

United States Senate

WASHINGTON, DC 20510

498

July 22, 2019

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, Southwest
Washington, D.C. 20554

Dear Chairman Pai,

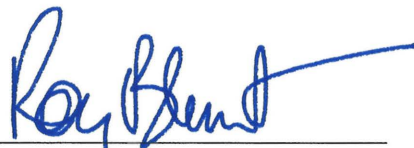
We write to you regarding the draft item on cable Franchise Authority that is currently being considered by the Federal Communications Commission (FCC). We support the FCC clarifying the treatment of “in-kind” contributions as franchise fees subject to the statutory cap. We also support clarifying the FCC’s mixed-use ruling as it applies to the provision of non-cable services. Non-compliance with the existing statute and rules impedes carriers’ ability to invest in broadband services, particularly in rural areas, and extend broadband services to unserved constituents.


The Cable Act allows states or municipal authorities to charge cable operators franchise fees for access to municipal rights of way. By capping these fees at 5 percent of cable service revenues, the law attempts to strike a careful balance between responsibly compensating municipalities for the use of public rights-of-way, while preventing excessive fees that drive up consumer bills and diminish private investment in broadband infrastructure. Franchise fees currently generate about \$3 billion a year in local revenues.

In some communities, state and local franchise authorities are attempting to find ways to charge more than the authorized 5 percent, either by impermissibly taxing broadband services, or by requiring costly “in-kind” contributions which surpass the statutory cap. Congress has long barred state and local broadband taxes.

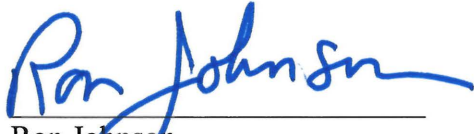
Clarification of these rules in the forthcoming item is needed to avoid diverting funds away from continued expansion and improvement of the nation’s high speed broadband infrastructure – including in rural areas – and to protect consumers from backdoor Internet taxes that raise consumer bills. We look forward to working with the FCC as we try to incentivize continued investment in modern broadband services for our constituents.

Sincerely,



Roy Blunt
United States Senator

John Thune
United States Senator



Ron Johnson
United States Senator



Ted Cruz
United States Senator



Marsha Blackburn
United States Senator



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 30, 2019

The Honorable John Thune
United States Senate
511 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Thune:

Thank you for your letter of support regarding the statutory cap on franchise fees. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting.

As you know, the Communications Act limits franchise fees to five percent 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). In *Montgomery County, Md. et al. v. FCC*, the U.S. Court of Appeals for the Sixth Circuit held that the terms "tax" and "assessment" were broad enough to encompass nonmonetary exactions—such as cable-related, in-kind contributions. 863 F.3d 485, 490-91 (6th Cir. 2017). But the court held that just because the statutory definition of "franchise fee" *could* include such nonmonetary contributions did not necessarily mean that it *did* include them, and it remanded the issue to the Commission for further consideration. *See id.* at 491-92.

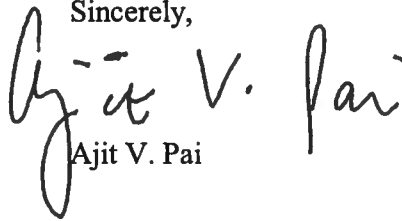
In response to this remand, the Commission unanimously issued its *Second Further Notice of Proposed Rulemaking* to consider the scope of the congressionally-mandated statutory limit on franchise fees. The Commission developed a voluminous record in response to this notice, including numerous submissions from local franchising authorities, providers of public, educational, or governmental (PEG) programming, and cable operators.

The draft order is the product of our careful consideration of this record and is consistent with the Act. 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 certain capital costs required by franchises granted after that date. 47 U.S.C. §§ 542(g)(2)(B) & (C). The draft order therefore concludes that cable-related, in-kind contributions—including PEG-related contributions—are "franchise fees" subject to the Act's five-percent cap unless otherwise expressly excluded.

Page 2—The Honorable John Thune

Again, thank you for your letter. Your views have been entered into the record of the proceeding and have been considered as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

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Ajit V. Pai

Attachment



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 30, 2019

The Honorable Marsha Blackburn
United States Senate
B40B Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Blackburn:

Thank you for your letter of support regarding the statutory cap on franchise fees. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting.

As you know, the Communications Act limits franchise fees to five percent 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). In *Montgomery County, Md. et al. v. FCC*, the U.S. Court of Appeals for the Sixth Circuit held that the terms "tax" and "assessment" were broad enough to encompass nonmonetary exactions—such as cable-related, in-kind contributions. 863 F.3d 485, 490-91 (6th Cir. 2017). But the court held that just because the statutory definition of "franchise fee" *could* include such nonmonetary contributions did not necessarily mean that it *did* include them, and it remanded the issue to the Commission for further consideration. *See id.* at 491-92.

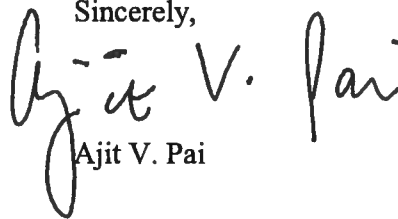
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FEDERAL COMMUNICATIONS COMMISSION
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July 30, 2019

The Honorable Ron Johnson
United States Senate
328 Hart Senate Office Building
Washington, DC 20510

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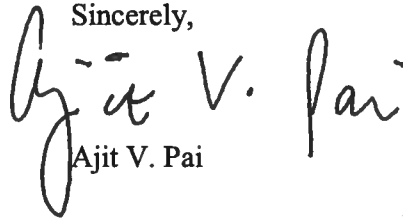
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OFFICE OF
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July 30, 2019

The Honorable Roy Blunt
United States Senate
260 Russell Senate Office Building
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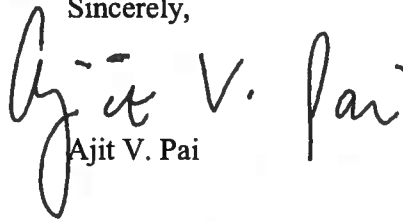
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FEDERAL COMMUNICATIONS COMMISSION
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OFFICE OF
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July 30, 2019

The Honorable Ted Cruz
United States Senate
404 Russell Senate Office Building
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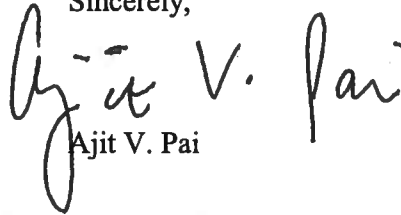
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