

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

**ZOE LOFGREN**  
19TH DISTRICT, CALIFORNIA

July, 26 2019

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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"<sup>1</sup> and, in particular, the proposed re-interpretation of "franchise fee" to include cable related "in-kind contributions" in the definition.

I'm concerned that this proposal could harm my constituents by reducing their access to public, educational, and governmental (PEG) programming, so I request the FCC not attempt to redefine franchise fees beyond Congress's original intent.

Congress clearly intended to empower communities to create PEG programming when it passed the Cable Communications Policy Act of 1984 (Cable Act) to "establish franchise procedures and standards ... 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."<sup>2</sup> Furthermore the Act explicitly provides franchising authorities the power to require cable operators to designate channel capacity for PEG programming.<sup>3</sup>

The FCC's proposal would allow cable companies to deduct the fair market value of in-kind contributions, such as channels set aside for PEG from franchise fee obligations of cable companies. Given that many city, county, and state governments face budget constraints, this

<sup>1</sup> MB docket No. 05-311; FCC 18-131

<sup>2</sup> 47 U.S.C. § 521

<sup>3</sup> 47 U.S.C. § 531

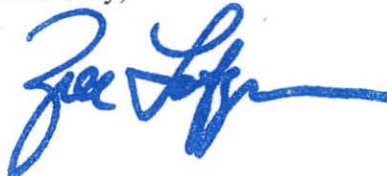
policy would force them to pick between continuing to receive franchise fee revenues and preserving access to PEG programming.

Public access programming gives voice to nonprofits, artists, and other community members who may otherwise struggle to be heard. Governmental access programming informs the electorate about their local government. An informed electorate is a critical ingredient in ensuring that our democracy, especially at the level of local government, remains a healthy one.

In my Congressional District, CreaTV San Jose manages two educational and two public access channels in San Jose and Silicon Valley, through which it provides educational and production services at little to no cost. CreaTV joined many of my constituents—including the City Attorney of the City of San Jose—in submitting comments opposing the FCC's proposal.

I stand with them in opposing this proceeding which I believe will harm my constituents and all Americans.

Sincerely,

A handwritten signature in blue ink, appearing to read "Zoe Lofgren", with a long horizontal flourish extending to the right.

Zoe Lofgren  
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

July 30, 2019

The Honorable Zoe Lofgren  
U.S. House of Representatives  
1401 Longworth House Office Building  
Washington, DC 20515

Dear Congresswoman Lofgren:

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.

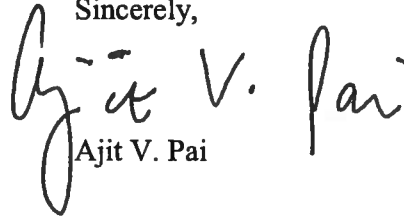
At the same time, the order defers ruling on the complex issues raised by PEG channel capacity and concludes that the costs of providing PEG channel capacity should not be offset against the franchise fee cap until the Commission can address the issue on a more complete record. The draft order also broadens the Commission's interpretation of an exclusion for certain PEG-

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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,

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'. 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'.

Ajit V. Pai

Attachment