

March 28, 2019

196

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

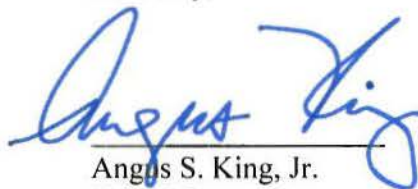
Dear Chairman Pai:

I write regarding the Second Further Notice of Proposed Rulemaking (FNPRM) in MB Docket No. 05-311, which proposes to include within the statutory five percent cap on franchise fees cable-related, in-kind services provided by cable companies under the terms of a franchising agreement. As you know, the FNPRM's definition of these services would include support provided to public, educational, and government (PEG) stations. We urge the Commission's careful consideration of how the FNPRM, if adopted, could adversely impact PEG stations and force local franchising authorities (LFAs) to make difficult decisions about whether to discontinue this important content.

As the Commission reviews the record in this proceeding, I encourage you and your colleagues to take steps to mitigate the impact of the FNPRM on PEG stations and their viewers. Given that Congress created a framework in the Communications Act for LFAs to require cable companies to provide services to PEG stations, it seems illogical that Congress would have simultaneously intended to disincentivize LFAs from availing themselves of that right by compelling them to offset the value of PEG-related in-kind services against their franchise fees. With this in mind, the FCC should amend any final rule to exclude PEG channel capacity and equipment from the definition of "cable-related, in-kind contributions."

Should the Commission nonetheless include this support within the fee cap, the FCC must recognize the potential conflict of interest inherent in allowing cable companies to unilaterally determine the cost of providing such support. Any cost determinations should be capped at evidence-based levels. Thank you for your consideration of these requests. Please be in touch with any questions about this letter.

Sincerely,



Angus S. King, Jr.
United States Senator

CC: The Honorable Michael O'Rielly, Commissioner
The Honorable Brendan Carr, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
The Honorable Geoffrey Starks, Commissioner



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 29, 2019

The Honorable Angus King
United States Senate
133 Hart Senate Office Building
Washington, D.C. 20510

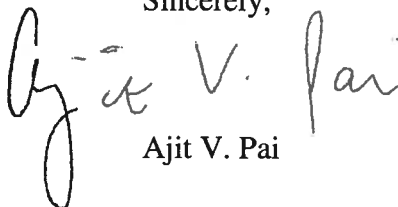
Dear Senator King:

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,



Ajit V. Pai