

**JIM COSTA**

16TH DISTRICT, CALIFORNIA  
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July 2, 2019

415

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

Re: MB Docket No. 05-311

Dear Chairman Pai:

I write regarding the FCC's September 25<sup>th</sup> Further Notice of Proposed Rulemaking in *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 05-311.

PEG channels play a critical role in local communities in my district, California's 16<sup>th</sup> District, and throughout the San Joaquin Valley. For example, since 2012 these channels have helped enhance public engagement in the Cities of Fresno and Clovis, California by contributing over 2,500 hours of skill development and over 5,200 hours of hyper-local programming to residents. PEG programs are an essential local service, providing more than platforms to enhance publicity for community events or avenues for local organizations to communicate to the communities they serve.

The intent of the PEG provisions in the 1984 Cable Act was to enhance learning opportunities for our local communities. Therefore, it is essential to consider the impact of potential changes on PEG stations' financial viability, and ultimately, the resources available to rural communities such as those within my district and the San Joaquin Valley. As the Commission continues to consider this docket, I strongly encourage to consider the critical role PEG stations play for the next generation.

Thank you for your consideration and attention to this important issue.

Sincerely,

JIM COSTA  
Member of Congress

Cc: The Honorable Michael O'Rielly, Commissioner  
The Honorable Brendan Carr, Commissioner  
The Honorable Jessica Rosenworcel, Commissioner  
The Honorable Geoffrey Starks, Commissioner

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

July 30, 2019

The Honorable Jim Costa  
U.S. House of Representatives  
2081 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Costa:

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.

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.

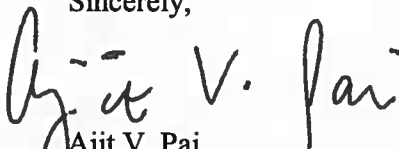
At the same time, the order defers ruling on the complex issues raised by PEG channel capacity and concludes that the costs of providing PEG channel capacity should not be offset against the franchise fee cap until the Commission can address the issue on a more complete record.

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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