

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF FORMER COMMISSIONERS RACHELLE B. CHONG, ERVIN S.  
DUGGAN, ALFRED C. SIKES, GLORIA TRISTANI, AND TOM WHEELER**

## EXECUTIVE SUMMARY

These comments are submitted on behalf of a bipartisan group of former Commissioners of the Federal Communications Commission. Across Republican and Democratic administrations, the Commission historically has been steadfast in its commitment to acting as an independent agency, respecting the free speech rights of broadcasters, and disclaiming any role in censoring the news media. This news distortion proceeding marks a significant departure from the Commission's historical practice, both procedurally and substantively.

The Commission has long stressed the importance of construing the “news distortion” policy narrowly to protect free speech. It has found sanctionable news distortion extraordinarily rarely, only in cases of wholesale fabrication of news stories and other egregious misconduct. The Commission has expressly declined to enforce the policy in cases that merely take issue with a broadcaster's editorial judgment, recognizing the acute danger of allowing a government agency to second-guess journalistic decisions. The Commission initially applied that precedent here and properly dismissed this news distortion complaint. But it took the highly unusual steps of reopening the proceeding once a new President assumed office, acting *sua sponte* to secure the precise relief requested by the complaint, and only *then* opening the docket for public comment—without any real explanation for reconsidering the prior decision. The Commission thus seems to be using this proceeding to warn broadcasters that it may apply the news distortion policy far more aggressively than over the past several decades, but the lack of transparency

leaves affected broadcasters and the public guessing as to the Commission's current view of the policy's scope.

As former Commissioners, we are deeply concerned about these departures from the Commission's historical practice, particularly when they are viewed in context. This Administration has made no secret of its desire to revoke the licenses of broadcasters that cover it in ways the President considers unfavorable. And the Administration has also decreed that the Commission and other historically independent agencies will now operate directly under the President's "supervision and control." By reopening this complaint, the Commission is signaling to broadcasters that it will indeed act at the behest of the White House by closely scrutinizing the content of news coverage and threatening the regulatory licenses of broadcasters whose news outlets produce coverage that does not pass muster in the President's view. We recommend the Commission reverse course, closing this proceeding without further action and reaffirming its long-held commitment to acting as an independent agency rather than the White House's personal censor.

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Former Commissioners Rachelle B. Chong, Ervin S. Duggan, Alfred C. Sikes, Gloria Tristani, and Tom Wheeler submit these comments in response to the Public Notice, *News Distortion Complaint Involving CBS Broadcasting Inc., Licensee of WCBS, New York, NY*, MB Docket No. 25-73 (Feb. 5, 2025).

**I. Introduction**

These comments are submitted to emphasize the unprecedented nature of this news distortion proceeding, and to express our strong concern that the Federal Communications Commission may be seeking to censor the news media in a manner antithetical to the First Amendment. The undersigned commenters comprise a bipartisan group of former FCC Chairs and Commissioners. These individuals served under both Republican and Democratic leadership, and from that experienced perspective, express deep concern about the breadth of the content regulation authority asserted by this proceeding.

The Commission has long recognized that “[t]he First Amendment, as well as Section 326 of the Communications Act, prohibits the Commission from censoring broadcast material

and from interfering with freedom of expression in broadcasting.”<sup>1</sup> The Commission has also long acknowledged the risks to free expression and a free press created by its “news distortion” policy—a policy that has never been codified as a rule. To mitigate those constitutional concerns, the Commission has construed the policy exceptionally narrowly. It has enforced the policy very rarely, and it has adopted guardrails requiring that complaints be summarily dismissed in all but the most exceptional circumstances.

Those circumstances are not remotely present here. As described in the Center for American Rights’ complaint,<sup>2</sup> this proceeding concerns two different broadcasts of the same interview with then-presidential candidate Kamala Harris, which aired on CBS’s “Face the Nation” and “60 Minutes.” Both broadcasts aired footage of the same question, and each program aired different portions of the response. The complaint sought the release of the unedited transcript, which the Commission has now secured along with the video of the interview. The transcript confirms that the editing choices at issue lie well within the editorial judgment protected by the First Amendment and that the Commission’s January 16 dismissal of the complaint was legally correct.<sup>3</sup> Yet the Commission has reopened the complaint and taken the highly unusual step of inviting public comment, even though the proceeding is adjudicatory in nature. These developments have unjustifiably prolonged this investigation and raise questions about the actual purpose of the proceeding.

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<sup>1</sup> FCC, *The Public and Broadcasting* 10 (rev. Sept. 2021), <http://bit.ly/4hAg9Ho>.

<sup>2</sup> Center for American Rights, *In re Complaint against WCBS-TV*, Oct. 16, 2024, <https://tinyurl.com/445dt8fu>.

<sup>3</sup> See Comments of Public Knowledge at 9-10, <https://tinyurl.com/ytsbdmr9>; Comments of Free Press at 3-10, <https://tinyurl.com/2s8zd993>; Comments of Foundation for Individual Rights and Expression at 14-17, <https://tinyurl.com/32ck7h2a>; Comments of the Center for Democracy and Technology at 3-5, <https://tinyurl.com/3kkmub85>; Joe Lancaster, *Transcript Proves the 60 Minutes Scandal Was Always Fake*, Reason, Feb. 6, 2025, <https://tinyurl.com/cp4acxr2>.

The Commission’s departures from its typical practice and precedent are especially troubling when viewed in context. This Administration has made no secret of its desire to revoke the licenses of broadcasters that cover it in ways the President considers unfavorable.<sup>4</sup> And the Administration has also decreed that this Commission and other historically independent agencies—including but not limited to the Federal Trade Commission, the Securities and Exchange Commission, and the Federal Energy Regulatory Commission—will now operate directly under the President’s “supervision and control.”<sup>5</sup> By reopening this complaint, the Commission is signaling to broadcasters that it intends to act at the behest of the White House by closely scrutinizing the content of news coverage and threatening the regulatory licenses of broadcasters whose news outlets produce coverage that does not pass muster in the President’s view.

We recommend that the Commission reverse course and once again dismiss the news distortion complaint as meritless. In doing so, the agency should reaffirm its foundational and long-held commitment to acting as an independent agency and not as a censor. Any other path contravenes the First Amendment and the great American free speech tradition.

## **II. This Proceeding Is An Extraordinary Departure from the Commission’s Historical Practice and Precedent**

Both procedurally and substantively, this news distortion proceeding is a remarkable departure from the Commission’s ordinary practice. Although it has continued to recognize the news distortion policy in theory, the Commission has exercised significant restraint in applying the policy to broadcasters in light of the substantial First Amendment interests at stake.

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<sup>4</sup> Brian Stelter, *Trump’s growing threats to strip broadcast licenses send chills across industry*, CNN, Oct. 22, 2024, <https://tinyurl.com/57r7t97k>.

<sup>5</sup> Exec. Order No. 14,215, 90 Fed. Reg. 10,447 (Feb. 18, 2025).

### **A. The Process Followed in This Proceeding Is Highly Unusual**

To start, this news distortion inquiry is so procedurally irregular that nothing in our combined experiences on the Commission compares.

CAR's complaint appears to have been filed as a request for Commission action under 47 C.F.R. § 1.41. As required by that section, the complaint included a specific request for relief—namely, the release of the complete transcript of the “60 Minutes” interview at issue.<sup>6</sup> On January 16, 2025, the Enforcement Bureau denied the request, explaining in a thorough and reasoned decision that CAR's complaint failed to allege actionable news distortion under settled precedent.<sup>7</sup>

On January 22, 2025, two days after the President's inauguration, the Bureau reinstated the complaint on its own motion, despite the absence of any new evidence.<sup>8</sup> The Bureau then requested that WCBS produce the unedited transcript and video, and WCBS complied.<sup>9</sup> Notably, the Chair is on record stating that the release of the transcript would end the matter.<sup>10</sup> But rather

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<sup>6</sup> CAR Compl. at 5.

<sup>7</sup> See Letter from Enforcement Bureau, FCC, to Daniel R. Suhr, Center for American Rights, GN Docket No. 25-11 (Jan. 16, 2025), <https://tinyurl.com/3e2csp2n>.

<sup>8</sup> See Order, GN Docket. No. 25-11 (Jan. 22, 2025), <https://tinyurl.com/4j6sej3w>.

<sup>9</sup> See CBS News, *60 Minutes publishes transcripts, video requested by FCC*, Feb. 5, 2025, <https://tinyurl.com/mr2y97zx>. The Commission's request for the transcript was “unusual,” as another former Commissioner explained. Liam Scott, *FCC launches media investigations, reinstates complaints*, VOA News, Feb. 5, 2025, <https://tinyurl.com/47x6sk5j>.

<sup>10</sup> Kristen Altus, *FCC commissioner urges CBS to release the transcript from Harris' '60 Minutes' interview*, Fox Business (Oct. 22, 2024), <https://tinyurl.com/4v28mw9n> (“I don't think this needs to be a federal case because I think CBS should release it . . . then that would inoculate, entirely, CBS from that FCC complaint[.]”)



than close the file, the Commission opened this docket for public comment on the complaint,<sup>11</sup> despite *already* having secured the requested relief.

The Commission did not cite any legal authority to explain or justify the decision to seek public comment. It indicated, without further explanation, that the matter would be treated as a “permit-but-disclose” proceeding for purposes of the *ex parte* rules.<sup>12</sup> That characterization could be significant. As a general matter, proceedings that adjudicate the conduct of specific licensees are considered “restricted” proceedings, meaning *ex parte* presentations are generally prohibited.<sup>13</sup> But the Commission retains discretion under the rules to specify that a restricted proceeding should be treated as a “permit-but-disclose” proceeding instead if the Commission “determine[s]” that it “involves primarily issues of broadly applicable policy rather than the rights and responsibilities of specific parties.”<sup>14</sup> That may well be the Commission’s view of this proceeding—*i.e.*, that it is an opportunity to make broad policy about broadcasters’ liability for editing news content. But the notice inviting public comment does not make that clear.

All of this raises important questions about the purpose of this proceeding, as well as the stakes for WCBS and other broadcasters. Because the actual relief sought in the CAR complaint has already been obtained, it is not at all clear whether any other penalties are under consideration. It is also not at all clear whether the Commission intends to use this proceeding to address “issues of broadly applicable policy,” such as the continued viability of the news distortion policy and the potential expansion of its historically extremely narrow scope.

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<sup>11</sup> Public Notice, *FCC Establishes MB Docket No. 25-73 and Comment Cycle for News Distortion Complaint Involving CBS Broadcasting Inc., Licensee of WCBS, New York, NY*, MB Docket No. 25-73 (Feb. 5, 2025), <https://tinyurl.com/yvpcpfkd>.

<sup>12</sup> 47 C.F.R. § 1.1206(a)(1)-(13).

<sup>13</sup> *Id.* § 1.1208.

<sup>14</sup> *Id.* § 1.1208 n.2.

If the Commission wishes to adopt and enforce an aggressive news distortion standard—despite the grave constitutional concerns that would raise—it should engage in a rulemaking process and publish a proposed rule. Affected broadcasters and the public would then be able to submit comments with a full understanding of the stakes of the proceeding, and the courts would decide whether the final rule comports with the First Amendment and relevant statutes. But that is not what the Commission has done. It has instead used unprecedented procedural maneuvers to prolong a proceeding that is plainly meritless under well-settled precedent. In doing so, the Commission seems to be *warning* broadcasters to expect a more aggressive approach to the news distortion policy, without any of the transparency or accountability that a rulemaking process would provide.

**B. The Commission Has Traditionally Construed the News Distortion Policy Narrowly in Light of the Substantial First Amendment Interests at Stake**

This proceeding is an anomaly substantively as well, as the Commission has long been committed to exercising restraint in addressing news distortion allegations to avoid undue interference with the free speech rights of broadcasters.

The exercise of editorial discretion by the press, including broadcasters, is protected by the First Amendment. In *Miami Herald Publishing Company v. Tornillo*, the Supreme Court struck down a Florida law requiring newspapers that published pieces critical of political candidates to provide space for the candidate to respond, holding that the law violated the First Amendment “because of its intrusion into the function of editors.”<sup>15</sup> Both the “choice of material to go into a newspaper” and the newspaper’s “treatment of public issues and public

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<sup>15</sup> 418 U.S. 241, 258 (1974); *see also* *Pittsburgh Press Co. v. Human Relations Comm’n*, 413 U.S. 376, 391 (1973); *Herbert v. Lando*, 441 U.S. 153, 167 (1979); *Passaic Daily News v. N.L.R.B.*, 736 F.2d 1543, 1557 (D.C. Cir. 1984).

officials—whether fair or unfair—constitute the exercise of editorial control and judgment.”<sup>16</sup> Allowing the government to regulate or control this editorial discretion violates the First Amendment.

The Supreme Court has extended these First Amendment protections to broadcasters, holding that their “expression of editorial opinion on matters of public importance . . . is entitled to the most exacting degree of First Amendment protection.”<sup>17</sup> For broadcasters, no less than for other media, “the editorial function itself is an aspect of speech.”<sup>18</sup> And, although First Amendment doctrine treats broadcast and non-broadcast media distinctly in some respects, the Court has made clear that the First Amendment requires the Commission to minimize the risk of expanding “[g]overnment control over the content of broadcast discussion of public issues.”<sup>19</sup> Not only must “[g]overnment regulation over *the content* of program broadcasting [] be narrow,” but “broadcast licensees must retain abundant discretion over programming choices.”<sup>20</sup>

Since its founding in 1934, the Commission has been concerned with the danger that content-based regulation could pose to the marketplace of ideas. The Federal Communications Act specified that no part of it should be “construed to give the Commission the power of censorship” and that the Commission should create no “regulation or condition . . . which shall interfere with the right of free speech.”<sup>21</sup> At the same time, the Commission is statutorily

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<sup>16</sup> *Tornillo*, 418 U.S. at 258.

<sup>17</sup> *F.C.C. v. League of Women Voters of California*, 468 U.S. 364, 375-76 (1984).

<sup>18</sup> *Denver Area Educ. Telecommc 'ns Consortium, Inc. v. F.C.C.*, 518 U.S. 727, 737 (1996) (cleaned up); *see also Arkansas Educ. Television Comm 'n v. Forbes*, 523 U.S. 666, 674 (1998).

<sup>19</sup> *Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 126 (1973).

<sup>20</sup> *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 651 (1994) (emphasis added).

<sup>21</sup> 47 U.S.C. § 326; *see also Columbia Broad. Sys.*, 412 U.S. at 102 (“Balancing the various First Amendment interests involved in the broadcast media and determining what best serves the public’s right to be informed is a task of [] great delicacy and difficulty.”).

required to ensure that licensees operate in the public interest,<sup>22</sup> a standard that, as the Supreme Court has put it, “necessarily invites reference to First Amendment principles.”<sup>23</sup>

In this context, the Commission’s news distortion policy—never codified as a formal rule or regulation—has always foregrounded the guardrails necessary to protect free speech.<sup>24</sup> As the Commission put it in a seminal opinion, it would not

“examine[] news coverage as a censor might to determine whether it is fair in the sense of presenting the ‘truth’ of an event as the Commission might see it. The question whether a news medium has been fair in covering a news event would turn on an evaluation of such matters as what occurred, what facts did the news medium have in its possession, what other facts should it reasonably have obtained, what did it actually report, etc. . . . [H]owever appropriate such inquiries might be for critics or students of the mass media, they are not appropriate for this Government licensing agency. . . . We do not sit as a review body of the ‘truth’ concerning news events.”<sup>25</sup>

In light of the First Amendment concerns and the statutory obligation to avoid censorship, the Commission has narrowly circumscribed its authority to intervene in cases of alleged news distortion.<sup>26</sup> The test is generally understood to have four elements.<sup>27</sup> First, the Commission will only act on allegations of “*deliberate* distortion,” as distinct from “mere inaccuracy or difference of opinion.”<sup>28</sup> Second, the Commission will act only if there is extrinsic

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<sup>22</sup> 47 U.S.C. § 303.

<sup>23</sup> *Columbia Broad. Sys.*, 412 U.S. at 122.

<sup>24</sup> Joel Timmer, *Potential FCC Actions against Fake News: The News Distortion Policy and the Broadcast Hoax Rule*, 24 Comm. L. & Pol’y 1, 43-46 (Winter 2019).

<sup>25</sup> *In Re Complaints Concerning Network Coverage of the Democratic Nat’l Convention*, 16 F.C.C.2d 650, 655 (1969).

<sup>26</sup> Timmer, *supra*, at 43-46; *see also* *Complaints Covering CBS Program “Hunger in America,”* 20 F.C.C.2d 143, 151 (1969) (“We will therefore eschew the censor’s role, including efforts to establish news distortion in situations where Government intervention would constitute a worse danger than the possible rigging itself.”)

<sup>27</sup> Chad Raphael, *The FCC’s Broadcast News Distortion Rules: Regulation by Drooping Eyelid*, 6 Comm. L. & Pol’y 485 (2001); *see also* *Serafyn v. F.C.C.*, 149 F.3d 1213, 1216 (D.C. Cir. 1998).

<sup>28</sup> *Galloway v. F.C.C.*, 778 F.2d 16, 20 (D.C. Cir. 1985) (emphasis added); *Hunger in America*, 20 F.C.C.2d at 150-51.

evidence (*i.e.*, beyond the broadcast itself) demonstrating that the broadcaster deliberately distorted or staged the news.<sup>29</sup> Third, the distortion must apply to a “significant event,” rather than minor inaccuracies or incidental aspects of the report.<sup>30</sup> And finally, the Commission will only consider taking action on the broadcaster’s license if the extrinsic evidence shows the distortion involved the “principals, top management, or news management” of the licensee, as opposed to other employees.<sup>31</sup>

In other words, because the Constitution and statute forbid the Commission from examining broadcasters’ presentation of news as a censor, the Commission has always underscored that “mere inaccuracy or difference of opinion” is insufficient to constitute a news distortion violation.<sup>32</sup> The news distortion policy is not an invitation to “question the legitimate editorial decisions” of broadcasters or dispute the accuracy of their reporting.<sup>33</sup> By confining the policy’s scope in these ways, the Commission has been able to ensure its fidelity to free speech principles regardless of the opinions or ideologies of its current leadership.

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<sup>29</sup> *Hunger in America*, 20 F.C.C.2d at 150 (“For the Commission to investigate mere allegations, in the absence of a material indication of extrinsic evidence of staging or distortion, would clearly constitute a venture into a quagmire inappropriate for this Government agency.”); *Complaints Against Screen Gems Stations, Inc., Station WVUE(TV), New Orleans, La. & Am. Broad. Companies, Inc.*, 46 F.C.C.2d 252, 257 (1974) (“Because of First Amendment considerations, we believe it is inappropriate for us to make inquiry into this sensitive area in the absence of extrinsic evidence . . . . Our role in this area is, therefore, very limited and the licensee’s discretion is commensurately broad.”).

<sup>30</sup> *Galloway*, 778 F.2d at 20.

<sup>31</sup> *Hunger in America*, 20 F.C.C.2d at 150.

<sup>32</sup> *Galloway*, 778 F.2d at 20.

<sup>33</sup> *Id.*

### C. The FCC Has Historically Upheld News Distortion Findings Only in Cases of Egregious Misconduct

These strict requirements have ensured that the Commission has very rarely found sanctionable news distortion. According to academic analyses, the Commission issued findings of liability on news distortion in just eight cases between 1969 and 2019—and in fact in just *one* case between 1985 and 2019.<sup>34</sup> None of the cases that found news distortion concerned the way a broadcaster had exercised its editorial discretion in presenting the news. Instead, each case involved egregious misconduct, including the wholesale fabrication of news stories. As the details of these cases demonstrate, the facts that have historically constituted news distortion are fundamentally different from the circumstances now before the Commission.

In several of these eight cases, the Commission did not take action against the licenses of the relevant broadcasters. In three of the cases, the Commission merely issued letters of admonishment or censure, even though all three cases involved the broadcasters' fabrication of news stories: staged news reports<sup>35</sup>; repeated instances of deceptive programming, including fabricated viewer letters, staged audience questions, and fictitious interviews with people wrongly identified as members of the public<sup>36</sup>; and, in one case, a staged explosion in a segment about unsafe gas tanks in GM trucks.<sup>37</sup> In two other cases, the Commission issued short-term license renewals but later chose to renew the licenses.<sup>38</sup> In one of these cases, a licensee had repeatedly broadcast fabricated suburban weather reports without any meteorological basis,

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<sup>34</sup> Raphael, *supra*, at 501; Timmer, *supra*, at 20.

<sup>35</sup> *In re Columbia Broad. Sys.*, 45 F.C.C.2d 119, 128 (1973).

<sup>36</sup> Raphael, *supra*, at 502-03 (discussing *In re American Broadcasting Co., Inc.*, 52 Rad. Reg. 2d (P & F) 1378, 1379-80 (1982)).

<sup>37</sup> *Id.* at 503 (discussing *In re Nat'l Broad. Co., Inc.*, 14 F.C.C.R. 9026, 9033 (1999)).

<sup>38</sup> *Id.* at 503-04.

while also failing to adequately supervise station operations.<sup>39</sup> In the other case, the news distortion issues centered on the station's use of taped weather broadcasts and its suppression of coverage over an advertiser's unpaid bill; on appeal, the Commission found the weather broadcasts amounted to only "occasional inaccuracies," and its penalty relied on multiple contract violations and misrepresentations by management in addition to the suppression issue.<sup>40</sup>

In the final three cases finding liability, news distortion was one of many infractions that led the Commission to revoke the offending stations' licenses. In one matter, the Commission revoked several licenses held by a broadcaster after the owner used his stations as improper campaign contributions to a candidate, slanted news broadcasts to deliberately favor one candidate over another, and held fraudulent contests, among numerous other violations.<sup>41</sup> In the second, a radio station's management staged a kidnapping of a disc jockey as a promotional stunt and falsely reported it as news, alongside other violations.<sup>42</sup> And in the last, a radio station aired nine fraudulent contests over two years, including a staged promotion falsely claiming that a disc jockey had disappeared in Miami and needed listener assistance. The Commission found that the pattern had resulted from station management's failure to adequately supervise its operations.<sup>43</sup>

In the cases described above, the Commission imposed consequences after licensees engaged in dramatic violations—elaborate hoaxes, internal conspiracies, and reports conjured from whole cloth. No credible argument can be made that the allegations in the instant proceeding belong in the same category.

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<sup>39</sup> *In re Action Radio, Inc.*, 51 F.C.C.2d 803, 807-08 (1975).

<sup>40</sup> *In re Gross Telecasting, Inc.*, 92 F.C.C.2d 250, 302-12, 365-74 (1981); *In re Gross Telecasting, Inc.*, 92 F.C.C.2d 204, 231-33, 243-46 (1982) (appeal).

<sup>41</sup> *In re Star Stations of Indiana Inc.*, 51 F.C.C.2d 95, 97, 100-01, 107-09 (1975).

<sup>42</sup> *In re Walton Broadcasting, Inc. (KIKX)*, 78 F.C.C.2d 880, 955-68 (1976).

<sup>43</sup> *In re WMJX, Inc.*, 85 F.C.C.2d 251, 255-58, 274-75 (1981).

#### **D. The Facts of This Case Bear No Resemblance to Those in Which the Commission Has Found Sanctionable News Distortion**

The FCC’s mere consideration of the complaint here represents a significant break with this history. In the broadcasts at issue, the same question was posed to former Vice President Harris, but each program aired different portions of the response. In its complaint, CAR argues that these editorial choices amount to violations of the news distortion policy.<sup>44</sup> But the Commission has never suggested that news editing amounts to distortion—nor could it, consistent with the First Amendment.

Indeed, when a similar news distortion complaint was lodged with the Commission in 1971, the Commission rejected it forcefully on free speech grounds. The complaint concerned the CBS program “The Selling of the Pentagon,” which drew the ire of the Vice President and some members of Congress.<sup>45</sup> The complaint filed with the Commission challenged the “splicing” of questions and answers in that program, as in the instant proceeding. In response, the Commission explicitly eschewed inquiry into CBS’s editorial practices, writing that such an inquiry “would involve the Commission deeply and improperly in the journalistic functions of broadcasters.”<sup>46</sup> It described an extremely narrow application for the news distortion policy in instances of possible “slant” or “bias” in editing, stating that short of “situations where the documentary evidence of deliberate distortion would be sufficiently strong to require an inquiry—for example, where a ‘yes’ answer to one question was used to replace a ‘no’ answer to

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<sup>44</sup> CAR Compl. at 4.

<sup>45</sup> *In re Complaint Concerning the CBS Program “The Selling of the Pentagon,”* 30 F.C.C.2d 150, 150 (1971).

<sup>46</sup> *Id.* at 152-53.



an entirely different question,” the Commission would reject any function as a censor or editorial arbiter, which would be a “remedy far worse than the disease.”<sup>47</sup>

Thus, the Commission has historically “viewed its proper area of concern to be with those activities which are not a matter of journalistic judgment or a gray area, but rather constitute the deliberate portrayal of a significant event which did not in fact occur but rather is acted out at the behest of news personnel.”<sup>48</sup> But here, the Commission suggests that it *will* wade into the realm of journalistic judgment. That disregard of past agency practice, precedent, and the First Amendment should raise alarms.

### **III. Viewing This Proceeding in Context Makes Its Impropriety Even Clearer**

As broadcasters have warned since the inception of the news distortion policy, merely opening an inquiry into “the accuracy or alleged bias of broadcast coverage of controversial issues and public events is deleterious to the journalistic function of the broadcaster.”<sup>49</sup> And as described above, the allegations against WCBS do not come close to meeting the Commission’s high bar for news distortion. That the Commission nonetheless chose to revive it would, standing alone, be cause for concern. But viewing the Commission’s action in its full context reveals the degree to which the Commission’s true purpose is to suppress disfavored speech.

*First*, as recounted above, the instant proceeding is exceptionally unusual in several ways. The Commission reopened the complaint days after the matter had been closed by staff in a reasoned decision applying well-settled precedent. The Commission did so despite the absence of any new evidence, apparently for the sole reason that a new President and Chair had assumed office. The Commission then acted on its own motion to secure the relief CAR had requested in

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<sup>47</sup> *Id.* at 153.

<sup>48</sup> *Galloway*, 778 F.2d at 20 (cleaned up).

<sup>49</sup> *Democratic Nat’l Convention*, 16 F.C.C.2d at 654.

its complaint—the release of the unedited transcript and video. Only then did the Commission open the docket for public comment, treating it as a “permit-but-disclose” proceeding even though that designation is most commonly reserved for rulemaking and other non-adjudicatory proceedings. These departures from ordinary practice strongly suggest the Commission is not acting within its ordinary statutory remit to protect the public interest.<sup>50</sup>

*Second*, the instant proceeding is part of a recent pattern of Commission action which, taken together, conveys to broadcasters that certain viewpoints, kinds of content, and editorial decisions will lead to additional scrutiny from the Commission, an ostensibly independent agency. Since January, the Commission has reinstated three previously dismissed complaints against ABC, NBC, and CBS affiliates, each of which concern allegations that their content presentation *harmed* then-candidate Trump. Meanwhile it has opted not to revive a complaint regarding a Fox News affiliate based on allegations that it improperly *helped* then-candidate Trump.<sup>51</sup> Additionally, the Commission recently opened an investigation into KCBS in San Francisco based on the content of a broadcast about immigration enforcement operations, even as the Chair has suggested it will scrutinize the ownership of the station based on its perceived political ideology.<sup>52</sup> This improper agenda has been communicated so clearly that a self-identified Christian, conservative licensee submitted comments here suggesting that the FCC

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<sup>50</sup> Julia Glum, *Government Confirms That No, Trump Can't Just Take Away NBC's License Over Its Nuclear Weapons Report*, Newsweek, Oct. 17, 2017, <https://tinyurl.com/2ertn9tw>.

<sup>51</sup> Memorandum Opinion and Order, GN Docket 25-11, MB Docket No. 23-293 (Jan. 16, 2025), <https://tinyurl.com/4ermck2n>; see also Scott, *supra*.

<sup>52</sup> Cameron Coats, *FCC Investigating Audacity AM for Airing ICE Agents' Locations*, RadioInk, Feb. 5, 2025, <https://tinyurl.com/yut38r6m>; Elizabeth Elkind, *FCC to brief lawmakers on George Soros investigation in closed-door meeting*, Fox News, Feb. 25, 2025, <https://tinyurl.com/55xx82ht>.

could more usefully advance the goal of increasing “conservative” viewpoints in the broadcast market by supporting conservative outlets, rather than targeting CBS.<sup>53</sup>

*Third*, with respect to CBS specifically, these actions strongly suggest that the FCC is wielding its authority in an effort to chill CBS news coverage of the Administration and extract concessions from CBS in only tangentially related contexts. President Trump has filed a lawsuit against CBS seeking \$20 billion in damages allegedly caused by the editing of the “60 Minutes” interview.<sup>54</sup> A motion to dismiss rooted in the First Amendment is pending,<sup>55</sup> but the Commission’s actions here have resulted in the disclosure of the relevant transcript long before the plaintiffs would otherwise be entitled to it. A finding by the Commission that CBS had engaged in news distortion would strengthen the President’s litigation case, and the very pendency of the proceeding pressures CBS to hand the White House a victory by settling that case.

Moreover, CBS’s parent company Paramount is currently seeking FCC approval of its merger with Skydance.<sup>56</sup> The Commission seems poised to use the instant proceeding as additional leverage in the merger review process, either to impose conditions on the transaction desired by the White House or simply to place additional pressure on CBS to modify its coverage of President Trump and his allies. Indeed, the public notice establishing the docket in this

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<sup>53</sup> Comments of Kenneth Leitch, President, KQSL, <https://tinyurl.com/5buwjw2> (“I realize that the FCC has limited resources, and so instead of focusing on news distortion with CBS, it may make sense to instead focus resources on unleashing independent broadcasters by helping foster their growth so that they can provide news with a counter viewpoint that is conservative.”)

<sup>54</sup> *Trump v. CBS Broadcasting Inc.*, No. 2:24-cv-00236 (N.D. Tex.).

<sup>55</sup> Defendants’ Memorandum of Law in Support of Mot. to Dismiss Plaintiffs’ Am. Complaint, *Trump v. CBS Broadcasting Inc.*, No. 2:24-cv-00236 (N.D. Tex.), ECF No. 52.

<sup>56</sup> Public Notice, *Media Bureau Establishes New Pleading Cycle for Applications to Transfer Control of Paramount Global*, MB Docket No. 24-275 (Nov. 15, 2024), <https://tinyurl.com/5x8jbyhu>.

proceeding goes so far as to note that the allegations in this matter were incorporated by CAR in a separate complaint seeking to condition the merger, making this relationship explicit.<sup>57</sup>

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From our many combined years of experience as Commissioners, we cannot stay silent. The Commission on which we served, regardless of the party of its Chair or the policy agenda of the President, was an independent agency. It contains a bipartisan group of five commissioners due to the sensitive nature of regulating broadcasters, and the critical role they play in free press and free speech, the bedrock foundations of our democracy. It was dedicated to ensuring that the broadcast spectrum helped to create the marketplace of ideas that undergirds political debate and ensures the richness of American culture. We have taken great pride in the Commission's historic bipartisan commitment to that position.<sup>58</sup>

To remain true to its mission, the Commission must close this proceeding without further action. To do otherwise would suggest that the Commission has been transformed into a tool of White House-driven speech suppression.

Respectfully submitted,

/s/ Rachelle B. Chong

/s/ Ervin S. Duggan

/s/ Alfred C. Sikes

/s/ Gloria Tristani

/s/ Tom Wheeler

March 26, 2025

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<sup>57</sup> Public Notice at 1 n.1, *News Distortion Complaint Involving CBS Broadcasting Inc., Licensee of WCBS, New York, NY*, MB Docket No. 25-73 (Feb. 5, 2025).

<sup>58</sup> For a robust discussion of the commitment of Republican commissioners and elected officials to this position, see Comment of Tech Freedom at 2-5, <https://tinyurl.com/4ewy84rj>.

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