

United States Senate

WASHINGTON, DC 20510

June 12, 2019

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

Dear Chairman Pai:

I write to express my concern regarding the Federal Communications Commission's (FCC) 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" (MB Docket No. 05-311) in which the FCC proposes allowing cable companies to determine the fair market value of franchise obligations such as public, educational, or governmental (PEG) channels and then deducting that amount from franchise fees. This proposal will be detrimental to the health of PEG channels in Maryland and throughout our country.

The Cable Act permits local franchising authorities (LFAs) to include in their franchise agreements with cable companies clauses that require cable companies to meet certain community needs, including creating spectrum space for PEG channels. Federal law further specifies that state and local governments cannot require fees that exceed more than five percent of a local franchisee's gross revenue from cable television services provided over their cable system.

However, the FCC's proposal would permit cable companies to assign a value to PEG channels and other franchise obligations, deem them in-kind contributions, and subtract that amount and the value they place on any other in-kind contributions, from the franchise fee the cable company pays to LFAs. These in-kind contributions could include the backhaul of signals, free or reduced cable connections to town halls, interactive program guides, or even the channel capacity allotted to PEGs.

PEG channels provide essential local programming not provided by other media and reflect the special interests and character of their specific communities. The entire state of Maryland is served by a limited number of broadcast stations. Local community events in the other 12,000 square miles of Maryland are often overlooked by commercial and public broadcasters because larger media entities have little time or incentive to cover them. Our local PEG channels are also invaluable and essential.

On October 29, 2018, my colleagues sent you a letter concerning this very issue.¹ In response to their letter, you noted that the FCC concluded that Congress had broadly defined franchise fees in 1984.

¹ See, e.g., Letter from the Honorable Edward Markey, Tammy Baldwin, Margaret Wood Hassan, Benjamin L. Cardin, Jeffrey A. Merkley, Bernard Sanders, Gary C. Peters, Ron Wyden, Patrick Leahy, Richard Blumenthal, and Elizabeth Warren to the Honorable Ajit Pai, October 29, 2018 (regarding Franchise Fee Cap on PEG Funding).

[...] 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.²

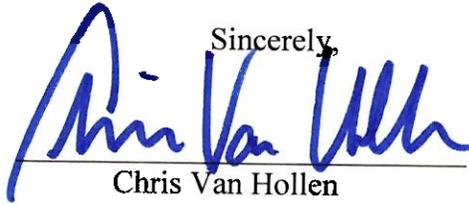
Unfortunately, your response seems to demonstrate a deliberate attempt by the FCC to ignore legislative history and circumvent Congressional intent. Senator Wirth's response to a colleague's question about the relationship between permissible franchise fees and PEG channels is unequivocal and makes clear that the fees are not the same as franchise obligations. He stated:

[...] a franchise fee [is] only monetary payments made by the cable operator, and does not include as a "fee" any franchise requirements for the provision of services, facilities or equipment³."

Additionally, a leading FCC order involving the City of Bowie in Maryland made clear that contractual franchise obligations cannot be counted as franchise fees.⁴

The legislative history is clear and the Commission should take care to follow the plain meaning of the statute. Additionally, I urge the Commission to undertake a cost-benefit analysis that weighs the impact this rulemaking will have on local communities versus the marginal benefit to cable providers and their shareholders.

Thank you for your attention to this matter.

Sincerely,

Chris Van Hollen
United States Senator

CC: The Honorable Michael O'Rielly, Commissioner
The Honorable Brendan Carr, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
The Honorable Geoffrey Starks, Commissioner

² See, e.g., Letter from the Honorable Ajit Pai, Chairman, Federal Communications Commission, November 27, 2018 to the Honorable Edward Markey, Tammy Baldwin, Margaret Wood Hassan, Benjamin L. Cardin, Jeffrey A. Merkley, Bernard Sanders, Gary C. Peters, Ron Wyden, Patrick Leahy, Richard Blumenthal, and Elizabeth Warren (regarding Franchise Fee Cap on PEG Funding).

³ See, e.g., Congressional Record, daily edition, Vol. 130, October 11, 1984, p.14285-97.

⁴ City of Bowie, 14 FCC Rcd 9596 (Cable Services Bureau, 1999)