December 14, 2018  
  
The Honorable Ajit Pai, Chairman  
The Honorable Michael O’Rielly, Commissioner  
The Honorable Brendan Carr, Commissioner  
The Honorable Jessica Rosenworcel, Commissioner  
  
Chairman  
Federal Communications Commission  
455 12th Street, Southwest  
Washington, DC, 20544  
  
Dear Chairman Pai,  
  
I write to support the Comments of the Cable Act Preservation Alliance (“CAPA”) and to disapprove of the proposals and tentative conclusions set forth in the FCC’s September 25 Further Notice of Proposed Rule Making 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.

By way of comment, I will attach the text of the editorial I wrote on behalf of my Boston, MA-based weekly newspaper [*DigBoston*](https://digboston.com/), entitled: EDITORIAL: SAVE COMMUNITY MEDIA.

The article text follows this letter.

Sincerely,

Jason Pramas, MFA

Executive Editor and Associate Publisher

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24 Spice St.

Boston, MA 02129

# **EDITORIAL: SAVE COMMUNITY MEDIA**

December 12, 2018 By [JASON PRAMAS](https://digboston.com/author/jason-pramas/)

## **Tell the FCC That You Support Your Local Cable Access Station by Dec 14**

At *DigBoston*, my colleagues and I put a lot of effort into working with local community media stations around Greater Boston. Because they are the heart and soul of grassroots democratic public broadcasting in the United States. And because we get so much out of hanging out with their staff and members that we just love them to pieces.

[Somerville Media Center](https://www.somervillemedia.org/federaassaultonlocalmedia/), Cambridge Community Television, Brookline Interactive Group, Malden Access Television, Boston Neighborhood Network, roughly 300 other stations around Massachusetts, and over 1500 nationwide provide a multitude of useful services to the cities and towns they’re based in. Perhaps better known by the older appellations “cable access stations” or “PEG (public, education, and government) access stations,” they broadcast city government meetings, public school events, and neighborhood happenings of all kinds. Something no other media institution does anywhere near as consistently.

In addition, many community stations allow literally anyone in their locales to walk in off the street and get trained to make media of their own—on increasingly sophisticated equipment, for cheap or even free—amounting to tens of thousands of homegrown productions of every conceivable description every year. Effectively creating the only US broadcast alternative where free speech, hard won in running legal battles all the way up to the Supreme Court, is taken very seriously. They are generally member-driven and run by small staffs of extremely committed experts. A fair number of whom were originally trained at community media stations when they were kids. As were many staffers at major media outlets to this day.

For all that great work, such stations require very little money to run. Federal regulation and laws enacted since the early 1970s have created a system in which cable companies like Comcast have to negotiate franchise fees with cities and towns for the privilege of laying their cables on public streets. The maximum annual franchise fee was codified in the federal Cable Communications Policy Act of 1984, [47 U.S. Code § 542 (b)](https://www.law.cornell.edu/uscode/text/47/542): “For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator’s gross revenues derived in such period from the operation of the cable system to provide cable services.”

Some of the resulting funds can then be used to run community media stations. Local governments can also negotiate for other things, too—including what are called “cable-related, in-kind contributions” like capital expenses for studio facilities and broadcasting equipment. Another important concession the cable companies have to provide local governments is the channels that the stations broadcast on. This helps the stations’ bottom line by relieving them of the cost of leasing those channels. Which does mean that cable companies lose whatever profits they might have otherwise made on those channels.

Together the franchise fee and the in-kind contributions provide most of each station’s annual operating budget and physical plant—and the free cable channels help keep costs low. Though many community media stations still have to raise extra money to make ends meet every year by charging dues to members who can afford to pay, crowdfunding, and applying for grants. Like PBS or NPR on a smaller scale.

Unfortunately, since the original Federal Communications Commission (FCC) rules mandating the establishment of such stations in many municipalities, the cable industry has been trying to eliminate them. In the interest of making even vaster profits than they already gouge from consumers. First by legal challenges culminating in the 1979 Supreme Court decision FCC v. Midwest Video Corp. that struck down the earlier cable access rules and directly resulted in the 1984 cable act as a “compromise” between community media stations and the cable industry. And later by successful lobbying campaigns to give states the sole power to negotiate franchise fees for all their cities and towns in the interest of “efficiency” (read: worse deals than many of those municipalities had been negotiating on their own). Which is how the system currently works in many states—though not, happily, in Massachusetts.

Further, as new monopoly telecom companies like Verizon arose (both ironically and predictably) after the government breakup of the old AT&T telephone monopoly in the 1980s, they began expanding well beyond their core telephone businesses. Seeing cable television as a growing market, they successfully lobbied for provisions in the federal Telecommunications Act of 1996 that allowed them to provide cable service as well. This caused the cable companies to bring even more political pressure to bear to end the franchise fee system as “unfair”—since the telecoms aren’t covered by the 1984 cable act and don’t have to pay the fees that support community media stations.

Also, the landmark global communications advance represented by the internet has further eroded the position of community media stations in some respects over that same period by providing other ways for Americans and immigrants alike to create their own media programming and reach audiences all over the world. Though usually not local audiences of the size and quality that community media stations can provide.

Meanwhile, the cable industry has continued to do its level best to shrink the number of community media stations with all kinds of crafty business and policy tricks. For example, Comcast’s practice of refusing to list the schedule of community media stations in its program guide—which drastically reduces the local audience for each station—makes it easier for the cable giant to make the case to get rid of the legal mandate to fund those stations through the franchise fee.

Now, FCC Chairman Ajit Pai—a former Verizon lobbyist who is the living embodiment of “regulatory capture” (the control of a government regulatory agency by the very industry it’s supposed to regulate) and who, it must be said, is an Obama appointee—is moving in for the kill. Fresh off his successful assault on net neutrality. Another anti-democratic communications move that virtually no one supported… except the cable and telecom industries.

On Sept 25, under Pai’s watch, the four FCC commissioners (three of whom are Republicans, with one seat on the five member commission remaining empty thanks to Trump administration politicking) released an official document snappily entitled the “[Second Further Notice of Proposed Rulemaking](https://docs.fcc.gov/public/attachments/FCC-18-131A1.pdf) 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.” Also known as the “Second FNPRM.” Or, for the purposes of this editorial, the “FNPRM.”

If the FCC enacts the FNPRM, cities, towns, and states (where applicable) will no longer be able to negotiate up to a 5 percent franchise fee plus the aforementioned cable-related, in-kind contributions like studios and other necessary infrastructure for community media stations. Instead those governments will be forced to allow cable companies to assign a “fair market value” to the channels it provides community stations and deduct that amount from the franchise fees that keep them going. The companies will also be allowed to catalog a wide variety of cable-related, in-kind contributions to cities and towns and deduct those from the fees, too. Including some contributions related to the stations, according to analysis by the [Community Media Center of Marin](https://cmcm.tv/news/protect-peg-fcc-rulemaking) in California. And it turns out that typical capital costs for community stations are only a fraction of the total in-kind contributions that cable companies historically agreed to provide to municipalities in exchange for using public rights of way for their cables. Cities and towns often have important civic buildings like schools and fire stations connected with cables and equipment provided by the companies that have been used for a variety of important purposes—including emergency services—for decades. Taking those costs off the top of the franchise fees will be significant indeed.

Gaithersburg, Maryland Mayor Jud Ashman gets to the crux of the problem with the possible FCC action [in his recent testimony against it](https://ecfsapi.fcc.gov/file/1109121405445/FNPRM_Gaithersburg.pdf):

*As proposed, the FNPRM’s broad definition of all “cable-related, in-kind contributions” other than PEG capital costs and build-out requirements could be interpreted as “franchise fees,” which could result in:*

*• Cable companies no longer paying the typical five percent franchise fees permitted by*

*federal law.*

*• Cable companies using local rights-of-way for any purpose, regardless of the terms of the franchise agreement, and avoiding paying their fair compensation to the local government for the use of funded assets in the rights-of-way.*

*• Significant reductions in cable franchise fees, depending on how the “fair market” value for PEG capacity and transmission is calculated within a given jurisdiction. This proposed change would result in PEG programming being drastically reduced, if not eliminated altogether in most jurisdictions.*

In practice, community media station advocates are saying that the FNPRM will quickly result in a loss of a significant portion of annual revenue for their entire sector. Which will cause many stations to drastically reduce their services… or cease operations entirely.

But local government officials like Mayor Ashman are saying that the effect on cities and towns overall will be even worse than the effect on the stations. Because as my longtime colleague [Fred Johnson](https://mwg.org/portfolio/johnson/)—noted community media policy maven and documentary filmmaker—said to me in a short interview for this editorial, “This is about seizing power and treasure from the cities.” If the FNPRM is enacted by the FCC, it will be allowing the cable companies to fundamentally devalue the use of public rights of way that have allowed them to make massive profits—by cutting into franchise fee revenue that is already far lower than it should be.

Incidentally, the [FNPRM also doubles down](https://docs.fcc.gov/public/attachments/FCC-18-131A1.pdf) on the part of the FCC rule trashing net neutrality that claims lower levels of government can’t reintroduce that reform by “prohibiting [cities, towns, and states] from using their video franchising authority to regulate the provision of most non-cable services, such as broadband Internet access service, offered over a cable system by an incumbent cable operator.” But, brevity being the soul of wit, I’ll have to address that issue another day.

In any case, to stop all that bad stuff from happening, *DigBoston* calls on our loyal audience to contact the FCC by this Friday, Dec 14, and join with thousands of other people around the country in demanding that the powerful agency do what’s best for American democracy and leave cable access franchise fees alone.

Readers can find a letter template and simple instructions for how to file your “reply comments” with the FCC on the Somerville Media Center website: [somervillemedia.org/federaassaultonlocalmedia/](https://www.somervillemedia.org/federaassaultonlocalmedia/).

It’s going to be an uphill fight in the current political climate. But with all of your help, community media stations can survive and thrive for decades to come. And municipalities will be much better off, too.

*Jason Pramas is executive editor and associate publisher of* [DigBoston](https://www.digboston.com)*.*