

Congress of the United States
Washington, DC 20515

July 22, 2019

500

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

Dear Chairman Pai:

We write in support of your proposal to reaffirm the federal framework for cable franchises, consistent with the Cable Act and bipartisan Federal Communications Commission (FCC) precedent.

The Cable Act carefully balanced the need to compensate communities for use of public rights-of-way with imperatives to expand services and limit costs for consumers. Communities may charge cable operators franchise fees of up to 5 percent of cable service gross revenues – roughly \$3 billion per year – ensuring that communities are compensated for costs they incur. At the same time, the 5 percent cap on fees, whether those fees are requested in cash or “in kind” contributions, safeguards against excessive costs that reduce funding available for deployment of new services, including broadband, and make service more expensive for consumers.

We are concerned that the 5 percent cap, including through “in kind” contributions, is not being appropriately upheld as intended under the statute. These “in kind” contributions, such as free service, programming, or advertising, can be valuable to communities. That is why we are pleased that under your proposal, local officials would continue to have discretion to choose which contributions best meet the needs of their communities, while keeping the total cost within the cap to avoid upending the careful balance achieved in the Cable Act.

We also recognize that franchise fees and other fees, such as those imposed on broadband services, must remain under the 5 percent cap. Your proposal correctly eliminates extra costs in circumstances where broadband service provided over the same franchised cable system does not add burden on the rights-of-way. These additional fees are contrary to the federal framework, as well as bipartisan Congressional intent to keep the internet free from taxation that drives up consumers’ bills and discourages broadband adoption. They also deter investment in broadband infrastructure needed to close the digital divide, particularly in rural areas that are already more costly to serve.

Therefore, as the FCC brings its rulemaking to conclusion, we encourage the FCC to act on both fronts: reaffirming that “in kind” contributions must be included in the 5 percent cap; and reinforcing that communities cannot charge extra fees for using rights-of-way to provide broadband and other non-cable services.

Thank you for your attention to this matter.

Sincerely,



Robert E. Latta
Member of Congress



Billy Long
Member of Congress



John Shimkus
Member of Congress



Pete Olson
Member of Congress



Gus Bilirakis
Member of Congress



Bill Flores
Member of Congress



Steve Scalise
Member of Congress



Adam Kinzinger
Member of Congress



Bill Johnson
Member of Congress



Tim Walberg
Member of Congress

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



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 30, 2019

The Honorable Adam Kinzinger
U.S. House of Representatives
2245 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Kinzinger:

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.

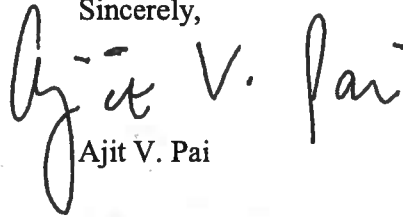
In response to this remand, the Commission unanimously issued its *Second Further Notice of Proposed Rulemaking* to consider the scope of the congressionally-mandated statutory limit on franchise fees. The Commission developed a voluminous record in response to this notice, including numerous submissions 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.

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Ajit V. Pai

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July 30, 2019

The Honorable Bill Flores
U.S. House of Representatives
2440 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Flores:

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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.

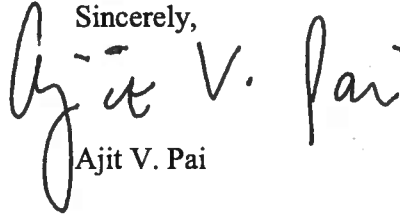
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July 30, 2019

The Honorable Bill Johnson
U.S. House of Representatives
1710 Longworth House Office Building
Washington, DC 20515

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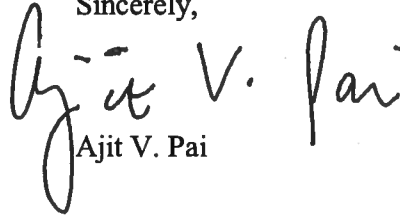
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July 30, 2019

The Honorable Billy Long
U.S. House of Representatives
2454 Rayburn House Office Building
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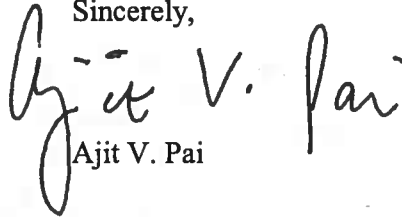
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FEDERAL COMMUNICATIONS COMMISSION
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July 30, 2019

The Honorable Bob Latta
U.S. House of Representatives
2448 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Latta:

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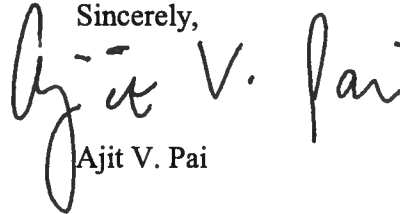
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The Honorable Gus Bilirakis
U.S. House of Representatives
2112 Rayburn House Office Building
Washington, DC 20515

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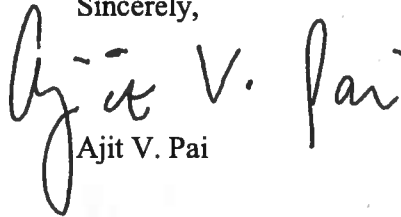
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2217 Rayburn House Office Building
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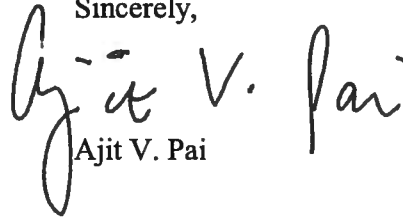
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Ajit V. Pai

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July 30, 2019

The Honorable Pete Olson
U.S. House of Representatives
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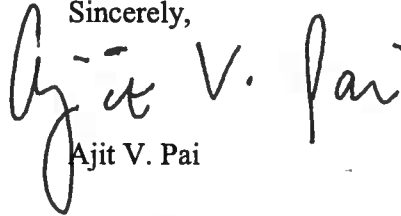
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The Honorable Steve Scalise
U.S. House of Representatives
2049 Rayburn House Office Building
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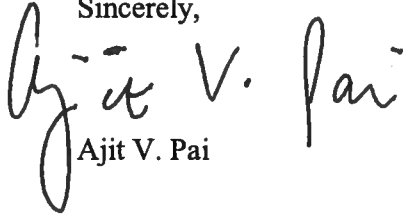
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July 30, 2019

The Honorable Tim Walberg
U.S. House of Representatives
2266 Rayburn House Office Building
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Dear Congressman Walberg:

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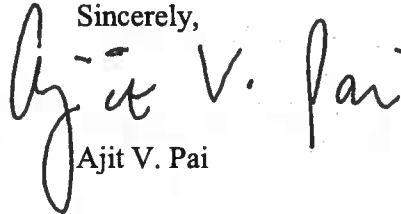
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The draft order is the product of our careful consideration of this record and is consistent with the Act. Among other things, the Commission observed that Congress broadly defined franchise fees; indeed, with respect to PEG channels, it only excluded 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 Tim Walberg

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,

A handwritten signature in cursive script that reads "Ajit V. Pai". The signature is written in dark ink and is positioned above the printed name.

Ajit V. Pai

Attachment