

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of	)	
	)	
News Distortion Complaint	)	
Involving CBS Broadcasting Inc.,	)	MB Docket No. 25-73
Licensee of WCBS, New York, NY	)	
	)	

**COMMENTS OF TECHFREEDOM**

Pursuant to the Public Notice (“Notice”) released by the Commission on February 5, 2025,<sup>1</sup> in response to the news distortion complaint against CBS, filed October 16, 2024, by the Center for American Rights (CAR),<sup>2</sup> TechFreedom submits the following comments.

**I. About TechFreedom**

TechFreedom is a non-partisan think tank dedicated to promoting the progress of technology that improves the human condition. To this end, we seek to advance public policy that makes experimentation, entrepreneurship, and investment possible, and thus unleashes the ultimate resource: human ingenuity.

When it comes to the First Amendment, we defend it no matter which party wields power in Washington, DC and at the FCC. We have objected when Democrats have run the

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<sup>1</sup> Fed. Commc’ns Comm’n, *FCC Establishes MB Docket No. 25-73*, DA 25-107, released Feb. 5, 2025, <https://docs.fcc.gov/public/attachments/DA-25-107A1.pdf>.

<sup>2</sup> Complaint Against WCBS-TV (Oct. 16, 2024), <https://www.fcc.gov/ecfs/document/10206207628047/1> (“CAR Complaint”).

FCC and have attempted to limit free speech and expression,<sup>3</sup> and we have done the same when Republicans are in charge.<sup>4</sup> The First Amendment has no party affiliation.

## II. Republicans Used to Defend the First Amendment

Republicans, for decades, championed the First Amendment rights of broadcasters. They opposed the Fairness Doctrine, which forced broadcasters to edit their content in such a way that resulted in stifled speech and broadcasts that were bland and never strayed from centrist orthodoxy.<sup>5</sup> It was a Republican FCC Chairman, Dennis Patrick, who finally had the fortitude to lead the FCC in striking it down in 1987:<sup>6</sup>

Our action today should be cause for celebration, because by it we introduce the first amendment into the 20th century. Because we believe it will serve the public interest, we seek to extend to the electronic press the same First Amendment guarantees that the print media have enjoyed since our country's

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<sup>3</sup> Reply Comments of TechFreedom in Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements, MB Docket No. 24-211 (Oct. 11, 2024), <https://techfreedom.org/wp-content/uploads/2024/10/TechFreedom-Reply-Comments-FCC-AI-Political-Advertising.pdf>; Comments of TechFreedom, MB Docket No. 24-211 (Sept. 19, 2024), <https://techfreedom.org/wp-content/uploads/2024/09/TechFreedom-FCC-AI-Comments.pdf>; Press Release, TechFreedom, FCC Study Will Impact Editorial Judgment, We Tell Comm Daily (Feb. 14, 2014), <https://techfreedom.org/fcc-study-will-impact-editorial-judgment-we-tell/>.

<sup>4</sup> Comment of TechFreedom in Petition for Reconsideration of Political File Orders, MB Docket No. 19-363 (Jan. 28, 2020), [https://techfreedom.org/wp-content/uploads/2020/01/TechFreedom\\_Reply\\_Comments\\_NAB.pdf](https://techfreedom.org/wp-content/uploads/2020/01/TechFreedom_Reply_Comments_NAB.pdf); Comments of TechFreedom in Petition for Rulemaking to Clarify Provisions of § 230 of the Communications Act of 1934, RM-11862 (Sept. 2, 2020), <https://techfreedom.org/wp-content/uploads/2020/09/NTIA-230-Petition-Comments-%E2%80%939.2.2020.pdf>.

<sup>5</sup> Fed. Commc'ns Comm'n Reports, Inquiry into the General Fairness Doctrine Obligations of Broadcast Licensees, Docket No. 84-282, 102 F.C.C. 2d 147 (Aug. 7, 1985), <https://ia801301.us.archive.org/10/items/FairnessReport/102Book1FCC2d145.pdf> (“[W]e find that the fairness doctrine, in operation, actually inhibits the presentation of controversial issues of public importance to the detriment of the public and the degradation of the editorial prerogatives of broadcast journalists.”).

<sup>6</sup> Undersigned counsel wrote the constitutional challenge to the Fairness Doctrine in the FCC administrative proceeding that led the Commission to release its 1987 order, ultimately upheld in *Syracuse Peace Council v. Fed. Commc'ns Comm'n*, 867 F.2d 654 (DC Cir. 1989). For a full discussion of the history and demise of the Fairness Doctrine, see *The Fairness Doctrine: The Next Generation*, TECH POLICY PODCAST (May 21, 2018), <https://techfreedom.org/fairness-doctrine-next-generation/>.

inception .... [T]he First Amendment does not guarantee a fair press, only a free press .... [T]he record in this proceeding leads one inescapably to conclude that the fairness doctrine chills free speech, is not narrowly tailored to achieve any substantial government interest, and therefore contravenes the First Amendment and the public interest. As a consequence, we can no longer impose fairness doctrine obligations on broadcasters and simultaneously honor our oath of office. By this action, we honor that oath, and, we believe, we promote the public interest.<sup>7</sup>

It was Ronald Reagan, a Republican president, who vetoed S.742, the Democrat-led congressional attempt to reinstate the Fairness Doctrine by statute. In his veto statement, President Reagan said, in part:

This doctrine, which has evolved through the decisional process of the Federal Communications Commission (FCC), requires Federal officials to supervise the **editorial practices** of broadcasters in an effort to ensure that they provide coverage of controversial issues and a reasonable opportunity for the airing of contrasting viewpoints on those issues. This type of content-based regulation by the Federal Government is, in my judgment, antagonistic to the freedom of expression guaranteed by the First Amendment. In any other medium besides broadcasting, such Federal policing of the editorial judgment of journalists would be unthinkable. The framers of the First Amendment, confident that public debate would be freer and healthier without the kind of interference rep resented by the “fairness doctrine,” chose to forbid such regulations in the clearest terms: “Congress shall make no law . . . abridging the freedom of speech, or of the press.”

[W]e must not ignore the obvious intent of the First Amendment, which is to promote vigorous public debate and a diversity of viewpoints in the public forum as a whole, not in any particular medium, let alone in any particular journalistic outlet. History has shown that the dangers of an overly timid or biased press cannot be averted through bureaucratic regulation, but only through the freedom and competition that the First Amendment sought to guarantee.<sup>8</sup>

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<sup>7</sup> *Fairness Held Unfair*, BROADCASTING, 27 (Aug. 10, 1987), <https://www.americanradiohistory.com/Archive-BC/BC-1987/BC-1987-08-10.pdf>.

<sup>8</sup> President's Remarks on Vetoing the Fairness in Broadcasting Act of 1987 (June 29, 1987), <https://www.senate.gov/legislative/vetoes/messages/ReaganR/S742-Sdoc-100-10.pdf> (emphasis added).

Every so often, something akin to the Fairness Doctrine is floated as a salve to the wounds of messy political discourse, since, after all, who could be against “fairness”? But each time, strong Republican leadership has exposed the fallacy of government-mandated “fairness,” that such measures always contravene the First Amendment and can be all too easily weaponized for political purposes. One former Republican Commissioner warned:

History proves that abuses of power brought forth by the [Fairness] Doctrine are not partisan. Both right-leaning and left-leaning broadcasters have been attacked and intimidated. With that in mind, if the Doctrine is reimposed in any form, how do we know that it will not be used to silence political adversaries?”<sup>9</sup>

Former Republican FCC Chair Ajit Pai similarly warned of the dangers of a government that tries to control the press in 2017:

After all, the First Amendment doesn’t give the government power to regulate. It denies the government that power. And anyone who thinks otherwise should remember the wise words of President Gerald Ford: “A government big enough to give you everything you want is a government big enough to take from you everything you have.” And it’s no different when it comes to the Internet.<sup>10</sup>

Former Republican Commissioner Michael O’Reilly presaged the very actions being considered by the FCC in this proceeding back in 2020:

Today, I would like to address a particularly ominous development in this space. . . I am very troubled by certain opportunists elsewhere who claim to be the First Amendment’s biggest heroes but only come to its defense when convenient and constantly shift its meaning to fit their current political objectives. The inconsistencies and contradictions presented by such false prophets would make James Madison’s head spin, were he alive to witness them. The First Amendment protects us from limits on speech imposed by the government—not private actors—and we should all reject demands, in the name of the First Amendment, for private actors to curate or publish speech

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<sup>9</sup> Remarks of FCC Commissioner Robert M. McDowell at the Media Institute (Jan. 28, 2009), <https://docs.fcc.gov/public/attachments/DOC-288134A1.doc>.

<sup>10</sup> Remarks of FCC Commissioner Ajit Pai at the Newseum 5 (Apr. 26, 2017), [https://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0426/DOC-344590A1.pdf](https://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0426/DOC-344590A1.pdf).

in a certain way. Like it or not, the First Amendment’s protections apply to corporate entities, especially when they engage in editorial decision making. I shudder to think of a day in which the Fairness Doctrine could be reincarnated for the Internet, especially at the ironic behest of so-called free speech “defenders.” It is time to stop allowing purveyors of First Amendment gibberish to claim they support more speech, when their actions make clear that they would actually curtail it through government action. These individuals demean and denigrate the values of our Constitution and must be held accountable for their doublespeak and dishonesty. This institution and its members have long been unwavering in defending the First Amendment, and it is the duty of each of us to continue to uphold this precious protection.<sup>11</sup>

### **III. Questioning the Editing of a News Interview Interferes with the Very Essence of the First Amendment’s Protection of EDITorial Discretion**

And yet, that’s where we are today, with the FCC now seeking comment on whether CBS’s editing of 50 minutes of raw footage into a 20-minute segment of “60 Minutes” constitutes “news distortion” when the answer to a question asked was different in a “preview clip” aired on “Face the Nation.”<sup>12</sup>

While the news distortion policy has been around for many decades, it has rarely been invoked by the Commission, which recognizes that its ability to second-guess the editorial decisions of stations is “narrow,” and cannot infringe “a broadcaster’s selection and presentation of news or commentary.”<sup>13</sup> There are very few cases in which the FCC has concluded that a broadcaster violated the policy, because “no government agency can authenticate the news, or should try and do so.”<sup>14</sup> Meeting the evidentiary burden of proving

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<sup>11</sup> Remarks of FCC Commissioner Michael O’Rielly at the Media Institute (July 29, 2020), <https://docs.fcc.gov/public/attachments/DOC-365814A1.pdf>.

<sup>12</sup> See CAR Complaint, Appendix A.

<sup>13</sup> FED. COMM’NS COMM’N, BROADCAST NEWS DISTORTION POLICY (July 18, 2024), <https://www.fcc.gov/sites/default/files/broadcast-news-distortion.pdf>.

<sup>14</sup> *Hunger in America*, 20 FCC 2d 143, 151 (1969).

news distortion is extremely difficult, and must include extrinsic evidence “such as written or oral instructions from station management, outtakes, or evidence of bribery.”<sup>15</sup>

So, what does the CAR Complaint rely on as extrinsic evidence? Bribes? Instructions from the network to make Vice President Harris look good? No. The CAR Complaint relies solely on the fact that what was aired during the full segment contained differently edited answers from Harris than those used in a clip that ran during a short promotional segment.<sup>16</sup> That’s it. The Complaint is based on the claim that the way CBS edited the 50 minutes of raw footage constitutes news distortion. The transcript shows that the answers in both instances came from the same exchange with the reporter, and nothing was added or substantively altered. The two clips were just edited differently to fit the time CBS needed.<sup>17</sup>

Such editing lies at the core of what broadcasters do. They have to. When you have raw footage exceeding the time available, edits *must* occur. And those edits—those editorial judgments—lie at the core of broadcasters’ First Amendment protections.

Further, the negative impacts of the Fairness Doctrine pale in comparison to the chilling effect the specter of news distortion complaints will have on broadcasters, if this proceeding is allowed to move forward. Stations will have to keep under lock and key the raw footage of all of their interviews, knowing that if any outtakes are used elsewhere (even in a promotional segment) or somehow leaked, such evidence could be used to demand a full examination, and potentially an administrative hearing at the FCC, and thus potential loss of

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<sup>15</sup> *Galloway v. Fed. Comm’ns Comm’n*, 78 F.2d 16, 20 (D.C. Cir. 1985) (no news distortion found where “60 Minutes” staged an interview to recreate events in a fraud scandal, because the participant admitted that she had participated in a similar such interview as part of the fraud).

<sup>16</sup> *Compare* CAR Complaint, Appendix A *with* Appendix B.

<sup>17</sup> *Id.*

their license—effectively, the death penalty.<sup>18</sup> How can a free press function in such an environment?

Finally, if the new standard for triggering a news distortion analysis is that **any** edits of raw interview video can be subject to challenge, then the FCC will spend the next four years, at least, fielding dozens, hundreds, thousands of news distortion complaints. Since every taped interview is edited, every taped interview that is aired will be ripe for an FCC complaint, which will have to be adjudicated.<sup>19</sup> The news distortion complaint process will be weaponized by **both** political parties,<sup>20</sup> and the business of the FCC will grind to a halt as it will have to assign more and more FTEs to processing these complaints. This literally will become “The Petition Against God” of the 21<sup>st</sup> Century.<sup>21</sup> One wonders what DOGE would think of such a vast waste of Commission resources.

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<sup>18</sup> See *Serafyn v. Fed. Commc’ns Comm’n*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (if a license is challenged under Section 309 based on a news distortion claim, “The FCC **must** hold a hearing if it finds that the application presents a ‘substantial and material question of fact’ or if it is otherwise unable to conclude that granting the application would serve the public interest.” (emphasis added)).

<sup>19</sup> Even if the result of this proceeding is an FCC finding that extrinsic evidence must be submitted with the complaint, the FCC will still have to review every complaint filed to examine the evidence submitted.

<sup>20</sup> Given President Trump’s tendency to provide very long answers to questions, even the most loyal outlets have to edit them down because of time constraints. Are their edits then subject to a news distortion complaint by Democrats?

<sup>21</sup> “The Petition Against God” was the name given to a 1974 Petition filed by non-commercial radio advocates Lorenzo Milam and Jeremy Lansman, requesting that the FCC stop awarding licenses in the non-commercial radio band to religious organizations with no local ties, arguing that the band was put in place to further local community broadcasting. It sparked the filing of over four million letters to the FCC, still a record for physical documents in an FCC proceeding, after fundamentalist pastors took to their pulpits to excoriate the FCC and call on their parishioners to file letters with the FCC. See *The Petition Against God*, THE YEARS OF KKFI, <https://www.kkfistory.org/lorenzo-jeremy-petition-against-god/> (last visited Mar. 6, 2025).

#### IV. The Marketplace of Ideas Worked Far Better in this Instance than Government Hindsight and Micromanagement Ever Could

There is one other doctrine to which Republicans have until recently adhered: whenever possible, the government should rely on market forces, not heavy-handed bureaucratic oversight.<sup>22</sup> In fact, the market worked here. Astute listeners and commentators seized upon the discrepancy between the teasers and what actually aired during the “60 Minutes” segment.<sup>23</sup> CBS was called out, and the Harris Campaign was called out, long before CBS even released both the transcript and raw video of the interview.<sup>24</sup> Ultimately, of course, Harris lost and Trump won—the voters spoke. We can’t know what, if any, impact the “60 Minutes” segment and blowback had on the electorate, but as MSN put it, prior to the election:

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<sup>22</sup> Remarks of FCC Commissioner Kathleen Q. Abernathy, *My View from the Doorstep of FCC Change* 1-2 (Mar. 4, 2002), <https://transition.fcc.gov/ftp/Speeches/Abernathy/2002/spkqa206.pdf> (“[F]ully functioning markets invariably make better decisions than regulators. Therefore, unless structural factors prevent markets from being competitive, or Congress has established public policy objectives ... that are not market-based, the FCC should be reluctant to intervene in the marketplace.”); Remarks of Commissioner O’Rielly, *supra* note 11 (“In the OTT context, we are getting a rare look into an almost completely unregulated free market, bound only by general consumer protection laws and private negotiations. While I’m not insensitive to the fact that the market will cause short-term pain for some companies and their employees, what we have generally seen so far is that less regulation breeds innovation and expands the overall market for content production and distribution, while increasing access and lowering prices for consumers—a far more beneficial outcome than forcing incumbents to fight for shares of a static pie.”).

<sup>23</sup> See, e.g., Jordan Liles, *CBS News Aired 2 Different Answers to Same Question from Harris’ ‘60 Minutes’ Interview*, Snopes (Oct. 11, 2024), <https://www.snopes.com/news/2024/10/11/60-minutes-edited-harris-answer/>; Joseph A. Wulfsohn, *‘60 Minutes,’ under fire for Kamala Harris editing decision, has history of liberal controversies*, Fox News (Oct. 16, 2024), <https://www.foxnews.com/media/60-minutes-under-fire-kamala-harris-editing-decision-has-history-liberal-controversies>; Yael Halon, *CBS News breaks its silence over editing allegations in ‘60 Minutes’ interview with Harris*, Fox News (Oct. 20, 2024), <https://www.foxnews.com/media/cbs-news-breaks-its-silence-over-editing-allegations-60-minutes-interview-harris>.

<sup>24</sup> See, e.g., *id.*



In the landscape of American political journalism, a troubling trend has emerged this election season: the selective editing of the news. The latest case study comes courtesy of “60 Minutes” of CBS News, whose apparent need to repackage Vice President Kamala Harris’ words into a neatly clipped soundbite is raising skepticism about the intent behind it. What makes the whole thing even more troubling is that they’ve withheld the full, unedited transcript of Kamala’s interview. They should have released it not because the Trump campaign labeled it “deceptively edited,” but because journalistic ethics demanded nothing less.

A clip of “60 Minutes” interview aired on Face the Nation on October 6, where Harris provided a lengthier response to Bill Whitaker’s question regarding the Biden-Harris administration lack of influence over Netanyahu. Yet, on October 7, that same answer was ruthlessly edited into a punchline, transforming Harris into something quite different. One might ask: Why? Why sacrifice credibility that remains in mainstream media for the sake of making Harris look good? What, exactly, do Harris—or CBS—stand to gain from this performance of distortion?<sup>25</sup>

Fundamentally, the only people who were damaged by the alleged “news distortion” here were CBS and the Harris campaign.

Why now should the FCC invest its finite resources in determining whether the way CBS edited raw footage violated news distortion policies? Especially when such policies, as we have discussed above, are nearly impossible to apply in a situation such as this, and which, if ultimately challenged in court by CBS, will fall on First Amendment grounds. Instead, the Commission should recognize that the market worked, no one was fooled by the “60 Minutes” segment,<sup>26</sup> and a majority of American voters did not vote for Kamala Harris.

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<sup>25</sup> Ksenija Pavlovic, *Kamala Harris: The Manufactured Candidate? Why CBS’s “60 Minutes” Edit Betrays The Larger Problem*, MSN (Oct. 12, 2024), <https://www.msn.com/en-us/news/politics/kamala-harris-the-manufactured-candidate-why-cbs-s-60-minutes-edit-betrays-the-larger-problem/ar-AA1saoAj>.

<sup>26</sup> Indeed, a Gallup Poll taken just prior to the election shows that the electorate is growing more and more skeptical of news stories reported by traditional media. See Megan Brenan, *Americans’ Trust in Media Remains at Trend Low*, GALLUP (Oct. 14, 2024), <https://news.gallup.com/poll/651977/americans-trust-media-remains-trend-low.aspx> (“For the third consecutive year, more U.S. adults have no

The election results demonstrate that there is a robust media landscape, and anyone who attempts to come close to the “news distortion” line will be called to task.

Everyone, especially the First Amendment, has won.

## **V. Conclusion**

Last summer, three conservative Justices joined the Supreme Court’s three liberals in declaring: “this Court has many times held, in many contexts, that it is no job for government to decide what counts as the right balance of private expression—to ‘un-bias’ what it thinks biased, rather than to leave such judgments to speakers and their audiences.”<sup>27</sup> This has long been the conservative position. The GOP-led FCC should return to conservative principles. The CAR Petition should be dismissed and DOGE’d as a waste of taxpayer resources.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_

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trust at all in the media (36%) than trust it a great deal or fair amount. Another 33% of Americans express ‘not very much’ confidence.”)

<sup>27</sup> *Moody v. NetChoice, LLC*, 603 U.S. \_\_\_ (2024) (slip op. at 4).