Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	MB Docket No. 26-131
The Walt Disney Company,	)	
American Broadcasting Company,	)	
	)	
KFSN-TV, Facility ID No. 8620	)	
KABC-TV, Facility ID No. 282	)	
KGO-TV, Facility ID No. 34470	)	
WLS-TV, Facility ID No. 73226	)	
WABC-TV, Facility ID No. 1328	)	
WTVD, Facility ID No. 8617	)	
WPVI-TV, Facility ID No. 8616	)	
KTRK-TV, Facility ID No. 35675	)	

OPPOSITION OF FORMER CHAIRS, COMMISSIONERS, CHIEFS OF STAFF, GENERAL COUNSELS, AND BUREAU CHIEFS TO PETITIONS TO DENY OF CENTER FOR AMERICAN RIGHTS & MEDIA RESEARCH CENTER

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SUMMARY

This early license renewal proceeding is unprecedented in the history of the Federal Communications Commission and a grave violation of both the Communications Act and the Constitution. Through this proceeding, the FCC seeks to censor Disney's and ABC's speech and send a chilling message to all broadcasters: carry speech we don't like at your peril. This opposition is submitted by a bipartisan group of former FCC Chairs, Commissioners, Chiefs of Staff, General Counsels, and Bureau Chiefs. The former FCC officials joining this opposition are identified in the accompanying addendum. These individuals served under both Republican and Democratic leadership. They all share a deep concern about the breadth of the content regulation and viewpoint discrimination at issue in this proceeding.

This renewal proceeding is the latest attack in a sustained campaign by Chairman Carr and the Trump administration of threatening legal sanctions against licensees whose speech President Trump dislikes. And although the purported justification for the early renewal proceeding is that it is in aid of a Commission investigation into unlawful employment discrimination, it is in fact an assault on free speech disguised as regulatory process.

We urge the Commission to terminate this improper early renewal proceeding and dismiss the petitions to deny the stations' renewal applications filed by the Center for American Rights ("CAR") and the Media Research Center ("MRC"). *First*, this proceeding is an alarming departure from agency practice that denies the stations meaningful due process. There was not one early renewal proceeding in our combined decades on the Commission, and the early license renewal process has not been invoked in more than 50 years. The Commission initiated the early renewal process of all eight ABC-owned-and-operated stations one day after the President and First Lady criticized ABC's Jimmy Kimmel for a joke he made about them. Public reporting and the notice establishing the procedures for this proceeding also suggest that the Chairman has

prejudged the outcome of this proceeding and that the Commission may assert the power to terminate the stations' licenses early. All this betrays that this proceeding is pretext for the Chairman's continued campaign of suppressing disfavored speech.

Second, the CAR and MRC petitions should be denied because they ask the Commission to implement a regime of content and viewpoint regulation that is prohibited by the First Amendment. Invoking the news distortion policy and equal opportunities requirement, these petitions ask the Commission to interfere with the stations' First Amendment-protected editorial discretion: word choices, fact-checks, time covering certain topics, personnel, and the licensees' perceived viewpoints. These are not legitimate subjects of FCC regulation. Indeed, the Supreme Court has repeatedly held that the government may not "un-bias" what it thinks is biased.[1] The news distortion policy has never authorized the type of interference with editorial discretion that the petitions call for. And, as a group of us argued in a separate petition, the policy is inherently vulnerable to abuse and should be repealed. Nor does the equal opportunities requirement permit investigation into whether, across all content, a licensee harbors partisan bias.

Finally, this proceeding must be viewed within the broader pattern of the Chairman's campaign to punish speech disfavored by the Trump administration. The Court recently warned against government attempts "to achieve its own conception of speech nirvana," and the use of threats and other means of coercion to suppress disfavored speech.[2] Yet that is precisely what this proceeding attempts to do. As former Chairs, Commissioners, Chiefs of Staff, General Counsels and Bureau Chiefs, we call on the Commission to respect the constitutional and congressional prohibitions on its "power of censorship" and terminate this proceeding.[3]

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[1] *See, e.g.*, *Moody v. NetChoice, LLC*, 603 U.S. 707, 719 (2024).

[2] *Id.* at 742 (first quotation); *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 180 (2024).

[3] 47 U.S.C. § 326.

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I. Introduction

The "fixed star of our constitutional constellation" is "that no official, high, or petty, can prescribe what shall be orthodox in politics . . . or other matters of opinion."[4] The First Amendment thus prohibits government officials from deciding "what counts as the right balance of private expression—to 'un-bias' what it thinks biased, rather than to leave such judgments to speakers and their audiences."[5] Nor may the government rely on the "threat of invoking legal sanctions and other means of coercion to achieve the suppression of disfavored speech."[6]

Accordingly, Congress barred the Commission from exercising any "power of censorship," or promulgating any "regulation or condition" that interferes with free speech.[7] The Commission itself has 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."[8] 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 formally codified—as well as the equal opportunities requirement of Section 315. To mitigate those constitutional concerns, the Commission has construed the news distortion policy and equal opportunities requirement exceptionally narrowly and refrained from using license renewal as a cudgel to infringe upon speech—until this administration.

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4 *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

5 *Moody*, 603 U.S. at 719.

6 *Vullo*, 602 U.S. at 189 (citation modified).

7 47 U.S.C. § 326; *see also* Federal Radio Act of 1927, Pub. L. No. 69-632, § 29, 44 Stat. 1162, 1172–73.

8 FCC, *The Public and Broadcasting* 10 (Sep. 2021), http://bit.ly/4hAg9Ho.

The petitions to deny filed by CAR and MRC invite the Chairman to take his assault on free speech even further. This early renewal proceeding was initiated one day after an ABC late-night host drew the ire of President Trump and First Lady Melania Trump. And, in virtually unprecedented fashion, it calls for the review of all eight ABC-owned licenses, which would not have been up for renewal until 2028 at the earliest. The Commission appears to envision terminating ABC's licenses years early and making spectrum currently licensed to ABC available to others.

The Commission's departures from its longstanding practice and precedent are especially troubling when understood as one piece of the Chairman's much broader pressure campaign. This administration has repeatedly (and unlawfully) said that broadcasters could lose their licenses for continuing to speak in ways the President considers unfavorable. Initiating this retaliatory early renewal proceeding forces ABC to participate in a burdensome review process and potentially endure years of uncertainty about the status of its licenses. The Commission's action here signals to other broadcasters that they, too, may be subject to early renewal proceedings if they speak in ways that displease the President.

We urge the Commission to terminate these early renewal proceedings and lift the pall of state censorship it has cast over American broadcasting. In doing so, the agency should reaffirm its foundational and long-held commitment to free speech, a cherished American value. Any other path violates the First Amendment.

II. <u>This Early Renewal Proceeding Is an Extraordinary Departure from the Commission's Historical Practice and Precedent</u>

A. Calling in Licenses for Early Renewal Is Virtually Unprecedented

License renewal is a systematic administrative process in which broadcast licensees ordinarily file an application for renewal every eight years. The Commission must grant a license renewal application if it finds that the station, in the preceding term, has "served the public interest, convenience, and necessity"; there have been no "serious violations by the licensee of . . . the rules and regulations of the Commission"; and there have been no other violations "which, taken together, would constitute a pattern of abuse."[9] Thus in 1996, Congress adopted Section 309(k), which codified the presumption of renewal previously recognized by the Supreme Court: a licensee that "has given meritorious service has a 'legitimate renewal expectanc[y]' that is 'implicit in the structure of the Act' and should not be destroyed absent good cause."[10]

The Commission last renewed the eight licenses at issue in this proceeding between December 10, 2020 and September 25, 2024 for terms that will not expire until 2028 to 2031.[11] On April 23, 2026, the late night talk show host Jimmy Kimmel made a joke about President Trump and First Lady Melania Trump.[12] Following an attempted shooting at the White House Correspondents Dinner, on April 27, 2026, the President and First Lady both criticized Kimmel

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[9] 47 U.S.C § 309(k)(1); *Broadcast Television License Renewals by Date*, FCC, https://www.fcc.gov/media/television/broadcast-television-license-renewal-dates-by-date.

[10] *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 805 (1978) (alteration in original) (quoting *Greater Bos. Television Corp. v. FCC*, 444 F.2d 841, 854 (D.C. Cir. 1970)).

[11] 47 C.F.R. § 73.1020.

[12] Shawn McCreesh, *President and First Lady Demand ABC Fire Jimmy Kimmel Over 'Widow' Joke*, N.Y. Times (Apr. 27, 2026), https://www.nytimes.com/2026/04/27/us/politics/trump-jimmy-kimmel-abc-widow-joke.html.

and called for his removal by ABC.[13] One day later, the FCC issued a virtually unprecedented order calling up the licenses of all eight ABC-owned-and-operated stations for early renewal proceedings.[14] The early renewal order directed ABC to file license renewals for all eight of its licensed stations within thirty days.[15] Stations typically know when an application for renewal will be due years in advance, which provides adequate time to compile a complete record demonstrating the stations' service in the public interest over the prior license term. The early renewal order denied the stations that opportunity and is highly prejudicial to their renewal efforts.[16]

The purported justification for this alarming departure from agency process is the Commission's investigation of ABC stations for possible violations of the "agency's prohibition on unlawful discrimination."[17] But the timing of the Kimmel joke, the President's criticism, and the subsequent renewal order impacting all ABC-owned-and-operated stations betray that the offered justification is pretext for the Chairman's continued campaign of suppressing disfavored speech. As the stations' objections to the early renewal proceedings correctly explain in detail, the "information solicited by the license renewal application" is neither relevant to, nor

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[13] Donald J. Trump (@realDonaldTrump), Truth Social (Apr. 27, 2026, at 1:26 PM ET), https://truthsocial.com/@realDonaldTrump/posts/116477838570626860; Melania Trump (@MelaniaTrump), Truth Social (Apr. 27, 2026, at 10:21 AM ET), https://truthsocial.com/@MelaniaTrump/posts/116477113100031370.

[14] Walt Disney Company, DA 26-416, 2026 WL 1284545 (FCC Apr. 28, 2026), https://docs.fcc.gov/public/attachments/DA-26-416A1.pdf ("early renewal order").

[15] *Id.*

[16] The Media Bureau also denied the stations' request for a 60-day extension without explanation. WABC Television (New York), LLC (WABC-TV), FCC Form 2100, Schedule 303-S, Objection to Unlawful Early Renewal, at 16 (May 28, 2026), https://perma.cc/Y4MT-5Z2A.

[17] Early Renewal Order ¶ 1.

"'essential to the proper conduct of' the ongoing investigation."[18] The license renewal application does not request information on employment issues, and Disney-ABC had been timely responding to the Commission's letters of inquiry.[19] Indeed, only after the early renewal order was issued did the Commission identify any purported deficiencies in ABC's responses.[20] Public reporting suggests that Chairman Carr has indicated that he has already prejudged the outcome of this matter—before any oppositions to the petitions to deny have been submitted.[21] That a Chair would foreshadow a result long before the pleading cycle concludes is unheard of. If accurate, this only confirms that the stations are being denied any meaningful due process in the proceedings and that the early renewal order was mere pretext for punishing Disney and ABC for its protected speech.

The demand for early license renewal is virtually unprecedented as the Commission has invoked a provision that—until April—had not been used in more than 50 years.[22] The "Commission has always been circumspect in its discretionary use of the callup procedure."[23]

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[18] *See, e.g.*, WABC Television (New York), *supra* note 16, at 12.

[19] *Id.* at 11–12.

[20] *Id.* at 12.

[21] Kelcee Griffis, *FCC Nearing Rulings Against Disney Over 'The View,' TV Licenses*, Bloomberg (July 15, 2026), https://www.bloomberg.com/news/articles/2026-07-15/fcc-nearing-rulings-against-disney-over-the-view-tv-licenses (reporting that the FCC is preparing to escalate the license reviews to an "internal judicial review").

[22] The day before the ABC early renewal order was issued, the Commission called for early renewal of licenses held by Bridge News, LLC. *See Bridge News, LLC*, DA 26-413, 2026 WL 1383752 (FCC Apr. 27, 2026), https://docs.fcc.gov/public/attachments/DA-26-413A1.pdf; Kelcee Griffis & Saijel Kishan, *ABC License Renewal Call Surprised FCC Staff and Shattered Norms*, Bloomberg (Apr. 29, 2026), https://news.bgov.com/bloomberg-government-news/abc-license-renewal-call-surprised-fcc-staff-and-shattered-norms. Before then, the Commission had not called for early renewal since 1972. *See Leflore Broad. Co.*, 36 F.C.C.2d 101, 104 (1972).

[23] *Thomas*, 17 F.C.C.2d 375, 380 (1969).

Early renewals are only to be sought under compelling circumstances, which are absent here.[24] There was not one early renewal proceeding in our combined decades on the Commission—even before the 1996 amendments[25] significantly streamlined the renewal process by eliminating the comparative renewal hearing for broadcast licenses and permitting the extension of license terms to eight years. This wouldn't be the first time the Chairman has "used the Media Bureau to take actions that are inconsistent with longstanding Commission precedent that violate both the Communications Act and the First Amendment," as Commissioner Gomez noted in her statement on the Bureau's dismissal of a petition submitted by a group of us seeking repeal of the news distortion policy.[26]

The CAR petition attempts to support the unprecedented early renewal order by comparing it to the last time the Commission called for an early renewal. But that case in no way supports what here amounts to nothing less than an abuse of process. In *Leflore Broadcasting*, the Commission called for early renewal proceedings of a license where there were possible intentional misrepresentations in the licensee's prior renewal application.[27] There, Leflore's renewal application pledged to meet certain programming needs of the community; eight months later, Leflore notified the Commission that it would not meet those programming needs.[28] The

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

[25] Telecommunications Act of 1996, Pub. L. No. 104-104, § 204(a), 110 Stat. 56, 113.

[26] *See* Statement, Anna Gomez, Comm'r, FCC, On Media Bureau Summary Dismissal of Petition to Repeal the News Distortion Policy (July 1, 2026), https://docs.fcc.gov/public/attachments/DOC-422758A1.pdf.

[27] *Leflore Broad. Co.*, 36 F.C.C.2d at 104.

[28] *Id.* at 102 ¶¶ 3–4.

Commission then ordered Leflore to file its renewal application early so, in part, the Commission could determine whether Leflore had made misrepresentations to the Commission in its 1970 application or in subsequent statements.[29] The Commission explicitly declined to address allegations of employment discrimination.[30]

The Leflore early renewal proceeding has no bearing here, where there is no allegation of misrepresentation in ABC's prior applications and the focus of the inquiry appears to be ABC's First Amendment-protected editorial discretion. The purpose of a renewal proceeding is to assess whether a licensee has complied with the Commission's rules—not whether the licensee has achieved what the agency considers the right balance of speech.

B. Despite the FCC's Talk of "Early Renewal," the Bureau's Public Notice Contemplates Terminating ABC's Licenses Early, which the Commission Cannot Do Without Justification

The public notice establishing the procedures for the early renewal applications suggests that the Commission may assert the power to terminate licenses early merely by ordering an early application for renewal: if "the FCC [should] issue an order denying a license renewal application," it would "make the former licensee's channel available to other interested parties."[31] To the extent the Commission pursues the termination of ABC's licenses, it bears "both the burden of proceeding with the introduction of evidence and the burden of proof."[32] The Notice does not mention Section 312, which permits license revocation in certain

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[29] *Id.* at 104 ¶ 12.

[30] *Id.* at 103–104 ¶ 9.

[31] FCC's Media Bureau Establishes Pleading Cycle and Ex Parte Procedures for the Early Renewal Applications of the Walt Disney Company's ABC Licenses, DA 26-541, at 2, 2026 WL 1878649, at *2 (FCC May 29, 2026) (public notice); *see also id.* n.16 ("Pending the outcome of the proceeding the licenses continue to remain in effect.").

[32] 47 U.S.C. § 312(d) (governing license revocation).

circumstances—undoubtedly because the Commission cannot carry that burden. Thus, the Notice puts a veneer of legal process onto the President's repeated threats of "revoking" broadcast licenses while ignoring the safeguard Congress provided to avoid abuse of that power.

C. The Commission Is Not Empowered to Police Allegations of Media "Bias," Contrary to the Arguments in Certain Petitions to Deny

CAR and MRC urge the Commission to deny renewal because of alleged partisan bias in ABC's programming.[33] Both petitions seek a stunning—and plainly unconstitutional—expansion of the Commission's role. They ask the Commission to embroil itself in the stations' editorial choices: for example, supposedly refusing to mention the national debt during the government shutdown;[34] the amount of time the stations dedicated to covering pandemic relief fraud[35] and the reduction in border crossings;[36] decisions about who moderates and fact-checks presidential debates;[37] and even specific word usage.[38] (Chairman Carr has also asserted that an NBC broadcast referring to Kilmar Ábrego Garcia—whom the administration had wrongfully deported to a notorious prison in El Salvador—as a "Maryland man" is news distortion).[39] None of these are legitimate subjects of FCC regulation: the First Amendment prohibits government officials

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[33] Petition to Deny of the Center for American Rights at 9–32, Walt Disney Co., No. 26-131 (FCC Jun. 29, 2026), https://www.fcc.gov/ecfs/document/26109956621/1 ("CAR Petition"); Petition to Deny of the Media Research Center, Walt Disney Co., No. 26-131 (FCC Jun. 29, 2026), https://www.fcc.gov/ecfs/document/26109953821/8 ("MRC Petition").

[34] MRC Petition, *supra* note 33, at 15.

[35] *Id.* at 13.

[36] CAR Petition, *supra* note 33, at 15.

[37] MRC Petition, *supra* note 33, at 7.

[38] CAR Petition, *supra* note 33, at 9.

[39] Brendan Carr (@BrendanCarrFCC), X (Apr. 16, 2025, at 6:58 PM ET), https://perma.cc/Z2VG-XUSR.

from deciding "what counts as the right balance of private expression—to 'un-bias' what it thinks biased."[40]

The CAR and MRC petitions ask the Commission to implement a regime of content regulation that is far more intrusive than what was permitted under the now-repealed fairness doctrine.[41] The fairness doctrine required each broadcaster, in its overall programming, to provide differing viewpoints on controversial matters of public importance.[42] The petitioners ask the Commission to dictate specific coverage decisions for any issue they believe is political or partisan.

Any authority now available to the Commission to review allegations of "bias" is primarily rooted in the news distortion policy. But that policy is very narrow. It has never authorized the kind of sweeping inquiry into editorial decisionmaking that petitioners ask the Commission to undertake here. And in any event—as a group of us have argued in a special petition seeking to repeal the news distortion policy that is currently subject to mandamus proceedings in the D.C. Circuit[43]—it is long past time for the Commission to abandon the news distortion policy altogether. This proceeding underscores the concerns we raised. The policy is

[40] *See Moody*, 603 U.S. at 719.

[41] *Syracuse Peace Council*, 2 FCC Rcd. 5043, 5049–50 (1987) ("[T]he fairness doctrine in operation disserves both the public's right to diverse sources of information and the broadcaster's interest in free expression . . . it results in excessive and unnecessary government intervention into the editorial processes of broadcast journalists."), *aff'd*, *Syracuse Peace Council v. FCC*, 867 F.2d 654, 656 (D.C. Cir. 1989) (affirming repeal of the fairness doctrine).

[42] *Syracuse Peace Council*, 2 FCC Rcd at 655.

[43] Petition for Special Relief in the Matter of Repeal of the News Distortion Policy (FCC Nov. 13, 2025), https://protectdemocracy.org/wp-content/uploads/2025/11/News-Distortion-Petition-for-Special-Relief.pdf. That petition is now the subject of a petition for a writ of mandamus to compel a substantive response from the FCC. *In re: Radio Television Digit. News Ass'n*, No. 26-1099 (D.C. Cir. May 20, 2026) (per curiam order for FCC to respond to petition).

inherently dangerous and vulnerable to partisan abuse. It chills broadcast speech and serves no legitimate purpose, as the Supreme Court has emphatically affirmed that there is no role for the government in "un-biasing" the media.[44]

1. The News Distortion Policy Is Exceptionally Narrow Because of the First Amendment Interests at Stake

Despite assertions by CAR, MRC, and the Chairman to the contrary, the exercise of editorial discretion by the press, including broadcasters, is protected by the First Amendment. Over fifty years ago, 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."[45] Both the "choice of material to go into a newspaper" and the newspaper's "treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment."[46] The Supreme Court has recently reaffirmed these principles.[47] 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."[48] For broadcasters, no less than for

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[44] *Moody*, 603 U.S. at 733 ("[I]n case after case, the Court has barred the government from forcing a private speaker to present views it wished to spurn in order to rejigger the expressive realm.").

[45] 418 U.S. 241, 258 (1974); *see also Pittsburgh Press Co. v. Pittsburgh Comm'n on Hum. Rels.*, 413 U.S. 376, 391 (1973); *Passaic Daily News v. NLRB*, 736 F.2d 1543, 1557 (D.C. Cir. 1984).

[46] *Tornillo*, 418 U.S. at 258.

[47] *Moody*, 603 U.S. at 719.

[48] *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 375–76 (1984).

other media, "the editorial function itself is an aspect of speech."[49] 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."[50] Not only must "[g]overnment regulation over *the content* of program broadcasting [] be narrow," but "broadcast licensees must retain abundant discretion over programming choices."[51]

Since Congress first created the Federal Radio Commission, the FCC's predecessor, in 1927, it has been cautious of the danger that content-based regulation could pose to the marketplace of ideas.[52] Congress has specified that nothing 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."[53] At the same time, the Commission is statutorily required to ensure that licensees operate in the public interest,[54] a standard that, as the Supreme Court has put it, "necessarily invites reference to First Amendment principles."[55]

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[49] *Denv. Area Educ. Telecomms. Consortium, Inc. v. FCC*, 518 U.S. 727, 737 (1996) (citation modified); *see also Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 674 (1998).

[50] *Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 126 (1973).

[51] *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 651 (1994) (emphasis added).

[52] Federal Radio Act of 1927, Pub. L. No. 69-632 § 29, 44 Stat. 1162, 1172 (denying the Federal Radio Commission the power to censor the content of programs).

[53] *See id.*; 47 U.S.C. § 326 (incorporating the anticensorship provisions of the Federal Radio Act of 1927); *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.").

[54] 47 U.S.C. § 303(y)(2)(A).

[55] *Columbia Broad. Sys.*, 412 U.S. at 122.

In this context, the Commission's news distortion policy—never codified as a formal rule or regulation—has respected guardrails necessary to protect free speech.[56] As the Commission noted in a seminal opinion, it does not "sit as a review body of the 'truth' concerning news events."[57]

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.[58] The test is generally understood to have four elements.[59] First, the Commission will only act on allegations of "*deliberate* distortion," as distinct from "mere inaccuracy or difference of opinion."[60] Second, the Commission will act only if there is extrinsic evidence (*i.e.*, beyond the broadcast itself) demonstrating that the broadcaster deliberately distorted or staged the news.[61] Third, the distortion must apply to a "significant event," rather

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[56] Joel Timmer, *Potential FCC Actions against Fake News: The News Distortion Policy and the Broadcast Hoax Rule*, 24 Commc'ns L. & Pol'y 1, 43–46 (2019).

[57] *Network Coverage of the Democratic National Convention*, 16 F.C.C.2d 650, 655 (1969).

[58] Timmer, *supra* note 56, at 43–46; *see also 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.").

[59] Chad Raphael, *The FCC's Broadcast News Distortion Rules: Regulation by Drooping Eyelid*, 6 Commc'ns L. & Pol'y 485, 495–96 (2001); *see also Serafyn v. FCC*, 149 F.3d 1213, 1216–17 (D.C. Cir. 1998).

[60] *Galloway v. FCC*, 778 F.2d 16, 20 (D.C. Cir. 1985) (emphasis added); *Hunger in America*, 20 F.C.C.2d at 150-51.

[61] *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."); *Screen Gems Stations, 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.").

than minor inaccuracies or incidental aspects of the report.[62] And finally, the Commission will consider taking action on the broadcaster's license only if the extrinsic evidence shows the distortion involved the "principals, top management, or news management" of the licensee, as opposed to other employees.[63] None of the examples identified in the CAR and MRC petitions satisfy this test.

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" cannot constitute a news distortion violation.[64] The news distortion policy is not an invitation to "question the legitimate editorial decisions" of broadcasters or dispute the accuracy of their reporting.[65] 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.

Given these strict requirements, 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 1982 and 2019.[66] None of the cases that found news distortion concerned the way a broadcaster had

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[62] *Galloway*, 778 F.2d at 20.

[63] *Hunger in America*, 20 F.C.C.2d at 150.

[64] *Galloway*, 778 F.2d at 20.

[65] *Id.*

[66] Raphael, *supra* note 59, at 501; Timmer, *supra* note 56, at 18–19 (noting in only three cases did the FCC revoke licenses, all of which involved multiple violations involving more than news distortion).

exercised its editorial discretion in choosing what news to cover and how to cover it. Instead, each case involved egregious misconduct, including the wholesale fabrication of news stories.[67]

2. The News Distortion Policy Should Be Repealed

CAR and MRC urge the Commission to deny renewal because of alleged partisan bias in ABC's programming.[68] Both petitions ask the Commission to scrutinize and second-guess ABC's editorial decisions at the microscopic level—word choices, fact-checks, the number of minutes spent covering particular topics, even personnel. These petitions only underscore the danger created by failing to repeal the news distortion policy.

There are at least five independent reasons for repealing the news distortion policy in full, which a group of us have detailed in prior filings.[69] *First*, the news distortion policy's purpose—to eliminate bias in the news—is not a legitimate government interest. As the Court recently put it, the government has no authority to "'un-bias' what it thinks biased."[70]

Second, application of the news distortion policy separately violates the First Amendment because of its chilling effect on broadcaster speech. This rationale was one of the bases for the Commission's repeal of the fairness doctrine, counterpart to the news distortion policy, in 1987.[71] During the first Trump Administration, Chairman Ajit Pai echoed these concerns in rejecting a request to investigate a broadcaster over news distortion allegations: "I can hardly

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[67] *See* Former Comm'r Rachelle B. Chong, et al., Comment Letter on In Re News Distortion Complaint Involving CBS Broadcasting Inc., at 10-12, MB Docket No. 25-73 (Mar. 26, 2025), https://perma.cc/Q5SG-WL2H.

[68] CAR Petition to Deny, *supra* note 33, at 9–32; MRC Petition to Deny, *supra* note 33, at 6–12.

[69] *See* Petition for Special Relief in the Matter of Repeal of the News Distortion Policy, *supra* note 43, at 6–15; Petition for Writ of Mandamus at 13–15, *In re: Radio Television Digit. News Ass'n*, No. 26-1099 (D.C. Cir. Apr. 28, 2026).

[70] *Moody*, 603 U.S. at 719.

[71] *See Syracuse Peace Council*, 2 FCC Rcd. at 5049–50.

think of an action more chilling of free speech than the federal government investigating a broadcast station because of disagreement with its news coverage or promotion of that coverage."[72]

Third, the news distortion policy has shown itself to be susceptible to partisan weaponization. The Commission, at the direction of the Chairman, has enforced the news distortion policy selectively against broadcasters and coverage the current administration disfavors.[73]

Fourth, the news distortion policy is overly vague. Violations of the policy could place a broadcaster's very license at risk, yet the basic contours of the policy remain entirely unclear. As the National Association of Broadcasters has pointed out, the Commission's news distortion decisions do not even offer a "clear definition of what programming constitutes 'news'" and can therefore be challenged as allegedly distorted or slanted.[74]

Fifth, the news distortion policy serves no critical regulatory purpose. The Commission's broadcast hoax rule, which proscribes a narrower set of false speech,[75] provides adequate authority to the Commission to regulate dangerous broadcasts and rests on distinct, valid government interests regarding public safety, not balance or bias. In light of that rule, the news distortion policy is unnecessary.

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[72] Letter from Ajit V. Pai, Chairman, FCC, to the Honorable Bernard Sanders, Senator, U.S. Senate (April 12, 2018), https://docs.fcc.gov/public/attachments/DOC-350372A1.pdf.

[73] *See* Petition for Special Relief in the Matter of Repeal of the News Distortion Policy, *supra* note 43, at 11-12.

[74] National Association of Broadcasters, Comment Letter on In re News Distortion Complaint Involving CBS Broadcasting Inc. at 18 (Mar. 7, 2025), https://www.nab.org/documents/filings/f-130-57-16634574_Ya8eeriW_News_Distortion_Comments_3-7-25.pdf.

[75] 47 C.F.R. § 73.1217.

3. The Equal Opportunities Requirement Does Not Permit the Commission to Impede on Broadcasters' Editorial Discretion

CAR attempts to frame the equal opportunities statute, Section 315, as a freestanding source of authority for the Commission to penalize broadcasters for advancing so-called partisan interests.[76] The statute creates no such roving authority, and if it did allow the Commission such discretion to assess the quantum of partisanship on the airwaves, it would raise the same serious constitutional issues as the news distortion policy.

Section 315 provides that if a broadcaster allows a candidate to "use" its station, it "shall afford equal opportunities" to all the other candidates for that same office.[77] Excluded from this requirement is any "bona fide newscast, bona fide news interview, bona fide news documentary, or on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto)."[78]

Nothing about the statutory regime affords the Commission free-range authority to investigate whether, across all coverage, a licensee harbors a partisan bias.[79] Section 315 applies only to appearances by "legally qualified candidate[s] for any public office"—not all guests or coverage. Moreover, because broadcasters' editorial discretion is protected by the First Amendment, any content-based restriction on that discretion must be narrowly tailored.[80] For that reason, the exemptions to the equal opportunities requirement have been interpreted broadly

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[76] CAR Petition, *supra* note 33, at 7-8.

[77] 47 U.S.C. § 315(a). The Commission has implemented the "shall afford" provision by adopting 47 C.F.R. § 73.1941(c), which establishes a 7 day deadline within which legally qualified opposing candidates can assert their rights to "equal opportunities." Thus, it is up to opposing candidates to seek equal opportunities and seek redress if it isn't provided. It is not the Commission's role to independently determine who deserves equal time and who does not.

[78] 47 U.S.C. § 315(a).

[79] *Id.*

[80] *Columbia Broad. Sys.*, 412 U.S. at 124–26; *League of Women Voters*, 468 U.S. at 380.

to avoid any constitutional conflicts.[81] The Commission has long exempted appearances on bona fide newscasts, news interviews, news documentaries, and coverage of developing news events. The Commission has justified these exemptions, explaining 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."[82] The Commission has also explained that "Congress was prepared to give substantial discretion to the good faith news judgments of broadcast licensees."[83] These exemptions help keep Section 315 consistent with the First Amendment.

However, petitioner CAR and the Chairman push a new interpretation of Section 315 that effectively coerces television[84] talk shows to seek pre-approval from the FCC to obtain a declaratory ruling that they qualify for the bona fide news exemption to decrease their risk of

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[81] *Multimedia Ent., Inc.*, 56 Pike & Fischer 2d 143, 146 (1984) (exempting The Phil Donahue Show from the equal time requirement); *Multimedia Ent., Inc.*, 9 FCC Rcd. 2811, 2811 (1994) (same for The Jerry Springer Show); *ABC, Inc.*, 15 FCC Rcd. 1355 (1999) (same for Politically Incorrect with Bill Maher); *Angelides for Governor Campaign*, 21 FCC Rcd. 11919, 11919 (2006) (same for interviews with political candidates on The Tonight Show); *Infinity Broad. Operations Inc*., 18 FCC Rcd. 18603, 18604 (2003) (same for news interviews with political candidates on The Howard Stern Show); Petition for Declaratory Ruling § III-B, 27–29 (FCC May 7, 2026), https://www.fcc.gov/ecfs/search/search-filings/filing/10522087167981 (petition requesting same for news interviews with political candidates on The View).

[82] *Multimedia Ent., Inc.*, 56 Pike & Fischer 2d at 143 ¶ 4; *Codification of the Commission's Political Programming Policies*, 7 FCC Rcd. 678, 683–84 (1991).

[83] *Multimedia Ent., Inc.*, 56 Pike & Fischer 2d at 143 ¶ 4.

[84] Notably, neither Chairman Carr nor CAR explain why, as a matter of law, television interviews are different from radio interviews. Section 315 makes no such distinction. *See Angelides for Governor Campaign*, 21 FCC Rcd 11,919, 11,923 (2006) (quoting *Request for Declaratory Ruling By Paramount Pictures Corporation*, 3 FCC Rcd 245, 245–46 (1988)); TechFreedom, Comment Letter for *Disney's ABC Asking the FCC to Declare that The View Qualifies as a Bona Fide News Interview Program* 29, MB Docket No. 26-124, at 36–38 (June 22, 2026), https://techfreedom.org/wp-content/uploads/2026/06/TechFreedom-Comments-ABC-Petition-on-The-View.pdf.

running afoul of Section 315.[85] This interpretation has already chilled speech (broadcaster interviews of political candidates) in advance of the 2026 midterm elections—contrary to Congress's intention to "encourage increased news coverage of political campaign activity" by "giv[ing] substantial discretion to the good faith news judgments of broadcast licensees.[86] The equal opportunities requirement cannot legally be deployed to punish the perceived viewpoints of licensees, their programming, or their employees.

Even if CAR's reinterpretation of Section 315 had any validity, CAR's allegations would fall far short of the high burden for denial established by Section 309(k). Under Section 309(k), a petitioner must demonstrate "serious violations" by the licensee or violations, which, taken together, "constitute a pattern of abuse."[87] CAR does not—and could not—demonstrate that a few isolated purported violations of Section 315 satisfy that requirement.

III. <u>This Proceeding Is the Latest Development in the Chairman's Campaign to Censor Disfavored Speech and Advance the President's Personal Interests</u>

The power to license the airwaves is "fraught with such great possibilities that it should not be entrusted to any one man nor to any administrative department of the Government."[88] Congress made clear that the Commission's authority did not include "the power of censorship" or the ability to interfere with the free speech rights of broadcasters.[89] As Chairs, Commissioners, Chiefs of Staff, General Counsels, and Bureau Chiefs, we recognized the importance of those limitations to the health of the American marketplace of ideas and abided by them.

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[85] TechFreedom Comment Letter, *supra* note 84, at 29–32.

[86] *Multimedia Ent., Inc.*, 56 Pike & Fischer 2d at 143 ¶ 4.

[87] 47 U.S.C. § 309(k).

[88] S. Rep. No. 69-772, at 2 (1926).

[89] 47 U.S.C. § 326.

Today, the Chairman loudly embraces the White House's demands to suppress disfavored content and wields the Commission's authority in increasingly dangerous ways. In numerous public appearances, he has aligned himself with the President's agenda of taking on the "fake news media." He has criticized ABC and other broadcasters for not being fair in their coverage of Republicans or President Trump.[90] The current campaign against ABC illustrates the lengths to which the Chairman will go to suppress coverage and commentary that the President dislikes.

The President has long criticized ABC and other national networks and programmers. In February 2026, the President posted on social media that the "Fake News National TV Networks" were "THE ENEMY."[91] The Chairman reposted that statement and added: "President Trump is exactly right. The national networks like Comcast & Disney have amassed too much power."[92] This kind of rhetoric from a sitting Chair would have been unthinkable during our tenures and should remain unthinkable today.

On the campaign trail, Trump called for ABC's licenses to be revoked because he believed a presidential debate had been unfair—a claim repeated by CAR in its petition to deny.[93] One of the Chairman's first actions upon assuming office was to reopen a complaint against ABC and an affiliate on this very topic—sending a message to broadcasters that they

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[90] Ryan Mancini, *FCC's Brendan Carr: Trump is 'winning' against 'fake news media'*, Hill (Mar. 28, 2026), https://thehill.com/homenews/media/5805710-brendan-carr-fcc-donald-trump-media-feud-cpac/.

[91] Gregory Svirnovskiy, *Trump strains conservative media alliances in push for Nexstar-Tegna merger*, Politico (Feb. 7, 2026), https://www.politico.com/news/2026/02/07/trump-nexstar-tegna-merger-00770466.

[92] Ted Johnson, *Donald Trump Endorses Nexstar-Tegna Merger, And FCC Chair Responds: "Let's Get It Done,"* Deadline (Feb. 7, 2026), https://deadline.com/2026/02/trump-endorses-nexstar-tegna-merger-1236712070.

[93] CAR Petition, *supra* note 33, at 7.

would face consequences for airing content that the President dislikes.[94] Earlier this month, President Trump again demanded that ABC's and NBC's broadcast licenses be revoked—this time for declining to air his primetime speech from the White House.[95] CAR has argued that the stations' decision not to air that speech should be reviewed as part of this proceeding and the Chairman has said that the stations' decision would be examined in these proceedings.[96]

After late-night comedian Jimmy Kimmel made a joke that offended the President's base, the Chairman appeared on a podcast to threaten ABC's licenses. The Chairman threatened ABC with allegations of news distortion over late-night host Jimmy Kimmel's jokes: "We can do this the easy way or the hard way," Chairman Carr said.[97] He openly encouraged affiliates to preempt ABC's programming.[98] Hours later, ABC suspended Kimmel indefinitely.[99]

Even before the Kimmel incident, the President had a long history of targeting late-night hosts. The Chairman has done the same. He reposted the President's call for Seth Meyers to be

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[94] News Distortion Complaint Involving WPVI Television (Philadelphia), LLC, licensee of WPVI-TV, Philadelphia, PA, 40 FCC Rcd. 564 (2025) (order).

[95] Michael M. Grynbaum, *In Prime Time, Trump Criticizes Networks for Not Carrying His Speech*, N.Y. Times (July 16, 2026), https://www.nytimes.com/2026/07/16/us/politics/trump-speech-television-networks.html.

[96] Supplemental Letter of the Center for American Rights, Walt Disney Co., No. 26-131 (FCC July 17, 2026), https://www.fcc.gov/ecfs/document/26110026680/1; Todd Spangler, *FCC Chair Says ABC's Decision to Not Broadcast Trump Speech Live Will Be Part of Agency's Review of Station Licenses*, Variety (July 22, 2026), https://variety.com/2026/tv/news/fcc-abc-trump-speech-review-station-licenses-1236818342/

[97] David Folkenflik, *Jimmy Kimmel's suspension shows power of FCC's Brendan Carr*, NPR (Sep. 19, 2025), https://www.npr.org/2025/09/19/nx-s1-5546764/fcc-brendan-carr-kimmel-trump-free-speech.

[98] Scott Nover, *Trump's media enforcer is relishing his Jimmy Kimmel moment*, Wash. Post (Sept. 19, 2025), https://www.washingtonpost.com/business/2025/09/19/trumps-media-enforcer-is-relishing-his-jimmy-kimmel-moment/.

[99] *Id.*

fired after Meyers aired a segment about the Epstein files.[100] Chairman Carr celebrated the end of Stephen Colbert's late night show.[101] And he published new guidance suggesting that television "entertainment" shows would not qualify for exemptions from the equal opportunities rule despite longstanding precedent to the contrary.[102] Finally, the Chairman opened this early renewal proceeding just one day after the President and First Lady criticized another joke by Kimmel.[103]

In today's world, where the Chairman himself has said that "formally speaking the FCC is not independent" from the White House,[104] it is even more crucial that the First Amendment serve as a meaningful constraint on the Commission and the officials who lead it. Regardless of the Commission's status as an independent agency, the First Amendment prohibits the government from targeting speech based on the message it conveys.[105] Broadcasters' editorial choices to forgo primetime coverage of government-favored speech are also protected by the First Amendment, absent very limited exceptions specified in statute or regulations, none of which apply here.[106]

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[100] Elizabeth Blair, *President Trump Wants Seth Meyers Fired. The FCC Chair Amplified the Message*, NPR (Nov. 17, 2025), https://www.npr.org/2025/11/17/nx-s1-5610501/trump-seth-meyers-fired.

[101] Mancini, *supra* note 90.

[102] FCC's Media Bureau Provides Guidance on Political Equal Opportunities Requirement, DA Docket No. 26-68 (FCC Jan. 21, 2026), https://docs.fcc.gov/public/attachments/DA-26-68A1.pdf (public notice).

[103] Griffis & Kishan, *supra* note 22.

[104] Dominick Mastrangelo, *Carr suggests FCC isn't an independent agency at Senate hearing*, Hill (Dec. 17, 2025), https://thehill.com/homenews/media/5653322-carr-fcc-not-independent-agency/.

[105] *See Vullo*, 602 U.S. at 180.

[106] *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943); 47 U.S.C. § 312(a)(7) (authorizing revocation for "willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than

Recently, the Supreme Court unanimously reaffirmed that "a government entity's 'threat of invoking legal sanctions and other means of coercion' . . . 'to achieve the suppression' of disfavored speech violates the First Amendment."[107] The Chairman's highly visible campaign of threats and coercion against ABC and other broadcasters, coupled with this early renewal proceeding, sends a message to the entire industry: air news coverage, commentary, or jokes that the current administration disfavors and your license may be at risk. In fact, Chairman Carr has used these proceedings to explicitly threaten other broadcasters that their licenses could be next: "If you didn't take us seriously, now you should."[108]

IV. <u>Conclusion</u>

The Commission should correct course and terminate these improper early renewal proceedings. When we served at the Commission, we respected the critical role that broadcasters and other members of the press play in a healthy democracy. The Commission was long dedicated to ensuring that broadcast spectrum helped to create the marketplace of ideas that undergirds robust political debate. We have taken great pride in the Commission's historically bipartisan commitment to that position, and we fear our democracy will suffer greatly if the Chairman continues to flout it.

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a non-commercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.").

[107] *Id.* (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963)).

[108] Anna Nicolaou, *'The US needed a shock to the system': Brendan Carr, media watchdog*, Fin. Times (May 15, 2026), https://www.ft.com/content/d62d3361-a337-4e2c-ab6b-afb791ba566f?syn-25a6b1a6=1.

* * *

WHEREFORE, we respectfully urge the Commission to terminate this improper early renewal proceeding and dismiss the CAR and MRC petitions to deny the stations' renewal applications.

Dated: July 28, 2026

Respectfully submitted,

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ADDENDUM

Identification of Signatories

Kathryn C. Brown served as chief of staff to Chairman of the Federal Communications Commission William E. Kennard from 1998 until 2001.

Rachelle B. Chong served as a Republican commissioner on the Federal Communications Commission from 1994 to 1997. She was appointed by President Bill Clinton.

Mark S. Fowler served as a Republican commissioner and chairman of the Federal Communications Commission from 1981 to 1987. He was appointed by President Ronald Reagan.

Jerald N. Fritz served as legal advisor and chief of staff to Chairman of the Federal Communications Commission Mark Fowler from 1981 to 1987.

Rosemary Harold served as the Federal Communications Commission's Enforcement Bureau chief from 2017 to 2022.

William T. Lake served as the Federal Communications Commission's Media Bureau chief from 2009 to 2017.

Ruth Milkman served as chief of staff to Chairman of the Federal Communications Commission Thomas E. Wheeler from 2013 to 2017.

Dennis R. Patrick served as Republican commissioner and chairman of the Federal Communications Commission from 1987 to 1989. He was appointed by President Ronald Reagan.

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Alfred C. Sikes served as a Republican commissioner and chairman of the Federal Communications Commission from 1989 to 1993. He was appointed by President George H.W. Bush.

Gloria Tristani served as a Democratic commissioner of the Federal Communications Commission from 1997 to 2001. She was appointed by President Bill Clinton.

Thomas E. Wheeler served as a Democratic commissioner and chairman of the Federal Communications Commission from 2013 to 2017. He was appointed by President Barack Obama.

Christopher J. Wright served as general counsel of the Federal Communications Commission from 1997 to 2001.