

WASHINGTON OFFICE
2058 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-6231

DISTRICT OFFICE
222 LENOX ROAD SUITE 1 & 2
BROOKLYN, NY 11226
(718) 287-1142

WEBSITE
WWW.CLARKE.HOUSE.GOV



Yvette D. Clarke
Congress of the United States
9th District of New York

COMMITTEE ON ENERGY AND COMMERCE
VICE CHAIR

SUBCOMMITTEE ON
COMMUNICATION AND TECHNOLOGY

SUBCOMMITTEE ON
ENVIRONMENT AND CLIMATE CHANGE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATION

COMMITTEE ON HOMELAND SECURITY

SUBCOMMITTEE ON
BORDER SECURITY, FACILITATION, AND OPERATIONS

SUBCOMMITTEE ON
EMERGENCY PREPAREDNESS, RESPONSE AND RECOVERY

May 9, 2019

291

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

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 re-interpretation of "franchise fee" to include cable related "in-kind contributions" in the definition.

The proposed rules would effectively rewrite the Cable Act.

I request the FCC not attempt to alter the original meaning of franchise fees. To do so would reduce the value of the publicly-owned rights-of-way upon which telecommunications companies earn tremendous profits. PEG stations and cities of all sizes have relied upon the stability of franchise agreements under the current system in the decades since the passage of the Cable Communications Policy Act of 1984 (Cable Act). I am very concerned that this proposal would harm my constituents by reducing their access to Public, Educational and Government (PEG) programming—the communications resources our communities need to function effectively.

Under the system established by the Cable Act, PEG stations gained critical resources for the community in exchange for cable company use of public property and the public rights-of-way. These franchise agreements set a reliable benchmark which PEG stations use to plan and support their public services—as well as a predictable cost structure for cable companies. The Commission's proposed rule would potentially alter, at the cable operators' sole discretion, the terms of existing governing agreements between Local Franchising Authorities and cable operators. In particular, the proposed rule would allow cable companies to charge non-cash items such as promotional advertisements, cable service to classrooms, senior and low-income discounts, transmission services from video origination points, and even schedule information on electronic program guides against the 5% franchise fee cap. This would pull the rug out from underneath PEG stations as it dramatically threatens the system established by the Cable Act.

The proposed change would inadvertently create a chaotic, antagonistic situation for both the cities and the market as existing and potential relationships are thrown into uncertainty.

Further, the proposed change goes against the Congressional intent of the Cable Act which explicitly sets forth a purpose to “*establish franchise procedures and standards... which is to insure 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 services and resources and services to the public.*” (47 U.S.C. § 521)

Our community loves and appreciates its Public Access programming. BRICs Brooklyn Free Speech enhances the public service capability of nonprofits, gives a voice and resources to a vibrant arts community, and unifies one of the most culturally diverse communities in the United States. Public Access provides a respected forum for good people who may otherwise struggle to be heard above the din. BRIC also provides media and arts education in more than 40 public schools—in some cases it is the only arts exposure our young students experience. New York is tremendously complex city of 11 million citizens. Our government access is a critical ingredient in ensuring that an informed citizenry is able to participate in a healthy democracy.

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. I encourage you to continue with franchising as laid out in the Cable Act and backed by decades of shared practice and understanding.

Sincerely,



Representative Yvette D. Clarke

Member of Congress

Member, Subcommittee on Technology and Communications

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

May 20, 2019

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

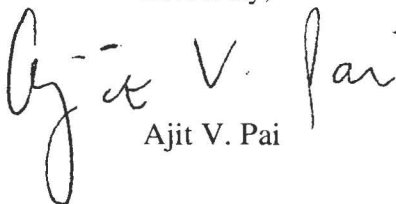
Dear Congresswoman Clarke:

Thank you for your letter regarding the 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