

Re: MB Docket No. 05-311

To the Honorable Chair Ajit V. Pai:

I appreciate the opportunity to express my concerns about the FCC's Second Further Notice of Proposed Rulemaking ("FNPRM") in docket number 05-311 as it relates to the FCC proposing that certain in-kind contributions in a franchise agreement other than PEG capital costs, build-out requirements, and other items enumerated in 47 USC Section 542(g)(2) are subject to the franchise fee cap under the Cable Act.

As a strong supporter of PEG access and 'Olelo Community Media located on the island of Oah'u, State of Hawai'i, I oppose the Commission's broad and ambiguous definition of cable-related, in-kind contributions.

The proposed definition is as follows:

cable related in-kind contributions is to include "any non-monetary contributions related to the provision of cable services provided by the cable operators as a condition or requirement of a local franchise agreement, including but not to limited free or discounted cable services and the use of cable facilities or equipment." The Commission further states that "this proposed definition, cable-related, in-kind contributions would not have to be provided directly to the LFA to be subject to the statutory five percent cap; rather any cable related, in-kind contributions provided to the LFA or any other entity designated by the LFA as a condition or requirement of a franchise agreement would be subject to the cap, if not expressly exempt under Section 622(g)(2). FCC 18-131 at page 13.

The FCC's broad definition of "In-Kind" contributions will allow cable operators to dodge the obligations to the communities they serve, which were negotiated originally as a payment for use of the public's rights of way. In the small island community of O`ahu alone, the use of our public rights of way has earned millions of dollars for the cable companies. They'll be fine without the rule change, but the benefits to our community would be greatly diminished in every sector.

The current franchise fee structure is essential in offering our community a platform for free speech through the noncommercial programming produced by local community members that is cablecast on 'Olelo's PEG access channels.

"Speech is valued so importantly in the Constitution, I maintain, not because it is a form of self-expression or self-actualization but rather because it is essential for collective self-determination. Democracy allows people to choose the form of life they wish to live and presupposes that this choice is made against a background of public debate that is, to use the now famous formula of Justice Brennan, "uninhibited, robust, and wide-open."

~ Owen Fiss, The Irony of Free Speech.

These channels and the services 'Ōlelo provides offers viewers the ability to see and understand their community in different and meaningful ways, promoting and contributing to civic engagement, public dialogue and debate, and the creation of a vital and viable marketplace of ideas.

For the Commission to declare that in kind contributions such as PEG access channel capacity, connections to access programming origination points, cable service to schools and libraries, should now be considered and included as franchise fees ignores the decades-long history of how such items have been negotiated. The consequences of the proposed rules will devastate PEGs and deprive them of the operating funds that allow them to serve their communities. This would be appalling for Oahu, where for 30 years, 'Ōlelo has empowered tens of thousands of O'ahu residents, community organizations, educational institutions, and local and State government officials and agencies by providing basic and advanced video production resources, trainings and services necessary to conceive, design, execute, and share uncensored messages and community dialogue via PEG access channels. To date, 'Ōlelo has cablecast over 120,000 locally produced programs that represent Hawai'i's rich diversity in speech, culture, and community perspectives. 'Ōlelo cablecasts over 6,000 hours of original programming annually, including gavel-to-gavel coverage of legislative hearings/meetings, city council hearings/meetings, neighborhood board meetings. The community benefits from these government programs by being more informed about issues affecting their lives and communities as well as providing enhanced transparency for local and state government bodies and agencies.

In closing, I strongly oppose the Commission's proposed rules and tentative conclusions in the FNPRM. I hope the Commission will consider the community's comments and preserve and protect PEG Access in the future for all.

Thank you for the opportunity to submit comments on this very important matter.

Respectfully,

Ku'uipo Rossiter