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19-4

January 2, 2019

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

Dear Chairman Pai:

I write to urge you to maintain essential funding for local public, educational, or governmental (PEG) television channels by preserving the terms of agreements between cable operators and local franchising authorities (LFA).

In Massachusetts, access to local government is a cornerstone of society. What began with the Town Meetings convened by the Pilgrims has evolved into active community engagement across the Commonwealth. Today, many households rely on broadcasts produced by PEG channels as their primary tool for monitoring their local government's proceedings in real time.

As you know, the Federal Communications Commission has historically asked cable operators to collaborate with LFAs by contributing approximately five percent of their local cable fees to help support PEG channels in the LFA's broadcast area. These fees account for large percentages of PEG broadcasters' annual budgets—budgets that are directly used to perform the public service of airing vitally important local government broadcasts.

Regrettably, I fear your agency's proposal to alter the terms of cable operators' PEG contributions will do irreparable harm to the viability of local cable broadcasting. By assigning monetary value to government-owned airwaves and permitting cable operators to use that value to account for their local contribution, local broadcasters will be stripped of critical financial resources and left scrambling to meet the public access needs of their communities. In the end, PEG broadcasters could ultimately go dark, depriving households throughout the country of the opportunity to participate in local government.

As a fellow public servant, I believe you understand the duties of accessibility and transparency we owe to our constituents. To that end, I urge you to rescind your proposal, preserve access to local government, and ultimately help more Americans work to better their communities. If I can be of any assistance in this effort, please contact Michael Wertheimer in my office at (202) 225-3111 or Michael.Wertheimer@mail.house.gov. Thank you for your consideration, and I look forward to your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. R. Keating", is written over the printed name and title.

WILLIAM R. KEATING
Member of Congress



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

January 3, 2019

The Honorable William Keating
U.S. House of Representatives
2351 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Keating:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. As you know, the Communications Act limits franchise fees to 5% of cable revenues and defines "franchise fee" to include "any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such." 47 U.S.C. § 542(g)(1). The U.S. Court of Appeals for the Sixth Circuit has held that the terms "tax" and "assessment" can include nonmonetary exactions. *Montgomery County, Md. et al. v. FCC*, 863 F.3d 485, 490-91 (6th Cir. 2017).

In response to a remand from the Sixth Circuit, the Commission unanimously issued its Second Further Notice of Proposed Rulemaking to consider the scope of the congressionally-mandated statutory limit on franchise fees. Among other things, the Commission observed that Congress broadly defined franchise fees; indeed, with respect to PEG channels, it only excluded support payments with respect to franchises granted prior to October 30, 1984 as well as capital costs required by franchises granted after that date. 47 U.S.C. § 542(g)(2)(B) & (C). The record of this proceeding remains open, and I encourage all interested parties and stakeholders—including local franchising authorities—to provide us with relevant evidence regarding these issues so that the Commission can make the appropriate judgment about the path forward, consistent with federal law. Your views will be entered into the record of the proceeding and considered as part of the Commission's review.

Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ajit V. Pai", is written over the printed name.

Ajit V. Pai