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

HOUSE COMMITTEE ON  
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SUBCOMMITTEE ON BIOTECHNOLOGY,  
HORTICULTURE AND RESEARCH

June 21, 2019

389

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
455 12<sup>th</sup> Street, SW  
Washington, DC 20544

Dear Chairman Pai:

I write to express concern with the Federal Communications Commission (FCC)'s proposed rule "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 1992*" (MB Docket No. 05-311).

This proposed rule would have a negative impact on local communities by allowing cable operators to consider public, educational, government TV channels (PEG channels) an "in-kind" service that can be commercially valued and then charged against the five percent franchise fee they pay to local communities. Cable operators' franchise fees have long supported the availability for PEG channels in communities throughout the nation.

PEG channels are critical to the fabric of our communities. PEG channels educate the public and promote an engaged citizenry by providing local communities with access to government meetings, local sports, and community events. They are particularly crucial for those who cannot attend town meetings in person due to a physical disability or other reasons beyond their control. Additionally, PEG channels employ hundreds of people within the local community whose jobs would be lost. This proposed rule will force local governments to limit, or worst yet, eliminate access to PEG channels altogether.

The proposed rule will not only negatively impact local communities but also contravenes the *Cable Communications Policy Act of 1984* as passed by Congress. The Act asserts that cable companies must pay rent to use a city's public property—this rent includes the five percent franchise fee and PEG channels. Congress did not intend for local governments to choose between supporting PEG channels and other critical institutions, for fear that the value of PEG channels will be used against their franchise

fees. The intent of the Act was not to put critical funding for PEG channel access stations at risk, thus I strongly encourage the commission to reconsider its proposed rule.

Thank you for your attention to this important matter. If you have any questions, please feel free to reach out to me or my Legislative Aide, Amanda Stayton ([Amanda.Stayton@mail.house.gov](mailto:Amanda.Stayton@mail.house.gov)) in my office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'TJ Cox', with a stylized flourish at the end.

TJ Cox  
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

July 30, 2019

The Honorable TJ Cox  
U.S. House of Representatives  
1728 Longworth House Office Building  
Washington, DC 20515

Dear Congressman Cox:

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.

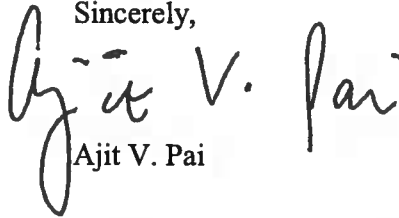
At the same time, the order defers ruling on the complex issues raised by PEG channel capacity and concludes that the costs of providing PEG channel capacity should not be offset

Page 2 – The Honorable TJ Cox

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.

Ajit V. Pai

Attachment