

Congress of the United States
Washington, DC 20515

207

April 2, 2019

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

Dear Chairman Pai:

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

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

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

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

¹ 47 U.S.C. § 1302(a).

² 47 U.S.C. § 1302(b).

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

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

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

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

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

⁴ Id.

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

⁶ Id.

⁷ Id.

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

⁹ Id.

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

The Honorable Ajit V. Pai

April 2, 2019

Page 3

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

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

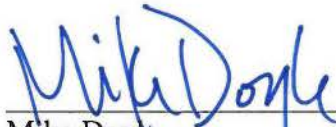
Thank you for your attention to this matter. If you have any questions, please contact Justin Goldberger at justin.goldberger@mail.house.gov.

Sincerely,



A. Donald McEachin
Member of Congress

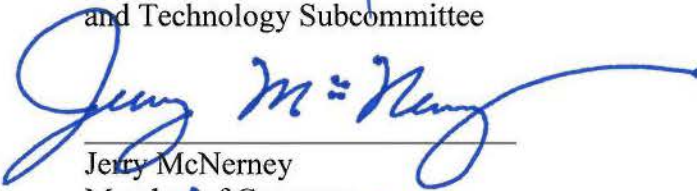
CC: Commissioner Geoffrey Starks
Commissioner Jessica Rosenworcel
Commission Brendan Carr
Commission Michael O'Rielly



Mike Doyle
Chairman, Communications
and Technology Subcommittee



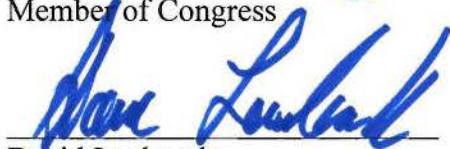
Frank Pallone, Jr.
Chairman, Energy and Commerce
Committee



Jerry McNerney
Member of Congress



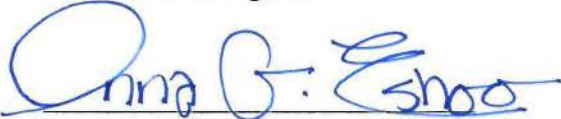
Yvette D. Clarke
Member of Congress



David Loebsack
Member of Congress



Tom O'Halleran
Member of Congress



Anna G. Eshoo
Member of Congress




Peter Welch
Member of Congress



Ben Ray Luján
Member of Congress



Kurt Schrader
Member of Congress



Marc Veasey
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 14, 2019

The Honorable Mike Doyle
U.S. House of Representatives
306 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Doyle:

Thank you for your letter regarding the 2019 Broadband Deployment Report. I agree that high-speed Internet access is critical in today's digital economy. Indeed, I have made closing the digital divide my top priority. Maintaining updated and accurate data about broadband deployment is critical to bridging the digital divide. It lets us target our efforts to those areas that most need it and allows us to measure our progress in bringing digital opportunity to all Americans.

That is why one of my first decisions as Chairman was to start a comprehensive rethink of the FCC Form 477 data collection process. Through this proceeding, we aim to make sure our FCC Form 477 data is as accurate as possible. We've teed up ideas for collecting more granular and standardized data, including using crowdsourcing as a way of getting information about the consumer experience. Staff is actively reviewing how to revise this data collection process.

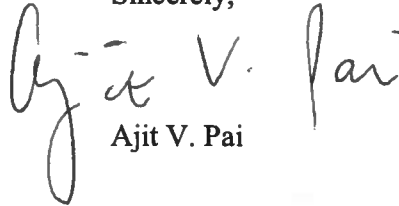
Meanwhile, we continue to regularly update our maps with newly submitted Form 477 data. Given the importance of this data, we are always concerned about getting this information right. When we circulated the draft 2019 Broadband Deployment Report, no one in my office was aware of the erroneous information contained in Barrier Free's submission. But when staff learned about the inclusion of inaccurate information, staff conducted a thorough review of this initial draft and made appropriate revisions to the report before recirculating a revised report to commissioners earlier this month.

As service providers submit their FCC Form 477 twice a year, and may revise their data at any time, staff review of the Form 477 data is an ongoing process. Filers are required to revise data whenever they discover a significant error. If they fail to do so, the Commission can initiate an enforcement action. Moreover, the Commission's Form 477 team checks reported subscribership and deployment data for unusual trends and other anomalies. Filers are contacted and asked to explain apparent anomalies. The code our staff uses currently identifies over 50 unique anomalies and is constantly evolving and improving. Most recently, staff added code to identify and flag data similar to that submitted by Barrier Free.

Page 2—The Honorable Mike Doyle

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 14, 2019

The Honorable A.Donald McEachin
U.S. House of Representatives
314 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman McEachin:

Thank you for your letter regarding the 2019 Broadband Deployment Report. I agree that high-speed Internet access is critical in today's digital economy. Indeed, I have made closing the digital divide my top priority. Maintaining updated and accurate data about broadband deployment is critical to bridging the digital divide. It lets us target our efforts to those areas that most need it and allows us to measure our progress in bringing digital opportunity to all Americans.

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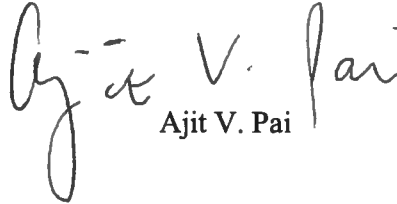
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Page 2—The Honorable A.Donald McEachin

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Sincerely,

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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 14, 2019

The Honorable Anna G. Eshoo
U.S. House of Representatives
202 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Eshoo:

Thank you for your letter regarding the 2019 Broadband Deployment Report. I agree that high-speed Internet access is critical in today's digital economy. Indeed, I have made closing the digital divide my top priority. Maintaining updated and accurate data about broadband deployment is critical to bridging the digital divide. It lets us target our efforts to those areas that most need it and allows us to measure our progress in bringing digital opportunity to all Americans.

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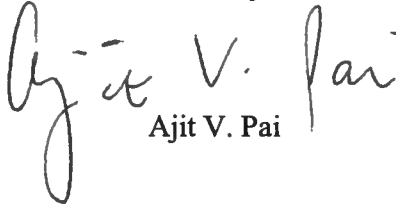
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Page 2—The Honorable Anna G. Eshoo

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 14, 2019

The Honorable Ben Ray Luján
U.S. House of Representatives
2231 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Luján:

Thank you for your letter regarding the 2019 Broadband Deployment Report. I agree that high-speed Internet access is critical in today's digital economy. Indeed, I have made closing the digital divide my top priority. Maintaining updated and accurate data about broadband deployment is critical to bridging the digital divide. It lets us target our efforts to those areas that most need it and allows us to measure our progress in bringing digital opportunity to all Americans.

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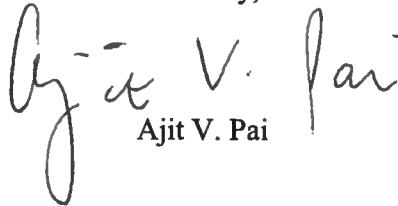
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Ajit V. Pai



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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 14, 2019

The Honorable Frank Pallone
U.S. House of Representatives
237 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Pallone:

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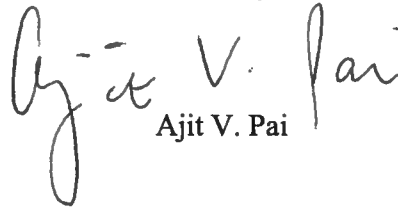
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Ajit V. Pai



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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 14, 2019

The Honorable Jerry McNerney
U.S. House of Representatives
2265 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman McNerney:

Thank you for your letter regarding the 2019 Broadband Deployment Report. I agree that high-speed Internet access is critical in today's digital economy. Indeed, I have made closing the digital divide my top priority. Maintaining updated and accurate data about broadband deployment is critical to bridging the digital divide. It lets us target our efforts to those areas that most need it and allows us to measure our progress in bringing digital opportunity to all Americans.

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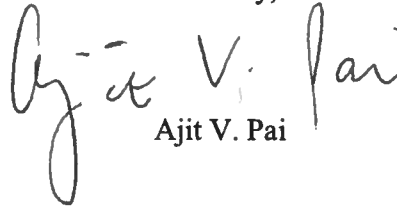
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Ajit V. Pai



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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 14, 2019

The Honorable Kurt Schrader
U.S. House of Representatives
2431 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Schrader:

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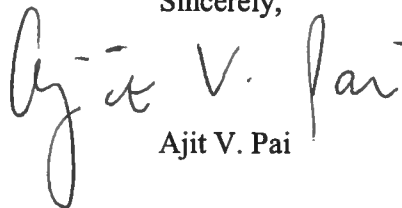
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Page 2—The Honorable Kurt Schrader

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Ajit V. Pai



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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 14, 2019

The Honorable Marc Veasey
U.S. House of Representatives
1519 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Veasey:

Thank you for your letter regarding the 2019 Broadband Deployment Report. I agree that high-speed Internet access is critical in today's digital economy. Indeed, I have made closing the digital divide my top priority. Maintaining updated and accurate data about broadband deployment is critical to bridging the digital divide. It lets us target our efforts to those areas that most need it and allows us to measure our progress in bringing digital opportunity to all Americans.

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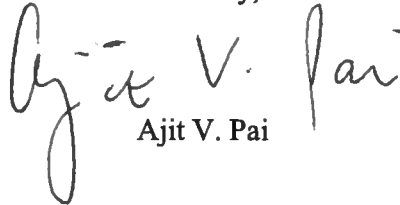
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Page 2—The Honorable Marc Veasey

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Ajit V. Pai



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May 14, 2019

The Honorable Peter Welch
U.S. House of Representatives
2303 Rayburn House Office Building
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Dear Congressman Welch:

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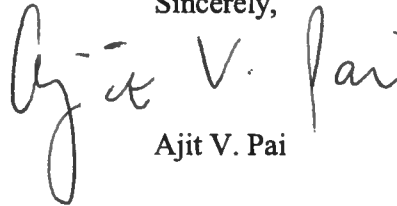
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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 14, 2019

The Honorable Tom O'Halleran
U.S. House of Representatives
126 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman O'Halleran:

Thank you for your letter regarding the 2019 Broadband Deployment Report. I agree that high-speed Internet access is critical in today's digital economy. Indeed, I have made closing the digital divide my top priority. Maintaining updated and accurate data about broadband deployment is critical to bridging the digital divide. It lets us target our efforts to those areas that most need it and allows us to measure our progress in bringing digital opportunity to all Americans.

That is why one of my first decisions as Chairman was to start a comprehensive rethink of the FCC Form 477 data collection process. Through this proceeding, we aim to make sure our FCC Form 477 data is as accurate as possible. We've teed up ideas for collecting more granular and standardized data, including using crowdsourcing as a way of getting information about the consumer experience. Staff is actively reviewing how to revise this data collection process.

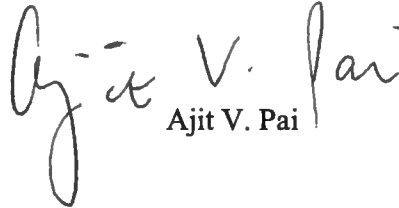
Meanwhile, we continue to regularly update our maps with newly submitted Form 477 data. Given the importance of this data, we are always concerned about getting this information right. When we circulated the draft 2019 Broadband Deployment Report, no one in my office was aware of the erroneous information contained in Barrier Free's submission. But when staff learned about the inclusion of inaccurate information, staff conducted a thorough review of this initial draft and made appropriate revisions to the report before recirculating a revised report to commissioners earlier this month.

As service providers submit their FCC Form 477 twice a year, and may revise their data at any time, staff review of the Form 477 data is an ongoing process. Filers are required to revise data whenever they discover a significant error. If they fail to do so, the Commission can initiate an enforcement action. Moreover, the Commission's Form 477 team checks reported subscribership and deployment data for unusual trends and other anomalies. Filers are contacted and asked to explain apparent anomalies. The code our staff uses currently identifies over 50 unique anomalies and is constantly evolving and improving. Most recently, staff added code to identify and flag data similar to that submitted by Barrier Free.

Page 2—The Honorable Tom O'Halleran

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

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Ajit V. Pai



OFFICE OF
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 14, 2019

The Honorable Yvette D. Clarke
U.S. House of Representatives
2058 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Clarke:

Thank you for your letter regarding the 2019 Broadband Deployment Report. I agree that high-speed Internet access is critical in today's digital economy. Indeed, I have made closing the digital divide my top priority. Maintaining updated and accurate data about broadband deployment is critical to bridging the digital divide. It lets us target our efforts to those areas that most need it and allows us to measure our progress in bringing digital opportunity to all Americans.

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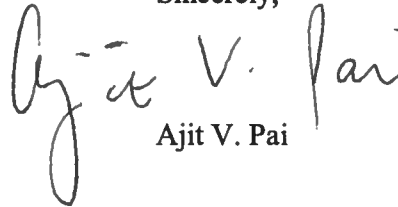
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 14, 2019

The Honorable Dave Loebsack
U.S. House of Representatives
1211 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Loebsack:

Thank you for your letter regarding the 2019 Broadband Deployment Report. I agree that high-speed Internet access is critical in today's digital economy. Indeed, I have made closing the digital divide my top priority. Maintaining updated and accurate data about broadband deployment is critical to bridging the digital divide. It lets us target our efforts to those areas that most need it and allows us to measure our progress in bringing digital opportunity to all Americans.

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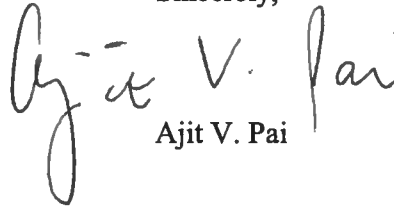
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Ajit V. Pai