

EARL BLUMENAUER

THIRD DISTRICT, OREGON

COMMITTEE ON WAYS AND MEANS

COMMITTEE ON BUDGET



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

July 31, 2019

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

Dear Chairman Pai:

I write to express deep concern with the Federal Communications Commission (FCC)'s recent action to proceed with the "Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection Act of 1992" (MB Docket No. 05-311). This proposal has the potential to hurt local communities, robbing them of the resources necessary to keep citizens informed of local government proceedings, school board meetings, and other important community events. I ask that you and your colleagues on the Commission carefully consider these potential impacts and not put valuable public information services at risk by moving forward with this proposal.

Cities and towns across the country enter into carefully negotiated governing agreements with cable operators in their area. In addition to paying rent or "franchise fees" for the use of public property and rights-of-way, cable operators are often required to provide certain in-kind cable-related services to meet important public, educational, or governmental (PEG) needs. Indeed, under the Communications Act, local franchising authorities are allowed to exact such services. Congress understood the important role PEG programming plays and expressly intended for these services to be included in franchise agreements, separate and apart from franchise fees.

The FCC's current proposal would undermine Congress's intent by redefining the statutory limit on franchise fees. Cable operators would be allowed to put a dollar value on PEG channels, along with other "in-kind contributions," and then deduct that amount from their total franchise fee payment. Despite whatever rationale the FCC puts forward for this action, the practical effect would be the elimination of PEG channels. Local municipalities likely will not maintain current PEG capacity to forego franchise fee revenues they use to fund other critical services.

As it stands, your proposal would limit the ability of cities and towns to meet the needs of their communities. I urge the FCC to reject any rule that would undermine the value of PEG channels or harm existing local government authority over franchising agreements.

Thank you for your attention to this issue.

Sincerely,

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

Earl Blumenauer  
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

August 1, 2019

The Honorable Earl Blumenauer  
U.S. House of Representatives  
1111 Longworth House Office Building  
Washington, DC 20515

Dear Congressman Blumenauer:

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.

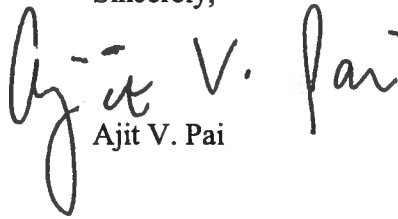
The draft order is the product of our careful consideration of this record. The result, we believe, is both consistent with the Act and responsive to your concerns regarding PEG programming. Among other things, the Commission observed that Congress broadly defined franchise fees; indeed, with respect 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-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 fluid and cursive, with the first name "Ajit" being the most prominent part, followed by "V." and "Pai".

Ajit V. Pai

Attachment