

United States Senate
WASHINGTON, DC 20510-1104

COMMITTEE ON ARMED SERVICES
COMMITTEE ON ENERGY &
NATURAL RESOURCES
COMMITTEE ON THE JUDICIARY
COMMITTEE ON SMALL BUSINESS &
ENTREPRENEURSHIP
COMMITTEE ON VETERANS' AFFAIRS

December 18, 2018

938

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

I am writing to express my support for the comments submitted to the Federal Communications Commission (FCC) dated November 13, 2018 by Hawaii's four Public, Education, Government (PEG) Access organizations regarding a proposed rulemaking (MB Docket No. 05-311), *In the Matter of 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*. I have attached their comments for your reference.

I have been a long-time supporter of Hawaii's four PEG access organizations – Akaku on Maui, Ho'ike on Kauai, Na Leo on Hawaii (Big Island), and Olelo on Oahu – who provide essential media content to people from all walks of life throughout our state. As noted in their letter, Hawaii's "PEG programs within each country are the predominate means for hyper local source for local news, cultural events and festivals, sports and urgent or emergency declarations." Hawaii's PEG organizations also work to empower the next generation of leaders in media through educational media training and informational workshops. Hawaii PEG organizations help make our communities across the state stronger and more civically engaged.

The FCC's proposed rulemaking (MB Docket No. 05-311), if adopted as currently proposed, would constrain the financial resources that PEGs in Hawaii and across the country rely on to serve the public. Currently, states and localities are able to negotiate agreements with cable providers that require them to fund PEGs through franchise fees. The proposed rulemaking, if adopted as currently proposed, would implement an overly broad definition of in-kind contributions in a way that would encourage cable providers to reduce the dollar contribution portion of the franchise fee. This would have the effect of constraining PEGs ability to serve the public as they have for decades.

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Thank you for your attention to this matter. I look forward to hearing from you soon.

Sincerely,

A handwritten signature in blue ink that reads "Mazie K. Hirono". The signature is fluid and cursive, with the first name "Mazie" being the most prominent.

Mazie K. Hirono
United States Senator

cc: Commissioner Michael O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 621(a)(1) of the Cable)	MB Docket No. 05-311
Communications Policy Act of 1984 as Amended)	
by the Cable Television Consumer Protection and)	
Competition Act of 1992)	

COMMENTS OF PEG ACCESS ORGANIZATIONS – STATE OF HAWAII

To the Honorable Chair Ajit V. Pai, and Commissioners O'Reilly, Carr and Rosenworcel:

We respectfully submit our grave concerns on the proposed rules in the above-entitled matter. In the State of Hawai'i, there are four (4) PEG access organizations covering each of the four counties - Akakū on Maui, Ho'ike on Kaua'i, Nā Leo on Hawai'i (Big Island) and 'Ōlelo on Oah'u. All of us provide media training from students to seniors and deliver diverse, local, and relevant community content that they produce on our PEG access channels. Our media training is built upon current technology and practices to create their stories and share them with the greater community to help to build stronger communities and community and civic engagement. Together we enable and empower hundreds of individuals and organizations each year by offering valuable tools and resources such as conducting media training, providing studio services, creating public service announcements for nonprofit organizations to air on our channels, educational and informational workshops for the public, and more all to assist in their missions and effectiveness. In addition, both local and state government proceedings, hearings, and meetings are covered and aired on our PEG access channels that enhance the reach of our local government to inform residents of important and relevant issues, programs, events, natural disaster declarations and the like.

The Hawai'i islands are virtually ignored by the national network broadcasters as local network affiliates concentrate on a single city (Honolulu) in our state for news and programming leaving the neighboring islands without local news and information from their local communities. Our PEG programs within each county are the predominant means for hyper local source for local news, cultural events and festivals, sports and urgent or emergency declarations. Often times, our presence and services provide a critical communications platform that advances health and safety issues when needed the most.

For the past 30 years, the provision of PEG access services and resources provided to our communities in Hawai'i is due to the federal Cable Act and State of Hawai'i regulatory oversight and administration of cable services on a statewide basis. Through negotiated franchise agreements between the State of Hawai'i and the cable operator, public benefits such as support for PEG access resources and channel capacity, a complimentary cable drop to schools and libraries, etc., are mutually agreed upon by the parties as part of the franchise fee. In exchange for the provision of such public benefits, the cable operator receives the ability to use and occupy public rights of way for the provision of cable services in the negotiated franchise agreement. These franchise fees paid by cable subscribers help to ensure that our organizations continue to play a vital role for advancement of free speech, democracy and community enrichment. The Commission's proposed rules treating as part of the five percent franchise fee cap "in-kind" contributions such as PEG channel capacity, transmission of PEG programming, complimentary cable drops to schools and libraries, etc. will cause serious and grave harm to our municipalities and the prolific Hawai'i PEG system.

Furthermore, not only will noncommercial voices from our youth to senior citizens be effectively silenced, but the vast array of diverse cultural programming in addition to essential local and state government proceedings will all but disappear. All of these programs are not available on traditional commercial television. Moreover, we firmly believe that the availability of the Internet can never be a substitute for PEG access when it comes to the advancement of free speech, diversity of rich cultural programs and events, governmental transparency, and barrier-free empowerment of everyone from all walks of life to create and share their unique stories to their local communities and beyond.

We respectfully request that the Commission remove from its rulemaking the proposed rules relating to treating as part of the five percent franchise fee cap "in-kind" contributions such as PEG channel capacity and other cable related public benefits that are set forth in negotiated franchise agreements between local franchising authorities and the cable operator.

Former FCC Commissioner Adelstein said it best in his dissent in the earlier proceeding "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: "the Communications Act defines "PEG access facilities" to mean channel capacity, facilities and equipment. 47 USC Section 522(16)¹. Moreover, the legislative history of 1984 Cable Act clearly indicates that any franchise requirement for the provision of services, facilities or equipment is not included as a fee."

¹ 47 USC Section 522(16) states: "the term 'public, educational, or governmental access facilities' means
(A) channel capacity designated for public, educational, or governmental use; and
(B) facilities and equipment for the use of such channel capacity."

We humbly ask for your thoughtful consideration and recognize the negative and devastating ramifications the proposed rules will have on our organizations in Hawai'i as well as with similar organizations across our nation, and that the Commission protect and preserve PEG access for our communities and for future generations.

With Aloha,

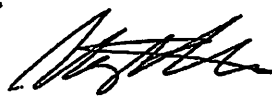
Hawaii's PEG Community Media Centers



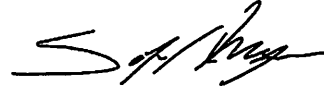
Jay April, Akakū



J Robertson, Ho'ike



Stacy Higa, Nā Leo



Sanford Inouye, 'Ōlelo

November 13, 2018

cc: U.S. Senator Brian Schatz
U.S. Senator Mazie Hirono
U.S. Representative Tulsi Gabbard
U.S. Representative Colleen Hanabusa
U.S. Representative-Elect Ed Case



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

December 20, 2018

The Honorable Mazie Hirono
United States Senate
730 Hart Senate Office Building
Washington, D.C. 20510

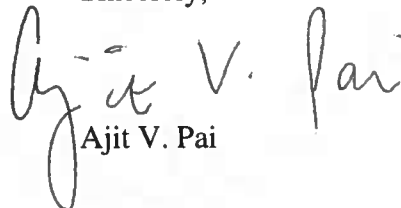
Dear Senator Hirono:

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,


Ajit V. Pai