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Congress of the United States
House of Representatives
Washington, DC 20515-0514

May 8, 2019

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The Honorable Ajit Pai
Chairman
Federal Communications Commission
455 12th Street NW
Washington, DC 20544

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Dear Chairman Pai:

I write regarding the Federal Communications Commission's Second Further Notice of Proposed Rulemaking in the matter of "Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992" (MB Docket No. 05-311; FCC 18-131), and in particular the proposed interpretation of "franchise fee" to include cable-related "in-kind contributions" in the definition.

I am concerned that this proposal could harm my constituents by reducing their access to public, educational, and governmental (PEG) programming, and I request that the FCC not change its interpretation of "franchise fee" in a way that would negatively impact the five-percent franchise fees upon which PEG stations have relied since passage of the Cable Communications Policy Act of 1984 (Cable Act).

Under the system established by the Cable Act, PEG stations gained critical funding support from franchise fees that cable companies paid for the use of public property and public rights of way. Such franchise fees are capped at five percent of gross cable revenues, setting a reliable benchmark PEG stations use to plan and support their operations. The Commission's proposed rule would potentially alter, at cable operators' discretion, the terms of the governing agreements between Local Franchising Authorities and cable operators. In particular, the proposed rule would allow the cable companies to charge non-cash items, such as promotional advertisements or classroom cable service, to be charged against the five-percent franchise fee cap. This would pull the rug out from underneath PEG stations, as it threatens to drastically reduce the franchise fee payments they use to operate.

This goes against the congressional intent of the Cable Act, which explicitly sets forth a purpose to "establish franchise procedures and standards ... which assure that cable systems are responsive to the needs and interests of the local community" and to "assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public." 47 U.S.C. § 521.

Public access programming gives voice to nonprofits, artists, and other community members who may otherwise struggle to be heard. Schools and citizens depend on educational access

government. An informed electorate is a critical ingredient in ensuring that our democracy, especially at the level of government, remains a healthy one.

In California's Fourteenth Congressional District, which I represent, Millbrae Community Television (MCT) and Pacific Coast TV (a.k.a. Pacifica Community Television Inc.) (PCT) provide cherished PEG programming to local communities. MCT is a nonprofit that manages a PEG station for Millbrae and provides training in video and media communications, helping local organizations create content of special concern to them. One of MCT's strongest aspects is its commitment to encouraging civic engagement to people of all ages. PCT, a successor of an Emmy Award-winning local station, is a nonprofit that gives voice to residents in coastal San Mateo County by providing technology training in TV, radio, and internet and facilitating creation of shows and podcasts by local artists and community members. I stand with MCT and PCT in opposing the proposed change to the "in-kind" rule, which will harm my constituents and all Americans.

While the Commission considers the proposed rule, I encourage you to avoid any final decision that could threaten the sustainability of PEG stations or their ability to provide meaningful and important content to local communities.

Sincerely,



Jackie Speier
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 8, 2019

The Honorable Jackie Speier
U.S. House of Representatives
2465 Rayburn House Office Building
Washington, D.C. 20515

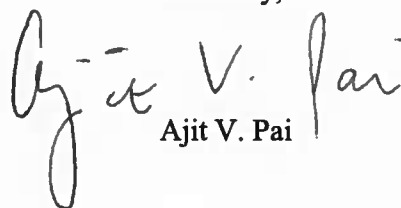
Dear Congresswoman Speier:

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