

United States Senate

WASHINGTON, DC 20510

July 29, 2019

528

The Honorable Ajit V. Pai
Chairman
455 12th Street, Southwest
Washington, DC, 20544

Dear Chairman Pai:

We write regarding the Federal Communications Commission's (FCC) Third Report and Order on "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) ("Order").

If implemented, the Order puts at risk critical funding for public, educational, or governmental (PEG) stations, which are vital resources for residents across the country. These stations connect Americans to their communities, catalyze civic engagement, and keep us up to date on the local issues and activities that affect our lives. Your proposal would force local governments to decide between supporting PEG stations and supporting other important services for critical community institutions like schools and public safety buildings. We strongly urge the Commission to forego any proposal that would threaten the sustainability of PEG channels. Support for these stations should not be pitted against support for other important community resources.

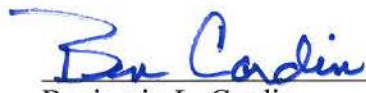
Under federal law, local governments may require cable operators to meet demonstrated community needs. In your latest proposal, however, you allow cable operators to assign a value to in-kind contributions intended for such purposes and subtract that amount from the franchise fees that cable providers owe to the communities where they serve. Local governments should not have to choose between requiring financial support for PEG channel operations or free cable service to schools, libraries and government, or requiring discounts for veterans, seniors and financially challenged families. Your proposed Order creates a no-win situation for Local Franchise Authorities (LFAs) and the residents they serve. To that end, we encourage you to explicitly exclude support for PEG channels—including the provision of channel capacity—from the five percent statutory franchise fee cap governing these contracts.

PEG channels are part of the fabric of our communities. They educate voters, entertain children, and employ workers. Imperiling critical funding for PEG channels across the country would be inconsistent with the intent of Congress and the mission of the Cable Act. We strongly urge the Commission to avoid any policy changes that will harm PEG channels and limit needed services to the communities we represent.

Sincerely,


Edward J. Markey
United States Senator


Richard Blumenthal
United States Senator

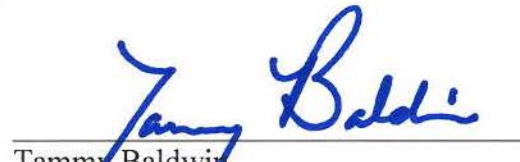

Benjamin L. Cardin
United States Senator



Margaret Wood Hassan
United States Senator

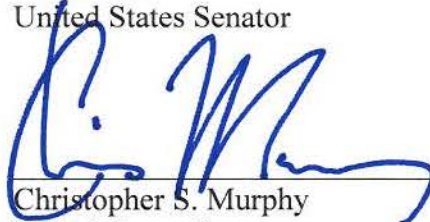

Chris Van Hollen
United States Senator



Mazie K. Hirono
United States Senator



Bernard Sanders
United States Senator


Tammy Baldwin
United States Senator

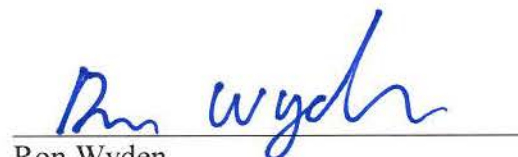

Tina Smith
United States Senator


Christopher S. Murphy
United States Senator


Patrick Leahy
United States Senator


Elizabeth Warren
United States Senator


Jeanne Shaheen
United States Senator


Ron Wyden
United States Senator



Amy Klobuchar
United States Senator

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



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Amy Klobuchar
United States Senate
425 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Klobuchar:

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. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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 PEG programming, and cable operators.

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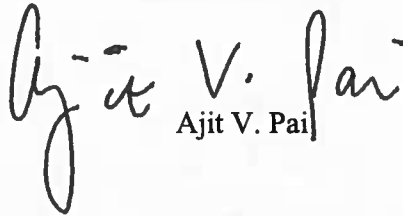
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Page 2—The Honorable Amy Klobuchar

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Ajit V. Pai

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Benjamin L. Cardin
United States Senate
509 Hart Senate Office Building
Washington, DC 20510

Dear Senator Cardin:

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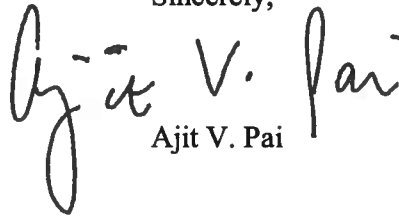
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Sincerely,

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Ajit V. Pai

Attachment



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Bernard Sanders
United States Senate
332 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Sanders:

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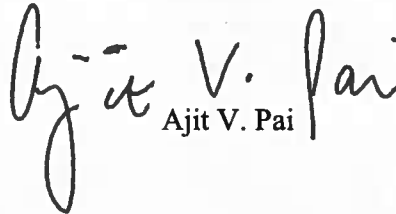
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Page 2—The Honorable Bernard Sanders

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Ajit V. Pai

Attachment



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Chris Van Hollen
United States Senate
110 Hart Senate Office Building
Washington, DC 20510

Dear Senator Van Hollen:

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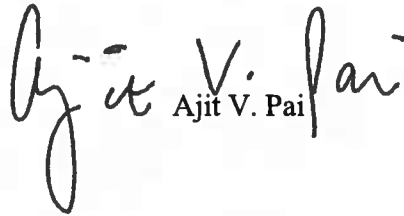
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FEDERAL COMMUNICATIONS COMMISSION
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OFFICE OF
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July 31, 2019

The Honorable Christopher S. Murphy
United States Senate
136 Hart Senate Office Building
Washington, DC 20510

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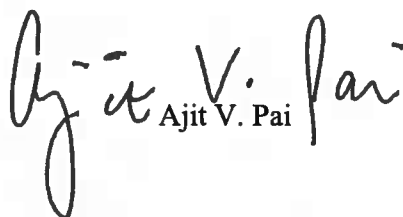
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Elizabeth Warren
United States Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren:

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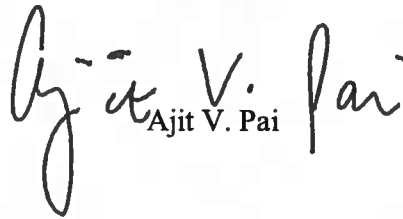
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Jeanne Shaheen
United States Senate
506 Hart Senate Office Building
Washington, DC 20510

Dear Senator Shaheen:

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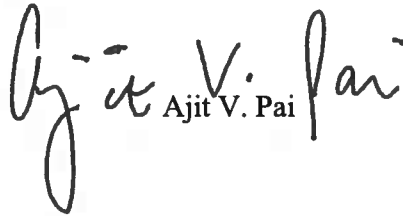
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OFFICE OF
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July 31, 2019

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United States Senate
330 Hart Senate Office Building
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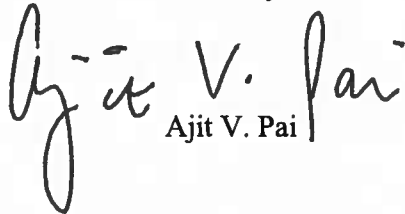
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Mazie Hirono
United States Senate
730 Hart Senate Office Building
Washington, DC 20510

Dear Senator Hirono:

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. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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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The draft order is the product of our careful consideration of this record. The result, we believe, is both consistent with the Act and responsive to your concerns regarding PEG programming. 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.

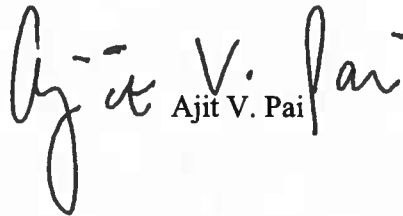
At the same time, the order defers ruling on the complex issues raised by PEG channel capacity and concludes that the costs of providing PEG channel capacity should not be offset against the franchise fee cap until the Commission can address the issue on a more complete record.

Page 2—The Honorable Mazie K. Hirono

The draft order also broadens the Commission's interpretation of an exclusion for certain PEG-related capital costs. These latter two conclusions directly address the concerns raised in your letter concerning the order's potential impact on PEG programming.

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,

Ajit V. Pai

Attachment



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Patrick J. Leahy
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

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. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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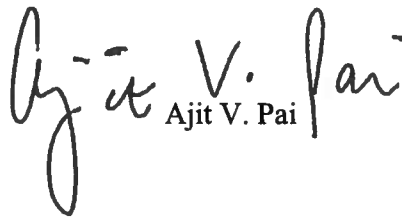
At the same time, the order defers ruling on the complex issues raised by PEG channel capacity and concludes that the costs of providing PEG channel capacity should not be offset against the franchise fee cap until the Commission can address the issue on a more complete record.

Page 2—The Honorable Patrick J. Leahy

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Ajit V. Pai

Attachment



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, DC 20510

Dear Senator Blumenthal:

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. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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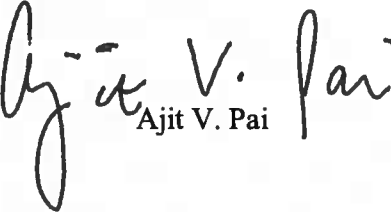
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Page 2—The Honorable Richard Blumenthal

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Ajit V. Pai

Attachment



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Wyden:

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. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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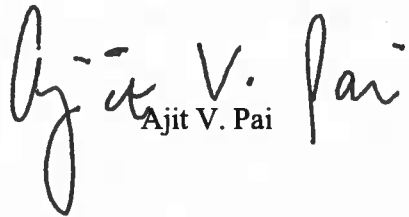
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Page 2—The Honorable Ron Wyden

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Attachment



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Tammy Baldwin
United States Senate
709 Hart Senate Office Building
Washington, DC 20510

Dear Senator Baldwin:

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. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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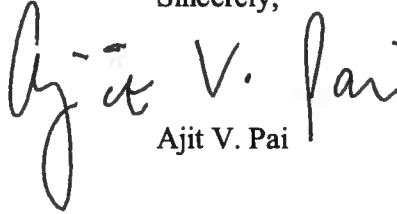
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Sincerely,

A handwritten signature in black ink that reads "Ajit V. Pai". The signature is written in a cursive, flowing style. The first name "Ajit" is written with a large, looped 'A' and a small 'j'. The middle initial "V." is written with a simple 'V' followed by a period. The last name "Pai" is written with a large, looped 'P' and a small 'i'.

Ajit V. Pai

Attachment



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 31, 2019

The Honorable Tina Smith
United States Senate
720 Hart Senate Office Building
Washington, DC 20510

Dear Senator Smith:

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. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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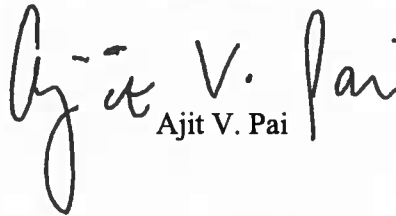
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Page 2—The Honorable Tina Smith

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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



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 31, 2019

The Honorable Edward J. Markey
United States Senate
255 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Markey:

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. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

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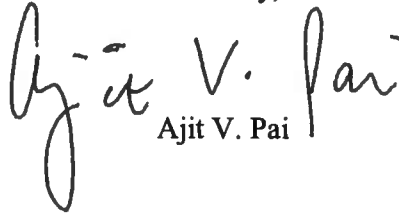
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Page 2—The Honorable Edward J. Markey

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