition.*
>
> *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. On August 29, 2018, staff emailed BarrierFree that there was a “FILING DUE DATE APPROACHING.” 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 deadline. Failure to file FCC Form 477 in a timely manner may result in fines and penalties." And on October 15, 2018, staff reiterated that admonition.*

BarrierFree did not make the required September 2018 filing, the FCC said. FCC staff sent another warning to BarrierFree on February 19, 2019 about the upcoming March 2019 deadline. Yet on the very same day, the FCC chairman's office issued a press release touting the draft report that included deployment data inflated by BarrierFree's incorrect March 2018 filing. "This report shows that our approach is working," Pai said in the press release.

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