Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Early Renewal Applications of the Walt Disney Company's ABC Licenses	)	MB Docket No. 26-131
	)	
	)	

Opposition of TechFreedom to Petitions to Deny

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July 29, 2026

Summary

The First Amendment bars the government from retaliating against speech disfavored by the government—even, indeed especially, when it does so with the goal of improving the marketplace of ideas by combatting "bias" in media, or promoting "balance," "accuracy" or "fairness." Each of these lofty concepts is being invoked here as pretext for interfering in the editorial judgments of private speakers, which the First Amendment protects from government meddling. Nor may regulators pursue valid law enforcement actions to retaliate against speech they disfavor. Here, the Commission doing both: It purports merely to be enforcing its rule against employment discrimination, but is clearly attempting to punish ABC for speech that the FCC Chair and the President do not like. And this proceeding is not limited to ABC's employment practices: The Bureau has left the door open for the FCC to deny, or condition, renewal of ABC's licenses based on the Chair's expansive conception of the "public interest." Thus is this Commission creating what amounts to a new Fairness Doctrine—one far more arbitrary and dangerous than the old one.

For decades, conservatives opposed the Fairness Doctrine—and rightly so. Under President Ronald Reagan, the Commission abolished the doctrine as counter-productive, dangerous, and unconstitutional. What the Commission said then is even more true now: There is no basis for denying broadcasters the full protection of the First Amendment. But even the media scarcity of the 1960s could somehow justify special treatment of broadcasting on some issues, there is no legitimate government interest in trying to "balance" or "un-bias" *any* private media, as the Supreme Court has repeatedly made clear.

For years, the President has threatened broadcasters that their licenses will be "revoked." The Commission has the power to do so, but has chosen not to use that power because it comes with safeguards that would make it impossible for the Commission to give him what he wants—principally, having to justify revocation in a hearing process. Instead, the Commission has ordered ABC to apply years early to renew the licenses of stations it has operated since the 1940s—the first time it has done so since 1972, invoking a rule hardly ever used in the Commission's 92-year history. ABC faces loss of its licenses at the whim of the Chair—and the President. Congress intended to protect broadcasters from such threats, not to give the Commission the power to shake down broadcasters using the mafioso tactics that this Chair wields so shamelessly.

The Commission's approach violates not only the First Amendment, but also the Constitution's Due Process Clause, which requires that the government give "fair notice" of what the law requires before it may impose a punishment. Courts have already recognized that non-renewal of a license—to say nothing of early termination—is a punishment that requires "fair notice." The Due Process Clause also bars discriminatory and arbitrary enforcement—exactly what the Commission is engaged in here. While a court might uphold the Commission's use of its employment rule to require changes to broadcasters' employment practices, the Commission could do so only *prospectively*; it could not use the rule to impose even small fines on broadcasters for practices that the rule does not clearly bar, let alone decapitate them by depriving them of their licenses. The same goes—much more strongly—for the Commission's hopelessly vague "public interest" standard and the accretion of other notions built on top of it, such as news distortion.

The airwaves may belong to the public, but a broadcaster's speech does not belong to the government. For these reasons, the Commission should terminate this proceeding immediately and dismiss all associated petitions. If it has evidence that ABC's employment practices violate its rule, it should bring an ordinary enforcement action. If it believes any of its claims about the "public interest" could survive judicial review, it should open a rulemaking, explain its analysis, propose specific rules, and provide affected parties—including the public—a clear opportunity to challenge those rules in court. But it should cease using this process—which could chill speech indefinitely—to circumvent the courts.

Table of Contents

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	)	
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Opposition of TechFreedom to Petitions to Deny

TechFreedom hereby files this opposition[1] to the petitions to deny the early renewal applications of The Walt Disney Company's ABC Licenses in the above-referenced proceeding by the Center for American Rights ("CAR"), Media Research Center ("Media Research"), American First Legal ("AFL"); the Article III Project ("A3P"); and Frequency Forward, et al. ("Frequency Forward"). We support ABC's renewal application, and ask the Commission to terminate this unlawful proceeding immediately.

The Public Notice released by the Media Bureau ("the Bureau") on May 29, 2026 ("the Early Renewal Notice") mentions only one specific ground for non-renewal of ABC's licenses: alleged violation of the Commission's employment rules.[2] Whatever the merits of any enforcement action the FCC might bring against ABC regarding its employment practices, the

[1] 47 C.F.R. § 73.3584(b). By Public Notice, DA 26-541, released May 29, 2026, the Media Bureau set the opposition date as July 29, 2026. This opposition is timely filed.

[2] Federal Communications Commission, FCC's Media Bureau Establishes Pleading Cycle and Ex Parte Procedures for the Early Renewal Applications of The Walt Disney Company's ABC Licenses, DA 26-541 (May 29, 2026) ("Early Renewal PN").

Commission could not deny renewal of ABC's licenses—even if it could prove such a violation—because it has not provided fair notice that ABC's practices were illegal.

This is pretext for the Commission's real, and very obvious, agenda: punishing ABC for its speech. The Bureau leaves the door wide open to such retaliation: "Calling the licenses in now for early renewal also provides the FCC the opportunity to determine whether the ABC Stations have been operating in the public interest, as required by their FCC licenses."[3] FCC Chair Brendan Carr has piously invoked the "public interest" in his repeated threats that ABC and other broadcasters would lose their licenses because of supposed bias in their speech—just as President Donald Trump has threatened broadcasters for the last decade. This proceeding is the latest and a most dangerous attack on the free press by this Chair.

The Commission should terminate this proceeding and dismiss all petitions to deny renewal of ABC's licenses, including those limited to employment discrimination and those that explicitly ask the FCC to punish ABC for its speech. If it believes ABC has violated its employment rules it should bring an enforcement action, as it has in any other employment case since 1969.[4]

I. Introduction

It is a bedrock principle of the First Amendment that the media and the people may speak their minds about the government, freely and without fear of state punishment. This is true even when—*especially* when—the government does not like what the people are

[3] Fed. Commc'ns Comm'n, Public Notice, DA 26-541, *FCC's Media Bureau Establishes Pleading Cycle and Ex Parte Procedures for the Early Renewal Applications of the Walt Disney Company's ABC Licenses* at 2, MB Docket No. 26-131 (May 29, 2026).

[4] The Commission issued its first employment rule in 1969. Nondiscrimination Employment Practices of Broadcast Licensees. 13 FCC 2d 240 (1969).

saying. And here, the government disapproves quite strongly. President Donald Trump tried trying to overturn the 2020 presidential election with baseless lies about election fraud and has claimed ever since that the 2020 election was "stolen." He is now outraged that, among other things, the broadcast networks declined to cover another speech casting doubt on this year's upcoming midterm election. In that speech he accused ABC and NBC of being "part of a plot … to protect the radical left," when they refused to air a speech where he railed again that this fall's congressional election is "vulnerable to being rigged and stolen."[5] "Fraud like this," Trump said, "should mean a revocation of their licenses."[6] This takes real chutzpah—"that quality enshrined in a man who, having killed his mother and father, throws himself on the mercy of the court because he is an orphan."[7]

Federal Communications Commission Chairman Brendan Carr disapproves of the choices of the media so strongly that he threatened "[b]roadcasters that are running hoaxes and news distortions—also known as the fake news—" that they would "lose their licenses if they do not" "correct course."[8] In this proceeding, he has acted on those threats, ordering ABC to beg for renewal of its broadcast licenses years before they expire. Chair Carr knows this is wrong; he's said so many times before. In 2019, he said, correctly, that the FCC has no "roving mandate to police speech in the name of the 'public interest.'"[9] What changed?

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[5] Zachary B. Wolf & Annette Choi, *Trump's speech claiming US election vulnerabilities, annotated*, CNN (July 17, 2026), https://www.cnn.com/interactive/2026/07/politics/annotated-transcript-trump-speech-us-election-vis/.

[6] *Id.*

[7] "LEO ROSTEIN, THE JOYS OF YIDDISH (1968).

[8] Brendan Carr (@BrendanCarrFCC), X (Mar. 14, 2026, 12:24 ET), https://x.com/BrendanCarrFCC/status/2032855414233047172.

[9] Brendan Carr (@BrendanCarrFCC), X (Feb. 14, 2019, 10:05 ET), https://x.com/BrendanCarrFCC/status/1096062915201953795.

Certainly not the powers of the FCC. If anything, it is clearer than ever that—as the Supreme Court since declared—"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."[10] That he now wields the FCC in ways that even fellow Republicans call "right out of Goodfellas"[11] is a testament to the shallowness of his convictions and his disregard for the Constitution, his oath of office, and the rule of law.

Chutzpah abounds in the petitions in this proceeding. The Center for American Rights (CAR) frankly acknowledges that the "networks … don't trust President Trump when he speaks, especially on election issues," but—much as Trump blamed Pence for endangering his own life—blaming the networks' "partisan bias" for "pushing a one-sided narrative on election integrity and a one-sided narrative that this president cannot be trusted to tell the truth," and demanding that ABC lose its broadcast licenses for refusing to indulge the President's mythomania.[12] The Media Research Center makes the same demands lest ABC continue to "excuse, minimize, and even justify … political violence; and to peddle misinformation and defamation"[13]—precisely the kind of speech from Trump and his allies that MRC, CAR, and Carr are trying to coerce ABC to host. "Let the citizens hear from their

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[10] NetChoice v. Moody, 603 U.S. 707, 733 (2024).

[11] Coral Murphy Marcos & Robert Mackey, *Ted Cruz Compares Threats to ABC by FCC Chair to those of Mob Boss,* THE GUARDIAN (Sept. 19, 2025), https://www.theguardian.com/us-news/2025/sep/19/ted-cruz-jimmy-kimmel-abc-fcc-mafia.

[12] Daniel R. Suhr, Letter to Chairman Brendan Carr, MB Docket No. 26-131, at 2 (July 17, 2026), https://www.fcc.gov/ecfs/document/26110026680/1 ["Suhr Letter"].

[13] MRC Petition at 6.

president directly without screening by the network media gatekeepers," CAR insists, and "then make their own judgment about his honesty."[14]

These arguments all presume that the FCC has the power to decide whether broadcasters act "fairly and impartially" in their coverage.[15] "The public interest," declares CAR, quoting the FCC's recent approval of the Skydance / Paramount merger, "lies in seeing broadcast stations carry an 'array of news and entertainment programming [that] embodies a diversity of viewpoints across the political and ideological spectrum and that [broadcast] reporting is fair, unbiased, and fact-based.'"[16] But the Supreme Court has made clear that there is no legitimate governmental (or "public") interest in the government "decid[ing] 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."[17] The FCC has no power, under the First Amendment, to "coerc[e] speakers to provide more of some views or less of others."[18] The airwaves might not belong to ABC,[19] but ABC's speech does not belong to the government.

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[14] *Id*.

[15] Federal Communications Commission, FCC Reminds Broadcasters of Their Public Interest Obligations, DA 26-530 (May 28, 2026) ("Public Interest PN") ("broadcasters serv[e] the role 'of a 'public trustee' charged with the duty of fairly and impartially informing the public audience.'" (quoting Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 117 (1973)).

[16] CAR Petition at 6 (quoting In re FCC Approves Skydance / Paramount (CBS) Transaction, 40 FCC Rcd 5689, 5714 (2025)).

[17] NetChoice v. Moody, 603 U.S. 707, 719 (2024).

[18] *Id.* at 733.

[19] Suhr Letter at 2 ("the airwaves belong to the American people, not to ABC and not to the Democratic Party.").

Because the process is the punishment, and because courts generally address statutory questions before constitutional ones, we begin with the powers claimed by the Bureau, then discuss the ostensible grounds for license revocation proposed by the Bureau, alleged violation of the FCC's employment discrimination rule, before discussing the elephant in the room: claims of "bias" in violation of the public interest. As we explain, the First Amendment and Due Process Clause bar the Commission from punishing ABC on either ground.

II. The Commission Can Neither Require ABC to Apply This Early for Renewal of Its Licenses nor Use Early Renewal to Terminate Them Prematurely

The Commission should have first considered what powers it has to order early renewal of licenses or what, exactly, would happen if the Commission denied renewal. Not since *Leflore Broadcasting* (1972) has the FCC ordered a broadcaster to apply early for renewal of its licenses.[20] This process is fundamentally different in three ways.

First, in *Leflore*, the Commission ordered a renewal application seven months early—just three months earlier than broadcasters are currently required to apply.[21] This only slightly accelerated the beginning of a lengthy process that was never going to be completed

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[20] Leflore Broad. Co., 36 F.C.C.2d 101 (1972). CAR disingenuously suggests that the Commission validated early renewal in Applications of Heritage-Wisconsin Broadcasting Corp., et al., 8 FCC Rcd 5607, 5613 (1993). CAR Petition at 52. In fact, the Commission distinguished *Leflore* ("this case is not similar to … Leflore Broadcasting Company, Inc") and said nothing about early renewal except to summarize what happened in that case. 8 FCC Rcd at 5613 ("the Commission ordered the licensee to file early renewal applications because inter alia, the licensee inexplicably terminated Black employees subsequent to assuming control of the stations."). The fact that the Commission—the day before it demanded the early renewal of Disney's ABC licenses—issued an order calling in Bridge News' licenses for early renewal, DA 26-413, (rel. April 27, 2026), doesn't somehow establish either precedent or a pattern of conduct on the part of the Commission.

[21] 47 C.F.R. § 73.3539(a).

before expiration of those licenses. That renewal ultimately took four years. Here, the FCC has ordered ABC to apply for renewal *years* early. None of its eight licenses expire before 2028; four expire in December 2030, so ABC is less than halfway through its term. WABC's prize New York City license is just 37.5% into its term, which ends in June 2031.

Second, in *Leflore*, as in other renewal cases, it was clear that the question to be decided was whether a *new* license would be issued. Here, by implying that the Commission could shorten the *current* license term, the Early Renewal Notice disguises license *revocation* as mere non-renewal, while implying that the Commission could circumvent the safeguards, both procedural and substantive, that Congress imposed on revocation.

Finally, unlike *Leflore*—or any other previous early renewal—the Commission is using the early renewal process as punishment—a way to keep a broadcaster in limbo for years to pressure it to change its speech. This is an egregious form of jawboning prohibited by the First Amendment.[22]

A. The Commission Cannot Terminate Licenses Early Without Satisfying the Requirements of Section 312's Revocation Process

The Early Renewal Notice says that, if the FCC orders a hearing and ultimately denies license renewal, the agency will "make the former licensee's channel available to other interested parties."[23] Footnote 16 adds: "Pending the outcome of the proceeding the licenses continue to remain in effect."[24] The implication is clear: that the licenses will remain in effect *only* pending the outcome in these proceedings, and thus that these channels will become

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[22] *See infra* note 52 et seq.

[23] Early Renewal PN at 2.

[24] *Id.* n.16.

available *immediately* upon denial of renewal. Thus, in effect, the Notice asserts that the Commission can revoke a license—*i.e.*, terminate it prior to its scheduled expiration—through the "renewal procedures" established by Section 309(k) and the rule implementing that statutory provision, Section 73.3539(c).

1. The Commission Improperly Claims the Power to Terminate Licenses Early Outside of Section 312's Revocation Process

Footnote 16 relies entirely on Section 307(c)(3), which provides that, "[pending any administrative or judicial hearing and final decision on … [a license] application …, the Commission shall continue such license in effect."[25] This "shall continue" language ensures that licenses do not expire while a renewal application is pending, which generally takes at least a year and can take several. It confers additional rights upon broadcasters beyond the "term" of their license, and *constrains* the power of the Commission over broadcasters. Yet the Early Renewal Notice turns this constraint on its head, reading Section 307(c)(3) as an implied power to deprive broadcasters of the full right to operate conferred upon them by their license.

When reviewing a renewal application, Section 309(k) gives the Commission only three options: "grant the application,"[26] "deny the application,"[27] or impose conditions on renewal.[28] Congress provided only one mechanism for terminating licenses early: Section 312, which imposes important safeguards. The Commission can revoke a license for

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[25] 47 U.S.C. § 307(c)(3).

[26] 47 U.S.C. § 309(k)(1).

[27] 47 U.S.C. § 309(k)(2).

[28] 47 U.S.C. § 309(k)(2) ("grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted").

"violation of, or … failure to observe any provision of [the Communications Act] or any rule or regulation of the Commission" but only where such violations are "willful or repeated."[29] This requires something more than the "serious violations" that might justify non-renewal of licenses under Section 309(k)(1). Moreover, in a revocation proceeding, "both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission."[30] By asserting the power to revoke licenses outside of Section 312, the Commission seeks—improperly—to escape these constraints on its power over licensees.

The Early Renewal Notice cites Section 307(c), which authorizes the FCC to prescribe broadcast license terms of up to eight years but requires the Commission to retain the power to issue renewals for shorter terms: "renewal …. may be granted … for a term of not to exceed 8 years *from the date of expiration of the preceding license*."[31] Congress could hardly have been clearer: "renewal" means issuing a new license on top of the existing license, not shortening the existing license so that the Commission has an earlier opportunity, in another license renewal, to reassess the licensee's future performance to ensure compliance with the statute and its rules. The Commission may not rely on this or any other provision of the Act to claim the power to terminate licenses early. The Supreme Court has been clear: Where "a general authorization and a more limited, specific authorization exist side-by-side" in a statutory scheme, the "terms of the specific authorization must be complied with."[32] The

[29] 47 U.S.C. § 312(a)(4).

[30] 47 U.S.C. § 312(d).

[31] 47 U.S.C. § 307(c)(1) (emphasis added).

[32] Radlax Gateway Hotel, LLC v. Amalgamated Bank, 566 U. S. 639, 645 (2012).

Communications Act's specific authorization for early termination of licenses is Section 312[33]—and its terms must be complied with.

2. The Commission Has Never Used Early Renewal to Terminate a License Early

A review of the Commission's scant use of early renewal leads to the same conclusion as the preceding textual analysis: Ordering early renewal might initiate the application review process early, but it cannot result in early *termination* of a license—unless the Commission follows the revocation process provided in Section 312.

The Commission has not ordered early renewal in decades. In *Tulsa 23* (1989), the Commission merely noted that this was a possibility,[34] citing *Leflore Broadcasting* (1972), the last time the Commission actually ordered early renewal.[35] There, the Commission was asked to institute a revocation hearing, but found "it more appropriate to consider the issues in the context of a renewal proceeding" and not to wait to begin that proceeding "until the end of the regular license term…" because, since the license was "in the last year of its license term, … no revocation proceeding could be concluded prior to the filing of a renewal…."[36] Thus, the Commission ordered the filing of an early renewal application seven months before

[33] Similarly, Section 303(m)(1) prescribes the Commission's power to "suspend" licenses only in certain circumstances. 47 U.S.C. § 303(m)(1).

[34] Application of Tulsa 23, 4 FCC Rcd 2067, 2069 n.12 (1989).

[35] Leflore Broad. Co., 36 F.C.C.2d 101 (1972). CAR disingenuously suggests that the Commission validated early renewal in In re Applications of Heritage-Wisconsin Broadcasting Corp., et al., 8 FCC Rcd 5607, 5613 (1993). CAR Petition at 52. In fact, the Commission distinguished *Leflore* ("this case is not similar to … Leflore Broadcasting Company, Inc") and said nothing about early renewal except to summarize what happened in that case. 8 FCC Rcd at 5613 ("the Commission ordered the licensee to file early renewal applications because inter alia, the licensee inexplicably terminated Black employees subsequent to assuming control of the stations.").

[36] 36 F.C.C.2d at 104.

the expiration of the license. The Commission said nothing to indicate that this might result in early termination of Leflore's license prior to its expiration in June 1973. The subsequent history of the case makes clear that this was never a possibility: The Commission did not designate the case for hearing until 1974, the initial decision was not issued until 1975, the Commission's decision was issued only in 1977, followed by a decision on reconsideration in 1978, and an appeals court decision in 1980.[37] Thus, when the Commission ordered an application for early renewal of Leflore's license, it was merely accelerating the start of a multi-year process that would, inevitably, run long past the expiration of the license—and during that process, Leflore would continue to operate.

The Commission clearly recognized this in *WAUB* (1958).[38] There, the licensee objected to being required to file for early renewal, arguing that this amounted to a "conditional revocation" of its license. The Commission rejected this argument, assuring the licensee that "their current authorizations to operate until June 1, 1960 [the license expiration date] will in no way be affected—absent any revocation proceedings not now contemplated" and that "the very worst" that could happen at a hearing would be that "licenses could not be renewed" *after* they expired—in another two years.[39]

WAUB noted that the early renewal process had been used "sparingly," citing just two examples. In *Albuquerque Broadcasting* (1958), the Commission similarly emphasized that

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[37] Teleprompter Corp., 48 F.C.C.2d 1075 (1974), aff'd, 53 F.C.C.2d 879 (1975), aff'd, 63 F.C.C.2d 956 (1977), recon. denied, 69 F.C.C.2d 1519 (1978), aff'd sub nom. CBS, Inc. v. FCC, 202 U.S. App. D.C. 369, 629 F.2d 1 (D.C. Cir. 1980).

[38] *Application of Herbert P. Michels (WAUB)*, 44 F.C.C. 1346, 1348, 1349 (1958), https://digital.library.unt.edu/ark:/67531/metadc177323/m1/1382/.

[39] *Id.* at 1348.

ordering early renewal would not affect the existing terms of the licenses.[40] In *Narragansett Broadcasting* (1949), the Commission did not address the issue; the licensee was required to file for early renewal just ten and a half months before expiration of its license.[41]

To be sure, these cases differed significantly from each other: *Leflore* and *Narragansett Broadcasting* involved alleged misrepresentations made to the Commission in a license application, while *WAUB* and *Albuquerque Broadcasting* concerned which broadcasters could better serve a market, given economic and technical constraints. But what matters here is that, in three of these cases, the Commission was clear that early renewal could merely accelerate the process of deciding what happens *after* the expiration of the existing licenses, and that, in the fourth (*Narragansett Broadcasting*), the Commission said nothing to indicate that it expected to terminate licenses early.

3. License Revocation Must Satisfy Additional Statutory Safeguards

If the Commission decides to terminate ABC's licenses prematurely, this would be a license revocation, rather than mere modification, and the Commission would have to satisfy the additional safeguards of Section 312. Notably, the Commission would have to show that the licensee has engaged in one of the categories of conduct that Congress considered sufficiently egregious to include in the enumerated list in Section 312(a) (*e.g.*, that rule

[40] Albuquerque Broadcasting Co., 25 FCC 683, 792 (1958) ("the procedure we are adopting will not require concurrent changes in the two stations" and allowing "continued operation throughout a changeover period which will extend on the present record not beyond June 1, 1960," the original license expiration date).

[41] Narragansett Broadcasting Co., 7 Pike and Fischer R. R. 37 (1949).

violations were "willful and repeated").[42] It would also have to issue a show cause order and hold a hearing.[43]

B. The FCC May Impose Conditions During the Current License Term Only Under Section 316, Which Requires It to Bear the Burden of Proof

If the Commission concludes that renewal of ABC's licenses is warranted but only under "appropriate" conditions—which might justify a license term of less than the standard eight years[44]—any such conditions could be imposed only for the term that begins *after* the current expiration dates. To impose such conditions during the *current* license term, the Commission has only one option: It can modify license conditions under Section 316 but in doing so, it bears the burden of proof, just as for license revocation under Section 312, [45] and licensees are guaranteed a hearing.[46] Again, by attempting to use the early renewal rule, the FCC effectively is rewriting the statute.

As the D.C. Circuit has explained, "a license is modified for purposes of section 316 when an unconditional right conferred by the license is substantially affected."[47] Modification can take many forms, and "a court considering the applicability of section 316 must look beyond the form of the license document and beyond the language employed by

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[42] 47 U.S.C. § 312(a).

[43] 47 U.S.C. § 312(c).

[44] 47 U.S.C. § 309(k)(2).

[45] 47 U.S.C. § 316(b) ("In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission").

[46] *See* AMSC Subsidiary Corp. v. Fed. Commc'ns Comm'n, 216 F.3d 1154 (D.C. Cir. 2000).

[47] P&R Temmer v. Fed. Commc'ns Comm'n, 743 F.2d 918, 927-28 (D.C. Cir. 1984).

the FCC to describe its action."[48] Any conditions that require changes in ABC's practices during the current license term (again, some of which will not expire until 2031), would constitute a license modification. To impose such conditions, the Commission would bear the burden of proceeding and proof—which is manifestly not the course the Commission is attempting here by calling up licenses early and requiring ABC to both bear the burden of proceeding and prove that it is broadcasting in the public interest.

C. Section 309(k)(1) Limits the FCC's Discretion in License Renewals

CAR relies heavily on the D.C. Circuit's statement, in *Central Florida Enterprises v. FCC* (1982), that "renewal expectancy will be factored in for the benefit of the public, not for incumbent broadcasters."[49] Thus, CAR argues, the "question should not be whether renewal is convenient for Disney as the incumbent, but whether its continued licensure benefits the public."[50] Whatever the D.C. Circuit might have meant in 1982, when Congress enacted Section 309(k)(1) in 1996, it *required* that the "Commission shall grant [a license renewal] application if it finds, with respect to that station, during the preceding term of its license" that "the station has served the public interest, convenience, and necessity" and that there

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[48] *Id.* ("Thus, a broadcaster's unconditional license to broadcast on a given frequency is "modified" if the FCC grants a license to another broadcaster on that frequency. *See, e.g.*, Fed. Commc'ns Comm'n v. National Broadcasting Co., 319 U.S. 239, 63 S. Ct. 1035, 87 L. Ed. 1374 (1943); Western Broadcasting Co. v. Fed. Commc'ns Comm'n, 674 F.2d 44 (D.C. Cir. 1982). Similarly, a full-time broadcaster's license, which includes the unconditional right to presunrise broadcasting, is modified by a grant of pre-sunrise authority to a daytime broadcaster within interference range. WBEN, Inc. v. Fed. Commc'ns Comm'n, 290 F.2d 743 (D.C. Cir. 1961). … [A] licensee whose right to the use of a frequency is contingent on satisfying specified conditions has no right to use of the frequency when the conditions are not met. Music Broadcasting Co. v. Fed. Commc'ns Comm'n, 217 F.2d 339, 342 (D.C. Cir. 1954).").

[49] CAR Petition at 4 n. 1.

[50] *Id.*

have been no "serious violations by the licensee" or a "pattern of abuse" by the licensee.[51] Each of this provision's three prongs refers to what the licensee "has" done, and thus bars the Commission from denying license renewal based on speculation about, as CAR puts it, "whether [the applicant's] *continued* licensure benefits the public."[52] The crucial word in the statute is "shall": Where the Commission previously enjoyed broad discretion to decide which of several competing applicants deserved a license, this word commands the FCC to renew the license based strictly on past performance,[53] explicitly foreclosing the open-ended, predictive inquiry CAR proposes. Section 309(k)(1) ended the cottage industry of jumping broadcast renewals, either for monetary contributions or promises of future performance. It cannot be resurrected here.

D. The FCC Must Consider the Licensee's Full Term in Any Renewal Application

Section 309(k)(1) requires the Commission to evaluate the licensee's conduct "during the *preceding term* of its license."[54] Implicitly, the Early Renewal Notice interprets this language to mean whatever *portion* of the license term has already elapsed. But the plain meaning of "term" is clear from the two other uses of the word in Section 309. Under Section 309(k)(2), the Commission may "grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."[55]

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[51] 47 U.S.C. § 309(k)(1).

[52] CAR Petition at 4 n. 1. (emphasis added).

[53] Me. Cmty. Health Options v. United States, 140 S.Ct. 1308 (2020) ("'Unlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement.'") (quoting Kingdomware Technologies, Inc. v. United States, 136 S.Ct. 1969, 1977 (2016)).

[54] 47 U.S.C. § 309(k)(1).

[55] 47 U.S.C. § 309(k)(2).

But a license "shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein…"[56] In both instances, "term" means the period prescribed *ex ante* by the Commission. This meaning fits naturally in Section 309(k)(1): the Commission must evaluate the entire period provided for in the existing (or expired) license. Evaluating only part of that period is insufficient because that is less than the "term" previously fixed by the Commission. Thus, as ABC argues, the renewal process must "operate at the end of a license term" for a station to have "the opportunity to build the full record of service the Act commands."[57]

This reading does not require invalidating the FCC's early renewal rule; the FCC may still order the early filing of applications, and thus accelerate the beginning of what can be a lengthy administrative process, but it cannot rule on the issue of renewal until the end of the licensee's term. Of course, the Commission remains free to begin a proceeding to revoke a broadcast license under Section 312 at any time during the term of the license.[58]

This is the best reading of Section 309(k)(1). Under *Chevron v. NRDC* (1984), courts might have deferred to some other interpretation developed by the FCC through a rulemaking or formal adjudication.[59] But *Loper Bright v. Raimondo* (2024) overruled

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[56] 47 U.S.C. § 309(h).

[57] ABC Objections at 7, https://rbr.com/wp-content/uploads/WABC-TV_Objection_to_Unlawful_Early_Renewal.pdf.

[58] 47 C.F.R. § 73.3539(c).

[59] *See* Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

Chevron, so courts must now determine the "best reading" of Section 309(k) for themselves: "In the business of statutory interpretation, if it is not the best, it is not permissible."[60]

Whatever power the Commission might claim to "prescribe rules to 'fill up the details' of [its] statutory scheme"[61] through general grants of rulemaking power and thus to "exercise a degree of discretion,"[62] *Loper Bright* directs lower courts to consider such interpretations under *Skidmore v. Swift & Co* (1944), which says that the "weight" of an agency's statutory interpretation "depend[s] upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."[63] But the Early Renewal Notice fails to explain its new, implicit interpretation of the "preceding term" language of Section 309(k)(1), nor has the Commission ever interpreted this language since Congress enacted it. Since 1996, the Commission has made only a ministerial amendment to its early renewal rule, without discussing how Section 309(k) affected the early renewal rule.[64] The Commission has had no need to explain how Section

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[60] Loper Bright Ent. v. Raimondo, 603 U.S. 400 (2024).

[61] *Id.* at 395.

[62] *Id.* at 394. *See, e.g.*, 47 U.S.C. § 154 (general authority to "make … rules and regulations" to implement the Communications Act).

[63] Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944).

[64] The FCC's 1996 Broadcast License Renewal Procedures Order did not even discuss the phrase (and declined to define the Section 309(k)'s substantive renewal standards—e.g., "public interest," "serious violations"—saying it would "continue to apply existing policy statements and case law, refining these as appropriate on a case-by-case basis"). *See* https://docs.fcc.gov/public/attachments/FCC-96-172A1.pdf. Subsequently, the agency amended the rule only to require electronic filing; https://www.federalregister.gov/documents/2021/10/01/2021-17394/mandatory-electronic-filing-of-applications-and-reports-administered-by-the-international-bureau#citation-26-p54398. The Commission would not qualify for any deference in its interpretation of this rule both

309(k) affects early renewal: It has not ordered any early renewal application since 1972,[65] and its decisions about standard license applications are consistently made *after* the end of the license term. While an FCC rule requires applications for renewal to be filed roughly four months before the license's expiration,[66] this is about how long it takes for all the relevant filings to be made: a few weeks for the FCC to announce (usually in batch form) that various applications have been accepted for filing in a public notice that provides time for petitions to deny (30 days), replies (30 days), and oppositions (20 days).[67] This allows the FCC to *begin* the process of considering license renewal applications around the time the licenses expire. And even then, the record is not closed: Broadcasters have an ongoing duty to supplement the record with any material changes.[68] Thus, when the Commission finally rules on renewal applications—months or even years later—it does so based on a complete evaluation of the licensee's conduct "during the *preceding term* of its license," as Section 309(k)(1) requires.[69]

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because "an agency's reading of a rule must reflect 'fair and considered judgment,'" which means "that a court should decline to defer to a merely 'convenient litigating position.'" Kisor v. Wilkie, 139 S. Ct. 2400, 2417 (2019).

[65] Leflore Broad. Co., 36 F.C.C.2d 101 (1972). CAR disingenuously suggests that the Commission validated early renewal in In re Applications of Heritage-Wisconsin Broadcasting Corp., et al., 8 FCC Rcd 5607, 5613 (1993). CAR Petition at 52. In fact, the Commission distinguished *Leflore* ("this case is not similar to … Leflore Broadcasting Company, Inc") and said nothing about early renewal except to summarize what had happened in that case. 8 FCC Rcd at 5613 ("the Commission ordered the licensee to file early renewal applications because inter alia, the licensee inexplicably terminated Black employees subsequent to assuming control of the stations.").

[66] 47 C.F.R. § 73.3539(a) ("an application for renewal of license shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed").

[67] 47 C.F.R. § 73.3584.

[68] 47 C.F.R. § 1.65.

[69] 47 U.S.C. § 309(k)(1).

Interpreting ***rule*** Section 73.3539(c) to allow the FCC not merely to require the filing of a license renewal application at any time during a license term, but also the early termination of that license, would essentially nullify ***statutory*** Section 312: Why would the FCC ever move to revoke a license under Section 312 if it could just call up a license for early renewal, and thus shift the burden from itself to the licensee? Suppose, for example, that a Republican administration renewed a Fox license at the end of Trump's term, and that the incoming Democratic FCC, just days later, ordered Fox to apply for renewal of that license. The Commission could solicit petitions to deny and keep Fox in limbo indefinitely, using the Sword of Damocles[70] to intimidate Fox—something far more dangerous than the FCC taking too long to dismiss the petition to deny Fox's license filed in 2023. If, as the Early Renewal Notice asserts, the Commission could also then "make the former licensee's channel available to other interested parties" once it denied renewal,[71] the early renewal process would have an even greater *in terrorem* effect, and Section 312 would effectively be read out of the Communications Act.

Congress could not have intended any of this. It enacted Section 309(k) to codify "'legitimate renewal expectanc[y]' that is 'implicit in the structure of the Act,'" recognized by the Supreme Court in *FCC v. National Citizens Committee* (1978).[72] Congress went further: Section 309(k) ended comparative hearings for renewals[73] and required that "the Commission *shall* grant [a renewal] application if it finds … during the preceding term of its

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[70] *Sword of Damocles*, MERIAM-WEBSTER, https://www.merriam-webster.com/dictionary/sword%20of%20Damocles (last visited July 29, 2026).

[71] Early Renewal PN at 2.

[72] Fed. Commc'ns Comm'n v. National Citizens Committee, 436 U.S. 775, 805 (1978).

[73] 47 U.S.C. § 309(k)(4).

license" that "the station has served the public interest…" and has not violated FCC rules or the Communications Act.[74]

The legislative history of Section 309(k) does not change this analysis. In general, "legislative history is itself often murky, ambiguous, and contradictory," and parsing it can become, as the Supreme Court has warned, "an exercise in 'looking over a crowd and picking out your friends.'"[75] The history is sparse. The 1995 House Commerce Committee's report said that what became Section 309(k) "in no way limits the ability of the Commission to act *sua sponte* in enforcing the Act or Commission rules."[76] ABC's reading of "during the preceding term" does not limit Commission powers to use the "Enforcement provisions" of Section 401[77] or the Act's investigative provisions.[78] The Commission has bypassed those provisions, and their safeguards, here. In particular, the FCC has forced ABC to apply for renewal of its licenses without even specifying what ABC did wrong—something the FCC's rules do not require the Commission to do until a hearing is ordered on the application.[79]

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[74] 47 U.S.C. § 309(k).

[75] Exxon Mobil Corp. v. Allapattah Services, Inc., 545 U.S. 546, 568 (2005) (quoting Wald, *Some Observations on the Use of Legislative History in the 1981 Supreme Court Term*, 68 IOWA L. REV. 195, 214 (1983)).

[76] https://www.congress.gov/committee-report/104th-congress/house-report/204/1 .

[77] 47 U.S.C. § 401.

[78] 47 U.S.C. § 403 ("Inquiry by Commission on its own motion"); 47 U.S.C. § 308 ("The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied.").

[79] 47 C.F.R. § 73.3593 (the FCC may "formally designate [a license] application for hearing on the grounds or reasons then obtaining and will forthwith notify the applicant and all known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally.").

By the same token, as ABC notes, the "early renewal procedure is not an investigative tool and adds nothing to the Commission's investigative capacity."[80] The FCC does not need a license renewal application to demand "written statements of fact" from broadcasters.[81] It can demand such statements from any broadcaster at any time.[82] And the FCC would gain exactly the same additional investigatory powers by ordering a hearing whether it did so for license renewal or for ABC's alleged violations in its hiring practices.[83] Thus, ABC's arguments are consistent with the House Report's ambiguous statement.

III. The Commission Cannot Deny or Limit License Renewal for Violation of Its Employment Rules

The second question the FCC should have asked was whether, even if it ultimately concluded that ABC had violated its employment rule, non-renewal of ABC's licenses might be warranted in response. Article III Project (A3P) and America First Legal (AFL) have filed petitions to deny renewal of ABC's licenses on this ground. The American Alliance for Equal Rights filed comments, rather than a petition to deny, asking the FCC to "enforce that rule against Disney."[84]

We take no position on ABC's employment practices. To the contrary, we assume, *arguendo*, that the Commission might well be able to justify interpreting its equal opportunities employment rule ("no person shall be discriminated against in employment

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[80] *ABC Objection* at 3.

[81] 47 C.F.R. § 73.1015.

[82] 47 C.F.R. § 308.

[83] 47 C.F.R. § 409(e).

[84] Alliance for Equal Rights Petition at 6.

by such stations because of race, color, religion, national origin, or sex"[85]) to prohibit race-based preferences such as those apparently employed by ABC. But even so, if the Commission used such a reinterpretation to deny (or condition) renewal of ABC's licenses, it would be in essentially the same situation as the last time it denied renewal of a broadcaster's license in *Trinity Broadcasting* (1999)[86]—which the D.C. Circuit reversed.[87]

A. Denial of License Renewal Requires Fair Notice

The *Trinity Broadcasting* court recognized that denial of license renewal is a "severe penalty"—indeed, the most severe punishment the FCC could possibly impose—and that imposition of such a penalty requires "fair notice" of what the law requires.[88]

That case involved the interpretation of two Commission regulations. One granted "preferences to minority applicants in lotteries for low-power and translator television station licenses," which was ambiguous as to whether it required de facto minority control, as one Commissioner noted in dissent at the time the rule was issued.[89] The other regulation exempted "minority-controlled" applicants from ownership limits for high-power television stations.[90] Noting the ambiguity in the low-power regulation, NMTV claimed eligibility for the exemption applicable to minority-controlled high-power stations because it had "a majority-minority board."[91] Later, on review of petitions to deny, the Commission

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[85] 47 C.F.R. § 73.2080(a).

[86] 14 FCC Rcd 13570 (1999).

[87] Trinity Broad. of Fl. v. Fed. Commun. Comm'n, 211 F.3d 618 (D.C. Cir. 2000).

[88] *Trinity Broadcasting,* 211 F.3d at 628.

[89] *Id.* at 620, 627.

[90] *Id.* at 622.

[91] *Id.* at 619.

interpreted the regulation to require de facto minority control, and thus denied renewal of the licenses as a sanction for violation of the rule. Because the FCC's interpretation of the exemption for ownership limits on high-power stations was not "'plainly wrong'," the D.C. Circuit deferred to that interpretation over Trinity's "plausible alternative interpretation."[92] But the court added:

> Were we simply reviewing the Commission's interpretation of its regulation, our task would be at an end. But the Commission has not just interpreted [S]ection 73.3555. Concluding that Trinity had abused Commission processes by exercising de facto control over NMTV in violation of section 73.3555, the Commission imposed a severe penalty—denial of Trinity's application to renew its commercial television station license. Because "[d]ue process requires that parties receive fair notice before being deprived of property," we have repeatedly held that "[i]n the absence of notice—for example, where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability." We thus ask whether "by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform...."[93]

The court rejected the Commission's assertion that the regulation's "use of the word 'controlled'" in the term "minority-controlled" "should have made clear to Trinity that the agency was interested in actual control."[94] The Commission's guidance about the low-power rule ("If a majority of the governing board ... are minorities, the entity is entitled to a minority preference") "may have 'confused' high-power applicants like Trinity."[95] Thus did the Commission fail to satisfy the requirements of the Constitution's Due Process clause.

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[92] *Id.* at 625 (quoting General Elec. Co. v. EPA, 53 F.3d 1324, 1327 (D.C. Cir. 1995)).

[93] *Id.* at 628 (quoting *GE*, 53 F.3d at 1328-29).

[94] *Id.* at 628-29.

[95] *Id.* at 629.

Here, as ABC notes, the Commission "has never stated whether or when diversity, equity, and inclusion ('DEI') practices violate a Commission rule or warrant ordinary punishment, much less the extraordinary punishment of a demand for early license renewal."[96] ABC points to the FCC's Equal Employment Opportunity ('EEO') rule in Section 73.2080(c), "which focus[es] on non-discrimination and providing access to opportunities for those from underrepresented groups."[97] Likewise, Section 73.2080(b) requires every broadcaster to "establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and nondiscrimination."[98] The Commission might be right that these two provisions cannot justify "positive" preferences in violation of the broad prohibition on discrimination imposed by Section 73.2080(a): "no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex."[99] But the Commission would have a difficult time showing that ABC had fair notice of what the rule, as a whole, required, or that ABC's interpretation was entirely unreasonable—so unreasonable that it would decapitate a broadcaster which had been continually operating as a Commission licensee since 1943. "The Commission through its regulatory power cannot, in effect, punish a member of the regulated class for reasonably interpreting Commission rules. Otherwise the practice of administrative law would come to

[96] ABC Objection at 3.

[97] *Id.* citing 47 C.F.R. § 73.2080(c).

[98] 47 C.F.R. § 73.2080(b).

[99] 47 C.F.R. § 73.2080(a).

resemble 'Russian Roulette,'" as the court had previously warned in a case involving rules that "addressed the filing of applications 'in a baffling and inconsistent fashion.'"[100]

In *Trinity Broadcasting*, the Commission inconsistently interpreted the same word ("controlled") in two regulations that were "nearly identical."[101] Here, the lack of fair notice comes from the novelty of the FCC's interpretation of the rule. This is the kind of fair notice problem at issue in *Fox v. FCC* (2012), where the Commission "modif[ied] its indecency enforcement regime to regulate so-called fleeting expletives" but the Supreme Court ruled that broadcasters "lacked notice at the time of their broadcasts that the material they were broadcasting could be found actionably indecent under then-existing policies."[102] As in *Trinity Broadcasting*, the Commission had a right to change its interpretation of its regulations, as the Court had previously ruled,[103] but its "lack of notice to [broadcasters] that its interpretation had changed … 'fail[ed] to provide a person of ordinary intelligence fair notice of what is prohibited.'"[104] As both *Trinity Broadcasting* and *General Electric* noted, "[w]here … the regulations and other policy statements are unclear, where the petitioner's interpretation is reasonable, and where the agency itself struggles to provide a definitive reading of the regulatory requirements, a regulated party is not 'on notice' of the agency's ultimate interpretation of the regulations, and may not be punished."[105]

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[100] *Trinity Broadcasting,* 211 F.3d at 630 (quoting Satellite Broadcasting Co., Inc. v. Fed. Commc'ns Comm'n, 824 F.2d 1, 2, 4 (D.C. Cir. 1987)). .

[101] *Id.* at 629.

[102] Fed. Commc'ns Comm'n v. Fox Television Stations, Inc., 567 U.S. 239, 243, 258 (2012) (*Fox II*).

[103] Fed. Commc'ns Comm'n v. Fox Television Stations, Inc., 556 U.S. 502, 529 (2009) (*Fox I*).

[104] 567 U.S. at 254 (quoting *United States v. Williams*, 553 U.S. 285, 304 (2008)).

[105] General Electric, 53 F.3d at 1333-34; Trinity Broadcasting, 211 F.3d at 632.

All three things are true here. Section 73.2080(a) bars discrimination "in employment … because of race, color, religion, national origin, or sex" but 73.2080(b) also requires broadcasters to "carry out a positive continuing program of specific practices designed to ensure equal opportunity," and Section 73.2080(c) requires certain outreach programs, including to minorities.[106] ABC could reasonably have believed that its "positive … program" was lawful *even if the Commission now believes this interpretation of the Act was incorrect*.[107] And the Commission itself had not previously provided a "definitive reading" of how to reconcile these requirements. The three-page warning letter the FCC sent to ABC in 2025[108] falls very far from being "definitive": It contains no analysis of any kind, merely a list of practices the Commission asserts constitutes "invidious discrimination."

B. Courts Require Even More When Speech Is at Risk

The *Fox* Court said that fair notice is especially critical where speech is at risk: "This would be true with respect to a regulatory change this abrupt on any subject, but it is surely the case when applied to the regulations in question, regulations that touch upon 'sensitive areas of basic First Amendment freedoms.'"[109] The regulations at issue in *Fox* were content-based, and the Court noted that the "'vagueness of [a content-based regulation of speech] raises special First Amendment concerns because of its obvious chilling effect.'"[110] Of course,

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[106] 47 C.F.R. § 73.2080.

[107] *See, e.g.*, *Trinity Broadcasting*, 211 F.3d at 628.

[108] Letter from Brendan Carr, Chairman, Fed. Commc'ns Comm'n, to Robert A. Iger, Chief Exec. Officer, The Walt Disney Co. (Mar. 27, 2025), https://www.fcc.gov/sites/default/files/Carr-Letter-to-Disney-DEI-03272025.pdf.

[109] *Id.* at 254 (quoting Baggett v. Bullitt, 377 U.S. 360, 372 (1964)).

[110] *Id.* (quoting Reno v. American Civil Liberties Union, 521 U.S. 844, 870–871 (1997)).

content-neutral laws can likewise cast an unconstitutional chill over speech.[111] And "laws that single out the press, or certain elements thereof, for special treatment 'pose a particular danger of abuse by the State.'"[112] Whatever the resemblance between the FCC's employment rule and other discrimination laws, it is not a law of general application: it applies only to broadcasters, which creates the opportunity for selective enforcement by the FCC. Most obviously, in this proceeding, the FCC asserts the possibility of applying this rule to shut down ABC's broadcast stations—a "special treatment" (effectively the corporate death penalty) unavailable under generally applicable employment non-discrimination laws.

The *Fox* Court's concern was not limited to the "fairness" of notice available to a regulated party: a "punishment fails to comply with due process if the statute or regulation under which it is obtained 'fails to provide a person of ordinary intelligence fair notice of what is prohibited, *or is so standardless that it authorizes or encourages seriously discriminatory enforcement*.'"[113] That is exactly the case here: The FCC has, for the first time, asserted that a broadcaster has violated its employment rule, singled out the broadcaster that the President and FCC Chair have most loudly and frequently denounced because of its speech and threatened with the loss of its licenses, and, instead of bringing an enforcement

[111] Watchtower Bible & Tract Society v. Village of Stratton, 536 U.S. 150, 166 (2002) (content-neutral registration requirement for canvassers chills speech of those who desire anonymity); *City of Lakewood v. Plain Dealer Publishing*, 486 U.S. 750, 757 (1988) (permitting scheme that provides the licensor with unfettered discretion "intimidates parties into censoring their own speech, even if the discretion and power are never actually abused"); *NAACP v. Alabama*, 357 U.S. 449 (1958) (compelled disclosure of donor lists under facially neutral law would chill members' associational and expressive rights).

[112] Turner Broadcasting System, Inc. v. Fed. Commc'ns Comm'n, 512 U.S. 622, 623 (1994); *id.* at 659 ("Regulations that discriminate among media, or among different speakers within a single medium, often present serious First Amendment concerns.").

[113] *Fox*, 567 U.S. at 253 (emphasis added).

action, sought to deny the broadcaster renewal of its licenses—and, apparently, to terminate them early. A more egregious case of abuse would be hard to imagine.

Trinity Broadcasting, too, recognized the danger of selective enforcement. The D.C. Circuit found "the Commission's insistence that [its rule on minority preferences] provided fair notice particularly problematic in view of the Commission's failure to explain satisfactorily how denying Trinity's license can be reconciled with cases where it found regulatory requirements too unclear to justify sanctioning other broadcasters."[114] The same goes here: The Commission has not explained why it has applied its new interpretation of Section 73.2080 to ABC.

C. Courts Will Not Defer to the FCC's Interpretation of Its Employment Discrimination Rule

Even where there is no danger of chilling speech protected by the First Amendment, the Supreme Court has raised the due process bar significantly since *Trinity Broadcasting*. There, the D.C. Circuit upheld the FCC's interpretation under a "high level of deference" to the FCC's interpretation.[115] But in *Kisor v. Wilkie* (2019), the Supreme Court said that "a court may not defer to a new interpretation, whether or not introduced in litigation, that creates 'unfair surprise' to regulated parties."[116] Where an agency has maintained an interpretation for decades and repeatedly proposed amending its rules to reflect that interpretation, a regulated party could not claim that it was unfairly surprised when that interpretation was

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[114] 211 F.3d at 630.

[115] *Trinity Broadcasting,* 211 F.3d at 625 (quoting *General Elec. Co. v. EPA*, 53 F.3d 1324, 1327 (D.C. Cir. 1995)).

[116] 139 S.Ct. 2400, 2417-18 (2019) (quoting *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 170 (2007)).

applied against it even though the agency had never formally amended its rule.[117] Here, the FCC's interpretation is novel, and has never been applied in any enforcement action, let alone as a clarification to the rule. *Kisor* also noted that deference is inappropriate for an agency "interpretation that would have imposed retroactive liability on parties for longstanding conduct that the agency had never before addressed"[118]—exactly what the FCC is attempting to impose here by denying renewal of ABC's licenses.

Likewise, *Kisor* requires that "an agency's reading of a rule must reflect 'fair and considered judgment,'" which means "that a court should decline to defer to a merely 'convenient litigating position.'"[119] That is essentially what the FCC has adopted here: A pretext for beginning an administrative process (a kind of litigation) without any substantive analysis of the Commission's claims (a fair and considered judgment).

Kisor also noted that the "basis for deference ebbs when '[t]he subject matter of the [dispute is] distan[t] from the agency's ordinary' duties or 'fall[s] within the scope of another agency's authority.'"[120] Both are plainly the case here: The FCC's "ordinary duties" are in telecommunications regulation, not employment discrimination. Indeed, the FCC's broadcast employment discrimination rule rests not on some explicit authority conferred by Congress, but on its conception of the "public interest" in licensing broadcasters.[121]

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117 *Long Island Care*, 551 U.S. at 170-71.

118 *Kisor*, 139 S.Ct. at 2418 (citing Christopher v. SmithKline Beecham Corp., 567 U.S. 142, 155-56 (2012)).

119 *Id.* at 2417.

120 *Id.*

121 47 U.S.C. §§ 307, 309, and 310.

D. Early Renewal Is Not Essential to Investigating ABC's Compliance with the FCC's Employment Rules

The FCC has long required a "compelling" reason for requiring the early filing of renewal applications.[122] Likewise, the FCC's current rule authorizes requiring licensees to file such applications only when the application is "*essential* to the proper conduct of a hearing or investigation…."[123]

There is nothing "essential" about ordering an early renewal application here. The FCC is in the early stages of its investigation into ABC's practices. Contrary to assertions by petitioners, the Commission does not need this process to investigate ABC's practices, as explained above.[124] The only example CAR can provide of how this process might aid investigation is that "[m]embers of the public such as these Petitioners may bring forth information about Disney's discriminatory practices (eight of which are listed above) which the Commission may not have known otherwise."[125] Perhaps, in a bygone era, requiring broadcasters to announce on air that they had been required to apply for early renewal[126] might have alerted someone to potential employment discrimination, and caused them to alert the FCC to discrimination it did not otherwise know about. Today, in an era of media abundance, the President and FCC have various tools available to communicate their

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[122] *See, e.g.*, Stangland, 9 F.C.C.2d 683, 684 (1967) (explaining Commission's "practice of not requiring the filing of early renewal applications absent some compelling reason"); KNOK Broad., Inc., 29 F.C.C.2d 47, 50 (1971) (finding no compelling reason for demanding an early renewal application); RKO Gen., Inc., 1 FCC Rcd. 1081, 1085 (1986).

[123] 47 C.F.R. § 73.3539(c).

[124] *See supra* at 21, notes 81-83 and associated text.

[125] CAR Petition at 53.

[126] 47 C.F.R. § 73.3580.

allegations to the public. It is exceedingly unlikely that the FCC will discover new evidence that would not otherwise have come to light merely because it initiated this early renewal process.

E. The Commission's Options to Avoid Constitutional Concerns

The Commission could avoid these constitutional concerns in one of three ways. First, it could provide a truly "definitive interpretation" in guidance—not merely a list of practices it believes are unlawful but an explanation of why. Second, it could do the same through an enforcement action.[127] Third, it could revise the existing rule. In each case, the new interpretation could have only prospective effect. The Commission could not have sought license revocation, or even a de minimis monetary penalty. Instead, it would have explicitly disclaimed the ability to impose such a penalty, as the Commission did when it fundamentally changed course to its indecency rules in its 2004 Golden Globes Order, declaring that even single, fleeting expletives were actionably indecent.[128]

Instead, the Commission has, for the first time in half a century, forced a broadcaster to apply for renewal of its licenses based on an entirely novel theory.

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[127] SEC v. Chenery Corp., 332 U.S. 194 (1947) (recognizing that an agency may change its interpretation of a statute either through rulemaking or adjudication).

[128] In re Complaints Against Various Broad. Licensees Regarding Their Airing of the "Golden Globe Awards" Program, Memorandum Opinion and Order, 19 FCC Rcd. 4975 (2004) ("But for the fact that existing precedent would have permitted this broadcast, it would be appropriate to initiate a forfeiture proceeding against NBC and other licensees that broadcast the program prior to 10 p.m. Given, however, that Commission and staff precedent prior to our decision today permitted the broadcast at issue, and that we take a new approach to profanity, NBC and its affiliates necessarily did not have the requisite notice to justify a penalty.").

IV. The First Amendment Protects the First Amendment Rights of Broadcasters

Employment non-discrimination is obviously not the only issue in this proceeding; indeed, it appears to be a smoke screen for the real issue: the content of ABC's speech. the petitions to deny the ABC licenses bear this out: CAR spends nearly half of its 61-page petition on speech-related arguments, and MRC's 24-page petition fails to even mention the employment issue, but instead focuses exclusively on speech-related arguments.

Indeed, the Early Renewal Notice says the Commission will also "determine whether the ABC Stations have been operating in the public interest…."[129] The day before the Bureau issued that Notice, the Chair (apparently) issued the Public Interest Notice, that broadcasters must "serv[e] the role 'of a 'public trustee' charged with the duty of fairly and impartially informing the public audience.'"[130] Before becoming Chair, Carr himself noted the vagueness of the concept of the "public interest": "we should start a rulemaking to take a look at what that [standard] means."[131] Whatever the "public interest" means, the Supreme Court has been clear: "'The choice of material,' the 'decisions made [as to] content,' the 'treatment of public issues'—'whether fair or unfair'—all these 'constitute the exercise of editorial control and judgment,'" which the First Amendment protects.[132]

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[129] *Early Renewal PN* at 2.

[130] *Public Interest PN* at 1 (quoting *Columbia Broadcasting*, 412 U.S. at 117). The title of this document implies that it speaks for the "FCC," but the document omits any mention of who issued it or under what authority, as is standard practice for FCC public notices. Compare Early Renewal PN at 4 ("This action is taken by the Chief, Video Division, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's Rules.").

[131] FCC Commissioner & President-Elect Trump's Pick for FCC Chairman Brendan Carr Speaks with CNBC's "Squawk on the Street" Today, CNBC (Dec. 6, 2024), https://www.cnbc.com/2024/12/06/cnbc-transcript-exclusive-fcc-commissioner-president-elect-trumps-pick-for-fcc-chairman-brendan-carr-speaks-with-cnbcs-squawk-on-the-street-today.html.

[132] *Moody*, 603 U.S. at 728 (quoting *Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974)).

A. *Red Lion* Does Not Support the FCC's Interference with ABC's First Amendment Rights

Broadcasters do not surrender their First Amendment rights to the FCC as a condition of receiving a license. In *Red Lion v. FCC* (1969), the Supreme Court upheld the Fairness Doctrine's imposition on broadcasters' editorial control—later repealed in 1987[133]—"[b]ecause of the scarcity of radio frequencies."[134] The Court concluded that, in that case, the rights of listeners were "paramount" and overcame broadcasters' rights.[135] But that does not give the FCC authority carte blanche to regulate broadcast content by invoking the rights or interests of the public viewership. The Court *also* recognized that "more serious First Amendment issues" would arise if the FCC refused "to permit the broadcaster to carry a particular program or to publish his own views" or selectively enforced its "equal time" rule[136]—in other words, if the Commission interfered with the broadcaster's editorial judgments just as it is doing now. The Court promised to "reconsider" its decision if it later had "the net effect of reducing, rather than enhancing, the volume and quality of coverage."[137] It subsequently required the FCC to accord broadcasters "the widest journalistic freedom consistent with their public [duties]."[138] And in *FCC v. League of Women Voters* (1984), the Court held that each application of *Red Lion* "requires a critical

133 Syracuse Peace Council v. WTVH, Memorandum Opinion and Order, FCC 87-266, 2 FCC Rcd. 5043 (Aug. 6, 1987).

134 Red Lion Broad. Co. v. Fed. Commc'ns Comm'n, 395 U.S. 367, 390 (1969).

135 *Id*. at 386.

136 *Id*. at 396. The Court mentioned the possibility of selective under-enforcement—"a discriminatory refusal to require the licensee to broadcast certain views which have been denied access to the airwaves," *id.*—but selective application of the FCC's rules is no less pernicious.

137 *Red Lion*, 395 U.S. at 393.

138 CBS v. Democratic Nat'l Committee, 412 U.S. 94, 110 (1973).

examination of the interests of the public and broadcasters in light of the particular circumstances of each case."[139] The "First Amendment must inform and give shape to the manner in which Congress exercises its regulatory power in this area" because broadcasters retain "editorial initiative and judgment" protected by the Constitution.[140] *Red Lion* made clear that the constitutional line the FCC walks is a thin one.

B. *Red Lion* Does Not Support the FCC's Interference with the Marketplace of Ideas

MRC and CAR argue, in more detail, what Carr and Trump have repeatedly proposed: punishing ABC for expressing views that it (and the current administration) dislikes. This goal is in direct opposition to *Red Lion's* reasoning that "the people as a whole retain their interest in free speech … and their collective right to have the medium function consistently with the ends and purposes of the First Amendment."[141] In *League of Women Voters*, the Court found that the "public's 'paramount right' to be fully and broadly informed on matters of public importance"—the original rationale for the Fairness Doctrine—was "not well served by the restriction" on editorializing, which would "diminish, rather than augment, 'the volume and quality of coverage' of controversial issues."[142]

Just so here. Most obviously, since the FCC required ABC to verify its news bona fides with the Commission to conduct political interviews on *The View*, the show ""hasn't featured

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[139] Fed. Commc'ns Comm'n v. League of Women Voters, 468 U.S. 364, 381 (1984).

[140] 468 U.S. 364, 378, 398.

[141] *Red Lion*, 395 U.S. at 390.

[142] *Id.* at 399.

a single political candidate running in a competitive midterm race."[143] Every time a broadcaster hesitates to say something that may offend Trump or his allies, speech is being chilled.

Red Lion prioritized (incorrectly) the audience's rights over the broadcasters' to wave away First Amendment concerns about interfering with the latter: "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount."[144] Quoting two Supreme Court decisions from the 1970s, CAR asserts that this includes a "'right to be informed,' which can manifest as 'a balanced presentation of information on issues of public importance'"[145] or achieving "'the widest possible dissemination of information from diverse and antagonistic sources.'"[146] But the Supreme Court has since rejected the underlying rationale of the cases vital to CAR's argument:

> a State "cannot advance some points of view by burdening the expression of others." To give government that power is to enable it to control the expression of ideas, promoting those it favors and suppressing those it does not. And that is what the First Amendment protects all of us from.[147]

Such an inversion appropriates the public's right to receive information to imbue government with the power to control the views expressed on television. The First Amendment protects the right to receive information free of government interference and

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[143] Max Tani, 'The View' Throttles Back Political Candidate Bookings Following FCC Inquiry, Semafor (July 5, 2026), https://www.semafor.com/article/07/05/2026/the-view-throttles-back-political-candidate-bookings-following-fcc-inquiry.

[144] *Id.* at 390.

[145] CAR Comments at 1 (quoting Columbia Broadcasting System, Inc. v. Democratic Nat'l Committee, 412 U.S. 94, 102 & 112 (1973) (*Columbia Broadcasting*)).

[146] *Id.* (quoting Fed. Commc'ns Comm'n v. National Citizens Comm. for Broadcasting, 436 U.S. 775, 799 (1978)).

[147] *Moody*, 603 U.S. at 744.

manipulation. "The right of freedom of speech … necessarily protects the right to receive it. The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them."[148] The American system of free speech achieves the broadest array of views and information from a multiplicity of antagonistic sources by protecting the right of speakers to express their views regardless of whether the government or the rest of the public approves and the right of listeners to decide for themselves what information is true, valid, or trustworthy—not through central government control.

C. Whatever the Status of *Red Lion*, There Is No Legitimate Government Interest in Balancing Speech

The *League of Women Voters* Court found that "ensuring adequate and balanced coverage of public issues" is a "substantial governmental interest."[149] But the Court has subsequently, on multiple occasions, rejected any government interest in "leveling the playing field" for speech.[150] It did so most clearly in *Moody v. NetChoice* (2024): "the

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[148] Board of Education, Island Trees Union Free School District v. Pico, 457 U.S. 853, 867 (1982) (cleaned up). *See also Va. Pharmacy Bd v. Va. Consumer Council*, 425 U.S. 748, 756 (1976) ("[W]here a speaker exists … the protection afforded is to the communication, to its source and to its recipients both."), *Stanley v. Georgia*, 394 U.S. 557, 565 (1969) ("If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds."), *Kleindienst v. Mandel*, 408 U.S. 753, 775–76 (1972) (Marshall, J., dissenting) ("The activity of speakers becoming listeners and listeners becoming speakers in the vital interchange of thought is the means indispensable to the discovery and spread of political truth. Its protection is a fundamental principle of the American government. The First Amendment means that Government has no power to thwart the process of free discussion, to 'abridge' the freedoms necessary to make that process work.") (cleaned up).

[149] *League of Women Voters*, 468 U.S. at 380.

[150] Arizona Free Enterprise Club's Freedom Club PAC v. Bennett, 564 U.S. 721, 749 (2011). *See also* Buckley v. Valeo, 424 US 1 (1976).

government cannot get its way just by asserting an interest in improving, or better balancing, the marketplace of ideas."[151]

Concerns about a lack of "balance," media "bias," and the power of elite "gatekeepers" are nothing new. In *Miami Herald v. Tornillo* (1974), the Supreme Court noted concerns that media "bias and manipulative reportage are … the result of the vast accumulations of unreviewable power in the modern media empires,"[152] and that "monopoly" media "'seldom presents two sides of an issue," and instead "too often hammers away on one ideological or political line using its monopoly position not to educate people, not to promote debate, but to inculcate in its readers one philosophy, one attitude.'"[153] But whatever "monopoly" power such "empires" might exercise, the Court was clear: Their "treatment of public issues and public officials whether fair or unfair—constitute the exercise of editorial control and judgment" and the Court "reaffirm[ed] unequivocally the protection afforded to editorial judgment" by the First Amendment.[154] Thus, the Court struck down a state law that "required a newspaper to give a political candidate a right to reply when it published 'criticism and attacks on his record.'"[155]

In 2021, Texas and Florida enacted laws intended to force social media platforms to allow Trump back onto their services and to bar them from restricting his speech—among other speech they might find lawful but awful. In a 2024 law review article, Chair Carr

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[151] *Moody*, 603 U.S. 707, 732 (2024).

[152] *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 250 (1974).

[153] *Id.* at 253 (quoting William O. Douglas, *The Bill of Rights is Not Enough*, THE GREAT RIGHTS 117 (Edmond Cahn ed., 1963)).

[154] *Id.* at 256, 258.

[155] *Id.* at 2400.

asserted that these laws were "easily distinguished from those struck down on First Amendment grounds in *Tornillo* and its progeny" because "the Court has permitted certain safeguards where the regulated entity exercises market power and controls a central means of communication…"[156] In *Moody v. NetChoice* (2024), the Supreme Court noted that

> the *Tornillo* Court devoted six pages of its opinion to recounting a critique of the then-current media environment—in particular, the disproportionate "influen[ce]" of a few speakers—similar to one heard today (except about different entities). It made no difference. However imperfect the private marketplace of ideas, here was a worse proposal—the government itself deciding when speech was imbalanced, and then coercing speakers to provide more of some views or less of others.[157]

The Court categorically rejected arguments like Carr's, noting that it had "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."[158] The constitutional violation lay in "the government interfere[ing] with such editorial choices—in overriding a private party's expressive choices,"[159] not interfering with any medium in particular, as the Court made repeatedly clear: "On the spectrum of dangers to free expression, there are few greater than allowing the government to change the speech of private actors in order to achieve its own conception of speech nirvana."[160] The Court reaffirmed what it had previously said about

[156] Brendan Carr & Nathan Simington, *The First Amendment Does Not Prohibit the Government From Addressing Big Tech Censorship*, Yale J. Reg.: Notice & Comment (Jan. 11, 2024), https://www.yalejreg.com/nc/the-first-amendment-does-not-prohibit-the-government-from-addressing-big-tech-censorship-by-brendan-carr-and-nathan-simington/. Notably, this article was published months after all the briefs in the *Moody* case had been filed.

[157] 603 U.S. 707, 733 (2024) (quoting *Tornillo*, 418 U.S. at 249 (internal citations omitted)).

[158] *Id*. at 719.

[159] *Id.* at 732.

[160] *Id.* at 741–742.

films and video games: "'whatever the challenges of applying the Constitution to ever-advancing technology, the basic principles' of the First Amendment 'do not vary.'"[161]

1. *Moody*'s Discussion of the First Amendment Was Not Dicta, so It Binds the Commission

Contrary to Justice Samuel Alito's assertions,[162] *Moody*'s discussion of the First Amendment was not dicta. Dicta involves "general expressions" which "may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision."[163] The *Moody* Court's holding may seem narrow: It did not invalidate Texas and Florida's laws, remanding them to the appellate courts—but only because the Court ruled that the parties had "focused" on the issue required to resolve a facial challenge to the laws.[164] But this holding incorporated the entirety of the Court's First Amendment discussion as a repudiation of the Fifth Circuit's analysis, which Carr relied on heavily.[165] The Court's extraordinary instruction to wayward lower court bears quote in full:

> there has been enough litigation already to know that the Fifth Circuit, if it stayed the course, would get wrong at least one significant input into the facial analysis. The parties treated Facebook's News Feed and YouTube's homepage as the heartland applications of the Texas law. At least on the current record,

[161] *Id.* at 733 (quoting Brown v. Entertainment Merchants Assn., 564 U.S. 786, 790 (2011)); *see also* Joseph Burstyn v. Wilson, 343 U.S. 495 (1952).

[162] *Id.* at 766 (Alito, J., concurring in judgment) ("The holding in these cases is narrow: NetChoice failed to prove that the Florida and Texas laws they challenged are facially unconstitutional. Everything else in the opinion of the Court is nonbinding dicta.").

[163] Cohens v. Virginia, 19 U.S. 264, 399 (1821).

[164] *Moody*, 603 U.S. at 743–44 ("To succeed on its First Amendment claim, NetChoice must show that the law at issue … 'prohibits a substantial amount of protected speech relative to its plainly legitimate sweep.' (quoting United States v. Hansen, 599 U.S. 762, 770 (2023)).

[165] Brendan Carr & Nathan Simington, *The First Amendment Does Not Prohibit The Government From Addressing Big Tech Censorship*, YALE NOTICE & COMMENT nn. 47 & 48 (Jan. 11, 2024), https://www.yalejreg.com/nc/the-first-amendment-does-not-prohibit-the-government-from-addressing-big-tech-censorship-by-brendan-carr-and-nathan-simington/.

> the editorial judgments influencing the content of those feeds are, contrary to the Fifth Circuit's view, protected expressive activity. And Texas may not interfere with those judgments simply because it would prefer a different mix of messages. How that matters for the requisite facial analysis is for the Fifth Circuit to decide. But it should conduct that analysis in keeping with two First Amendment precepts. First, presenting a curated and "edited compilation of [third party] speech" is itself protected speech. And second, ***a State "cannot advance some points of view by burdening the expression of others."*** To give government that power is to enable it to control the expression of ideas, promoting those it favors and suppressing those it does not. ***And that is what the First Amendment protects all of us from***.[166]

Far from being dicta, this was the Court reminding the Fifth Circuit of the established jurisprudence by which it is bound. The passage also makes clear not only that the Court was explaining "First Amendment precepts" applicable to all courts. The Commission cannot sidestep *Moody*'s repudiation (and the Court's repudiation in many other cases[167]) of any state interest in balancing speech (the Court's second precept) simply by labeling it "dicta."

2. There Is No Governmental Interest in Balancing or "Un-Biasing" Speech

The laws at issue in *Moody* were specific to tech platforms, so the Court had no need to address broadcasters. Thus, it said nothing about *Red Lion*, which upheld the FCC's Fairness Doctrine, the requirement—repealed in 1987[168]—that licensees air opposing views on controversial matters of public importance, "[b]ecause of the scarcity of radio frequencies."[169] The Court alluded to *Red Lion* only implicitly, saying the "government can

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[166] *Moody*, 603 U.S. at 744

[167] *See, e.g.*, *Ariz. Free Enter. Club's Freedom Club PAC*, 564 U.S. 721 (2011); *Citizens United v. FEC*, 558 U.S. 310 (2010); *Davis v. FEC*, 554 U.S. 724 (2008); *Buckley v. Valeo*, 424 U.S. 1 (1976).

[168] Syracuse Peace Council v. WTVH, Memorandum Opinion and Order, FCC 87-266, 2 FCC Rcd. 5043 (Aug. 6, 1987).

[169] Red Lion Broadcasting Co. v. Fed. Commc'ns Comm'n, 395 U.S. 367, 390 (1969).

take varied measures, like enforcing competition laws, to protect" "a well-functioning sphere of expression, in which citizens have access to information from many sources."[170] This sentence cited *Turner v. FCC* (1994), which upheld cable operators' obligations to carry local broadcasters.[171] *Turner* discussed, but did not rely on *Red Lion*.

Carr's defense of Texas and Florida's must-carry mandates relied principally on *Turner*—citing it 11 times, more than any other case—because it upheld cable operators' obligations to carry local broadcasters. But the *Moody* Court read *Turner* to make the opposite point: It "further underscored the constitutional protection given to editorial choice."[172] The government's interest there "was not to balance expressive content" but "to save the local-broadcast industry, so that it could continue to serve households without cable."[173] This interest depended on remedying the unique bottleneck power of cable operators because the "physical connection between the television set and the cable network gives cable operators bottleneck, or gatekeeper, control over most programming delivered into subscribers' homes."[174] Social media possess no such physical control—nor do broadcasters, who compete with many other sources of video programming delivered by Internet, cable, and satellite services.[175] Regardless, said *Moody*, that "interest … was

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[170] *Id.* at 732.

[171] *Id.* at 733 (citing Turner, 512 U.S. 622, 647 (1994)).

[172] *Id.* at 729.

[173] *Id*. at 743 n.10.

[174] *Turner*, 512 U.S. at 656.

[175] That the *Moody* Court found it unnecessary to examine this question is significant: It underscores that even if some "special characteristic" distinguished social media platforms, as in *Turner*, the states' must-carry mandate would have been unconstitutional because their real interest was related to the suppression of expression. *See infra* note 177 and related text.

'unrelated to the content of expression' disseminated by either cable or broadcast speakers …"[176] and where "the Government's interest [is] 'not the alteration of speech' … , the prospects of permissible regulation are entirely different.[177] Critically, the Court saw little danger that must-carry mandates would favor certain content or viewpoints: Cable operators' objections weren't about the content they were compelled to carry, but *economic*: they lost control of some of their limited channel capacity.[178]

Moody thus drew a red line, as the Court has done on previous occasions,[179] between policing business practices—which might *indirectly* enhance viewpoint diversity—and interfering with editorial judgment,[180] which the Court barred completely: "in case after case, the Court has barred the government from forcing a private speaker to present views it wished to spurn in order to rejigger the expressive realm."[181] "That principle," the Court said, "works for social-media platforms as it does for others."[182]

Chair Carr confidently predicted that Texas's law would survive Supreme Court review, comparing it to the must-carry mandate in *Turner*, and claiming that it "does not 'distinguish[] favored speech from disfavored speech on the basis of the ideas or views

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[176] *Moody*, 603 U.S. at 743 n.10 (quoting *Turner*, 512 U.S. at 647).

[177] *Id.* (quoting Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., 515 U.S. 557, 577 (1995)).

[178] *Id.* at 645.

[179] Lorain Journal Co. v. United States, 342 U.S. 143 (1951); Associated Press v. United States, 326 U.S. 1, 7 (1945).

[180] *See generally* Berin Szóka, *The First Amendment's Red Line*, CONCURRENCES (Nov. 2025), https://techfreedom.org/wp-content/uploads/2025/11/Berin-Szoka-Part-VIII-The-First-Amendments-red-line-between-the-expressive-and-commercial-realms.pdf.

[181] *Moody*, 603 U.S. at 733.

[182] *Id.* at 719.

expressed' and "[i]nstead … operates to protect all viewpoints and aims to ensure there are more ideas or viewpoints in the public discourse."[183] *Moody* said the opposite:

> The interest Texas asserts is in changing the balance of speech on the major platforms' feeds, so that messages now excluded will be included. To describe that interest, the State borrows language from this Court's First Amendment cases, maintaining that it is preventing "viewpoint discrimination." But the Court uses that language to say what governments cannot do: They cannot prohibit private actors from expressing certain views. When Texas uses that language, it is to say what private actors cannot do: They cannot decide for themselves what views to convey. The innocent-sounding phrase does not redeem the prohibited goal. The reason Texas is regulating the content-moderation policies that the major platforms use for their feeds is to change the speech that will be displayed there. Texas does not like the way those platforms are selecting and moderating content, and wants them to create a different expressive product, communicating different values and priorities. But under the First Amendment, that is a preference Texas may not impose.[184]

The exact same can be said about Carr's pressure campaign: He talks about combatting ABC's viewpoint discrimination ("bias") but the reason—obviously—that he has ordered ABC to apply early to renew its licenses, and to justify its right to decide whom to interview on *The View* and other talk shows,[185] is that he and the President do "not like the way" broadcasters are speaking and "want[] them to create a different expressive product, communicating different values and priorities."[186] The First Amendment bars such interference with editorial discretion—in broadcasting, as in any medium.[187] While the FCC might indirectly pursue *Red Lion*'s goal of an "uninhibited marketplace of ideas" through

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[183] Brendan Carr & Nathan Simington, *supra* note 165 (quoting *Turner*, 512 U.S. at 643).

[184] *Moody*, 603 U.S. at 743 (internal citations omitted).

[185] https://techfreedom.org/wp-content/uploads/2026/06/TechFreedom-Comments-ABC-Petition-on-The-View.pdf; https://techfreedom.org/wp-content/uploads/2026/07/TechFreedom-Reply-Comments-on-ABC-The-View-Petition.pdf; https://techfreedom.org/wp-content/uploads/2026/07/The-View_-Reply-Comments-coalition-Letter.pdf.

[186] *Moody*, 603 U.S. at 743.

[187] *See infra* at 32-**Error! Bookmark not defined.**.

economic or structural regulation, it cannot directly regulate "bias," "distortion," "balance," or "fairness." Combating these simply is not a legitimate government interest.

3. The Government Cannot Force Private Speakers to "Balance" Speech

The Public Interest Notice claims that the "duty of fairly and impartially informing the public audience" is an "obligation that broadcasters take on voluntarily, in exchange for the privilege of holding a license to operate using the public airwaves."[188] But if achieving "fairness" or "balance" in media is not a legitimate interest, as *Moody* says,[189] this quid pro quo is an unconstitutional condition.

4. Whatever Government Interest Might Apply, Regulation Must Be Narrowly Tailored to It

Similarly, even if the FCC could establish *some* legitimate interest under *Red Lion*, any condition must be narrowly tailored to that interest, as in *League of Women Voters.*[190] An open-ended interpretation of the "public interest" is far from being narrowly tailored. To be narrowly tailored, a regulation must be substantially related to the government interest and not excessively burden speech.[191] The proposed regime of subjectively determining political bias or motivation in a station's programming, in order to impose the government's view of a balanced information ecosystem on broadcast television, fails both criteria. It would sweep

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188 Federal Communications Commission, FCC Reminds Broadcasters of Their Public Interest Obligations, DA-26-530A1 (May 28, 2026).

189 *See Moody*, 603 U.S. at 743.

190 468 U.S. 364, 380.

191 Ward v. Rock Against Racism, 491 U.S. 781, 799–800 (1989).

in a vast swath of undeniably protected expression and use it to punish license holders or applicants.

D. *Red Lion*'s Scarcity Rationale Is Obsolete

The Communications Act's "public interest" licensing scheme burdens some speakers but not others: It applies to broadcast media but not cable or Internet-based media. The Supreme Court has long held that "differential treatment, unless justified by some special characteristic of the press, suggests that the goal of the regulation is not unrelated to suppression of expression, and such a goal is presumptively unconstitutional."[192]

Spectrum scarcity might once have been such a characteristic (though we doubt it).[193] But the Court has not said anything to suggest that this rationale is still a valid justification for denying full First Amendment protections to broadcasters since *League of Women Voters* (1984)—and even then, far from upholding restrictions on broadcasters' speech, the Court did the opposite: it struck down restrictions on broadcasters' right to editorialize But ABC is correct the decision's "factual predicates" are obsolete.[194] In an era of media abundance, broadcasting is no longer the "unique medium" upon which *Red Lion* thought an "uninhibited

[192] Minneapolis Star and Tribune Company v. Minnesota Commissioner of Revenue, 460 U.S. 575, 585 (1983).

[193] *Red Lion*, 395 U.S. at 390.

[194] Petition for Declaratory Ruling of KTRK Television, Inc. & American Broadcasting Cos., Inc., FCC Docket No. 26-124, at 5, 10 (filed May 7, 2026), https://www.fcc.gov/ecfs/document/10522087167981/1 ("*The View Petition*").

marketplace of ideas" depended.[195] Indeed, it is no longer either the prevalent, or most important medium for the consumption of information or exchange of ideas.[196]

Justice Clarence Thomas has said *Red Lion*, and the Court's subsequent decision in *FCC v. Pacifica* (1978),[197] were "unconvincing when they were issued, and the passage of time has only increased doubt regarding their continued validity."[198] In 1986, the Republican-led FCC similarly rejected *Red Lion*'s factual basis: "scarcity no longer justifies an intrusion into the First Amendment rights of broadcasters that would not be tolerated if applied to print."[199] Relatedly, Justice Ruth Bader Ginsburg thought that "[t]ime" and "technological advances .... show why" the Court's subsequent decision in *Pacifica v. FCC* (1978) "bears reconsideration."[200] It is likely only a matter of time before the Supreme Court strikes down *Red Lion*.[201]

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195 *Red Lion*, 395 U.S. at 390.

196 Packingham v. North Carolina, 582 U.S. 98, 98 (2017); Christopher St. Aubin & Jacob Liedke, *Social Media and News Fact Sheet*, Pew Rsch. Ctr. (Sept. 25, 2025), https://www.pewresearch.org/journalism/fact-sheet/social-media-and-news-fact-sheet/.

197 Fed. Commc'ns Comm'n v. Pacifica Foundation, 438 U.S. 726 (1978).

198 Fed. Commc'ns Comm'n v. Fox Television Stations, Inc., 556 U.S. 502, 530-31 (2009) (Thomas, J., concurring).

199 *In re Applications of FM 105, et al.*, Hearing Designation Order, MM Docket No. 86-122, 1986 FCC LEXIS 3588, at *50-51 (Apr. 23, 1986).

200 Fed. Commc'ns Comm'n v. Fox Television Stations, Inc., 567 U.S. 239, 249 (2012) ("*Fox II*") (Ginsburg, J. concurring) (citing Fed. Commc'ns Comm'n v. Pacifica Foundation, 438 U.S. 726 (1978)). While *Pacifica* involved indecency, and additional rationales for FCC regulation, notably the intrusiveness of broadcast media, it also rested on *Red Lion*. 438 U.S. at 748.

201 Thomas W. Hazlett, Sarah Oh, and Drew Clark, *The Overly Active Corpse of* Red Lion, 9 NW. J. TECH. & INTELL. PROP. 1 (2010), https://scholarlycommons.law.northwestern.edu/njtip/vol9/iss3/1.

E. This FCC's Reliance on Fairness Doctrine-Era Reasoning Contradicts Longstanding Conservative Positions

The 2016 Republican platform, re-adopted in 2020, opposed "the so-called Fairness Doctrine" and instead "support[ed] free-market approaches to free speech unregulated by government."[202] Conservatives have opposed the Fairness Doctrine, and lambasted *Red Lion*, for decades. Thus, it is not surprising that MRC, the Article III Project, and American Alliance for Equal Rights entirely avoid mentioning *Red Lion*. Only CAR mentions the case.

The Commission should recall why conservatives so long and so intently opposed the Fairness Doctrine and with it, *Red Lion*. Dennis Patrick, the Republican FCC Chairman who oversaw the repeal of the Fairness Doctrine in 1987 explained that decision as follows:

> 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 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.[203]

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… requires Federal officials to supervise the ***editorial practices*** of broadcasters in an effort to ensure that they provide coverage of

[202] Republican Party Platform of 2016, Am. Presidency Project (July 18, 2016), https://www.presidency.ucsb.edu/documents/2016-republican-party-platform (readopted June 2020).

[203] *Fairness Held Unfair,* BROADCASTING, 27 (Aug. 10, 1987) (emphasis added), https://www.americanradiohistory.com/Archive-BC/BC-1987/BC-1987-08-10.pdf.

> 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.[204]

The Commission was always concerned that the Fairness Doctrine was prone to abuse—a concern shared across ideological divides. The Commission's 1985 report on the Fairness Doctrine quoted Justice William O. Douglas, the New Deal progressive, in a 1973 concurring Supreme Court opinion: "'the Fairness Doctrine … makes the broadcast licensee an easy victim of political pressures'"; he becomes "'timid and submissive,'" left in fear of how the FCC will measure the "public interest," and so offering only "'echoes of the dominant political voice that emerges after every election.'"[205] "Perhaps," warned Douglas, "we are inching slowly toward a controlled press."[206] Republican FCC Commissioners have, until now, consistently warned about the potential for abuses—such as Robert McDowell in 2009:

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[204] 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).

[205] 1985 Fairness Report, 50 Fed. Reg. at 35418 (quoting Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm., 412 U.S. 94, 164-65 (1973) (Douglas, J., concurring in judgment)).

[206] *CBS*, 412 U.S. at 164 (Douglas, J., concurring in the judgment).

> 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?"[207]

And former Republican FCC Chair Ajit Pai in 2017:

> 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.[208]

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

> 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 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

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

[208] 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.

Amendment, and it is the duty of each of us to continue to uphold this precious protection.[209]

These principled defenses of the First Amendment are laudable. They reflect the Commission's established, decades-old stance on the Fairness Doctrine. In fact, they essentially what the Commission said in its most recent formal interpretations of the "public interest"—back in 1985 and 1987.

F. The Commission Remains Bound by Its Previous Repudiation of the Scarcity Rationale and Judgments about the Dangers of Chilling Speech and Government Abuse

In its 1985 *Fairness Report*, the Commission said that "we no longer believe that the fairness doctrine, as a matter of policy, serves the public interest."[210] In 1987, the Commission formally repealed the doctrine.[211]

In *Syracuse Peace Council v. FCC* (1989), the D.C. Circuit upheld this policy judgment.[212] The Supreme Court declined to review that decision.[213] While the appeals court did not rule on the underlying constitutional questions,[214] it upheld the FCC's conclusion that

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[209] Remarks of FCC Commissioner Michael O'Rielly at the Media Institute (July 29, 2020) (emphasis added), https://docs.fcc.gov/public/attachments/DOC-365814A1.pdf.

[210] Syracuse Peace Council v. Fed. Commc'ns Comm'n, 867 F.2d 654, 659 (D.C. Cir. 1989) (quoting Report Concerning General Fairness Doctrine Obligations of Broadcast Licensees, 102 F.C.C. 2d 145, 147 (1985), https://www.worldradiohistory.com/Archive-FCC/FCC-Fairness-Report-1985.pdf (*1985 Fairness Report*)).

[211] *Syracuse Peace Council*, 2 FCC Rcd. 5043.

[212] *Id.* at 660-62.

[213] Syracuse Peace Council, 2 F.C.C.R. 5043 (1987), aff'd, 867 F.2d 654 (D.C. Cir. 1989), cert. denied, 493 U.S. 1019 (1990).

[214] *Id*. at 656 ("Although the Commission somewhat entangled its public interest and constitutional findings, we find that the Commission's public interest determination was an independent basis for its decision and was supported by the record. We uphold that determination without reaching the constitutional issue.").

there was no longer any factual basis for the scarcity rationale of *Red Lion*.[215] It also found that there was no dispute "that discouraging any coverage at all, having government officials second-guess editorial judgments, or allowing incumbents an opportunity for abuse of power are things to be avoided, all other things being equal."[216]

To be sure, these were predictive judgments,[217] which the Commission could now reverse. But to do so, the Commission would have to directly address the holdings of the FCC in repealing the Fairness Doctrine.[218] it cannot "depart from a prior policy sub silentio."[219] It must not only "display awareness that it *is* changing position," but also "provide a more detailed justification than what would suffice for a new policy created on a blank slate."[220]

This is because any future reliance on the scarcity rationale of *Red Lion* would "rest[] upon factual findings that contradict those which underlay its prior policy," *i.e.*, the repeal of the Fairness Doctrine, and because the approach followed by the Commission since 1987 "has engendered serious reliance interests that must be taken into account."[221] The present Commission has shown no such awareness. Rather, it acts as if its new course is no change at all, requiring no justification whatsoever—despite the mountain of objective evidence to the contrary.

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[215] *Id.* at 661.

[216] *Id.* at 660.

[217] *Id.* at 680 ("Independent review of the Commission's findings also seems inappropriate because we have before us the predictive judgments of a federal agency concerning the (perceived) effects of its own policy.").

[218] *See 1985 Fairness Report* at 147; Syracuse Peace Council against Television Station WTVH Syracuse, New York, 2 FCC Rcd 5043 (1987).

[219] Fed. Commc'ns Comm'n v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).

[220] *Id.*

[221] *Id.*

In 1985, the FCC summarized its study of the practical effects of "fairness" regulation as follows: "the evidence of record mandates that the conclusion that the requirement that broadcasters provide balance in their overall coverage of controversial public issues in fact makes them more timid than they would otherwise be in airing programming" involving such issues.[222] It noted that the "typical fairness doctrine case addresses whether the licensee provided overall balanced coverage" and that "the anomalous result of" this "prong of the fairness doctrine is to inhibit or silence licensees who make significant contributions to the marketplace of ideas."[223] These were the judgments upheld by the D.C. Circuit; those judgments provided the basis for broadcasters to exercise their editorial judgments ever since—not only in deciding how to report on each day's news, but in structuring their newsrooms, which shows to run, whom to hire, what long-term strategies to pursue in shaping their editorial agenda, *etc*. Never before in American history—or since—have any speakers had greater reliance interests in an opinion issued by the Commission—or any other government agency. If the Commission decides to reverse course—the premise inherent in this proceeding—it bears a heavy burden in explaining why it was, in fact, mistaken about "balancing" and "fairness" in media four decades ago.

V. CAR and MRC's Petitions Must Be Dismissed

CAR and MRC ask the FCC to deny, or condition, renewal of ABC's licenses because of supposed bias or unfairness, because ABC has lost the "trust" of the American people, as

[222] *1985 Fairness Report*, 102 F.C.C. 2d at 170.

[223] *Id.* at 179.

Chair Carr claims, or because it believes ABC lacks the character required to be a licensee. Each argument it baseless and must be dismissed.

A. These Petitions Ask the FCC to Regulate ABC's Speech

CAR and MRC make various arguments that ABC has not served the public interest because its speech is biased, partisan, inaccurate or insufficiently objective. But to accept any of these would be tantamount to reviving the Fairness Doctrine, of which they are all variations.

Most explicitly, CAR demands that the FCC ensure "'a balanced presentation of information on issues of public importance'"[224] and "'the widest possible dissemination of information from diverse and antagonistic sources.'"[225] This is literally what the Fairness Doctrine required.[226] CAR's petition explicitly conflates these concepts, to imply that a lack of "balance" is somehow equivalent to violating clear FCC rules, because it "ignores long-standing Commission precedents and principles protecting the integrity of the news.'"[227]

Similarly, CAR claims that ABC's "deep and consistent lack of balance indicates the airtime is being used 'in service of a political agenda' rather than as an exercise in good-faith

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[224] CAR Petition at 1 (quoting Columbia Broadcasting System, Inc. v. Democratic Nat'l Committee, 412 U.S. 94, 102 & 112 (1973) (*Columbia Broadcasting*)).

[225] *Id.* (quoting Fed. Commc'ns Comm'n v. National Citizens Comm. for Broadcasting, 436 U.S. 775, 799 (1978)).

[226] "[The broadcaster] must affirmatively endeavor to make ... facilities available for the expression of contrasting viewpoints held by responsible elements with respect to the controversial issues presented." Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 29 Fed. Reg. 10426 (1964).

[227] CAR Petition at 1–3 ("ABC does not provide 'a balanced presentation of information on issues of public importance.' ABC does not expose viewers to 'information from diverse and antagonistic sources.' ABC ignores long-standing Commission precedents and principles protecting the integrity of the news.'").

newscasting" and that, to correct this lack of balance, ABC must change its speech in ways that CAR prefers: "If one of these shows consistently leaned liberal, but was balanced by another show that leaned conservative, that could still offer an overall mix of programming in the public interest."[228] CAR demands that ABC be punished for declining to carry Trump's recent speech related to election integrity.[229] CAR asserts that fact-checking claims made during a presidential debate is a violation of the public interest because this "was … executed in an entirely one-sided way that served the political interest of one candidate."[230] "To obtain the Commission's permission to use public spectrum," MRC insists, "licensees agree not to use said spectrum to advance their personal, partisan political agendas."[231]

These arguments are, to put it bluntly, nonsense. What MRC calls "personal … agendas" is simply the editorial discretion of private speakers. Moreover, the decision to provide the electorate with factual information in response to claims made by candidates seeking public office is quintessentially acting as a "trustee" in "the public interest." Converting any challenge to the veracity of a politician's claims into prohibited activity not only unconstitutionally restricts a broadcaster's own right to express its views, but it diminishes the marketplace of ideas and results in a *less* informed public.

Both parties invoke the FCC's news distortion policy. CAR claims that "[e]very broadcast licensee has an 'obligation to present the news in an accurate manner.'"[232] Thus,

[228] CAR Petition at 31.

[229] *See supra* note 12.

[230] CAR Petition at 9 (citing In re Applications of Voce Intersectario Verdad America, Inc., 100 F.C.C.2d 1607, 1611 (Rev. Bd. 1985)).

[231] *Id.* at 5.

[232] *Id.* at 10 (quoting In the matter of the handling of public issues under the Fairness Doctrine, 48 F.C.C.2d 1, 21 (1974)).

it argues, "a licensee may not 'distort or suppress the basic factual information upon which any truly fair and free discussion of public issues must necessarily depend.'"[233] Likewise, MRC accuses ABC of "us[ing] public spectrum to suppress news coverage of the most critical stories of our day; to engage in electioneering and relentless political bias; … and to peddle misinformation and defamation."[234] As we have explained elsewhere, on behalf of a bipartisan coalition of former FCC Chairs and Commissioners, the First Amendment does permit the FCC to "police broadcaster licensees' speech for bias or the falsity of the speech they carry, except under the exceedingly narrow circumstances of the broadcast hoax rule."[235]

B. Public "Trust" Cannot Be a Grounds for Denying or Conditioning License Renewal

CAR questions "whether ABC is operating in the public interest or remains worthy of the public trust" and claims that ABC has "breached its duty and public trust to ABC's viewers nationwide and in these eight markets."[236] Likewise, the Public Interest Notice declares that broadcasters "not only must broadcasters air programming that is responsive to the needs of their local community, but they must avoid conduct that undermines the public trust in

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[233] *Id.* (quoting Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246, 1254 (1949)).

[234] MRC Petition at 2.

[235] Petition for Special Relief in the Matter of Repeal of the News Distortion Policy (FCC Nov. 13, 2025), https://protectdemocracy.org/wp-content/uploads/2025/11/News-Distortion-Petition-for-Special-Relief.pdf. *See also* Opposition of Former Chairs, Commissioners, Chiefs Of Staff, General Counsels, and Bureau Chiefs to Petitions to Deny of Center For American Rights & Media Research Center, MB Docket No. 26-131 (July 28, 2026), https://protectdemocracy.org/wp-content/uploads/2026/07/Protect-Democracy-ABC-Early-Renewal-Comment-FINAL.pdf.

[236] CAR Petition at 3, 5.

the broadcast service."[237] It mentions "character" issues that could disqualify a licensee.[238] But the FCC has long understood "trust"—as a dimension of license renewal—to mean whether the Commission itself can trust a broadcaster that has lied or broken FCC rules. For example, the Commission's bedrock 1986 Character Policy Statement "view[ed] misrepresentation and lack of candor in an applicant's dealings with the Commission as serious breaches of trust" because the "integrity of the commission's processes cannot be maintained without honest, dealing with the Commision [sic] by licensees."[239]

Chair Carr has repeatedly conflated this concept of "trust" in broadcasters with something very different: whether the *public*, "trusts" the media not to be biased. In this formulation, "trust" means "fairness" and "distrust" proves "bias." If a significant percentage of Americans don't like the speech of certain broadcasters, broadcasters are failing to satisfy their obligations as public trustees. After Larry Ellison's takeover of CBS, Chair Carr lauded the company for "begin[ning] the process of earning back Americans' trust" in "the legacy national news media to report fully, accurately, and fairly."[240] He has since said: "It is very important to bring trust back into media, which has earned itself the label of fake news."[241] Carr has since claimed that "trust in legacy media has now fallen to an all time low of just

[237] Public Interest Notice at 5 note 35.

[238] Early Renewal Notice at 2 n 12.

[239] Report and Order and Policy Statement, In the Matter of Policy Regarding Character Qualifications In Broadcast Licensing, Docket No. 81–500, 102 F.C.C. 2d 1179, 1211 (1986) (*1986 Character Policy Statement*).

[240] Press Release, Fed. Commc'ns Comm'n, FCC Approves Skydance's Acquisition of Paramount CBS (July 24, 2025), https://docs.fcc.gov/public/attachments/DOC-413229A1.pdf.

[241] Brendan Carr (@BrendanCarrFCC), X (Mar. 14, 2026, 12:24 ET), https://x.com/BrendanCarrFCC/status/2032855414233047172.

9%."[242] He cites no source, but might have been referring to the most common survey, conducted by Gallup, which asked respondents "how much trust and confidence do you have in the mass media—such as newspapers, TV and radio—when it comes to reporting the news fully, accurately and fairly?"[243] 62% of Republicans say "none at all" versus just 8% of Democrats, and 92% say either "not very much" or "none at all" versus 48% of Democrats.[244] Just 8% of Americans said "a great deal"—3% of Republicans and 16% of Democrats.[245]

While this number comes close to Carr's 9% claim, and refers to something similar to his claim, it is far from being an all-time low; in fact, this overall measure of distrust has been relatively stable since 2007.[246] What has really changed is Republicans' perception that the "news media" favor Democrats—43% in 2017 (the last time Gallup asked that question), up from 23% in 2003 and 25% in 1995.[247] Democrats' answer to the same question about partisan bias has remained relatively stable: 13% in 2017, down from 17% in 1995. The overall perception that the "news media" are "too liberal" hardly changed: 45% in 2001 and 44% in 2014 (the last time Gallup asked that question).[248] In any event, public opinion on whether mass media is "trustworthy" is not an appropriate or constitutional basis for regulation.

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[242] *Id.*

[243] Megan Brenan, *Trust in Media at New Low of 28% in U.S.*, GALLUP (Oct. 2, 2025), https://news.gallup.com/poll/695762/trust-media-new-low.aspx.

[244] *Id.*

[245] *Id.*

[246] *Id.*

[247] Art Swift, Six in 10 in U.S. See Partisan Bias in News Media, Gallup (Apr. 5, 2017), https://news.gallup.com/poll/207794/six-partisan-bias-news-media.aspx.

[248] *Id.*

This is an obvious pretext for the FCC to retaliate against broadcasters for speech disfavored by the Administration and its supporters. And it will be so for every future administration, regardless of ideology. If all the FCC needs to do is show that some substantial portion of the populace distrusts a particular media outlet, it will have carte blanche to punish speech it does not like—and the First Amendment will be a dead letter.

C. CAR's Other Arguments for Denial of Renewal Are Legally Baseless

CAR makes three further arguments to justify denial of ABC's renewal application. Each is legally baseless and should be dismissed.

1. Other Alleged Violations of Federal Law Dot Not Satisfy the FCC's 1986 Character Policy Statement

CAR quotes a 1973 Bureau decision: "'Violation of federal law, either by an applicant or one of its principals, on its face, raises a sufficient question regarding character to merit careful examination in order to determine whether an applicant is qualified to operate a broadcast station in the public interest.'"[249] That decision was superseded by the FCC's 1986 Character Policy Statement, which recognized that "repeated, willful violation of law amounting to a flagrant disregard for complying with the law" might, if "adjudicated," "provide sufficient evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee."[250] CAR points to three examples:

> Disney recently entered a $10 million settlement with the U.S. Department of Justice (and Federal Trade Commission) for violations of the Children's Online Privacy Protection Act (2025); a $2.75 million settlement with the California

[249] CAR Petition at 56 (quoting In re Chapman, 38 F.C.C.2d 871, 871-872 (Rev. Bd. 1973)).

[250] *1986 Character Policy Statement*, 102 F.C.C. 2d at 1201.

> Attorney General for violations of the California Consumer Privacy Act (2026); a $43.25 million class settlement for gender pay discrimination (2024).[251]

None of these qualify under the 1986 Character Policy Statement. As settlements, none were "adjudicated": No judge ruled on the merits. None of these even involved any admission of liability on Disney's part,[252] as is routine in such settlements, which, the Supreme Court has noted, are products of negotiation and "compromise."[253] CAR has failed to show that any of the underlying violations were either "willful" or "repeated." Furthermore, the Policy Statement required

> not only must there be a pattern of adjudicated violations, but the types of violations must reflect a significant departure from established legal authority. Moreover, the applicant must have either actual knowledge that the conduct constitutes a clear violation of existing law or the nature of the violation itself must give rise to a irrefutable inference that the applicant knew it was violating the law. In making these determinations it may be appropriate to consider whether the violation resulted from an incorrect legal interpretation

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[251] CAR Petition at 4 n. 2.

[252] Order for Permanent Injunction, Civil Penalty Judgment, and Other Relief, United States v. Disney Worldwide Servs., Inc., No. 2:25-cv-08223, at 3 ¶ 3 (C.D. Cal. Sept. 2, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/Disney-Order.pdf ("Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order."); Final Judgment and Permanent Injunction, People v. Disney DTC, LLC, No. 26STCV04425 (Cal. Super. Ct. L.A. Cnty. Feb. 11, 2026), https://oag.ca.gov/system/files/attachments/press-docs/CA_SUP_LAX_26STCV04425__Final_Judgment_and_Permanent_Injunction.pdf (defendants "having stipulated to the entry of this Final Judgment … without the taking of proof and without trial or adjudication of any fact or law, without this JUDGMENT constituting evidence of or an admission by DEFENDANTS regarding any issue of law or fact alleged in the Complaint on file, and without DEFENDANTS admitting any liability"); Settlement Agreement, Rasmussen v. Walt Disney Co., No. 19STCV10974 (Cal. Super. Ct. Los Angeles Cnty. Nov. 25, 2024), https://www.cohenmilstein.com/wp-content/uploads/2022/08/Settlement-Agreement-Rasmussen-v-Disney-11252024.pdf. ("Without any admission or concession by Defendants of any liability or wrongdoing with respect to the allegations in Plaintiffs' Amended Complaint, all released claims shall be finally and fully compromised, settled…").

[253] United States v. Armour & Co., 402 U.S. 673, 681 (1971).

> or whether the violation represented a knowing decision to ignore legal authority.[254]

CAR has shown none of this. Its arguments deserve action except dismissal.

2. ABC's Settlement of Alleged Defamation Is Likewise Irrelevant

The foregoing also applies to CAR's next argument. "In a renewal proceeding," CAR argues, "the FCC 'may [] refuse a renewal of license to one who has abused it to broadcast defamatory and untrue matter.'"[255] It claims that ABC has admitted defaming President Trump:

> The Center further reminds the Commission of ABC's settlement with President Trump for $16 million after it allegedly defamed the President. As part of the settlement, ABC released an editor's note: "ABC News and George Stephanopoulos regret statements regarding President Donald J. Trump made during an interview by George Stephanopoulos with Rep. Nancy Mace on ABC's This Week on March 10, 2024."[256]

Again, ABC's settlement disclaims any admission of liability.[257] Nor did any court make any finding regarding ABC's culpability. This unadjudicated settlement cannot, under the 1986 Character Policy Statement, be relevant to renewal of ABC's licenses.

But there is more to say: partial adjudication of constitutional claims is inadequate. In July 2023, the Media and Democracy Project (MDP) filed a petition to deny renewal of the

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[254] 102 F.C.C. 2d at 1205 n. 61.

[255] CAR Petition at 12 (quoting Trinity Methodist Church v. Federal Radio Com., 62 F.2d 850, 851 (D.C. Cir. 1932)).

[256] *Id.* at 12.

[257] Trump v. American Broadcasting Companies, Inc., 1:24-cv-21050, (S.D. Fla. Dec 14, 2024) ECF No. 58, https://www.courtlistener.com/docket/68351681/58/1/trump-v-american-broadcasting-companies-inc/.

license of a Fox station that was already up for renewal.[258] MDP cited a state trial court's finding that the Fox cable network made false claims about Dominion Voting System's role in election fraud in 2020, and accused the station both of lacking adequate character to hold a license and of engaging in "news distortion." Despite a court's decision regarding falsity,[259] the Commission rightly dismissed the complaint, noting that the state court did actually find that the statements were defamatory because, before it could rule on the question of whether Fox employees made these false claims with "actual malice," Fox and Dominion settled the case. The FCC wisely declined to attempt to adjudicate this question, [260] which rests on First Amendment doctrine.[261] The FCC has neither the competence nor the authority to decide whether speech about public figures is defamatory. That is a job for courts alone. Where courts have fully adjudicated such a question (including appeals), the fact that a broadcaster had been found guilty of defamation might be relevant to non-renewal (or revocation) of a broadcast license. But that is simply not the case here.

3. CAR's Reliance on the Equal Time Rule Fails

CAR indirectly invokes the Commission's authority, under Section 312(a)(7) (to revoke broadcast licenses for "for willful or repeated failure to allow reasonable access to . . . the use of a broadcasting station by a legally qualified candidate for Federal elective office

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[258] Petition to Deny, MDP, Application of FOX Televisions Stations for Renewal of License, LMS File No. 0000213362 (July 3, 2023), https://dad34edf-c7e7-4530-a601-25ab1c5aab01.filesusr.com/ugd/f9547d_d59f128ca09d4106b82930d09c12c94f.pdf.

[259] *See* US Dominion, Inc. v. Fox News Network, LLC, 293 A.3d 1002 (Del. Super. 2023), https://courts.delaware.gov/Opinions/Download.aspx?id=345820.

[260] Preserving the First Amendment, Memorandum Opinion & Order, GN Docket No. 25-11 (Jan. 16, 2025), https://docs.fcc.gov/public/attachments/DA-25-57A1.pdf.

[261] New York Times Co. v. Sullivan, 376 U.S. 254 (1964).

on behalf of his candidacy").[262] It claims that this provision "illustrates how seriously Congress took a station's decision to selectively put a thumb on the scale in favor of one candidate by denying access to another candidate: willful or repeated violations should result in revocation of a license."[263] Which "violations" CAR means is made clear in the previous footnote: "This petition focuses on violations of the FCC's rules and precedents, which always occupy first rank in this Commission's attention."[264] CAR claims that those "precedents" either require balance or, at a minimum, "have required disclosure of partisan conflicts of interest to listeners and viewers."[265]

As explained above, the First Amendment bars the Commission from requiring balance in any speech, including broadcast speech.[266] But the First Amendment also broadly bars the government from compelling speech, including requiring speakers to label themselves as "partisans." This body of case law rests on *West Virginia Board of Education v. Barnette* (1943), where the Court established that the government cannot force citizens to affirm or profess a belief or political status. Justice Robert Jackson famously wrote: "If there is any fixed star in our constitutional constellation, it is that no official ... can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."[267] Such a self-identification mandate would be precisely the kind of disclosure that the Court has

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[262] CAR Petition at 4–5 n.3.

[263] *Id.*

[264] CAR Petition at 4 n. 1.

[265] Id. at 11 ("the failure to disclose these partisan activities to viewers is contrary to Commission precedent.").

[266] *See supra* at 36-44.

[267] 319 U.S. 624, 642.

treated as "an effective restraint on freedom of association."[268] Unlike campaign finance disclosures, where the government has an interest in preventing corruption and the appearance thereof,[269] here the government has no such legitimate interest—it targets core political speech in order to control it in exactly the manner the First Amendment prohibits.

VI. The Commission Is Engaging in Jawboning to Punish ABC for Its Speech, which the First Amendment Bars

The Commission is trying to change the content of broadcast media—an impermissible goal whether accomplished by explicit mandate or coercive threats. As the Supreme Court recently reaffirmed in *NRA v. Vullo* (2024), "the First Amendment prohibits government officials from relying on the 'threat of invoking legal sanctions and other means of coercion . . . to achieve the suppression' of disfavored speech."[270] *Vullo* summarized decades of case law dating back to *Bantam Books, Inc. v. Sullivan* (1963)[271] against retaliation or "jawboning," *i.e.*, the use of a flimsy legal claim to reshape speech.[272] Together, *Bantam Books* and *Vullo* prohibit "the practice of constitutional evasion."[273] Crucially, *Vullo* makes clear that, even where a state actor has a valid grounds for investigating or suing a party,

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[268] NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958); Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021).

[269] Buckley v. Valeo, 424 U.S. 1, 27 (1976).

[270] National Rifle Association of America v. Vullo, 602 U.S. 175, 189 (2024).

[271] Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963).

[272] *See* Derek E. Bambauer, *Against Jawboning*, 100 MINN. L. REV. 51 (2015), https://scholarship.law.umn.edu/mlr/182/.

[273] *See, e.g.*, Genevieve Lakier, *Enforcing the First Amendment in an Era of Jawboning* 3 (2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5162523 (summarizing the "the contested First Amendment law of jawboning") (Forthcoming University of Chicago Law Review).

they cannot use such investigations or enforcement actions as pressure "to punish or suppress … protected expression."[274]

Whether *Red Lion* remains good law or not, the D.C. Circuit has long recognized that *Bantam Books* applies to the FCC no less than any other government actor. In Action for Children's Television v. FCC (1995), the D.C. Circuit rejected claims that the FCC was "operating a scheme of informal censorship like the one held unconstitutional in *Bantam Books*," but noted that "the possibility that the agency's actions might similarly run afoul of the first amendment demands prompt judicial scrutiny."[275] The court thus overruled the district court's refusal to "extend the Bantam Books ruling to a medium of expression that is so much more limited in the First Amendment protection it receives."[276]

A. What *Bantam Books* and *Vullo* Prohibit

Bantam Books involved a Rhode Island state commission that notified a book distributor that books and magazines it distributed might be obscene, and "either solicited or thanked [him], in advance, for his 'cooperation' with the Commission, usually reminding [him] of the Commission's duty to recommend to the Attorney General prosecution of purveyors of obscenity."[277] The Commission's authority was "limited to informal sanctions—the threat of invoking legal sanctions" (which might ultimately imposed by someone else)

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[274] National Rifle Association of America v. Vullo, 602 U.S. 175, 196 (2024) ("although [the state attorney general] can pursue violations of state insurance law, she cannot do so in order to punish or suppress the NRA's protected expression. So, the contention that the NRA and the insurers violated New York law does not excuse Vullo from allegedly employing coercive threats to stifle gun-promotion advocacy.").

[275] Fed. Commc'ns Comm'n, 59 F. 3d 1249, 1256 (D.C. Cir. 1995).

[276] Action for Childrens Television v. Fed. Commc'ns Comm'n, 827 F. Supp. 4, 18 (D.D.C. 1993).

[277] Bantam Books, Inc v. Sullivan, 372 U.S. 58, 62 (1963).

“and other means of coercion, persuasion, and intimidation,” but the Court did not hesitate to “look through forms to the substance and recognize that informal censorship may sufficiently inhibit the circulation of publications to warrant injunctive relief.”[278] Because the book “distributor ‘reasonably understood’ the commission to threaten adverse action,” its “‘compliance with the [c]ommission’s directives was not voluntary.’”[279] Rhode Island’s commission had effectively subjected “the distribution of publications to a system of prior administrative restraints,” and any such system bears a “heavy presumption against its constitutional validity.”[280]

The Supreme Court recently reaffirmed that coercive government threats against protected speech violates the First Amendment. After the Parkland, Florida school shooting, Maria Vullo, New York’s attorney general, “pressured regulated entities to help her stifle the [National Rifle Association]’s pro-gun advocacy.”[281] Privately, she threatened insurance companies that, if they did not cease selling insurance to the NRA she would pursue “technical regulatory infractions” against them.[282] Publicly, she was more coy: her “Guidance Letters reminded [the entities she regulated] of their obligation to consider their ‘reputational risks,’ and then tied that obligation to an encouragement for ‘prompt actio[n] to manag[e] these risks.’”[283] Such “encouragement” was, in context, clearly coercive. It did

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[278] *Id.* at 67.

[279] National Rifle Association of America v. Vullo, 602 U.S. 175, 189 (2024) (quoting *Bantam Books*, 372 U.S. at 66–68).

[280] 372 U.S. at 70.

[281] 602 U.S. at 181.

[282] *Id.* at 183.

[283] *Id.* at 176.

not matter to the Court that Vullo's Guidance Letters were written "in an even-handed, nonthreatening tone and employed words intended to persuade rather than intimidate."[284] *Vullo* likewise rejected the appellate court's conclusion that the state attorney general's Guidance Letters were not coercive because they "'did not refer to any pending investigations or possible regulatory action' and alluded only to business-related risks 'amid growing public concern over gun violence.'"[285] The Court recognized that a "threat need not be explicit" to be coercive.[286]

This followed the reasoning in *Bantam Books*, where it did not matter that the Rhode Island commission had no formal power to prosecute anyone, Instead, the Court had "to look through forms to the substance and recognize that informal censorship may sufficiently inhibit the circulation of publications to warrant injunctive relief."[287] Because the commission used "the threat of invoking legal sanctions [applied by someone else] and other means of coercion, persuasion, and intimidation" to suppress speech, the censorship regime was unconstitutional.[288] Even "informal censorship may," *Bantam Books* noted, "sufficiently inhibit the circulation of publications to warrant injunctive relief."[289]

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[284] *Id.* at 185.

[285] *Id.* (quoting National Rifle Association of America v. Vullo, 49 F. 4th 700, 717 (2nd Cir. 2022)). *Accord Bantam Books*, 373 U.S. 58.

[286] *Id.* at 188.

[287] Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 67 (1963).

[288] *Id.*

[289] 372 U.S. at 67.

B. The FCC Is Jawboning Speech in Violation of *Vullo* and *Bantam Books*

Bantam Books and *Vullo* prohibit "conduct that, viewed in context, could be reasonably understood to convey a threat of adverse government action in order to punish or suppress speech."[290] The context of this proceeding and the Public Interest Notice is the most egregious set of threats made by government actors against private media since John Adams Administration's crackdown under the Sedition Act of 1798. These threats were so obviously coercive that even Sen. Ted Cruz (R-TX), who chairs the Senate Committee responsible for overseeing the FCC, recognizes them as "mafioso" threats to something "right out of *Goodfellas*," essentially: "nice bar you have here, it'd be a shame if something happened to it."[291]

Carr's statements are remarkably similar to Vullo's "Guidance Letters":

> Vullo pointed to the "social backlash" against the NRA and other groups "that promote guns that lead to senseless violence" following "several recent horrific shootings, including in Parkland, Florida." Vullo then cited recent instances of businesses severing their ties with the NRA as examples of companies "fulfilling their corporate social responsibility."[292]

Vullo was not subtle about what she wanted insurers to do—cut ties with the NRA:

> In the Guidance Letters' final paragraph, Vullo "encourage[d]" DFS-regulated entities to: (1) "continue evaluating and managing their risks, including reputational risks, that may arise from their dealings with the NRA or similar gun promotion organizations"; (2) "review any relationships they have with the NRA or similar gun promotion organizations"; and (3) "take prompt actions to manag[e] these risks and promote public health and safety.[293]"

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[290] *Vullo,* 602 U.S at 191.

[291] Coral Murphy Marcos & Robert Mackey, *Ted Cruz Compares Threats to ABC by FCC Chair to those of Mob Boss*, THE GUARDIAN (Sept. 19, 2025), https://www.theguardian.com/us-news/2025/sep/19/ted-cruz-jimmy-kimmel-abc-fcc-mafia.

[292] *Vullo*, 602 U.S at 184.

[293] *Id.*

In fact, Carr's threats are even worse than Vullo's. Her threats attempted to stifle the NRA's speech by pressuring those that did business with it. The FCC does so here as well, stifling the speech of television hosts and reporters by threatening ABC. But the Commission also is more direct: ABC is threatened directly for its *own speech* as well. Where most attempt to hide their censorship behind indirect threats, this FCC has committed to the constitutional mendacity of using indirect threats to reinforce the direct ones.

Here, the process here is the punishment. There are no statutory or regulatory deadlines to act on either ABC's renewal application or *The View*'s petition. Even an uncomplicated license renewal generally takes at least six months,[294] so even if the Commission acted quickly, ABC's licenses would be kept in limbo through the midterm elections and well into 2027—or perhaps even through the 2028 election. Alternately the Bureau—meaning Chair Carr—might find it expedient to turn up the pressure on ABC by designating either the application or the petition for hearing. The last major battle over license renewal, involving the once-renowned RKO, spanned 22 years;[295] just getting from RKO's renewal application to the FCC order designating the matter for hearing took four years.[296] Such a lengthy process makes an ideal weapon—and gives the FCC even more leverage to influence programming while it winds its course.

Both processes break with decades of FCC precedent. The FCC hasn't ordered a broadcaster to apply early for renewal since 1972.[297] Doing so has invited not only petitions

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[294] *See supra* note 67.

[295] Peter J. Boyer, *Renewal Rejected for RKO Stations*, N.Y. TIMES (Aug. 12, 1987), https://www.nytimes.com/1987/08/12/business/renewal-rejected-for-rko-stations.html.

[296] RKO General, Inc. v. FCC, 670 F. 2d 215, 218 (D.C. Cir. 1981).

[297] In re Leflore Broad. Co., 36 F.C.C.2d 101 (1972).

to deny but a veritable "Airing of Grievances." Courts have long recognized that "forwarding viewer or listener complaints to the broadcaster with a request for a formal response" can be a powerful means "for communicating official pressures."[298] That is exactly what ordering ABC to endure the early renewal process has done, inviting not only petitions to deny but also public comments—of which there are now 151,000 in this docket.

This process comes on top of many a "prominent speech or statement by a Commissioner or Executive official," another recognized form of retaliation against disfavored speech.[299] *Vullo* measures coercion in "context."[300] The context in which this process is unfolding could hardly be clearer: *"Nice bar you have…"*[301]

VII. The Commission Is Heading Down a Dangerous Path

Just as Republican Commissioners have long warned about the dangers of the Fairness Doctrine,[302] and of the FCC's meddling in broadcast regulation more generally, One Ministries is "concerned about what the new practice of early station renewals could mean for religious and Christian TV stations in the future. If a new administration takes power in the future that is hostile toward religious stations, it could contend that Christian TV and

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[298] Community-service Broadcasting v. Fed. Commc'ns Comm'n, 593 F.2d 1102, 1116 (D.C. Cir. 1978).

[299] *Id.*

[300] Vullo, 602 U.S. at 191.

[301] Coral Murphy Marcos & Robert Mackey, *Ted Cruz Compares Threats to ABC by FCC Chair to those of Mob Boss,* THE GUARDIAN (Sept. 19, 2025), https://www.theguardian.com/us-news/2025/sep/19/ted-cruz-jimmy-kimmel-abc-fcc-mafia.

[302] *See supra* at 48–49.

radio stations are not serving in the public interest and could use the early station renewal process on them."[303] One Ministries is right to be concerned.

President Trump is not the first president to threaten broadcasters—though his threats are far more egregious and realistic, given the compliance of his FCC Chair. President Lyndon Johnson routinely made late night phone calls to CBS's president to complain about unfavorable coverage.[304]

The right response from the FCC to such pressure from the White House would, at a minimum, be to ignore the President's demands—as FCC Chair Ajit Pai did. Pai was more explicit when the FCC petitioned to punish Fox News for its speech: "the Commission does not—and cannot and will not—act as a self-appointed, free-roving arbiter of truth in journalism."[305] Under Carr's immediate Democratic predecessor, Chair Jessica Rosenworcel, the Bureau quoted Pai when it dismissed the MDP petition to den renewal of a Fox license. The Commission refused to engage in "content review"[306] or "take adverse action on a license renewal application based solely on the subjective determination … as to what constitutes

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[303] One Ministries Comment at 1.

[304] Matt Friedman, New "Fake News" Denials Ripped From Old Playbook, Tanner Friedman (Oct. 15, 2017), https://tannerfriedman.com/blog/new-fake-news-denials-ripped-old-playbook/.

[305] In re Application of Fox Television Stations, LLC, Memorandum Opinion and Order, 40 FCC Rcd ¶ 2 (MB Jan. 16, 2025) (DA 25-57), https://docs.fcc.gov/public/attachments/DA-25-57A1.pdf (quoting Free Press Emergency Petition for Inquiry Into Broadcast of False Information on COVID-19, Letter Order, 35 FCC Rcd. 3032, 3033 (MB & OGC 2020)).

[306] MDP Dismissal, *supra* note 260, at 6 ("To the extent Petitioners and Objectors would have the Commission review specific content aired by WTXF-TV to assess whether and to what extent such content is similar to the content aired on Fox News that the state court found to be false, we decline to do so. Such content review in the context of a renewal application would run afoul of our obligations under the First Amendment and the statutory prohibition on censorship and interference with free speech rights as set forth in Section 326 of the Act.").

appropriate programming."[307] If Rosenworcel could be faulted for anything, it is that she should have directed the Media Bureau to dismiss MDP's petition more quickly.

Carr's pressure tactics are working. Last year, Larry Ellison's Skydance bought Paramount and its CBS broadcast licenses—an $8.4 billion deal[308] that Carr approved[309] only after the company "volunteered" to install an "ombudsman" to "evaluate any complaints of bias or other concerns involving CBS," to offer "a diversity of viewpoints across the political and ideological spectrum," and to "ensure that CBS's reporting is fair, unbiased, and factbased."[310] Ellison put in writing what the Nixon White House once schemed at in secret: a "mechanism" for communicating displeasure "every time we believe coverage is slanted" directly to the broadcaster's CEO—a way to "dampen [broadcasters'] ardor for putting on" what Nixon's special counsel mockingly called "'loyal opposition' type programs."[311]

The week before Ellison's commitments to Carr about bias, NBC cancelled Stephen Colbert's *The Late Show*, which had aired since 1982.[312] So Carr had every reason to expect ABC to roll over, too. Under intense pressure,[313] ABC initially gave in to Trump's demands,

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307 *Id.* at 6.

308 Skydance Acquires Paramount Global in $8 Billion Deal, Creating a New Media Powerhouse, Bocconi Students Capital Mkts. (Aug. 2025), https://bit.ly/4xgq7WF.

309 In re Applications for Consent to the Transfer of Control of Paramount Global, Memorandum Opinion and Order, 40 FCC Rcd ¶ 59 (July 24, 2025) (FCC 25-43).

310 Letter from Stephanie Kyoko McKinnon, General Counsel and Co-President of Business Operations, Skydance Media, to Hon. Brendan Carr, Chairman, FCC, MB Docket No. 24-275 (filed July 22, 2025), https://www.fcc.gov/ecfs/document/1072299913934/2.

311 Final Report of the Senate Select Committee on Presidential Campaign Activities (Feb. 7, 1973), available at https://bit.ly/44WfU5u.

312 The Late Show (Franchise), Wikipedia, https://en.wikipedia.org/wiki/The_Late_Show_(franchise) (last edited July 26, 2026), https://en.wikipedia.org/wiki/The_Late_Show_(franchise).

313 Blake Reid, Jawbreaking and Counterboning, 58 Conn. L. Rev. 905, 912 (2026), https://connecticutlawreview-law.media.uconn.edu/wp-content/uploads/sites/2747/2026/05/1-Reid_print.pdf.

suspending Kimmel[314]—even after Sen. Ted Cruz (R-TX) compared Carr's "mafioso" threats to something "right out of *Goodfellas*," essentially: "nice bar you have here, it'd be a shame if something happened to it."[315] ABC soon reinstated Kimmel, but the company was clearly shaken, renewing his contract "for one more year rather than offering the show's more typical three-year renewal."[316] Kimmel notes that NBC cancelled Colbert's *The Late Show* two years into a three-year contract, and says, of the late-night talk show: "We're not just dying of natural causes. We're being poisoned."[317] Chair Carr is killing an entire medium to chill speech the President doesn't like.

VIII. Conclusion

The Commission should dismiss the petitions to deny discussed herein and terminate this unlawful proceeding without delay. The Bureau has already conceded the urgency of this matter: It shortened the reply comment window to just 15 days, rather than the 30 days that would normally be required by FCC rules.[318] If there was, as the Notice claims (without explanation), "good cause"[319] for this shorter window, it can only be that the Sword of Damocles hangs over ABC's head—and that this may chill ABC's speech in the vital 97 days remaining before the November election.

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[314] Elizabeth Wagmeister, Jimmy Kimmel: What Happened Behind the Scenes and What Comes Next, CNN (Sept. 18, 2025), https://bit.ly/4x5gxWf

[315] Coral Murphy Marcos & Robert Mackey, Ted Cruz Compares Threats to ABC by FCC Chair to those of Mob Boss, THE GUARDIAN (Sept. 19, 2025), https://bit.ly/4wvgN17

[316] Kathryn VanArendonk, Jimmy Kimmel Would Stop If He Could, VULTURE (June 1, 2026), https://bit.ly/4xeqC3q

[317] *Id.*

[318] *See supra* note 64 and associated text.

[319] Notice at 3.

This would not prevent the FCC from pursuing an enforcement action against ABC regarding its employment discrimination rule—or any other enforcement action the Commission believes would be justified. But the Commission should make clear that it understands that denial of license renewal would be an extraordinary remedy appropriate only for the most egregious violations—and that early termination of ABC's licenses would require satisfying the safeguards of Section 312. If the Commission believes the public interest standard requires clarification, as Chair Carr has said, it should open a rulemaking on that question, explain its analysis, propose specific rules, and provide affected parties—including the public—a clear opportunity to challenge those rules in court.

Closing this proceeding would be a small sign of humility, and a way for the Commission itself to begin what will be a long and difficult process of regaining the trust of the American people that it will respect the First Amendment and Congress's command that the Commission shall have no "power of censorship" over broadcasting, and that it shall not "interfere with the right of free speech by means of radio communication."[320]

Respectfully submitted,

___________/s/___________

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July 29, 2026

[320] 47 U.S.C. § 326.