

AMERICAN BROADCASTING COMPANIES, INC.,
et al.,

Plaintiffs,

v.

FEDERAL COMMUNICATIONS COMMISSION, *et al.*,

Defendants

and

FREQUENCY FORWARD, LLC,
MEDIA ACTION CENTER, *et al.*,

Proposed Plaintiffs-Intervenors

Frequency Forward, and the Media Action Center, individuals, Elise Nakhnikian, Ginger Feldman, Jen Senko, Marcia Annenberg, Rosy Harari, Kristen Brochmann, Jill Noelle Pellowski, Anne Cooper, William Clinton McSherry II, Merry Jones, Kimberley Leahy, James Keenan, Mitchell Szczepanczyk, Sabrina Haake, Torry Mercer, Jeff Shaw, Lanny Larson and Roxanne Griffith (collectively “Intervenors”), hereby Oppose the Defendants’ Motion to Dismiss and Reply to Defendant’s Opposition to Plaintiffs’ Motion for Preliminary Relief. (“Motion to Dismiss”) (Dkt. 24).

INTRODUCTION

1. The FCC's Pretextual and Retaliatory Investigation – When the Process is the Punishment

Under the Administrative Procedure Act, an agency may not offer a disingenuous basis for its actions. It follows that its actions may not be retaliatory, especially when the retaliatory action is a thinly veiled attempt to punish a regulated entity for speech the administration disapproves of or finds offensive.

The Administrative Procedure Act requires agency action to be “reasonable and reasonably explained.” *FCC v. Prometheus Radio Proj.*, 592 U.S. 414, 423 (2021). When an agency instead offers a pretextual basis for its action—for example, a “contrived” reason that “played an insignificant role in the decisionmaking process”—the agency violates the APA. *Department of Commerce v. New York*, 588 U.S. 752, 782, 784 (2019). “The reasoned explanation requirement of administrative law, after all, is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public.” *Id.* at 785. An agency frustrates that purpose when it explains its decision falsely or uses agency action as a pretext to punish disfavored speech. It also frustrates that purpose if it keeps hidden or destroys communications pertaining to its decision making. In *Department of Commerce v. New York*, the Court concluded that this “evidence tells a story that does not match the explanation the Secretary gave for his decision.” *Id.* at 784. Indeed, “the sole stated reason” the agency offered “seems to have been contrived.” *Id.*

Despite the Defendants’ largely unsupported claims, the case has little, if anything, to do with Plaintiffs compliance with the FCC’s Equal Employment Opportunity (“EEO”) rules. This case should be seen for what it is: an attempt by the Trump administration to suppress disfavored speech. Specifically, the Trump administration seeks to control the news and information

broadcast on the ABC network. Plaintiffs have briefed their First Amendment claim and demonstrated why their claim should not have to wait for resolution of the FCC's administrative proceedings. *See, Axon Enterprises, Inc. v. FTC*, 598 U.S. 175 (2023). What is clear is that the FCC process, including the likelihood that Plaintiffs will be required to participate in a long and pointless hearing, is the punishment. Without the Court's intervention, if this proceeding is permitted to run its full course, it may be years before the appellate court has an opportunity to review the case. In the meantime, ABC will continue to self-censor.¹ The FCC action will not only censor ABC, but other news outlets who too will fear retaliation if they criticize or offend the Trump administration. As the Plaintiffs have said, "When a broadcaster must weigh regulatory retaliation before making editorial decisions, the public loses access to journalism that is free from government influence."²

ARGUMENT

I. The Trump Administration is Chilling Protected Speech in Violation of the First Amendment Rights of Journalists, the Broadcast Media and the Rights of Individuals to Receive Information Unfiltered by Government Intervention.

The Trump administration is actively working to silence all print and electronic media companies that are critical of the president or his policies. The Trump administration's attacks on journalists and the media are unprecedented in the history of the American Republic. Currently,

¹ For example, Jimmy Kimmel announced on September 9, 2026, that his show would not air his upcoming interview with Texas' Democratic Senate candidate James Talarico on television, citing the Trump administrations threats against ABC. NBC News, *Jimmy Kimmel says show won't air James Talarico interview on TV, citing FCC threats*.

<https://www.nbcnews.com/politics/trump-administration/jimmy-kimmel-abc-tv-show-wont-air-james-talarico-interview-fcc-threats-rcna596994><https://www.nbcnews.com/politics/trump-administration/jimmy-kimmel-abc-tv-show-wont-air-james-talarico-interview-fcc-threats-rcna596994>

² FCC FORM 2100, SCHEDULE 303-S KABC TELEVISION, LLC (KABC-TV) Objection to Unlawful Early Renewal, p. 17, May 28, 2026.

Trump is pressing lawsuits against news organizations and publishers, including *The Wall Street Journal*, *The New York Times*, the British Broadcasting Corporation, the *Des Moines Register* and CNN. He is also suing the Pulitzer Prize board over journalism prizes it awarded eight years ago. Trump's goal is not necessarily to win, but rather to use the power of the government to intimidate and silence opposition. Knowing the president is willing to rush to court serves to intimidate news outlets into easing their reporting on Trump and his administration's policies. Placing the full weight of federal regulatory pressure on news organizations serves to further intimidate them. This was certainly the case with CBS's parent company Paramount, which agreed to pay \$16 million to settle a lawsuit by Trump over the editing of CBS' "60 Minutes" interview with then Vice President Kamala Harris. The explanation for the settlement is simple. Paramount had an \$8.4 billion merger pending before the FCC, and Trump-appointed FCC Chairman Brendan Carr put that approval in jeopardy when he reopened a dubious news distortion investigation concerning a Kamala Harris interview. CBS had little choice but to capitulate to Trump's demands.

Trump's heavy-handed approach toward media relations is not restricted to CBS, nor is Paramount's capitulation unique. ABC paid \$16 million to Trump to settle a defamation claim based on statements made by ABC anchor George Stephanopoulos concerning the civil judgment that Trump sexually abused E. Jean Carroll. As with Paramount, ABC chose to settle that case instead of availing itself of several First Amendment defenses. Similarly, both Meta and X paid millions of dollars to settle legally questionable lawsuits Trump filed against Facebook and X.

On September 24, 2024, the Center for American Rights ("CAR") filed a complaint against WPVI-TV, in Philadelphia, Pennsylvania, an ABC affiliate station licensed to Disney for "news distortion" during the broadcast of the presidential debate on September 10, 2024. On October 16, 2024, CAR filed a complaint requesting an investigation into WCBS, in New York for "news

distortion” in the airing of a “60 Minutes” interview with the Vice President Kamala Harris. On November 4, 2024, CAR filed a complaint alleging that WNBC, in New York violated the Commission’s Equal Opportunities Rule. The Enforcement Bureau on January 16, 2025, denied the three complaints. Motion to Dismiss Exs. 12, 13 and 14. The Enforcement Bureau found, in the case of the two news distortion petitions, that “the Commission does not—and cannot and will not—act as a self-appointed, free-roving arbiter of truth in journalism.” *Id.* citation omitted. On January 22, 2025, when Brendan Carr assumed the Commission’s leadership, the complaints against WCBS, WNBC, and WPVI were reinstated. Motion to Dismiss, Exs. 17, 18 and 19. There these reinstated petitions have languished, threatening the stations’ licenses, without any further action from the Carr Commission.

A. Chairman Brendan Carr is Actively Supervised by the President.

The Defendants claim that “The Commission’s Chairman has repeatedly emphasized that, although the allegations against Disney are serious, he and the agency remain ‘open-minded,’ have ‘not made a decision,’ and are ‘going to follow the facts and the law wherever they [lead].’” Motion to Dismiss p. 2. The FCC was an independent agency accountable to Congress. It lost its independence when President Donald Trump issued an executive order requiring the FCC to submit to White House supervision.³ Confirming his agency’s lack of independence, Chairman Brendan Carr testified to Congress, “The FCC is not an independent agency, formally speaking.”⁴ Brendan Carr serves at the pleasure of the president. Recently released FOIA documents show that between March 12, 2025, and February 11, 2026, Carr attended at least eight meetings at the White House and had at least three scheduled calls with

³ Executive Order 14215—Ensuring Accountability for All Agencies, February 18, 2025.

⁴ *The Washington Sun*, Jira, Violet, Dec. 17, 2025 “The FCC Chair Says It’s ‘Not an Independent Agency’”

administration officials, including two conversations with the chief of staff, Susie Wiles.⁵ His claims of being open minded and following the law wherever it may lead cannot withstand scrutiny of President Trump’s own words.

President Trump has been openly hostile to what he calls the “fake news media,” openly calling for the revocation of the licenses of broadcasters who disagree with or criticize him.

Trump’s attacks are not limited to ABC. He has repeatedly attacked the media and called for the revocation of broadcast licenses. Below are just a few examples, in Trump’s own words.

- October 11, 2017, With all of the Fake News coming out of NBC and the Networks, at what point is it appropriate to challenge their License? Bad for country!⁶
- September 4, 2018. “NBC FAKE NEWS, which is under intense scrutiny over their killing the Harvey Weinstein story, is now fumbling around making excuses for their probably highly unethical conduct. I have long criticized NBC and their journalistic standards-worse than even CNN. Look at their license?”⁷
- September 18, 2020. “You know, in the old days, when you used public airwaves free, you had to get a license. I keep saying if they’re reporting fake news, how come they can keep getting a license? Whether it’s ABC, whether it’s NBC, CBS, or of course CNN, which is, I mean, it’s one of the great jokes of all time: CNN or MSDNC.”⁸
- January 16, 2024. “We were talking about a show and how corrupt the press is. Last night it was amazing. NBC and CNN refused to air my victory speech. Think of it, because they are crooked, they're dishonest, and frankly, they should have their licenses or whatever they have taken away.”⁹

⁵ Poynter, Jones, Tom August 20, 2026. “How close is FCC chair Brendan Carr to the Trump White House? New records offer a look.” <https://www.poynter.org/commentary/2026/fcc-ties-white-house-trump-conservative-media/>

⁶ Post on X. <https://x.com/realDonaldTrump/status/918112884630093825?s=20>

⁷ *The Guardian*, Barr, Jeremy Nov. 26, 2025 “Trump once again steps up attacks on TV networks as he threatens to revoke licenses”

⁸ Id.

⁹ Transcript of Trump speech. https://rollcall.com/factbase/trump/transcript/donald-trump-speech-political-rally-atkinson-new-hampshire-january-16-2024?utm_source=chatgpt.com

- September 11, 2024. “Because they're dishonest and because I think ABC took a big hit last night. I mean, to be honest, they're a news organization. They have to be licensed to do it. They ought to take away their license for the way they did that. Bloodbath was referring to the economy. Everybody loved the term because as soon as they heard the word, it's sort of a vicious word, but referring to the economy.”¹⁰
- September 12, 2024. “ABC’s license should be TERMINATED.”¹¹
- October 10, 2024. “CBS should lose its license, and it should be bid out to the Highest Bidder, as should all other Broadcast Licenses, because they are just as corrupt as CBS — and maybe even WORSE!”¹²
- October 10, 2024. “A giant Fake News Scam by CBS & 60 Minutes. Her REAL ANSWER WAS CRAZY, OR DUMB, so they actually REPLACED it with another answer in order to save her or, at least, make her look better. A FAKE NEWS SCAM, which is totally illegal. TAKE AWAY THE CBS LICENSE. Election Interference. She is a Moron, and the Fake News Media wants to hide that fact. An UNPRECEDENTED SCANDAL!!! The Dems got them to do this and should be forced to concede the Election? WOW!”¹³
- October 11, 2024. “You know, they have licenses, these networks. They're worth billions of dollars, but the one thing is it says you have to be honest. That's election interference. They're interfering with the election. Am I right? They should lose their license, and "60 Minutes" should be taken off the air.”¹⁴
- October 31, 2024. “And I think CBS should lose its license, but I think ABC should lose its license also because of what they've done.”¹⁵
- November 1, 2024. “And I said, "That's terrible." This is doing -- it's part of the news division. They get free licensing. They're worth billions, by the way, but they get -- the

¹⁰ Transcript of Trump speech. https://rollcall.com/factbase/trump/transcript/donald-trump-interview-fox-friends-telephone-interview-september-11-2024?utm_source=chatgpt.com

¹¹ Truth Social Post. <https://www.trumpstruth.org/statuses/26153>

¹² Truth Social Post. <https://www.trumpstruth.org/statuses/27178>

¹³ Id.

¹⁴ Transcript of Trump speech. https://rollcall.com/factbase/trump/transcript/donald-trump-speech-campaign-rally-reno-nevada-october-11-2024/?utm_source=chatgpt.com

¹⁵ Transcript of Trump speech. https://rollcall.com/factbase/trump/transcript/donald-trump-speech-campaign-rally-henderson-nevada-october-31-2024/?utm_source=chatgpt.com

government brilliantly gives it to them for nothing. And they're all crooked. ABC's crooked as hell.”¹⁶

- April 13, 2025. They should lose their license! Hopefully, the Federal Communications Commission (FCC), as headed by its Highly Respected Chairman, Brendan Carr, will impose the maximum fines and punishment, which is substantial, for their unlawful and illegal behavior. CBS is out of control, at levels never seen before, and they should pay a big price for this. MAKE AMERICA GREAT AGAIN!¹⁷
- August 24, 2025. “Despite a very high popularity and, according to many, among the greatest 8 months in Presidential History, ABC & NBC FAKE NEWS, two of the worst and most biased networks in history, give me 97% BAD STORIES. IF THAT IS THE CASE, THEY ARE SIMPLY AN ARM OF THE DEMOCRAT PARTY AND SHOULD, ACCORDING TO MANY, HAVE THEIR LICENSES REVOKED BY THE FCC. I would be totally in favor of that because they are so biased and untruthful, an actual threat to our Democracy!!! MAGA”¹⁸¹⁹
- August 24, 2025. “Why is it that ABC and NBC FAKE NEWS, two of the absolute worst and most biased networks anywhere in the World, aren't paying Millions of Dollars a year in LICENSE FEES. They should lose their Licenses for their unfair coverage of Republicans and/or Conservatives, but at a minimum, they should pay up BIG for having the privilege of using the most valuable airwaves anywhere at anytime!!! Crooked "journalism" should not be rewarded, it should be terminated!!!”
- September 18, 2025. “Late night hosts on network television? There is a licensing. I'll give you an example. I read someplace that the networks were 97 percent against me, again 97 percent negative, and yet I won it easily. I won all seven swing states, popular vote, won everything, and then 97 percent against. They give me only bad publicity or press. I mean, they're getting a license. I would think maybe their license should be taken away. It will be up to Brendan Carr. I think Brendan Carr is outstanding. He's a patriot. He loves our country and he's a tough guy.”²⁰
- September 23, 2025. “I can’t believe ABC Fake News gave Jimmy Kimmel his job back. The White House was told by ABC that his Show was cancelled! Something happened between then and now because his audience is GONE, and his “talent” was never there.

¹⁶ Transcript of Trump Speech. https://rollcall.com/factbase/trump/transcript/donald-trump-speech-campaign-rally-milwaukee-wisconsin-november-1-2024?utm_source=chatgpt.com

¹⁷ Truth Social Post. <https://www.trumpstruth.org/statuses/30636>

¹⁸ Truth Social Post. https://www.presidency.ucsb.edu/documents/truth-social-posts-august-24-2025?utm_source=chatgpt.com

¹⁹ Id.

²⁰ Transcript of Trump Interview. https://rollcall.com/factbase/trump/transcript/donald-trump-press-gaggle-air-force-one-september-18-2025/?utm_source=chatgpt.com

Why would they want someone back who does so poorly, who's not funny, and who puts the Network in jeopardy by playing 99% positive Democrat GARBAGE. He is yet another arm of the DNC and, to the best of my knowledge, that would be a major Illegal Campaign Contribution. I think we're going to test ABC out on this. Let's see how we do. Last time I went after them, they gave me \$16 Million Dollars. This one sounds even more lucrative. A true bunch of losers! Let Jimmy Kimmel rot in his bad Ratings."²¹

- October 5, 2025. "This is just one of the many reasons that the Federal Communications Commission should look into the license of NBC, which shows almost exclusively positive Democrat content. Likewise, ABC Fake News — About the same thing, 97% negative to Republicans!"²²
- December 24, 2025. "If Network NEWSCASTS, and their Late Night Shows, are almost 100% Negative to President Donald J. Trump, MAGA, and the Republican Party, shouldn't their very valuable Broadcast Licenses be terminated? I say, YES!"²³
- April 30, 2026. "When is ABC Fake News Network firing seriously unfunny Jimmy Kimmel, who incompetently presides over one of the Lowest Rated shows on Television? People are angry. It better be soon!!! President DJT"²⁴
- July 16, 2026 "Fraud like this should mean a revocation of their licenses. They use our public multi-billion-dollar-in-value airways for absolutely no money. They pay nothing. All we want is honesty in our elections and honesty and reporting. They pay nothing for multibillion dollar assets."²⁵

These are the words of Donald Trump, posted on the internet by him, made in speeches, or given in interviews. Chairman Carr heard President Trump loud and clear. Upon becoming Chairman of the FCC, he immediately started investigating Trump's enemies. As discussed *supra*, one of his first acts was to reinstate the complaints against WCBS, WNBC, and WPVI.

²¹ Truth Social Post. https://www.trumpstruth.org/statuses/33072?utm_source=chatgpt.com

²² Truth Social Post. <https://www.trumpstruth.org/statuses/33210>

²³ Truth Social Post. <https://www.cbsnews.com/news/trump-broadcast-licenses-terminated-100-negative/>

²⁴ Truth Social Post. <https://www.trumpstruth.org/statuses/38098>

²⁵ *The Washington Post*, Nover, Scott, July 16, 2026, "Trump says ABC, NBC licenses should be revoked over refusal to air speech on election integrity"
<https://www.washingtonpost.com/business/2026/07/16/trump-says-abc-nbc-licenses-should-be-revoked-over-refusal-air-speech-election-integrity/>

He has ordered investigations into public broadcasters PBS and NPR.²⁶ Carr says he is simply trying to hold media companies accountable but, unsurprisingly, the one major broadcasting outlet he has not criticized and is not investigating is Fox News. This case is not about whether the Plaintiffs have failed to cooperate with the FCC's poorly articulated antidiscrimination investigation. Rather, it is just one battlefield in Trump's war to silence his critics. Viewed in this context, the retaliatory and pretextual nature of this case becomes obvious. The purpose of the investigation is not to determine whether Plaintiffs violated the EEO rules. There are better ways to get that type of information without the need for early renewal applications and a hearing proceeding. If permitted to continue, the investigation and hearing will go on for years, turning the regulatory process itself into the punishment. The purpose of this proceeding is not to gather information, but to threaten punishment for Disney's temerity to criticize Trump and his policies, thereby constraining ABC and other broadcasters from any future revelations that might cast the administration in a negative light. The FCC's investigation is not just about Disney or ABC per se, nor does it have anything to do with EEO rules. The FCC's action is part of a larger attack on the First Amendment and the Constitutional rights of media outlets and the public that relies on those media outlets to keep them informed.

It is not just the Plaintiffs; many media companies that criticize Trump are suffering "present, concrete, and objective harms . . . resulting from retaliatory government actions" in violation of the First Amendment. *Endocrine Soc'y v. FTC*, 832 F. Supp. 3d 1, 20 (D.D.C. 2026). President Trump's vitriol toward the media and his FCC chairman's actions are chilling speech

²⁶ National Public Radio, Folkenflik, David, Jan. 30, 2025, "Trump's FCC chief opens investigation into NPR and PBS." <https://www.npr.org/2025/01/30/nx-s1-5281162/fcc-npr-pbs-investigation>

across print and electronic media. Carr has proven himself to be a useful tool for this apparently thin-skinned president. He oversees and executes investigations of President Trump's perceived enemies with the intent to silence or intimidate them into self-censorship.

Trump's own words demonstrate that the FCC's actions constitute unlawful retaliation unrelated to EEO rules. Government cannot use the "power of the State to punish or suppress disfavored expression." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 188, 144 S. Ct. 1316, 218 L. Ed. 2d 642 (2024). See also, *Hartman v. Moore*, 547 U.S. 250, 256 (2006) "the law is settled that . . . the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out."

The FCC has violated Plaintiffs' and Intervenors' Constitutional rights. Plaintiffs 1) are "engaged in conduct protected under the First Amendment"; 2) the Government's alleged retaliatory action was "sufficient to deter a person of ordinary firmness in plaintiff's position from speaking again"; and 3) there exists "a causal link between" the protected speech and the retaliatory action. *Aref v. Lynch*, 833 F.3d 242, 258, 425 U.S. App. D.C. 274 (D.C. Cir. 2016).

B. The FCC's Investigation is Pretextual, Retaliatory and Serves No Legitimate Government Purpose.

The FCC claims it initiated its investigation based on "serious allegations that Disney has engaged in unlawful discrimination." Motion to Dismiss, p. 2. However, the FCC provides a paucity of information concerning those "serious allegations". See, e.g. Motion to Dismiss, Ex. 4, Letter from Chairman Brendan Carr to Ranking Member Yvette Clarke, House Subcommittee on Oversight and Investigations, (May 29, 2026). Ex. 5, Letter from Chairman Brendan Carr, FCC, to Chief Executive Officer Robert A. Iger, Disney (Mar. 27, 2025). Likewise, the FCC's Early Renewal Order merely states, "the FCC has been investigating Disney's ABC stations for possible violations of the Communications Act of 1934 and the FCC's rules, including the

agency’s prohibition on unlawful discrimination.” Wilkinson Ex. 41 (Dkt. 2-4), The Walt Disney Company, DA 26-416, (Media Bur. Apr. 28, 2026) (“Early Renewal Order”). Other than in the most general and vague terms, nothing in the letters or the Early Renewal Order explains what the FCC is investigating.

The FCC’s rules set forth specific EEO obligations for broadcasters. *See* 47 C.F.R. § 73.2080(a). The FCC’s rules and its webpage place specific requirements on broadcasters.²⁷ The EEO rules prohibit discrimination in hiring based on race, color, religion, national origin or sex. They require broadcasters employing five or more full-time employees to maintain an EEO recruitment program. The recruitment section of Section 73.2080 includes requirements to provide notice of job vacancies and to undertake additional outreach measures to all qualified job candidates, such as holding job fairs and establishing scholarship programs. Specifically, the FCC’s EEO rules requires broadcasters to:

- Widely distribute information concerning each full-time (30 hours or more) job vacancy, except for vacancies that need to be filled in demanding or special circumstances.
- Provide notice of each full-time job vacancy to recruitment organizations that request notice.
- Complete four, in the case of large market broadcasters like Plaintiffs, longer-term recruitment initiatives within a two-year period. These initiatives can include job fairs, scholarship and internship programs and other community events designed to inform the public about employment opportunities in broadcasting and include training and mentoring for existing staff.

²⁷ <https://www.fcc.gov/consumers/guides/eo-rules-and-policies-radio-and-broadcast-and-non-broadcast-tv>

The EEO rules include record-keeping and reporting requirements. For example, Section 73.2080 requires broadcasters to prepare on an annual basis, an “Annual EEO Public File Report” comprised of the following:

- (1) a list of all full-time vacancies filled by the station employment unit during the preceding year,
- (2) identified by job title;
- (3) the recruitment sources used to fill each vacancy, (including organizations entitled to notification of vacancies which should be separately identified), as well as the address, contact person, and telephone number of each source;
- (4) a list of the recruitment source that referred the hire for each full-time vacancy; data reflecting the total number of persons interviewed for each full-time job vacancy in the preceding year;
- (5) the total number of interviewees referred by each recruitment source; and
- (6) a list and brief description of the outreach efforts implemented during the preceding year.

Further, all television stations with five or more full-time employees must file a “Broadcast Mid-Term Report” on FCC Form 397. In addition, all stations must file with their renewal applications a “Broadcast Equal Employment Opportunity Program Report” on FCC Form 396. That form requires all applicants to respond “Yes” or “No” as to whether any pending or resolved complaints were filed during the current license term before any body having competent jurisdiction under federal, state, territorial or local law, in which unlawful discrimination in the employment practices of the station(s) was alleged.²⁸

²⁸ INSTRUCTIONS - FORM 2100, SCHEDULE 396 – BROADCAST EQUAL EMPLOYMENT OPPORTUNITY PROGRAM REPORT
<https://www.fcc.gov/sites/default/files/lms-396-eeo-instructions.pdf>

The FCC's EEO rules are comprehensive and cover a broad range of licensee activities. The FCC's EEO rules are clear and have been developed over many years. The FCC's so-called antidiscrimination investigation provides no meaningful information. Further, the FCC makes no effort to articulate with which section or requirement of the EEO rules one or more of the Disney stations has failed to comply.

If indeed the FCC is truly investigating allegations of EEO rule violations, it has not even attempted to justify requiring Plaintiffs to file early license renewal applications. The FCC routinely employs other options. When a broadcaster is found to have violated the FCC's EEO rules, the Commission typically issues a Notice of Apparent Liability for Forfeiture. See e.g. *In the Matter of Liberman Television of Dallas License Corp.*, 22 FCC Rcd 2032 (2007) and *In re Fox Television Stations, Inc.*, 23 FCC Rcd 18527 (2008). Alternatively, the FCC enters into a consent decree with the licensee. See, e.g. *In re Guam Educ. Telcoms. Corp.*, 41 FCC Rcd 56, 56 (2026) and *In re Action Cmty. TV Broad. Network*, 32 FCC Rcd 4190, 4190 (2017). Why then did the FCC choose to call for early license renewal? The FCC has repeatedly stated that there must be a "compelling reason" for calling for early license renewal. See *Leflore Broadcasting Co., Inc.*, 36 FCC2d 101 (1972); *Greater Portland Broadcasting Corp.*, 3 FCC Rcd 1953, 1954 (1988); *In re Stangland*, 9 F.C.C.2d 683, 684 (1967). What then was the compelling reason that the FCC for the first time in over 50 years chose early license renewal? Here again the FCC provides a vague reason for its actions. "It was Disney's lack of cooperation with the antidiscrimination inquiry that triggered the need for Filing renewal applications." Motion to Dismiss, p. 3. According to the FCC, Disney's April 21, 2026 response, "did not meet the agency's expectations, and it raised "considerable concerns" for Commission staff. See Ex. 27, email from Pamela Kane, FCC Enforcement Bureau, to Suzanne Tetreault, Outside Counsel for

Disney, at 2 (May 15, 2026, at 12:52 ET)” Motion to Dismiss p. 9. The email in question seems primarily to focus on a misunderstanding between Disney and the FCC as to the scope of the document request as well as certain other issues concerning Disney’s response to the Enforcement Bureau’s letter of inquiry. As the Enforcement Bureau states in the email. “The Company apparently relied on a July 2, 2025 e-mail from the Bureau to counsel for the Company, in which the Bureau agreed to limit the Company’s ***document production*** in response to the Bureau’s June 5, 2025 Letter of Inquiry (Initial LOI) by defining “Disney” as the Disney-owned broadcast stations.” Apparently, in its subsequent request, the Enforcement Bureau was looking for company wide information. A misunderstanding between the Enforcement Bureau and Disney as to the scope of the inquiry is hardly a basis to reviving a procedure that was last employed over 50 years ago. Nor was Disney given an opportunity to respond or to resolve the misunderstanding. The Enforcement Bureau email was sent after the FCC had issued its Early Renewal Order. Why did the FCC not wait for Disney to provide the additional information it claimed it needed? Why did it not issue a Notice of Apparent Liability or seek to negotiate a Consent Decree? As Sherlock Holmes said, “When you have eliminated all which is impossible, then whatever remains, however improbable, must be the truth.”²⁹ Here the truth is that ordering the filing of early license renewal applications on the pretext of an “antidiscrimination” investigation was the only means available to Chairman Carr to give President Trump what he has been demanding for years – a vehicle for the revocation of Plaintiffs’ licenses.

Even if the FCC is unable to revoke the Plaintiffs’ licenses, early renewal combined with a lengthy hearing and a still lengthier FCC review process, will place Disney’s licenses in limbo

²⁹ Arthur Conan Doyle, *The Sign of Four*.

for many years. Thus, either Plaintiffs' licenses will be revoked, or the Trump administration will muzzle Disney for the foreseeable future. A win-win for the administration, but a terrible loss for democracy and the Constitution's guarantee of freedom of speech.

CONCLUSION

Denying the injunctive relief sought by Plaintiffs would force them to endure years of uncertainty about the status of their licenses without effective judicial recourse. It would most certainly lead to more self-censorship. By granting a preliminary injunction, this Court will send a strong rebuke to those who seek to undermine the First Amendment rights of the media and the rights of individuals to receive information unfiltered by petty government bureaucrats.

By: /s/ Arthur Belendiuk
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