

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

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December 11, 2018

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 my strong concerns with the proposed rules under MB Docket No. 05-311, "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". These proposed rules would drastically impact funding for public, education, and governmental (PEG) access organizations, which air community produced content and provide critical information to local communities in Hawaii.

Under the Cable Communications Policy Act, local franchising authorities (LFA) can negotiate franchise agreements with cable operators and require them to serve local communities by reserving channels for local PEG stations. The Federal Communications Commission's (FCC) current proposal, however, would substantially reduce or possibly eliminate franchise fee payments and endanger local PEG providers from operating community access channels and deliver critical information and diverse cultural programs to the many local communities in the Hawai'i islands. As an island state consisting of four different counties, our residents rely on PEG channels to keep abreast of local events and monitor government proceedings including city and county councils, neighborhood boards and state legislature to stay informed. Furthermore, PEG stations provide critical information to communities during natural disasters - including providing emergency updates during the Kilauea volcanic eruption on Hawai'i island.

I urge you to consider the adverse implications this proposal would have on PEG access organizations and their ability to provide meaningful and important content that serve local communities in Hawaii and across the country.

Sincerely,



TULSI GABBARD  
Member of Congress



COLLEEN HANABUSA  
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

December 12, 2018

The Honorable Colleen Hanabusa  
U.S. House of Representatives  
422 Cannon House Office Building  
Washington, D.C. 20515

Dear Congresswoman Hanabusa:

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. As you know, the Communications Act limits franchise fees to 5% 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). The U.S. Court of Appeals for the Sixth Circuit has held that the terms “tax” and “assessment” can include nonmonetary exactions. *Montgomery County, Md. et al. v. FCC*, 863 F.3d 485, 490-91 (6th Cir. 2017).

In response to a remand from the Sixth Circuit, the Commission unanimously issued its Second Further Notice of Proposed Rulemaking to consider the scope of the congressionally-mandated statutory limit on franchise fees. 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 capital costs required by franchises granted after that date. 47 U.S.C. § 542(g)(2)(B) & (C). The record of this proceeding remains open, and I encourage all interested parties and stakeholders—including local franchising authorities—to provide us with relevant evidence regarding these issues so that the Commission can make the appropriate judgment about the path forward, consistent with federal law. Your views will be entered into the record of the proceeding and 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 cursive script that reads "Ajit V. Pai".

Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

December 13, 2018

The Honorable Tulsi Gabbard  
U.S. House of Representatives  
1433 Longworth House Office Building  
Washington, D.C. 20515

Dear Congresswoman Gabbard:

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. As you know, the Communications Act limits franchise fees to 5% 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). The U.S. Court of Appeals for the Sixth Circuit has held that the terms “tax” and “assessment” can include nonmonetary exactions. *Montgomery County, Md. et al. v. FCC*, 863 F.3d 485, 490-91 (6th Cir. 2017).

In response to a remand from the Sixth Circuit, the Commission unanimously issued its Second Further Notice of Proposed Rulemaking to consider the scope of the congressionally-mandated statutory limit on franchise fees. 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 capital costs required by franchises granted after that date. 47 U.S.C. § 542(g)(2)(B) & (C). The record of this proceeding remains open, and I encourage all interested parties and stakeholders—including local franchising authorities—to provide us with relevant evidence regarding these issues so that the Commission can make the appropriate judgment about the path forward, consistent with federal law. Your views will be entered into the record of the proceeding and 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".

Ajit V. Pai