

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	MB Docket No 26-124
Petition for Declaratory Ruling Under)	
Section 315(a) of the Communications)	
Act of 1934, as)	
Amended)	
)	
KTRK Television, Inc. and)	
American Broadcasting Companies,)	
Inc.)	

**COMMENTS OF THE
FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION**

Robert Corn-Revere, Chief Counsel
Ronnie London, General Counsel
700 Pennsylvania Ave., SE, Suite 340
Washington, DC 20003
(215) 717-3473
bob.corn-revere@fire.org

William Creeley, Legal Director
D Gill Sperlein
510 Walnut Street, Suite 900
Philadelphia, PA 19106
(215) 717-3473
will@fire.org

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Summary

This inquiry into the Federal Communications Commission's (FCC) public interest authority and its reinterpretation of the equal opportunities rule exemption for news interviews comes after an extraordinary 18-month period in which the FCC, under Chairman Brendan Carr, has transformed from an agency that proclaimed "the Commission does not—and cannot and will not—act as a self-appointed, free-roving arbiter of truth in journalism" into a government body that routinely threatens broadcasters for programming choices and ominously warns "we can do this the easy way or the hard way."

During this time, the Commission has been transformed from its original statutory design as a bi-partisan, independent regulatory agency into an extension of the presidency that presumes the power to implement political whims in the name of the "public interest." Current FCC leadership operates under the assumption that the public interest standard permits focusing on particular programs or personalities and threatening regulatory consequences. Worse still, this mindset equates the public interest with what pleases—or displeases—the President. That has never been the law.

The Communications Act's public interest standard is not a blank check empowering bureaucrats to second-guess broadcasters' independent editorial judgments. Given the principle established at our nation's founding that "Congress shall make no law ... abridging the freedom of speech or of the press," government regulation of broadcast content, including the equal opportunity rules, has been a constant source of tension. The Act itself addresses this tension by expressly

withholding from government the power to “interfere with the right of free speech by means of radio communication.” 47 U.S.C. § 326. This denies to the FCC “the power of censorship,” as well as the ability to promulgate any “regulation or condition” that interferes with freedom of speech. *Id.*

The FCC’s recent actions regarding the regulation of broadcast programming betray three fundamental misconceptions regarding the extent of the agency’s authority under the public interest standard and the First Amendment. *First*, the Communications Act never vested the Commission with unbridled discretionary power over broadcast programming, as the current Chairman appears to assume. *Second*, the Commission concluded a generation ago that the historic justifications that previously allowed the government some greater constitutional latitude to regulate broadcast programming compared to other media are no longer valid. And *third*, the current Administration’s use of the FCC as an extension of the White House and as a tool for jawboning undermines the Commission’s design as an independent agency and violates recent unanimous Supreme Court authority.

Nothing could be less compatible with the Communications Act and the First Amendment limits embedded therein than the spectacle of an FCC Chairman, at the President’s behest, calling out particular news reports and specific reporters and threatening regulatory repercussions, including license revocation. In this environment, the Commission’s recent public notice “encouraging” broadcasters “to review their current practices and confirm that they fully align with their statutory public interest obligations” can be perceived only as another “easy way” or “hard way”

threat. When Chairman Carr repeatedly warns he is going to hold broadcasters to their “public interest obligations,” the term bears little relationship to the careful and limited use of that term in the Act and past FCC and court decisions interpreting it.

These misconceptions extend both to the FCC’s general assertions of authority over programming as well as to the specific subject of the *Public Notice* seeking comment on whether the ABC network program *The View* qualifies as a bona fide news interview program that is exempt from the equal opportunities rule. The Commission’s abrupt departure from its policy of exempting talk shows like *The View* as bona fide news interview programs is contrary to the congressional intent underlying the exemptions as well as the First Amendment.

For over forty years, the FCC has made clear it would follow congressional intent and “defer substantially to the good faith news judgments of broadcast licensees.” Its change in policy regarding the Section 315 news exemptions and investigation of *The View* is incompatible with the design of the Communications Act “to maintain – no matter how difficult the task – essentially private broadcast journalism” and to hold licensees “only broadly accountable to public interest standards.” *CBS, Inc. v. Democratic Nat’l Comm.*, 412 U.S. 94, 120 (1973).

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I. INTRODUCTION

The Foundation for Individual Rights and Expression (FIRE) submits this comment in response to the Public Notice, *FCC’s Media Bureau Seeks Comment on Petition by Disney’s ABC Asking the FCC to Declare That “The View” Qualifies as a Bona Fide News Interview Program and Thus Is Exempt from the Statutory Equal Opportunities Requirements* (Med. Bur. May 22, 2026) (“*Public Notice*”).

As a nonpartisan nonprofit that defends the rights of all Americans to free speech and free thought, the essential qualities of liberty, FIRE is keenly interested in protecting the free press, including in the broadcast medium. Since 1999, FIRE has successfully defended First Amendment rights nationwide without regard to speakers’ views through public advocacy, in cases implicating expressive rights and,

more recently, before the Commission.¹ FIRE’s work emphasizes, among others, two priorities this case implicates: First, a vigorous defense of speakers targeted by strategic litigation that aims to burden critical speech into silence. Second, a principled support for a robust, open, and free press and proverbial public square, unhindered by the political whims of government officials. FIRE thus seeks to ensure the FCC does not exceed the scope of its authority to encroach upon broadcasters’ journalistic decisions.

II. BACKGROUND

A. The FCC’s Recent Radical Reinterpretation of the Communications Act and the Public Interest Standard

This past May, the Commission “encourage[d]” broadcasters “to review their current practices and confirm that they fully align with their statutory public interest obligation.”² Just days earlier, the Media Bureau issued a *Public Notice* seeking comment on one particular aspect of the public interest—the political equal opportunities rule set forth in Section 315 of the Communications Act, 47 U.S.C. § 315—colloquially called the “equal time rule.”³ Among other things, the *Public*

¹ FIRE filed comments *In the Matter of News Distortion Complaint Involving CBS Broadcasting, Inc.*, MB Docket 25-73, <https://www.fire.org/research-learn/fire-comments-fcc-news-distortion-complaint>, and *In the Matter of Delete, Delete, Delete*, MB Docket 25-133, <https://www.fire.org/research-learn/fire-comments-fcc-delete-delete-delete>.

² Public Notice, *FCC Reminds Broadcasters of Their Public Interest Obligations*, DA 26-530 at 6 (MB May 28, 2026) (“*Public Interest Obligations Notice*”).

³ Public Notice, *FCC’s Media Bureau Seeks Comment on Petition by Disney’s ABC Asking the FCC to Declare That The View Qualifies as a Bona Fide News Interview Program and Thus Is Exempt from the Statutory Equal Opportunities Requirements*, DA 26-517 (MB May 22, 2026) (“*Public Notice*”). The Public Notice was issued in

Notice solicited comments on whether the “federal equal opportunities statute pass[es] relevant constitutional scrutiny, either as a general matter or as applied” to *The View* on ABC’s owned affiliate KTRK Television. *Public Notice* at ¶ 7. The questions raised in this *Public Notice* broadly implicate the limits of FCC power, under both the Communications Act and the Constitution, especially in the context of recent events.

This inquiry comes after an extraordinary 18-month period in which the FCC, under Chairman Brendan Carr, has transformed from an agency that proclaimed “the Commission does not—and cannot and will not—act as a self-appointed, free-roving arbiter of truth in journalism”⁴ to a government body that routinely threatens broadcasters over their programming choices and ominously warns “[w]e can do this the easy way or the hard way.”⁵ During this time the Commission has been transformed from its original statutory design as a bi-partisan, independent regulatory agency to an extension of the presidency that presumes it has the power to implement political whims in the name of the “public interest.”

response to a Petition for Declaratory Ruling submitted by KTRK Television, Inc. and American Broadcasting Companies, Inc., *available at* <https://www.fcc.gov/ecfs/document/10522087167981/1>.

⁴ See Memorandum Opinion & Order, *In the Matter of Preserving the First Amendment, Application of Fox Television Stations, LLC For Renewal License of WTXF-TV, Philadelphia, PA*, GN Docket No. 25-11 at 2 (January 16, 2025) (internal quotation marks omitted).

⁵ *E.g.*, Brian Stelter, *How Brendan Carr, the attack-dog FCC chair, helped take down Jimmy Kimmel with words, not actions*, CNN.COM (Sept. 18, 2025), <https://www.cnn.com/2025/09/18/media/brendan-carr-jimmy-kimmel-fcc-first-amendment>.

But the public interest standard is not—and never was—a blank check empowering bureaucrats to second-guess the independent editorial judgment of broadcasters. Given the principle established at our nation’s founding that “Congress shall make no law ... abridging the freedom of speech or of the press,” government regulation of broadcast content, including the equal opportunity rules, has been a constant source of tension. This tension was acknowledged in the Act itself, which expressly withholds from government the power to “interfere with the right of free speech by means of radio communication.” 47 U.S.C. § 326. This denies to the FCC “the power of censorship,” as well as the ability to promulgate any “regulation or condition” that interferes with freedom of speech. *Id.*

These policies “were drawn from the First Amendment itself [and] the ‘public interest’ standard necessarily invites reference to First Amendment principles.” *Democratic Nat’l Comm.*, 412 U.S. at 122. Consequently, the Supreme Court has stressed that “the First Amendment must inform and give shape to the manner in which Congress exercises its regulatory power in this area.” *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 378 (1984). Recognizing this inherent tension, courts have noted that the Commission must “walk a ‘tightrope’ to preserve the First Amendment values written into the Radio Act and its successor, the Communications Act.” *Democratic Nat’l Comm.*, 412 U.S. at 117; *see also Banzhaf v. FCC*, 405 F.2d 1082, 1095 (D.C. Cir. 1968) (“[I]n applying the public interest standard to programming, the Commission walks a tightrope between saying too much and saying too little.”).

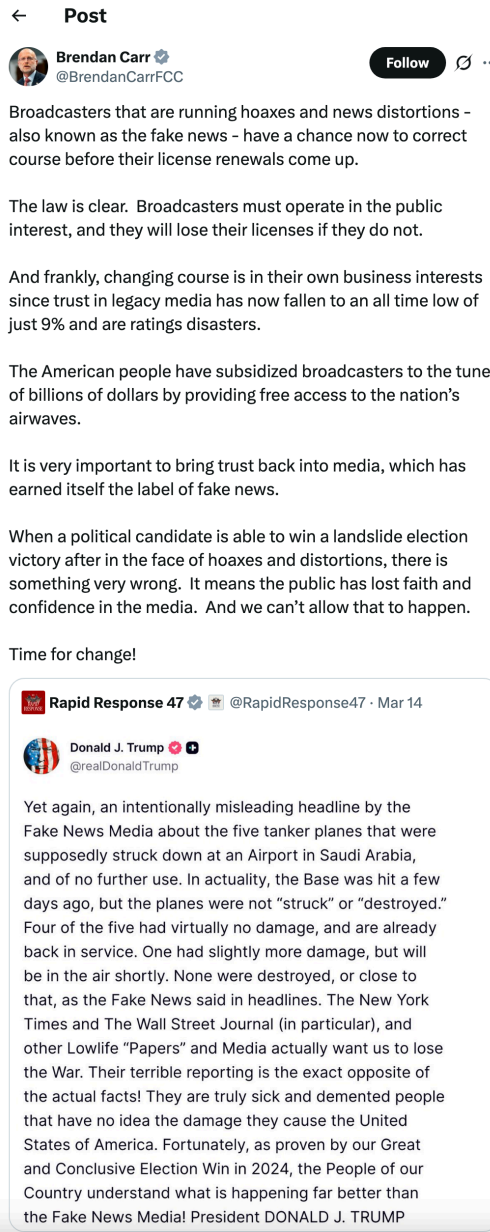
The FCC's current approach to broadcast regulation stands in bold relief against this statutory and constitutional backdrop. The Commission no longer comports itself as the independent regulatory agency Congress designed it to be, but merely as an instrument to implement presidential policy.⁶ As Chairman Carr put it at a December 2025 Senate Commerce Committee oversight hearing, "The FCC isn't an independent agency, formally speaking."⁷ That subordinate position is reflected in Chairman Carr's social media activity, where he frequently reposts the President's positions on media regulation. This call-and-response routine has targeted networks, late-night talk show hosts, news programs, and any programming that happens to catch the President's attention. And that social media activity, coupled with statements in interviews, speeches, and other informal venues, increasingly finds expression in FCC policy statements, thus setting the stage for the current *Public Notice*.

One recent example of this tag-team exercise came in mid-March, when the President objected to how certain newspapers covered an attack on American bases in Saudi Arabia which resulted in damage to several tanker planes. This led to an immediate repost by Chairman Carr, cautioning against "hoaxes and news

⁶ See Patience Haggin, *FCC Isn't an Independent Agency, Chair Brendan Carr Says*, THE WALL STREET JOURNAL (Dec. 17, 2025), <https://www.wsj.com/politics/policy/fcc-isnt-an-independent-agency-chair-brendan-carr-says-74e81fff>.

⁷ *Id.* Chairman Carr's statement came in response to an embarrassing question from Congressman Ben Ray Lujan, who pointed out that the FCC's website referred to the agency as independent. That reference, reflecting an understanding that dates to 1927, was removed from the website before the hearing ended.

distortions—also known as the fake news” and warning that broadcasters could lose their licenses if they did not “correct course before their license renewals come up.”



The media reports that prompted these posts were—in fact—true,⁸ so it is unclear on what basis Chairman Carr was invoking the public interest standard. But the more

⁸ Lara Seligman and Shelby Holliday, *Five Air Force Refueling Planes Hit in Iranian Strike on Saudi Arabia*, THE WALL STREET JOURNAL (Mar. 14, 2026),

important point is this: Both the Administration and this FCC have abandoned any notion that they must “walk a tightrope” and have fully embraced the Commission’s role as the speech police. There is abundant irony here given Chairman Carr’s previous statements on the subject as a commissioner.⁹

Of course, this approach to broadcasters is nothing new for the President, who since his first term has routinely described the media as “the enemy of the people” and frequently called for network “licenses” to be revoked. As early as 2017, the President called for challenges to NBC’s licenses because of what he called “fake

<https://www.wsj.com/livecoverage/us-israel-iran-war-news-2026/card/five-air-force-refueling-planes-hit-in-iranian-strike-on-saudi-arabia-wHYFMW2YG3p0rWH3HaGU>; Michael Scanlon, *Iran missile strike damages five KC-135 tankers in Saudi Arabia, officials say*, MILITARY TIMES (Mar. 16, 2026), <https://www.militarytimes.com/news/your-military/2026/03/16/iran-missile-strike-damages-five-kc-135-tankers-in-saudi-arabia-officials-say/>.

⁹ See *FCC Commissioner Carr Responds to Democrat’s Efforts to Censor Newsrooms* (Feb. 22, 2021), <https://www.fcc.gov/document/carr-responds-democrats-efforts-censor-newsrooms> (“A newsroom’s decision about what stories to cover and how to frame them should be beyond the reach of any government official, not targeted by them.”); *Democrats Pressure FCC to Deny Sale of Spanish-Language Radio Station in Florida Based on Political Viewpoints* (April 19, 2021), <https://docs.fcc.gov/public/attachments/DOC-371715A1.pdf> (“to inject partisan politics into our licensing process” is “a deeply troubling transgression of free speech and the FCC’s status as an independent agency”).

news.”¹⁰ This complaint was based on news coverage of increases in the country’s nuclear arsenal, and he broadened his threat to include other networks as well.¹¹

At the time, President Trump’s first FCC Chairman, Ajit Pai, confirmed that the FCC lacks any such authority under the public interest standard and described such efforts at content control “an affront to the First Amendment.” As he said at the time:

I believe in the First Amendment. The FCC under my leadership will stand for the First Amendment. And under the law, the FCC does not have the authority to revoke a license of a broadcast station based on the content of a particular newscast.

When asked about allegations of “fake news,” the Chairman made clear that evaluating the veracity of news is not “within the FCC’s jurisdiction” and he recognized the need “to hew as closely as I can to the terms of the Communications Act and to other applicable legal principles.”¹²

Chairman Pai’s legal analysis found more support in a recent petition for special relief filed by a bipartisan group that included seven former FCC Commissioners (five Republicans and two Democrats), four of whom had served as

¹⁰ See, e.g., Jon Levine, *‘Blatantly Unacceptable’: Trump’s Threat to NBC License Denounced by 2 Ex-FCC Commissioners*, THE WRAP (Oct. 11, 2017), <https://www.thewrap.com/trump-fcc-licenses-nbc-news-commissioners-blatantly-unacceptable>.

¹¹ See, e.g., Blair Guild, *Trump refutes NBC Story, suggests challenging its broadcast license*, CBS NEWS (Oct. 11, 2017), <https://www.cbsnews.com/news/trump-refutes-nbc-story-suggests-challenging-its-broadcasting-license>.

¹² Jon Brodtkin, *Six days later, FCC chair says Trump can’t order FCC to revoke TV licenses*, ARS TECHNICA (Oct. 17, 2017), <https://arstechnica.com/tech-policy/2017/10/ajit-pai-despite-what-trump-says-fcc-wont-revoke-broadcast-licenses>.

Chairman, as well as senior staff members. That petition called for the FCC to repeal its news distortion policy, arguing the Commission’s processes had been “weaponized” to serve “partisan purposes.”¹³ Chairman Carr declined to act on the petition, which is now the subject of a petition for mandamus in the D.C. Circuit, to which the Court has ordered a response from the Commission.¹⁴

Such statements of law and subsequent legal developments have had no effect on President Trump, who has only escalated his calls to revoke broadcast licenses. He called for revocation of ABC’s TV licenses in 2024 because he objected to being fact-checked by the moderator of a presidential debate.¹⁵ He called for revocation of CBS’s licenses over the editing of an interview with then-Vice President Kamala Harris on *60 Minutes*.¹⁶ In August 2025, the President said ABC and NBC’s licenses

¹³ See Andrew C. Barrett, *et al.*, *Petition for Special Relief in the Matter of Repeal of the News Distortion Policy* at 10 (November 13, 2025), <https://protectdemocracy.org/wp-content/uploads/2025/11/News-Distortion-Petition-for-Special-Relief.pdf>.

¹⁴ *In re Radio Television Digital News Ass’n*, Rachele B. Chong, Ervin S. Duggan, Mark S. Fowler, Alfred C. Sikes, Thomas E. Wheeler, Christopher J. Wright, Kathryn C. Brown, and Jerald N. Fritz, No. 26-1099 (D.C. Cir., May 20, 2026).

¹⁵ Dominick Mastrangelo, *Trump floats punishment for ABC after debate*, THE HILL (Sept. 11, 2024), <https://thehill.com/homenews/media/4874106-trump-abc-debate-punishment/>.

¹⁶ Jon Brodtkin, *Trump wants CBS license revoked; FCC chair explains that isn’t going to happen*, ARS TECHNICA (Oct. 10, 2024), <https://arstechnica.com/tech-policy/2024/10/fcc-chair-slams-trumps-call-to-revoke-cbs-and-abc-broadcast-licenses/>.

should be revoked because they aired too many “bad stories” about him.¹⁷ This was followed a month later by President Trump’s statement that network licenses should be revoked because “[t]hey give me only bad publicity or press” and that the decision “will be up to Brendan Carr.”¹⁸ And in November 2025, President Trump called for revoking ABC’s licenses because a reporter asked him a question about the Epstein files. He added “we have a great [FCC] chairman who should look at that.”¹⁹ A December 2025 social media post said that network licenses should be “terminated” because network newscasts and their “Late Night Shows” are “almost 100% Negative to President Donald J. Trump, MAGA, and the Republican Party.”²⁰

The law has not changed from what former Chairman Pai described in 2017 and the present. The threats to licenses and other actions to punish broadcasters for content the Administration dislikes exceed what the Communications Act and the

¹⁷ Matthew Keys, *Trump suggests pulling broadcast licenses of NBC, ABC stations*, THEDESK.NET (Aug. 25, 2025), <https://thedesk.net/2025/08/trump-threatens-abc-nbc-broadcast-licenses-fcc/>.

¹⁸ Kathryn Watson, *Trump says TV networks covering him negatively should “maybe” have their licenses revoked*, CBS NEWS (Sept. 18, 2025), <https://www.cbsnews.com/news/trump-says-tv-networks-should-maybe-have-their-licenses-revoked/>.

¹⁹ Irie Sentner, *Trump again threatens ABC’s broadcast license, this time over Epstein questions*, POLITICO (Nov. 18, 2025), <https://www.politico.com/news/2025/11/18/trump-again-threatens-abcs-broadcast-license-this-time-over-epstein-questions-00657264?>.

²⁰ Kaia Hubbard, *Trump says broadcast licenses should be terminated if networks are “almost 100% Negative” about him*, CBS NEWS (Dec. 24, 2025), <https://www.cbsnews.com/amp/news/trump-broadcast-licenses-terminated-100-negative/>.

First Amendment permit. What has changed is the current Chairman’s willingness to ignore established law and serve as an aggressive enabler of the President’s grievances against news programs and network personalities. Beginning within days of President Trump returning to office, the FCC—under Chairman Carr—has embarked on a wide array of initiatives to penalize broadcasters for their programming, employing both formal and informal means:

- The Commission rescinded dismissals of news distortion and equal opportunities complaints against CBS, ABC, and NBC stations that had been dismissed the week before, explaining only that the dismissals had been “issued prematurely based on an insufficient investigatory record.”²¹
- The Commission issued a *Public Notice* launching an investigation into CBS *60 Minutes* for “news distortion” for its editing of an interview with Vice President Kamala Harris.²²
- The Commission delayed approval of a merger between Paramount Global and Skydance Media to help force settlement of a private lawsuit brought by President Trump against *60 Minutes* over the Harris interview.²³

²¹ *Equal Opportunities Complaint Involving NBC Telemundo License, LLC, licensee of WNBC, New York, NY*, GN Docket No. 25-11 (January 22, 2025), <https://www.fcc.gov/document/complaint-involving-nbc-telemundo-license-llc-wnbc-new-york-ny>.

²² Public Notice, *News Distortion Complaint Involving CBS Broadcasting Inc., Licensee of WCBS, New York, NY*, DA 25-107 (Med. Bur. Feb. 5, 2025).

²³ See Press Release, *Warren, Sanders, Wyden Open Investigation Into Whether Paramount is Engaging in Bribery With Trump for Approval of \$8 Billion Megamerger* (May 20, 2025), <https://www.warren.senate.gov/newsroom/press-releases/warren-sanders-wyden-open-investigation-into-whether-paramount-is-engaging-in-bribery-with-trump-for-approval-of-8-billion-megamerger>; Robert Corn-Revere, *Extortion in Plain Sight*, THE DISPATCH (July 4, 2025), <https://thedispatch.com/article/paramount-settlement-trump-60-minutes-extortion/>.

- Almost immediately after the merger was approved, CBS announced it would not renew *The Late Show With Stephen Colbert* which had been a thorn in President Trump’s side because of Colbert’s frequent monologues skewering Trump. Both the President and Chairman Carr have taken credit for Colbert’s exit from the network.²⁴
- Chairman Carr threatened the ABC network over a September 15, 2025 monologue on *Jimmy Kimmel Live!* that included a joke about MAGA reactions to Charlie Kirk’s assassination, directing the network to “take action on Kimmel or there is going to be additional work for the FCC ahead.”²⁵
- The Commission has opened a proceeding to explore requiring content ratings for programs that contain “gender identity” issues.²⁶
- And, most significantly, in April 2026, the FCC directed Disney and ABC to file license renewal applications for eight local stations years ahead of their original schedules, which were slated to expire between 2028 and 2031. The brief order purported to justify the action because of DEI issues.²⁷

This is an incomplete list of the FCC’s recent actions that are deeply at odds with the Communications Act’s structural limits on broadcast content regulation—

²⁴ See Dominick Mastrangelo, *Trump says media ‘on notice’ after Paramount, ABC settlements*, THE HILL (July 22, 2025) <http://thehill.com/homenews/media/5414270-trump-media-settlements/>; Ryan Mancini, *FCC’s Brendan Carr: Trump is ‘winning’ against ‘fake news media,’* The Hill (March 28, 2026) <https://thehill.com/homenews/media/5805710-brendan-carr-fcc-donald-trump-media-feud-cpac/>.

²⁵ See Dominick Mastrangelo, *Former FCC chairs: Carr improperly wielding ‘news distortion policy’*, THE HILL (Nov. 13, 2025), <https://thehill.com/homenews/media/5603807-former-fcc-officials-brendan-carr-news-distortion-policy/>.

²⁶ Public Notice, *FCC’s Media Bureau Seeks Comment on Further Empowering Parents to Protect Their Children and Make Informed Choices About the TV Programs Their Children Watch*, DA 26-392 (MB April 22, 2026), <https://docs.fcc.gov/public/attachments/DA-26-392A1.pdf>.

²⁷ Order, *In the Matter of Walt Disney Company*, DA 26-416 (MB April 28, 2026), <https://docs.fcc.gov/public/attachments/DA-26-416A1.pdf>.

and the First Amendment's boundaries. And this short list does not include most of the informal threats Chairman Carr has frequently directed to broadcasters. Nevertheless, this general background provides important context necessary to understand the more specific questions raised in the instant *Public Notice* on the equal opportunity rule. The FCC's action targeting *The View* is not occurring in isolation but rather is part of a larger pattern of formal and informal actions that bear on the overall legality of the Commission's actions.

B. The FCC's Inquiry Regarding Section 315(a) News Exemptions and *The View*

The FCC's examination of whether *The View* qualifies for the news interview exemption of 47 U.S.C. § 315(a)(2)—and the constitutionality of imposing the equal opportunity rules to the program—is inherently bound up in the broader questions of FCC authority to regulate broadcast content. The Commission has long interpreted its news exemptions as including programs like *The View* (and specifically has extended that exemption to *The View*).²⁸ The FCC interpreted the news exemptions broadly to help promote the widespread discussion of political issues during campaigns and out of recognition that a narrower reading of the exemptions created tensions with the Communications Act and the Constitution. But the FCC's sharp turn away from established practice is explained by the same dynamic that led the current Chairman to abandon the Commission's history of restraint from programming regulation generally.

²⁸ *Letter from Robert Baker, Chief, Office of Political Programming, Policy and Rules Division, Mass Media Bureau, FCC, to ABC, Inc.* (Mar. 1, 2002).

As with the broadcast networks, the President has long had an adversarial relationship with *The View* and the show's hosts. Although one would assume that commentary on a daytime talk show might not attract the attention of the President, he has regularly called out *The View*'s hosts by name.²⁹ Usually this involves personal invective and claims about the show's ratings, but sometimes it goes farther. After co-host Joy Behar said in a July 2025 episode that Trump was "jealous" of former President Barack Obama, the White House issued a statement that *The View* would be the next show "pulled off the air."³⁰

Following the President's comments, it was not long before Chairman Carr fell in line. In September 2025, the Chairman said it would be "worthwhile to have the FCC look into whether 'The View,' and some of these other programs that you have, still qualify as bona fide news programs and therefore are exempt from the equal

²⁹ See, e.g., Joey Nolfi, *White House slams Joy Behar over 'herpes' comment on The View: 'Extremely unlikeable, talentless hack,'* ENTERTAINMENT WEEKLY, (Mar. 25, 2026), <https://ew.com/white-house-responds-the-view-joy-behar-donald-trump-herpes-joke-11934278>; Joey Nolfi, *White House criticizes Ana Navarro's 'brain-numbingly dumb takes' on The View after Donald Trump remarks,* ENTERTAINMENT WEEKLY (Sept. 30, 2025), <https://ew.com/white-house-criticizes-ana-navarro-dumb-takes-donald-trump-the-view-11821192>; Joey Nolfi, *White House slams The View stars as 'useful idiots' after Whoopi Goldberg calls for Donald Trump's removal,* ENTERTAINMENT WEEKLY (Jan. 21, 2026), <https://ew.com/white-house-slams-the-view-stars-useful-idiots-whoopi-goldberg-11889683>; Joey Nolfi, *White House slams The View's 'liberal pundits' after cohost blasted 'illegal' Venezuela raid,* ENTERTAINMENT WEEKLY (Jan. 5, 2026), <https://ew.com/white-house-responds-the-view-criticism-venezuela-illegal-11879310>.

³⁰ Raquel Calhoun, *Trump White House Says 'The View' Is 'Next to Be Pulled Off the Air' After Hosts Say Trump is Jealous of Obama,* THE WRAP (July 23, 2025), <https://www.thewrap.com/trump-the-view-cancellation-threats-joy-behar-obama/>.

opportunity regime that Congress has put in place.”³¹ But the Chairman was more making a statement than he was asking as question, as he told Fox News that *The View* faced “an uphill climb” to demonstrate it qualifies for an exemption.³²

Around the same time, the Commission took certain actions to increase the steepness of that climb. On January 21, 2026, the Media Bureau released a *Public Notice* stating that the Bureau “has not been presented with any evidence” that any current late night or daytime television talk show would qualify as a bona fide news interview program.³³ The Notice “encourage[d]” any program or station that wishes to obtain formal assurance that it qualifies for the bona fide news exemption to file a request for declaratory ruling, reversing established FCC practice which provided that “licensees airing programs that meet the statutory news exemption, as clarified in our case law, need not seek formal declaration from the Commission that that such programs qualify as news exempt programming under Section 315(a).”³⁴

³¹ Faith Wardwell, *FCC chair puts ‘The View’ under the spotlight after Kimmel pressure*, POLITICO (Sept. 18, 2025), <https://www.politico.com/news/2025/09/18/fcc-brendan-carr-the-view-00572178>.

³² Madison Columbo, *FCC chair warns ‘The View’ faces ‘uphill climb’ in equal-time probe*, FOX BUSINESS (Feb. 27, 2026), <https://www.foxbusiness.com/media/fcc-chair-warns-theview-faces-uphill-climb-equal-time-probe>. Cf. *Cinderella Career & Finishing Schs., Inc. v. F.T.C.*, 425 F.2d 583 (D.C. Cir. 1970).

³³ Public Notice, *FCC’s Media Bureau Provides Guidance on Political Equal Opportunities Requirement for Broadcast Television Stations*, DA 26-68 (MB Jan. 21, 2026) (“*Equal Opportunities Notice*”).

³⁴ See, e.g., *Request of Infinity Broadcasting Operations Inc., Declaratory Ruling*, 18 FCC Rcd 18603, 18604 (MB 2003).

Shortly thereafter, on February 11, 2026, the Media Bureau sent a Letter of Inquiry (“LOI”) to KTRK Television concerning a February 2 appearance of senatorial primary candidate James Talarico on *The View*.³⁵ This was followed several weeks later by a Supplemental LOI directing KTRK “to produce and submit to the Commission a petition for declaratory ruling regarding *The View* that satisfies the statutory requirements for a bona fide news exemption.”³⁶ The Supplemental LOI was particularly notable in that the Commission did not explain the source of its authority for the unprecedented action of compelling a licensee to file a petition for declaratory ruling.

Nevertheless, ABC complied with this directive and filed a petition for declaratory ruling on May 7, 2026.³⁷ The FCC opened this proceeding on May 22 and sought public comment. *See Public Notice* at ¶ 7.

III. The FCC’s Actions Targeting *The View* Violate the Communications Act and the First Amendment

The FCC’s actions over the past eighteen months regarding the regulation of broadcast programming betray three fundamental misconceptions regarding the extent of its authority under the public interest standard. ***First***, the Communications

³⁵ Letter from Erin Boone, Acting Chief, Media Bureau, FCC, to KTRK Television Inc., KTRK, Houston, TX (Fac. Id. 35675) (Feb. 11, 2026) (“LOI”).

³⁶ Letter from Erin Boone, Chief, Media Bureau, FCC, to KTRK Television, Inc., KTRK, Houston, TX (Fac. Id. 35675), at 3 (Mar. 26, 2026) (“SLOI”).

³⁷ *In the Matter of KTRK Television, Inc. and American Broadcasting Companies, Inc., Petition for Declaratory Ruling Under Section 315(a) of the Communications Act of 1934, as Amended*, <https://www.fcc.gov/ecfs/document/10522087167981/1> (May 7, 2026) (“*ABC Declaratory Ruling Petition*”).

Act never vested the Commission with unbridled discretionary power over broadcast programming, as the current Chairman appears to assume. **Second**, the Commission concluded a generation ago that the historic justifications that previously allowed the government some greater latitude to regulate broadcast programming compared to other media are no longer valid. And **third**, the current Administration’s use of the FCC as an extension of the White House and as a tool for jawboning undermines the Commission’s design as an independent agency and violates recent unanimous Supreme Court authority.³⁸ These misconceptions extend both to the FCC’s general assertions of authority over programming as well as to the specific subject of this *Public Notice*—namely, the equal opportunity rule.

A. The FCC’s Public Interest Authority Never Included the Power to Micromanage Programming

The current leadership of the FCC is operating under the assumption that the public interest standard permits the government to focus on particular programs or personalities and to threaten regulatory consequences for those who fail to get in line. Worse still, this mindset equates the public interest with what pleases—or displeases—the President. This has never been the law.

1. The Commission Under Chairman Carr Overestimates FCC Authority Over Broadcast Programming Generally

From the beginning of broadcast regulation, Congress and the FCC (and its predecessor agency, the Federal Radio Commission) approached broadcast regulation with the understanding that constitutional limitations might prevent too great a

³⁸ See *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 180 (2024).

reliance on specific programming mandates. For example, one of the bills submitted prior to passage of the Radio Act of 1927 included a provision that would have required stations to comply with programming priorities based on subject matter. However, the provision was eliminated because “it was considered to border on censorship.”³⁹ Similarly, the Federal Radio Commission sought to “chart a course between the need of arriving at a workable concept of the public interest in station operation, on the one hand, and the prohibition laid on it by the First Amendment to the Constitution of the United States ... on the other.”⁴⁰

Even at the height of the public interest standard as a guide for programming, the FCC emphasized in 1960 that “[i]n considering the extent of the Commission’s authority in the area of programming it is essential [first] to examine the limitations imposed upon it by the First Amendment to the Constitution and Section 326 of the Communications Act.” *En Banc Programming Inquiry* at 2306. After an extensive analysis of the meaning of the public interest, the FCC found that the required constitutional and statutory balance barred the government from implementing programming requirements that were too specific. It noted:

[S]everal witnesses in this proceeding have advanced persuasive arguments urging us to require licensees to present specific types of programs on the theory that such action would enhance freedom of expression rather than tend to abridge it. With respect to this proposition we are constrained to point out that the First Amendment forbids governmental interference asserted in aid of free speech, as well as governmental action repressive of it. The protection against

³⁹ See *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 597 (1981).

⁴⁰ *Report and Statement of Policy re: Commission En Banc Programming Inquiry*, 44 F.C.C. 2303, 2313 (1960) (“*En Banc Programming Inquiry*”).

abridgment of freedom of speech and press flatly forbids governmental interference, benign or otherwise. The First Amendment while regarding freedom in religion, in speech, in printing and in assembling and petitioning the government for redress of grievances as fundamental and precious to all, seeks only to forbid that Congress should meddle therein.

Id. at 2308 (citation omitted).

Recognizing these limits, the Commission concluded it could not “condition the grant, denial or revocation of a broadcast license upon its own subjective determination of what is or is not a good program.” *Id.* To do so, the Commission concluded, would “lay a forbidden burden upon the exercise of liberty protected by the Constitution.” *Id.* (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 307 (1940)). To maintain a balance between a free competitive broadcast system, on the one hand, and the requirements of the public interest standard, on the other, the Commission found that “as a practical matter, let alone a legal matter, [its role] cannot be one of program dictation or program supervision.” *Id.* at 2309.

And so, over the years the FCC has attempted to balance the constitutional imperative of the First Amendment with the public interest aspirations of the Communications Act. It has found that while it may “inquire of licensees what they have done to determine the needs of the community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear.” *Id.* at 2308. In particular, public interest “standards or guidelines should in no sense constitute a rigid mold for station performance, nor should they be considered as a Commission formula for broadcast services in the public interest.” *Id.* at 2313. The Commission emphasized that it did “not intend to guide the licensee

along the path of programming.” *Id.* at 2316. On the contrary, “the licensee must find his own path with the guidance of those whom his signal is to serve.” *Id.*

The Supreme Court has found that the Communications Act was designed “to maintain – no matter how difficult the task – essentially private broadcast journalism.” *Democratic Nat’l Comm.*, 412 U.S. at 120. For that reason, licensees are held “only broadly accountable to public interest standards.” *Id.* Thus, the Court later quoted the 1960 *En Banc Policy Statement* to emphasize that “although the Commission may inquire of licensees what they have done to determine the needs of the community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear.” *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 650 (1994) (citation and internal quotation omitted) (“*Turner I*”).

Specific program demands generally are the most constitutionally suspect among the requirements imposed by broadcasting regulations. As the D.C. Circuit has noted, the “power to specify material which the public interest requires or forbids to be broadcast ... carries the seeds of the general authority to censor denied by the Communications Act and the First Amendment alike.” *Banzhaf*, 405 F.2d at 1095. The Supreme Court has emphasized “the minimal extent” to which the government may influence the programming provided by broadcast stations. It stressed that “the FCC’s oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations.” *Turner I*, 512 U.S. 622, 650–52.

Public interest requirements relating to specific program content create a “high-risk that such rulings will reflect the Commission’s selection among tastes, opinions, and value judgments, rather than a recognizable public interest,” and “must be closely scrutinized lest they carry the Commission too far in the direction of the forbidden censorship.” *Banzhaf*, 405 F.2d at 1096.⁴¹ Thus, courts have avoided approving “a more active role by the FCC in oversight of programming” because it would “threaten to upset the constitutional balance struck in *CBS v. DNC*.” *Accuracy in Media v. FCC*, 521 F.2d 288, 296–97 (D.C. Cir. 1975); *see also Community-Service Broad. of Mid-America v. FCC*, 593 F.2d 1102, 1115 (D.C. Cir. 1978) (*en banc*) (FCC and courts have generally eschewed “program-by-program review” schemes because of constitutional dangers).

This is the “tightrope” the Commission must walk “to preserve the First Amendment values written into the Radio Act and its successor, the Communications Act.” *Democratic Nat’l Comm.*, 412 U.S. at 117; *Banzhaf*, 405 F.2d at 1095. The Supreme Court has described this balancing act as “a task of a great delicacy and difficulty,” and stressed that “we would [not] hesitate to invoke the Constitution should we determine that the [FCC] has not fulfilled its task with appropriate

⁴¹ *See also Public Interest Research Group v. FCC*, 522 F.2d 1060, 1067 (1st Cir.1975) (“[W]e have doubts as to the wisdom of mandating . . . government intervention in the programming and advertising decisions of private broadcasters.”); *Anti-Defamation League of B’nai B’rith v. FCC*, 403 F.2d 169, 172 (D.C. Cir. 1968) (“[T]he First Amendment demands that [the FCC] proceed cautiously [in reviewing programming content] and Congress . . . limited the Commission’s power in this area.”).

sensitivity to the interests in free expression.” *Democratic Nat’l Comm.*, 412 U.S. at 102, 103.

Nothing could be less compatible with this congressional design and the constitutional limitations on which it is based than the spectacle of an FCC Chairman, at the President’s behest, calling out particular news reports and specific reporters and threatening regulatory repercussions, including license revocation. In this environment, the Commission’s *Public Interest Obligations Notice* that “encouraged” broadcasters “to review their current practices and confirm that they fully align with their statutory public interest obligations”⁴² can only be perceived as a threat of the “easy way” versus “hard way” variety. When Chairman Carr repeatedly warns that he is going to hold broadcasters to their “public interest obligations,”⁴³ the term bears little relationship to the careful and more limited use of the term in the Act and in past FCC and court decisions.

2. The FCC’s Treatment of *The View* Is Contrary to Congressional Intent, the First Amendment, and Longstanding FCC Practice

The Commission’s abrupt departure from its policy of exempting talk shows like *The View* as bona fide news interview programs is contrary to the congressional intent underlying the Act’s exemptions as well as the First Amendment. The

⁴² *Public Interest Obligations Notice*, *supra* n.2 at 6.

⁴³ See Brendan Carr, @BrendanCarrFCC, X (Mar. 14, 2026, at 12:24 ET), <https://x.com/BrendanCarrFCC/status/2032855414233047172> (“The law is clear. Broadcasters must operate in the public interest, and they will lose their licenses if they do not.”)

Commission's 1984 decision to recognize a Section 315 news exemption for the daytime talk show *Donahue* resulted from careful review of the congressional purpose for adding the news exemptions to Section 315(a) in 1959.⁴⁴ The Commission explained that, “[b]y amending Section 315 to include four categories of exempt news programming, Congress contemplated and intended to encourage increased news coverage of political campaign activity.”⁴⁵ The FCC reaffirmed and codified this understanding of congressional intent in 1991.⁴⁶

Prior to the 1984 *Donahue* decision, the FCC strictly limited the bona fide news interview exemption to traditional, rigid question-and-answer programs controlled entirely by journalists, like the examples in the 1959 legislative record such as *Face the Nation* and *Meet the Press*. But after closer examination of the legislative record, the Commission concluded that Congress' intent required application of the news exemptions to new and innovative programming. In order “to make it possible to cover

⁴⁴ In re Request by Multimedia Entertainment, Inc. for Declaratory Ruling, 1984 FCC LEXIS 2665 *; 56 Rad. Reg. 2d (P&F) 143 (1984) (“Donahue”).

⁴⁵ *Id.* at 4. The Commission also found *Donahue* met longstanding criteria used for determining whether a program qualified as a *bona fide* news interview program in that the program was regularly scheduled; it produced and exclusively controlled the program; its decisions on the format, content, and participants were based on reasonable good faith journalistic judgment rather than an intention to advance any candidacy; and guests and topics were selected based on their newsworthiness. *Id.* at *2, *5.

⁴⁶ See *Codification of the Commission's Political Programming Policies*, 7 FCC Rcd. 678, 683 (1991).

the political news to the fullest degree,”⁴⁷ the Commission found, “Congress was prepared to give substantial discretion to the good faith news judgments of broadcast licensees.”⁴⁸ Relying on licensees’ independent news judgment also better comported with the overall structure of the Act.

The Commission later determined that even independently produced programming could qualify for the bona fide news interview exemption.⁴⁹ And after *Donahue*, FCC staff routinely accorded the bona fide news program exemption to a wide array of mixed news and entertainment programs, such as *Entertainment Tonight*,⁵⁰ *The Sally Jessy Raphael Show*,⁵¹ *The Jerry Springer Show*,⁵² *Face to*

⁴⁷ *Id.* at *5, n. 5 (quoting 105 Cong. Rec. 14451 (1959) (remarks of Sen. Holland)).

⁴⁸ *Id.*

⁴⁹ *Request For Declaratory Ruling That Independently Produced Bona Fide News Interview Programs Qualify for the Equal Opportunities Exemption Provided in Section 315(A)(2) of the Communications Act*, 7 FCC Rcd. 4681 (1992); see also *Oliver Productions, Inc.*, 4 FCC Rcd. 5953 (1989), appeal dismissed *sub nom.*, *TRAC v. FCC*, 917 F.2d 585 (D.C. Cir. 1990).

⁵⁰ *Request for Declaratory Ruling by Paramount Pictures Corporation, Cox Broadcasting Corporation, Taft Television Productions, and Television Program Enterprises*, 3 FCC Rcd. 245 (1988).

⁵¹ *Request for Declaratory Ruling of Multimedia Entertainment, Inc.*, 6 FCC Rcd. 1798 (1991).

⁵² *Request for Declaratory Ruling of Multimedia Entertainment, Inc.*, 9 FCC Rcd. 2811 (1994).

Face,⁵³ *Politically Incorrect with Bill Maher*,⁵⁴ and even *The Howard Stern Show*.⁵⁵ And when *The View* filed a petition in 2002 for declaratory ruling that it—like all other similar programs—qualified for the news program exception, the Commission’s Mass Media Bureau granted the petition without qualification.⁵⁶

For over forty years, the FCC has made it clear that it would follow congressional intent and “defer substantially to the good faith news judgments of broadcast licensees.”⁵⁷ Now, under Chairman Carr, the FCC claims that “the FCC has not been presented with any evidence that the interview portion of any late night or daytime television talk show program on air presently would qualify for the bona fide news exemption” and “encourage[es]” licensees “to promptly file a petition for declaratory ruling that satisfies the statutory requirements for a bona fide news exemption.”⁵⁸ This makes the exercise of news judgment to interview a bona fide candidate contingent on the FCC’s prior approval in order to avoid sanctions. And the fact that this requirement is being extended to television talk shows but not radio

⁵³ *Request of KQED, Inc., Licensee of Station KQED (TV), San Francisco, California for Declaratory Ruling*, 9 FCC Rcd. 2813 (1994).

⁵⁴ *Request of ABC, Inc. for Declaratory Ruling*, 15 FCC Rcd. 1355 (1999).

⁵⁵ *Request of Infinity Broad. Operations Inc.*, 18 FCC Rcd. 18603 (2003).

⁵⁶ *ABC’s Petition for Declaratory Ruling, Petition for Declaratory Ruling of KTRK Television, Inc. and American Broadcasting Companies, Inc.* (filed May 7, 2026) at § III-B, pp. 27–29, available at <https://www.fcc.gov/ecfs/search/search-filings/filing/10522087167981>.

⁵⁷ *Donahue* at *13–*14.

⁵⁸ *Equal Opportunities Notice*, *supra* note 33.

talk shows reveals the Commission’s action to be arbitrary and likely viewpoint-based.⁵⁹

The Commission’s change in policy regarding the Section 315 news exemptions and its investigation of *The View* is incompatible with the design of the Communications Act “to maintain – no matter how difficult the task – essentially private broadcast journalism” and to hold licensees “only broadly accountable to public interest standards.” *Democratic Nat’l Comm.*, 412 U.S. at 120.

B. The Scarcity Rationale Can No Longer Justify Broadcast Content Regulation Under the First Amendment

The FCC’s ability to regulate broadcast content—limited as it is—has always been a historical anomaly. It has long been clear that traditional First Amendment protections, if applied to broadcasting, would doom FCC content rules, such as the equal opportunity rule.⁶⁰ Almost six decades ago, in *Red Lion Broadcasting Co. v. FCC*, the Supreme Court upheld the FCC’s personal attack and political editorial rules under a spectrum scarcity theory. 395 U.S. 367 (1969). However, reviewing courts, and the Commission itself, have long recognized that *Red Lion* was based on

⁵⁹ See, e.g., John Hendel, *Talk radio isn’t a target of FCC’s ‘equal time’ notice*, *Brendan Carr says*, POLITICO (Jan. 29, 2026), <https://www.politico.com/news/2026/01/29/talk-radio-isnt-a-target-of-fccs-equal-time-memo-brendan-carr-says-00755660>.

⁶⁰ See, e.g., *Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241 (1974) (invalidating on First Amendment grounds a Florida statute which gave political candidates a right to reply to criticisms and attacks by a newspaper).

“the present state of commercially acceptable technology’ as of 1969,”⁶¹ that its rationale “is not immutable,”⁶² and that with the passage of time and the advance of technology, “some venerable FCC policies cannot withstand constitutional scrutiny in the light of contemporary understanding of the First Amendment and the modern proliferation of broadcasting outlets.”⁶³

Now is a particularly inopportune time for the FCC and its Chairman to assert a heightened ability to regulate broadcast content under a theory both Congress and the Commission have abandoned. For example, the Senate Report for the Telecommunications Act of 1996 found that “[c]hanges in technology and consumer preferences have made the 1934 [Communications] Act a historical anachronism.”⁶⁴ It explained that “the [Communications] Act was not prepared to handle the growth of cable television” and that “[t]he growth of cable programming has raised questions about the rules that govern broadcasters” among others.⁶⁵ The legislative findings in the House were even more direct. The House Commerce Committee observed that the

⁶¹ *News Am. Publ’g, Inc. v. FCC*, 844 F.2d 800, 811 (D.C. Cir. 1988) (quoting *Red Lion*, 395 U.S. at 388).

⁶² *Meredith Corp. v. FCC*, 809 F.2d 863, 867 (D.C. Cir. 1987).

⁶³ *Banzhaf*, 405 F.2d at 1100.

⁶⁴ Telecommunications Competition and Deregulation Act of 1995, S. Rpt. 104-23, 104th Cong. 1st Sess. 2-3 (Mar. 30, 1995).

⁶⁵ *Id.*

audio and video marketplace has undergone significant changes over the past 50 years “and the scarcity rationale for government regulation no longer applies.”⁶⁶

These findings from three decades ago are even more true today in a world of myriad programming choices, including streaming media. From the 1950’s through the 1970’s, the three major broadcast networks captured over 90% of U.S. audiences.⁶⁷ As of May 2026, broadcast network viewership represented just 20.1% of television viewership, compared to cable viewership at 24.1% and streaming services at 44.8%.⁶⁸

The FCC repeatedly has reached the same conclusion regarding spectrum scarcity over the years. In the mid-1980s, for example, the Commission “found that the ‘scarcity rationale,’ which historically justified content regulation of broadcasting ... is no longer valid.”⁶⁹ In 1985, the FCC conducted “a comprehensive reexamination of the public policy and constitutional implications of the fairness doctrine” and

⁶⁶ Communications Act of 1995, H. Rpt. 104-204, 104th Cong. 1st Sess. 54 (July 24, 1995).

⁶⁷ John Markert, *Decline of the Big Three Networks*, EBSCO (2023), <https://www.ebsco.com/research-starters/history/decline-big-three-networks>.

⁶⁸ Meg James, *TV milestone: Streaming is now bigger than cable and broadcast combined*, LOS ANGELES TIMES (June 17, 2025), <https://www.latimes.com/entertainment-arts/business/story/2025-06-17/nielsen-report-streaming-surpasses-television-in-viewership>.

⁶⁹ *Meredith Corp.*, 809 F.2d at 867 (citing *Report Concerning General Fairness Doctrine Obligations of Broadcast Licensees*, 102 F.C.C.2d 143 (1985) (“1985 Fairness Doctrine Report”)); see also *Syracuse Peace Council*, 867 F.2d at 660–66 (discussing *1985 Fairness Doctrine Report* and upholding FCC’s decision to repeal the fairness doctrine).

reported, “[o]n the basis of the voluminous factual record compiled in [the] proceeding, [the FCC’s] experience in administering the doctrine and [its] general expertise in broadcast regulation,” the fairness doctrine, as a matter of policy, no longer “serves the public interest.”⁷⁰ The Commission found the Fairness Doctrine was incompatible with the First Amendment.⁷¹ Based on these findings, the FCC eliminated the doctrine, and the D.C. Circuit upheld the decision.⁷²

Consistent with this recognition of its constitutional boundaries, the Commission in 1986 recommended that Congress repeal the Section 315 equal opportunity rule. It pointed out that “Section 315 imposes a hierarchy of speech values which unnecessarily and improperly restricts the discretion of broadcasters in fulfilling their public interest obligations and journalistic responsibilities.”⁷³ Because Section 315 “forces broadcasters to commit substantial time blocks, particularly in multi-candidate races ... the practical result of this policy has been that broadcasters often exercise the discretion not to give or sell *any* time to candidates in some races.”⁷⁴

A decade and a half later, in complying with the congressional mandate to conduct a biennial review of broadcast regulations, the FCC again found that the

⁷⁰ *1985 Fairness Doctrine Report* at 147.

⁷¹ *Id.* at 151 (citing *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974)).

⁷² *Syracuse Peace Council*, 2 FCC Rcd 5043 (1987), *aff’d*, *Syracuse Peace Council*, 867 F.2d 654, 669 (D.C. Cir. 1989).

⁷³ FCC, *Legislative Proposal*, 926 (Jan. 30, 1986).

⁷⁴ *Id.* (emphasis in original).

media landscape has been transformed.⁷⁵ It concluded that “the modern media marketplace is far different than just a decade ago,” finding that traditional media “have greatly evolved” and “new modes of media have transformed the landscape, providing more choice, greater flexibility, and more control than at any other time in history.”⁷⁶

Two decades ago, an FCC staff report concluded that the spectrum scarcity rationale “no longer serves as a valid justification for the government’s intrusive regulation of traditional broadcasting.”⁷⁷ It criticized the logic of the scarcity rationale for content regulation and added that “[p]erhaps most damaging to The Scarcity Rationale is the recent accessibility of all the content on the Internet, including eight million blogs, via licensed spectrum and WiFi and WiMax devices.” Content regulation “based on the scarcity of channels, has been severely undermined by plentiful channels.”⁷⁸

⁷⁵ *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd. 13620, 13623 (2003) (“*Biennial Regulatory Review*”).

⁷⁶ *Id.* at 13647–48.

⁷⁷ John W. Berresford, *The Scarcity Rationale for Regulating Traditional Broadcasting: An Idea Whose Time Has Passed*, FCC MEDIA BUREAU 8 (Mar. 1, 2005), <https://www.fcc.gov/reports-research/working-papers/scarcity-rationale-regulating-traditional-broadcasting-idea-whose>. FCC staff research papers are unofficial studies and do not necessarily reflect the position of the Media Bureau or the Commission.

⁷⁸ *Id.* at 11. The report also concludes that alternative rationales for broadcast content regulations are similarly flawed. *Id.* at 18–28.

It is particularly unfortunate (and telling) that the Commission’s recent Public Notice on broadcasters’ public interest obligations omits *entirely* this history of FCC findings on scarcity.⁷⁹ But failure to mention its prior findings cannot make them disappear, nor can the Commission stuff the technological genie back into the bottle. The conditions that once were used to justify differential First Amendment treatment of broadcasters simply do not exist.

Of course, if Congress or the FCC chose to adopt new public interest requirements, they would be expected to adopt new legislative or regulatory findings. But it would be difficult in the current media marketplace to fashion credible evidence that the broadcast medium operates in a condition of scarcity, or that the public would be deprived of information absent FCC programming mandates. Any new rules regulating broadcast content or expanded enforcement of existing rules would necessarily implicate the First Amendment, and reviewing courts would not be required to defer to Commission findings.⁸⁰

And it is difficult to imagine reviewing courts would be enthusiastic about more muscular FCC content regulations predicated on spectrum scarcity. The Supreme Court has expressly refused to extend broadcast regulation to other media, and has been lukewarm (at best) to the continuing validity of FCC content rules. In *Turner I*, for example, the Court rejected the government’s bid to extend the principles of *Red*

⁷⁹ See generally *Public Interest Obligations Notice*, *supra* note 2.

⁸⁰ *Playboy Ent. Grp.*, 529 U.S. at 817–18; *Sable Commc’ns of Cal., Inc. v. FCC*, 492 U.S. 115, 129 (1989) (“Deference to a legislative finding cannot limit judicial inquiry when First Amendment rights are at stake.”) (citation omitted).

Lion to the regulation of cable television. After noting the Commission’s “minimal” authority over broadcast content, the Court pointed out that “the rationale for applying a less rigorous standard of First Amendment scrutiny to broadcast regulation, *whatever its validity in the cases elaborating it*, does not apply in the context of cable television.”⁸¹

In the interim, courts have been unwilling to grant the FCC greater authority to regulate broadcast content. In *MPAA v. FCC*, the D.C. Circuit vacated the Commission’s video description rules.⁸² Although the court analyzed only the question of whether the FCC had been given statutory authority to adopt the rules, it explained that it interpreted the Commission’s powers narrowly because any regulation of programming content “invariably raise[s] First Amendment issues.”⁸³ The thrust of the holding was that the FCC’s general public interest authority over programming is far less expansive than was previously assumed.

The same conclusion follows from the D.C. Circuit’s decision in *RTNDA v. FCC*, where the court ordered the Commission to repeal the personal attack and political editorial rules.⁸⁴ There, the court held that the FCC had the burden to justify rules that “interfere with editorial judgment of professional journalists and entangle the

⁸¹ *Turner I*, 512 U.S. at 637 (emphasis added); *see also Reno v. ACLU*, 521 U.S. 544 (1997).

⁸² 309 F.3d 796 (D.C. Cir. 2002).

⁸³ *Id.* at 805.

⁸⁴ *Radio-Television News Dirs. Ass’n v. FCC*, 229 F.3d 269 (D.C. Cir. 2000) (per curiam).

government in day-to-day operations of the media.”⁸⁵ Although the court did not decide whether such rules are constitutional or would serve the public interest, it was unwilling to allow the FCC to continue to enforce the content restrictions (that already had been subject to protracted review) while the Commission assessed their validity.

The Commission’s recent experience with the news exemptions vividly illustrates how technological change has rendered the equal opportunity rules superfluous. After the Commission issued its *Public Notice* announcing its intention to limit exemptions for certain interview programs, one target of this policy change demonstrated a simple workaround. Stephen Colbert transmitted his interview with Texas Senate candidate James Talarico on *The Late Show’s* YouTube channel, which is beyond the FCC’s jurisdiction.⁸⁶ That interview got over seven million views overnight (more than three times the on-air viewership).⁸⁷ Imposing equal

⁸⁵ *Id.* at 270 (it is “incumbent upon the Commission to ‘explain why the public interest would benefit from rules that raise these policy and constitutional doubts’”) (citation omitted).

⁸⁶ *The Late Show with Stephen Colbert, Rep. James Talarico On Confronting Christian Nationalism, And Strange Days In The Texas Legislature*, YOUTUBE (Feb. 17, 2026), https://www.youtube.com/watch?v=oiTJ7Pz_59A; see also Adam Bonin, *What Stephen Colbert protects by standing up to FCC Chairman Brendan Carr*, MS NOW (Feb. 18, 2026), <https://www.ms.now/opinion/stephen-colbert-talarico-fcc-carr-equal-time-rule>.

⁸⁷ Dade Hayes, *After Colbert-CBS Rift, Interview With Texas Senate Candidate James Talarico Draws 85M Views Across YouTube & Social*, DEADLINE (Feb. 19, 2026), <https://deadline.com/2026/02/stephen-colbert-cbs-james-talarico-interview-views-youtube-social-1236729257/>.

opportunity requirements in this circumstance where they serve no purpose cannot survive any level of First Amendment scrutiny.

C. The FCC’s Political Manipulation of Regulatory Processes Has Undermined its Legitimate Authority

Congress always recognized the inherent dangers of empowering the government to regulate broadcasting. For that reason, it adopted specific safeguards in the Communications Act, such as the “no censorship” provision of Section 326, and sought to infuse the Act with First Amendment values. It also sought to minimize the potential for political abuse by designing the Commission as a politically bipartisan institution, as evidenced by its structure—a multimember commission appointed by the President with Senate confirmation, subject to a same-party cap and fixed terms.⁸⁸

Whatever one may think of independent regulatory agencies within the framework of the three branches of government, Congress never intended to give the President direct control over regulated industries, and most especially the communications industry. Given this design, it seems clear that when Congress empowered the agency to regulate in the “public interest,” it did not contemplate handing unbridled discretion to political partisans.

⁸⁸ 47 U.S.C. § 154(a), (b)(5), (c); 47 U.S.C. § 401(c). Multimember structures with specified tenure, partisan balance requirements, and full or partial independent litigation authority are characteristic of independent agencies. *See* Kirti Datla & Richard L. Revesz, *Deconstructing Independent Agencies (and Executive Agencies)*, 98 CORNELL L. REV. 769, 789–804 (2013) (examining the functional differences between independent and executive agencies).

The fact that Chairman Carr no longer considers the FCC to be an independent agency, and instead merely an extension of the President’s will, is an important warning sign that undermines the Commission’s legitimacy. It is significant that no living former FCC Commissioner has endorsed Chairman Carr’s current view of his regulatory authority, while a bipartisan group of former Chairmen and Commissioners, along with other high-level staff, have condemned it. For that reason, when the term “public interest” appears in former FCC decisions, court decisions, and Commissioners’ statements, it carries a different meaning from its usage on Chairman Carr’s watch. As the term is currently being used, the Commission has forfeited the presumption of regularity.⁸⁹

No doubt, the FCC has been no stranger to jawboning tactics in past administrations. The phenomenon is so sufficiently well known at the Commission that it is commonly referred to as “regulation by raised eyebrow.”⁹⁰ The D.C. Circuit has recognized the various ways a regulatory agency can put pressure on a regulated firm, “some more subtle than others.”⁹¹ In particular, it has observed that the FCC

⁸⁹ *Fed. Educ. Ass’n v. Trump*, 795 F. Supp. 3d 74, 88–92 (D.D.C. 2025) (collecting numerous cases), *stay pending appeal denied*, 2025 WL 2738626, at *8 (D.C. Cir. Sept. 25, 2025); *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President*, 774 F. Supp. 3d 86, 889 (D.D.C. 2025) (“The retaliatory nature of the Executive Order at issue ... is clear from its face.”).

⁹⁰ See e.g., David L. Bazelon, *FCC Regulation of the Telecommunications Press*, DUKE L. J. 213, 215 (1975); Glen O. Robinson, *The FCC and the First Amendment: Observations on 40 Years of Radio and Television Regulation*, 52 MINN. L. REV. 67, 119 (1967).

⁹¹ *MD/DC/DE Broadcasters Ass’n*, 236 F.3d 13, 19 (D.C. Cir. 2001).

“has a long history of employing ... ‘a variety of *sub silentio* pressures and “raised eyebrow” regulation of program content The practice of forwarding viewer or listener complaints to the broadcaster with a request for a formal response to the FCC, the prominent speech or statement by a Commissioner or Executive official, the issuance of notices of inquiry ... all serve as means for communicating official pressures to the licensee.”⁹²

In this regard, an investigation “is a powerful threat, almost guaranteed to induce the desired conduct.”⁹³ Such concerns are particularly acute where the Commission seeks to compel licensees to alter their content. A chilling effect can exist even when a regulatory requirement “neither creates any new content restrictions ... nor establishes any new mechanism for enforcement of existing standards” to the extent the measure has the purpose of exerting greater control over content.⁹⁴ As the Supreme Court unanimously reaffirmed in *Vullo*, the “‘threat of invoking legal sanctions and other means of coercion ... to achieve the suppression’ of disfavored speech violates the First Amendment.”⁹⁵

The Commission’s *Public Notice* targeting *The View* has all the hallmarks of an unconstitutional government campaign designed to suppress speech, combining

⁹² *Id.* (quoting *Community-Service Broad. of Mid-America*, 593 F.2d at 1116).

⁹³ *Id.*; see also *Lutheran Church-Missouri Synod*, 141 F.3d at 353 (same).

⁹⁴ *Community-Service Broad. of Mid-America*, 593 F.2d at 1115.

⁹⁵ *Vullo*, 602 U.S. at 180; see *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963).

both formal and informal actions. It includes President Trump’s repeated attacks on the program’s hosts, capped by the White House statement that *The View* would be the next show “pulled off the air;” Chairman Carr’s statements closely following (and echoing) those of the President;⁹⁶ the Commission’s follow-up actions including the reinterpretation of news exemption, the investigation of KTRK, and the FCC’s unprecedented order that ABC submit a declaratory ruling petition. There also are disturbing indications in the ABC Petition suggesting that the FCC has surreptitiously contacted other Texas stations about their public files in what appears to be an effort to tilt the proceeding against KTRK.⁹⁷ And all these actions are occurring under the long shadow cast by the FCC’s putting all ABC station licenses into early renewal.

In addition to these various acts, the selective focus of the Commission’s inquiry makes it highly suspect. Chairman Carr has said he sees no comparable reason to deny the Section 315 news exemptions to talk radio,⁹⁸ yet has identified no

⁹⁶ *E.g.*, Alex Weprin, *Brendan Carr Responds to Kimmel Over New FCC Equal Time Rules: “If You’re Fake News, You’re Not Going to Qualify”*, THE HOLLYWOOD REPORTER (Jan. 29, 2026), <https://www.hollywoodreporter.com/news/politics-news/fcc-chairman-responds-jimmy-kimmel-equal-time-rule-change-1236488623/>.

⁹⁷ *See ABC Declaratory Ruling Petition, supra* note 37, at 3–4. If true, these allegations would further undermine any presumption of regularity for the Commission.

⁹⁸ John Hendel, *Talk Radio Isn’t a Target of FCC’s “Equal Time” Notice, Brendan Carr Says*, POLITICO (Jan. 29, 2026), <https://www.politico.com/news/2026/01/29/talk-radio-isnt-a-target-of-fccs-equal-time-memo-brendan-carr-says-00755660> (reporting on Carr’s comments at a press conference after the FCC’s Jan. 29, 2026 meeting); Jon Brodtkin, *Trump FCC’s equal-time crackdown doesn’t apply equally—or at all—to talk radio*, ARS TECHNICA (Mar. 2, 2026), <https://arstechnica.com/tech-policy/2026/03/trump-fccs-equal-time-crackdown-doesnt-apply-equally-or-at-all-to->

neutral enforcement principle to justify this different treatment. Television talk shows and radio talk shows both feature political commentary, interviews, satire, advocacy, and personality-driven discussion.⁹⁹ If the Commission's concern is genuinely that certain broadcast formats may confer unequal political advantages on candidates, there is no obvious reason why that concern would apply to television but not radio.

The more plausible explanation is also the more troubling one: the distinction tracks perceived viewpoint. The Commission is targeting only television shows perceived as critical of President Trump or other Republican leaders, or favoring Democrats. Talk radio, by contrast, has long been associated with conservative commentary and Republican political advocacy.¹⁰⁰ This suggests the Commission's *Public Notice* and threatened enforcement is not driven by a neutral concern about candidate access or broadcast fairness, but instead targets licensees and programs based on their perceived viewpoints. The First Amendment does not permit the government to wield licensing authority in this way under the banner of the public interest standard.

talk-radio (reporting on Carr's comments at a press conference after the FCC's February 18, 2026 meeting).

⁹⁹ See *ABC Declaratory Ruling Petition*, *supra* note 37, at 37–38 (citing numerous examples of candidate interviews on talk radio).

¹⁰⁰ Max Pienkny, *From the Dial to the Aisle: The Effects of Talk Radio* (June 18, 2025) (unpublished manuscript), available at https://maxpienkny.github.io/files/research/working_papers/pienkny_talk_radio.pdf.

IV. CONCLUSION

The fact that Chairman Carr no longer considers the FCC to be an independent agency, and instead merely an extension of the President's will, is an important warning sign that undermines the Commission's legitimacy. No living former FCC Commissioner has endorsed Chairman Carr's current view of his regulatory authority, while a bipartisan group of former Chairmen and Commissioners, along with other high-level staff, have condemned it. For that reason, when the term "public interest" appears in former FCC decisions, court decisions, and Commissioners' statements, it carries a different meaning from its usage on Chairman Carr's watch. As the term is currently being used, the Commission has forfeited the presumption of regularity.

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FOUNDATION FOR INDIVIDUAL
RIGHTS AND EXPRESSION

/s/ Robert Corn-Revere

Robert Corn-Revere, Chief Counsel
Ronnie London, General Counsel
700 Pennsylvania Ave., SE, Suite 340
Washington, DC 20003
(215) 717-3473
bob.corn-revere@thefire.org

William Creeley, Legal Director
D Gill Sperlein, Attorney
510 Walnut Street, Suite 900
Philadelphia, PA 19106

(215) 717-3473
will@thefire.org