

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

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

REPLY COMMENTS IN SUPPORT OF PETITION FOR DECLARATORY RULING

July 6, 2026

SUMMARY

These Reply Comments arise from an unusual posture. ABC did not come to the Federal Communications Commission asking for anything. The Commission compelled ABC to file the Petition for Declaratory Ruling at issue here,¹ directing the network to explain why the government should not dictate which political candidates may appear on *The View*—even though the Commission itself resolved that very question in ABC’s favor more than two decades ago, ruling in 2002 that *The View* is a bona fide news program not subject to the equal opportunities requirement.² Members of the public then submitted tens of thousands of comments in the proceeding, the overwhelming majority urging the Commission to respect the broadcaster’s editorial independence. These Reply Comments respond to that record.

The commenters are right to be concerned. The First Amendment does not permit the government to sit in an editor’s chair. Yet that is the seat the Commission now proposes to take—deciding which broadcast programs qualify as legitimate news and, for those it finds wanting, compelling them to surrender their airtime to guests they never chose to feature.³ Today, the program in the Commission’s sights is *The View*. The principle in the balance is far larger: whether

¹ See Letter from Erin Boone, Chief, Media Bureau, FCC, to KTRK Television, Inc., KTRK, Houston, TX (Fac. Id. 35675), at 3 (Mar. 26, 2026) (“SLOI”) (directing ABC to seek a declaratory ruling); see also KTRK Television, Inc. and American Broadcasting Companies, Inc., *Petition for Declaratory Ruling Under Section 315(a) of the Communications Act of 1934, as Amended*, MB Docket No. 26-124 (May 7, 2026) (“Petition”); *FCC’s Media Bureau Seeks Comment on Petition by Disney’s ABC Asking the FCC to Declare that The View Qualifies as a Bona Fide News Interview Program and Thus Is Exempt from the Statutory Equal Opportunities Requirements*, Public Notice, DA 26-517 (rel. May 22, 2026) (“Public Notice”) (soliciting the comments to which these Reply Comments respond).

² See Letter from Robert Baker, Chief, Office of Political Programming, Policy and Rules Division, Mass Media Bureau, FCC, to ABC, Inc. (Mar. 1, 2002) (“2002 Declaratory Ruling”) (concluding that “*The View*” qualifies for the bona fide news interview exemption under Section 315(a)(2)).

³ See *Moody v. NetChoice, LLC*, 603 U.S. 707, 742 (2024).

a federal regulator may override a broadcaster’s editorial judgment about whom to interview—a judgment the Constitution commits to broadcasters and their audiences, not to the state.

Nothing about *The View* that the law cares about has changed since the Commission last answered that question more than two decades ago. The program remains regularly scheduled, remains under ABC’s control, and remains driven by the same lodestar—newsworthiness—that has long led it to interview the day’s most consequential figures, from Presidents and Senators to Supreme Court Justices. What has changed is not the program but the political climate around it. The Commission has trained its attention on daytime and late-night television—programs perceived as unfriendly to the current administration—while leaving untouched the vast landscape of talk radio, where candidates routinely appear without their opponents.⁴ A rule pressed against one set of speakers and quietly suspended for another, along lines that track the administration’s political preferences, is not evenhanded regulation. The record here reflects a widespread and well-founded concern that it is not.

The governing law admits of no such selectivity, and it points decisively in ABC’s favor. As the Petition explained: (a) the equal opportunities rule raises serious First Amendment concerns that, at a minimum, require a robust bona fide news interview exemption; (b) in 2002, the Commission granted *The View*’s petition and held that it is a bona fide news interview program under 47 U.S.C. § 315(a)—a binding determination on which ABC has reasonably relied ever since; and (c) the First Amendment forbids applying the equal opportunities rule to *The View*.⁵ Opposing commenters do not meaningfully engage the Commission’s settled, three-factor test, under which *The View* plainly qualifies. They instead urge the Commission to graft on factors it

⁴ See *infra* Part IV.

⁵ See Petition at 12–20; *infra* Part V.

has never used—the opinions of a program’s hosts, the political balance of its guests, the ratio of news to entertainment, and whether an interviewer holds government-approved journalistic credentials. Each novel factor would require the Commission to do precisely what the Constitution forbids: grade speech by its viewpoint and decide who is a “real” journalist and what is “real” news.⁶ This is a Nation shaped in no small part by anonymous pamphleteers of no credential at all. The right to inform the public has never depended on a regulator’s imprimatur. And if that has always been true, it is only more so today. Technological and business developments have multiplied the channels through which Americans learn about the world — podcasts, streaming programs, and online platforms that answer to no traditional newsroom. A moment when more voices reach the public than ever before is precisely the wrong time for the government to begin demanding an official credential before a speaker may be treated as a journalist.

Nor can the Commission treat broadcasters as second-class speakers on the theory that the airwaves are scarce. Whatever force that rationale carried in 1969—when Americans had a handful of channels and few other ways to learn about those seeking office—it cannot bear the same weight in today’s media environment of virtually unlimited streaming, cable, and online alternatives.⁷ The public’s access to information about candidates does not turn on dictating the guest list of a single daytime program, and the Supreme Court has grown only more emphatic that the government may not rebalance private expression to achieve its own conception of fairness.⁸

⁶ See *infra* Part III.

⁷ See *infra* Part V.A.

⁸ See *Nat’l Republican Senatorial Comm. v. FEC*, 609 U.S. ___, 2026 WL 1868932, at *7 (U.S. June 30, 2026); cf. *Trump v. Slaughter*, 609 U.S. ___, 2026 WL 1855612, at *25 (U.S. June 29, 2026) (Gorsuch, J., concurring).

A broad and cross-ideological consensus of commenters agrees, urging the Commission to adhere to longstanding precedent and the First Amendment and to reaffirm that *The View* qualifies for the bona fide news exemption under Section 315(a).⁹ They are correct. An exemption that protects editorial independence only when the speaker's politics please those in power protects nothing at all; the shelter it gives one program today it will deny another tomorrow, when the gavel changes hands—as it inevitably will. The Commission should decide this proceeding the way it would want the rule applied under any administration: by reaffirming that *The View* is a bona fide news interview program and that the 2002 Declaratory Ruling remains in force. The record strongly supports that result, and the law—not to mention the Constitution—compels it.

One administration official, however, has minimized this overwhelming consensus as the product of a “misinformation” campaign orchestrated by ABC.¹⁰ That characterization is not only inaccurate—it understates the depth of the commenters’ commitment to bedrock First Amendment principles. Constitutional scholars, journalistic organizations, think tanks, and trade groups needed no invitation to weigh in on the Commission’s contemplated actions. Their comments span the

⁹ See, e.g., Comment of The Future of Free Speech et al. at 4–5 (June 18, 2026); Comment of American Society of Journalists and Authors et al. at 1 (June 22, 2026).

¹⁰ See Lucas Manfredi, *FCC Chairman Brendan Carr Accuses Disney’s ABC of “Misinformation Campaign” Amid “The View,” Broadcast License Reviews*, TheWrap (June 25, 2026), <https://www.thewrap.com/industry-news/business/fcc-brendan-carr-disney-abc-misinformation-the-view-broadcast-license/> (reporting that, asked about the tens of thousands of public comments filed after the network encouraged viewers to weigh in, Chairman Carr accused Disney and ABC of running a “campaign of misinformation” and characterized the effort as “a fairly standard, off-the-shelf strategy”); see also Saba Hamedy and Daniel Arkin, *FCC Takes Aim at Disney’s Push for Public Support Amid Regulatory Probes*, NBC News (June 22, 2026), <https://www.nbcnews.com/news/us-news/fcc-takes-aim-disney-push-public-support-the-view-rcna351251>; Luke Bouma, *FCC Chairman Carr Says Disney’s ABC Is Running a “Campaign of Misinformation” Against the FCC*, Cord Cutters News (June 26, 2026), <https://cordcuttersnews.com/the-fcc-chairman-carr-says-disneys-abc-is-running-a-campaign-of-misinformation-against-the-fcc/>.

ideological spectrum; indeed, some support ABC's requested relief while disagreeing with some of its key arguments. What they reveal instead is a broad-based public consensus on fundamental constitutional principles. And to the extent ABC's call for public comment during the Commission's official public comment period prompted some commentators to voice their views, there is nothing "misleading" about alerting the public that the proceeding could impinge on a broadcaster's editorial discretion over who appears on its programming. That is simply an accurate description of the power the Commission proposes to claim for itself. The public's robust response during the comment period represents laudable civic engagement of the kind the Commission should welcome given its statutory obligation to make decisions based on the public interest.

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I. INTRODUCTION

KTRK Television, Inc. (“KTRK Television”), licensee of station KTRK-TV, Houston, Texas (“KTRK”), and its parent company, American Broadcasting Companies, Inc. (individually and together with KTRK Television, “ABC”) hereby submit these Reply Comments in response to the Public Notice¹¹ seeking comment on ABC’s Petition for Declaratory Ruling (“Petition”).¹² The Commission directed ABC¹³ to seek this ruling on a question the Commission itself already resolved in ABC’s favor over two decades ago¹⁴: whether *The View* qualifies for the “bona fide news interview” exemption under Section 315(a) of the Communications Act of 1934.¹⁵ Put plainly, the Commission ordered ABC to explain why the government should not control its editorial discretion. As the Petition explained: (a) the Commission’s equal opportunities rule raises serious constitutional concerns which, at minimum, require a robust bona fide news interview

¹¹ See Public Notice ¶¶ 7, 10.

¹² See Petition.

¹³ See SLOI at 3.

¹⁴ See 2002 Declaratory Ruling.

¹⁵ See 47 U.S.C. § 315(a).

exemption; (b) in 2002, *The View* petitioned for and received a ruling that it was a bona fide news interview program under Section 315(a), and it has qualified ever since; and (c) the First Amendment bars the Commission from applying the equal opportunities rule against *The View*.

The vast majority of commenters here agreed, urging this Commission to adhere to longstanding precedent and the First Amendment and affirm that *The View* qualifies for the bona fide news exemption under Section 315(a). They are correct.

II. THE RECORD CONFIRMS THE COMMISSION’S 2002 DETERMINATION THAT *THE VIEW* IS A BONA FIDE NEWS INTERVIEW PROGRAM.

ABC,¹⁶ the overwhelming majority of commenters,¹⁷ and the Commission itself in 2002¹⁸ all reached the same conclusion: *The View* qualifies for the bona fide news interview exemption in Section 315(a)(2). Both the facts and the law compel the Commission to reaffirm that determination.

1. *The View* fits comfortably within the bona fide news interview exemption as that exemption has long been construed. *The View*, after all, is motivated by one core purpose: to engage, inform, and entertain the widest possible audience by presenting newsworthy and compelling content. A daytime talk show does not top the charts¹⁹ by focusing elsewhere. And

¹⁶ Petition at 20–33.

¹⁷ See, e.g., Comment of The Future of Free Speech *et al.* at 4–5 (June 18, 2026); Comment of American Society of Journalists and Authors *et al.* at 1 (June 22, 2026); Comment of the Competitive Enterprise Institute (“CEI Comment”) at 5–10 (June 22, 2026); Comment of Reporters’ Committee for Freedom of the Press at 1–4 (June 22, 2026); Comment of GLAAD *et al.* at 1 (June 22, 2026); Comment of Higher Heights *et al.* at 1–2 (June 22, 2026).

¹⁸ 2002 Declaratory Ruling.

¹⁹ See ‘*The View*’ Ranks No. 1 in Households and Total Viewers Among All Daytime Network Talk Shows, ABC News Press Site (Jan. 16, 2026), <https://www.detroitpress.com/abcnews/pressrelease/the-view-ranks-no-1-in-households-and-total-viewers-among-all-daytime-network-talk-shows-6/> (noting, among other successes, that interview with Marjorie Taylor Greene “scored its most-watched telecast (2.754 million) in 9 months”).

no candidate invited to appear on *The View* can expect kid gloves; interviews are planned and produced in accordance with ABC News standards and practices, which helps to ensure that candidates do not use *The View* as a soapbox.²⁰

Until recently, the Commission had recognized that programs like *The View* are exempt. Indeed, for decades, the Commission has “increas[ed] the flexibility to licensees to experiment with innovative formats and to include bona fide news interview segments in broadcasts generally considered as entertainment.”²¹ That includes programs, like *The View*, that feature a panel of co-hosts.²² The Commission correctly aimed to “further expand[] and reinforce[] both the flexibility of format” and “the extent to which a program that is otherwise an entertainment program may nevertheless qualify for an exemption under Section 315(a)(2).”²³ It is no surprise that the Commission has given more and more room for editorial discretion; the equal opportunities rule could otherwise not survive First Amendment scrutiny.

This is no mere tendency; it is a venerable regulatory tradition. The Commission’s recognition that it must permit “meaningful editorial independence”²⁴ and flexibility of format goes back over 40 years, to *Donahue*—where the Commission expressly blessed programs that combine entertainment content with news content.²⁵ That made (and makes) perfect sense:

²⁰ Petition at 25-26; Teta Declaration ¶ 17.

²¹ See Comment of Public Knowledge (“Public Knowledge Comment”) at 9–16. See also Comment of TechFreedom at 12. Public Knowledge also correctly explains that *The View* fits comfortably within the Commission’s precedents for the exemption in Section 315(a)(1) for bona fide newscasts. See Public Knowledge Comment at 5–7.

²² See, e.g., *Request of Oliver Prods., Inc. for Declaratory Ruling*, Mem., Opinion and Order, 4 FCC Rcd 5953 (1989) (as to *The McLaughlin Group*); *Request by CBS Inc. for Declaratory Ruling*, 2 FCC Rcd 4377 (MMB 1987) (as to *The Morning Program*).

²³ Public Knowledge Comment at 11–12.

²⁴ Comment of American Society of Journalists and Authors *et al.* at 1.

²⁵ See *Request by Multimedia Entertainment, Inc. for Declaratory Ruling*, Memorandum Opinion and Order, 56 Rad. Reg. 2d 143 (1984) (“*Donahue*”). Contrary to Chairman Carr’s statement on

Congress intended the exemptions to increase news coverage of campaigns, including coverage in innovative formats, not to chill it. It would therefore be “unsound” to disqualify programs just because they “involve[e] a unique or innovative approach to interviewing [] guests.”²⁶ It is certainly not in the public interest to “signal to broadcasters that to be exempt an interview program should adhere only to the format of certain programs mentioned by Congress over twenty-five [and now seventy] years ago.”²⁷ And it flowed naturally from the Commission’s recognition of innovative formats that the programs that feature them are not disqualified just because “other [] segments may not include discussions pertaining directly to the political arena, or even to current news events.”²⁸ This approach, with “numerous and varied exemptions” for programs like “*The Howard Stern Show*, *The 700 Club*, and *Governor Heineman’s Call-In Show*,”²⁹ has nourished open discourse on the important questions of the day.

2. *The View* has been an important contributor to that discourse, demonstrating the wisdom of the Commission’s longstanding approach. To say the least, *The View*’s news interview segments

X, see Brendan Carr (@BrendanCarrFCC), X (May 22, 2026), <https://x.com/BrendanCarrFCC/status/2057852532769050812>, ABC’s Petition never compared itself *Meet the Press* or *Face the Nation*, as no such comparison is or can be required.

²⁶ *Donahue*, 56 Rad. Reg. 2d at 146.

²⁷ *Id.*

²⁸ *Id.* at 148 (emphasis added). That holding has been reaffirmed countless times. See *Request of Oliver Productions, Inc. for Declaratory Ruling*, 4 FCC Rcd 5953, 5954 (1989) (citing *Multimedia Entertainment, Inc.*, 56 Rad. Reg. 2d 143, 148 (1984)). See also, e.g., *Request by CBS Inc. for Declaratory Ruling*, 2 FCC Rcd 4377 (MMB 1987) (as to *The Morning Program*); *Request of Multimedia Entertainment, Inc. for Declaratory Ruling*, 6 FCC Rcd 1798 (MMB 1991) (as to *Sally Jessy Raphael*); *Request of Multimedia Entertainment, Inc. for Declaratory Ruling*, 9 FCC Rcd 2811 ¶ 4 (MMB 1994) (as to *Jerry Springer*); *Request of Infinity Broadcasting Operations Inc.*, 18 FCC Rcd 18603, 18604 ¶¶ 3–4 (MB 2003) (“*Infinity Declaratory Ruling*”) (as to *The Howard Stern Show*); *Equal Opportunities Complaint Filed by Angelides For Governor Campaign Against 11 California Television Stations*, 21 FCC Rcd 11919, 11922–23 ¶¶ 8–11 (MB 2006) (as to *The Tonight Show*).

²⁹ Comment of American Society of Journalists and Authors *et al.* at 1.

are of “genuine news value.”³⁰ Over the decades, *The View* has routinely interviewed the day’s most newsworthy figures—from Presidents and members of Congress to prominent scientists, authors, business leaders, artists, and athletes. Recent segments have featured obviously newsworthy figures like Vice President J.D. Vance, former First Lady Jill Biden, Senator Chris Murphy, Senior Advisor to the Attorney General Alina Habba, Supreme Court Justices Ketanji Brown Jackson and Sonia Sotomayor, and former Representative Marjorie Taylor Greene.

And *The View*’s editorial freedom has long been protected by the Commission, which, consistent with clear and longstanding precedent, determined in 2002 that *The View* qualifies for the bona fide news interview exemption. That Declaratory Ruling, contra some commenters³¹ and Chairman Carr, is neither nonbinding nor ambiguous. It was spurred by ABC’s request two years earlier,³² and was issued by the Mass Media Bureau in a delegated exercise of Commission authority. Indeed, the Declaratory Ruling’s plain language makes clear it is a Bureau decision: “Based on the record before us, we conclude that the program ‘*The View*’ qualifies for the bona

³⁰ Cf. *Anderson v. Suiter*, 499 F.3d 1228, 1235–36 (10th Cir. 2007) (defining newsworthy broadly to mean anything of “legitimate public concern.”).

³¹ See Comment of Bull Moose Project (“Bull Moose Comment”) at 1 (June 22, 2026) (referring to the 2002 Declaratory Ruling as “drafted by a staffer”).

³² Petition at 27–28.

bona fide news interview exemption under Section 315(a)(2).”³³ As Commissioner Gomez observed, such formal, binding³⁴ decisions cannot be wished away.³⁵

3. There is no reason to revise the 2002 Declaratory Ruling now. Quite the opposite; this proceeding “presents precisely the situation the bona fide news exemption was designed to govern” because it “concerns an editorial decision to feature a newsworthy public figure ... without requiring any judgment about the program’s content or the politics of its participants.”³⁶

No commenter denies that the Commission’s traditional “bona fide news interview” test asks three questions: (1) whether the program is regularly scheduled; (2) whether the broadcaster or an independent producer controls the program; and (3) whether the broadcaster’s or independent producer’s decisions on format, content, and participants are based on newsworthiness rather than an intention to advance or harm an individual’s candidacy.³⁷ Nor could they; as the Commission

³³ 2002 Declaratory Ruling (emphasis added).

³⁴ See 47 C.F.R. § 0.445(f) (providing that unpublished Commission interpretations may be relied upon or used or cited as precedent by persons “who have actual notice of the document . . . *against the Commission*” (emphasis added)). Because the 2002 ruling has not been overturned, the Commission may not bring an enforcement action against ABC to retroactively punish actions taken in reliance on that ruling. See *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1081 (D.C. Cir. 1987) (citing factors to consider, all of which favor ABC).

³⁵ Dak Dillion, *Gomez calls FCC’s ‘View’ comment cycle ‘rulemaking by mob,’* NewscastStudio (May 26, 2026), <https://www.newscaststudio.com/2026/05/26/gomez-calls-fccs-view-comment-cycle-rulemaking-by-mob/>.

³⁶ CEI Comment at 3-4.

³⁷ See, e.g., *Hearst Television Inc. for Declaratory Ruling Regarding the Program “Matter of Fact with Fernando Espuelas”*, 31 FCC Rcd 7191, 7192-93 (MB 2016) (“*Hearst Declaratory Ruling*”) (citing *Request of ANE Productions, Inc. for Declaratory Ruling*, 26 FCC Rcd 16148, 16149 (MB 2011) (“*ANE Declaratory Ruling*”); *Request of ABC, Inc. for Declaratory Ruling*, 15 FCC Rcd 1355, 1358 (MMB 1999) (“*ABC Declaratory Ruling*”)).

explained more than 60 years ago, Congress “enjoined” it to use just that test.³⁸ The vast majority of commenters conclude that *The View* continues to satisfy it, just as it did in 2002.³⁹

That makes sense, because *The View* has not materially changed since 2002. *The View* still has a regularly scheduled timeslot and format, and it remains under the control of ABC—an organization that has been in operation since 1943 and that has been a staple of American broadcasting ever since.⁴⁰ Neither ABC nor *The View* is beholden to any political party. And the lodestar of *The View*’s programming decisions remains newsworthiness—including for interviews of political candidates like James Talarico.⁴¹ Of course, any long-running program will see hosts come and go,⁴² but that is irrelevant. The Commission’s test asks whether the decisions on format, content, and participants are based on newsworthiness rather than an intention to advance or harm an individual’s candidacy, not whether the Commission and certain commenters dislike the hosts or their viewpoints.⁴³ As the Petition explains, *The View*’s producers make decisions based on newsworthiness, just as they did in 2002.

Basic First Amendment principles need no popular endorsement, but that is present here anyway: numerous commenters urge the Commission to “grant the Petition and reaffirm the

³⁸ *Inquiry Concerning “Equal Time” Requirements Under Section 315 of the Communications Act of 1934, as amended*, 40 F.C.C. 395, 396 (1964). *Donahue* interpreted these factors more flexibly to afford broadcasters flexibility in developing innovative programming. *Donahue*, 56 Rad. Reg. at 143.

³⁹ See Petition at 27–33.

⁴⁰ *Id.* at 29–31.

⁴¹ *Id.* at 31–33.

⁴² See Bull Moose Comment at 1 (noting that “[o]nly one of the six current permanent hosts, Joy Behar, was hosting the show in 2002”); Comment of Center for American Rights (“CAR Comment”) at 25 (noting that Barbara Walters is not on the program anymore).

⁴³ See, e.g., *Hearst Television Inc.*, Declaratory Ruling, 31 FCC Rcd 7191, 7192-93 (MB 2016) (citing *ANE Declaratory Ruling*, 26 FCC Rcd 16148, 16149 (MB 2011); *Request of ABC, Inc. for Declaratory Ruling*, 15 FCC Rcd 1355, 1358 (MMB 1999) (“*ABC Declaratory Ruling*”)).

principles of editorial independence, viewpoint neutrality, and open democratic discourse that have long guided the Commission’s approach to bona fide news programming.”⁴⁴

III. THE COMMISSION SHOULD REJECT RADICAL NEW TESTS.

Tacitly recognizing that *The View* easily passes the Commission’s long-established test, several commenters propose new ones. Those commenters urge that the Commission consider novel factors like: (a) the viewpoints of *The View*’s hosts, (b) the breakdown of political leanings of *The View*’s guests, (c) the ratio of “traditional news” content to other content, and (d) the journalistic pedigree of *The View*’s hosts. These factors have never been part of the congressionally mandated test because the Commission has (rightly) avoided wading into the First Amendment thicket they would present. The Commission’s traditional, deferential approach—far from swallowing the equal opportunities rule⁴⁵—respects the will of Congress, which “contemplated and intended to encourage increased news coverage of political campaign activity,”⁴⁶ and accordingly “was prepared to give substantial discretion to the good faith news judgments of broadcast licensees.”⁴⁷ If Congress disagreed, it could have amended Section 315(a) at any time over the last forty years.⁴⁸ And, in fact, the statutory history cuts in the opposite direction. The 1959 amendments that added the bona fide news exemptions were a direct response to a wayward

⁴⁴ Comment of American Society of Journalists and Authors *et al.* at 2.

⁴⁵ *Contra* CAR Comment at 3.

⁴⁶ *Donahue*, 56 Rad. Reg. 2d at 144.

⁴⁷ *Id.*; *see also id.* at 145 & n.6 (recognizing that Congress considered that a broad exemption might result in some political bias but that the “benefit to the public of the exemptions controlled”).

⁴⁸ *See CFTC v. Schor*, 478 U.S. 833, 846 (1986) (quoting *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 274–275 (1974)) (“It is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the ‘congressional failure to revise or repeal the agency’s interpretation is persuasive evidence that the interpretation is the one intended by Congress.’”).

Commission’s “radical departure from its prior interpretation” that “the equal time provision [was] inapplicable to the appearance of a candidate on a newscast.”⁴⁹ Congress’s answer was to amend Section 315 to “maximize broadcast coverage of political events and to increase broadcaster discretion.”⁵⁰ As bipartisan, contemporary congressional criticism shows, the Commission appears poised to make a similar mistake in this proceeding.⁵¹ The Commission should reject opposing commenters’ proposed changes to the long-established test.

A. The Viewpoints Expressed by *The View*’s Hosts or Guests Are Not—and Cannot Be—Part of the Test.

Some commenters refer to *The View* as “opinion-driven” and take issue with the hosts discussing political views during show segments.⁵² These commenters make little effort to explain why hosts’ opinions are relevant to the exemption. They are not—and for good reason. Regulating a program based on the viewpoints expressed would be a prototypical content- or viewpoint-based restriction, inconsistent with the First Amendment.⁵³

To the extent these commenters suggest that hosts’ opinions bear on the Commission’s third factor—whether decisions on format, content, and participants are intended to advance or harm an individual’s candidacy—that argument misreads the test entirely. That third factor focuses on the

⁴⁹ *Chisholm v. FCC*, 538 F.2d 349, 351-52 (D.C. Cir. 1976); *see also* 47 C.F.R. § 73.1941(b) (defining “use” broadly to mean “a candidate appearance (including by voice or picture)”).

⁵⁰ *Chisholm*, 538 F.2d at 360; *see also id.* (noting that “Congress[] expressed willingness to take some risks with the equal time philosophy in order to achieve these goals”).

⁵¹ Alexandra Koch, *Cruz warns conservatives ‘will regret’ FCC censorship push against ABC, other media outlets*, Fox News (Sept. 19, 2025), <https://foxnews.com/politics/cruz-warnsconservatives-will-regret-fcc-censorship-push-against-abc-other-media-outlets>.

⁵² *See, e.g.*, Comment of Independent Women at 2; Comment of Nat’l Republican Senatorial Comm. & Nat’l Republican Congressional Comm. Comment (“NRSC/NRCC Comment”) at 6–7.

⁵³ *See infra* Section V; Petition at 5–7, 12–19.

intent of broadcasters and producers, not the political viewpoints of on-air hosts. A host's political point of view—even a manifestly partisan one—says nothing about whether programming decisions are driven by newsworthiness rather than an intention to advance or harm a candidacy. The Commission has repeatedly granted bona fide news interview exemptions to programs hosted by individuals with openly political views, including elected officials.⁵⁴ Talk radio (on both the left and the right) has long operated under the same principle—and rightly so. A rule disqualifying programs based on the perceived politics of their hosts is not a neutral regulatory standard. It is viewpoint discrimination.

B. The Ratio of Guests by Political Lean Is Not—and Cannot Be—Part of the Test.

Some commenters urge the Commission to consider purported statistics on the ratio of right-leaning to left-leaning guests on *The View*.⁵⁵ That approach runs counter to Commission precedent, misunderstands the premise of the bona fide news exemption, is unsupported by the record, and would violate the First Amendment.

The guests' ideological composition is irrelevant under the Commission's standard. The third prong focuses exclusively on whether decisions on format, content, and participants are based

⁵⁴ See, e.g., *Request of Nebraska Broadcasters Ass'n for Declaratory Ruling*, 21 FCC Rcd 10742 (MB 2006) (“*NBA Declaratory Ruling*”) (finding that radio programs hosted by then-Nebraska Governor Dave Heineman and then-United States Senator Ben Nelson qualified for the bona fide news interview exemption); *Request of Infinity Broad. Corp. of Illinois for Declaratory Ruling*, 12 FCC Rcd 773 (MMB 1997) (finding that the guest interview portion and the listener call-in segment of the radio program hosted by former Chicago Alderman Ed Vrdolyak qualified for the bona fide news interview exemption.).

⁵⁵ See, e.g., Comment of Independent Women at 3 (“[E]vidence of persistent viewpoint imbalance [of guests] is relevant to determining whether editorial decisions are being made pursuant to bona fide news judgment or partisan objectives.”); NRSC/NRCC Comment at 6 (“This year alone, as of April, 27 of the show's guests defended liberal views, while just one offered a conservative perspective.”).

on newsworthiness rather than on an intention to advance or harm an individual's candidacy. Commenters identify no Commission decision analyzing whether a program meets some government-approved balance of interviewees—because none exists.

Commenters' assertion that "Republican-aligned political figures are as 'newsworthy' as ever" misses the point.⁵⁶ Many of the commenters' statistics evaluate the *overall* number of guests rather than candidates for public office—but Section 315(a) applies only to the latter. And the logic that Republicans are newsworthy, ergo *The View* must interview them on a one-for-one basis with Democrats, is flawed. That some Republicans are newsworthy does not mean *The View*'s guests were *not*. Under the commenters' approach, the Commission would have to force ideological balance—their "own conception of speech nirvana"⁵⁷—for the exemption to apply. The logic behind this proposed factor also wrongly assumes that *The View*'s producers can compel guests to appear. But *The View*'s producers control only who to *invite*—not who shows up.⁵⁸ Statistics on which guests ultimately appeared do not reflect which guests may have been invited and are thus irrelevant to understanding the producers' intentions.⁵⁹

Moreover, some commenters argue that the ideological breakdown of *all* guests is relevant—not just appearances by "legally qualified candidate[s] for any public office." Taken to its logical conclusion, this would require broadcasters to satisfy a government-approved ideological quota across *its entire roster of guests*—a rolling tally of perceived viewpoints that a

⁵⁶ NRSC/NRCC Comment at 7; *see also* CAR Comment at 15; Bull Moose Comment at 3.

⁵⁷ *NetChoice*, 603 U.S. at 742.

⁵⁸ *See* Petition at 31 ("Of course, any list of interviewees on *The View* would not reflect individuals who have been invited by the producers but declined to appear."); Teta Declaration ¶ 26 (identifying notable individuals who were invited to appear on *The View* but who declined the invitation).

⁵⁹ And that is even assuming that the statistics are accurate. For example, none of the "studies" presented by CAR were peer reviewed or verified by a third party. *See* CAR Comment at 15–17.

federal agency monitors to decide whether its vision of “balance” has been achieved. Again, the exemption itself applies only to legally qualified candidates. A factor that requires considering the ideology of every guest—legally qualified candidate or not—would thus sweep far more broadly than the rule itself. That is not a regulatory standard, but a surveillance regime—one that Congress never contemplated and that the First Amendment forbids.⁶⁰

C. The Ratio of “Traditional News” Content to Other Content Is Not—and Cannot Be—Part of the Test.

Center for American Rights (“CAR”) also suggests that only programs focusing “predominantly” on news may qualify for the exemption, an assessment CAR would base on the ratio of interviews to panel discussion.⁶¹ That suggestion ignores virtually every Commission decision concerning bona fide news exemptions over the last forty years.⁶² All CAR offers in response to that wall of precedent is a single 1973 Bureau-level decision (which predates *Donahue* by 11 years).⁶³

CAR’s suggestion would also doom most talk radio. And CAR’s attempt to distinguish talk radio from *The View* merely underscores the problem with its own position. CAR offers an invented statistic—without any citation—that “[n]ews/talk radio programs, by contrast, are . . . 90% news commentary and newsmaker interviews and perhaps 10% entertainment or

⁶⁰ See *infra* Section IV.

⁶¹ See, e.g., CAR Comment at 13, 36 (likening *The View* to an “opinion show” and claiming it is distinct from talk radio because of purported 90% news content on radio); Comment of Independent Women at 2 (arguing that the “hybrid nature” of certain programs “makes it especially important that the Commission carefully evaluate whether a program satisfies the requirements for a bona fide news interview exemption”).

⁶² See *supra* notes 25-28 and accompanying text.

⁶³ CAR Comment at 7 (quoting *Joseph A. Gillis*, 43 FCC 2d 584, 589 (BB 1973)).

celebrities.”⁶⁴ The distinction CAR draws would protect the speech it favors while burdening the speech it opposes—precisely the content discrimination the First Amendment forbids. This standard would make the Commission the arbiter of what counts as news versus entertainment—a distinction the Commission has no statutory basis for drawing,⁶⁵ and one that would compel content-based discrimination in violation of the First Amendment.⁶⁶

D. The Journalistic Pedigree of Programs’ Hosts Is Not—and Cannot be—Part of the Test.

Some commenters argue that a program must be hosted by professional journalists (however defined) to qualify for the exemption. The Commission has repeatedly rejected this notion: “[a]lthough hosts of some bona fide news programs in the past have had journalism backgrounds, such credentials in a host are by no means a prerequisite for a program to be considered a bona fide news program.”⁶⁷ Not all “news” must be created by “journalists.”⁶⁸ The

⁶⁴ CAR Comment at 36.

⁶⁵ *Equal Opportunities Complaint Filed by Angelides for Governor Campaign Against 11 California Television Stations*, 21 FCC Rcd at 11923 (“[T]he prospect of the Commission making determinations as to whether particular kinds of news are more or less bona fide ‘would involve unwarranted intrusiveness into program content and would be thus, at least suspect under the First Amendment.’”) (quoting *Request for Declaratory Ruling By Paramount Pictures Corporation, Cox Broadcasting Corporation, Taft Television Productions, and Television Program Enterprises*, 3 FCC Rcd 245 (MMB 1988) (“*Paramount Declaratory Ruling*”)).

⁶⁶ *See id.*; Petition at 8–9; *Barr v. Am. Ass’n of Political Consultants, Inc.*, 591 U.S. 610, 621 (2020) (holding content-based eligibility requirement for regulatory exception unconstitutional).

⁶⁷ *Equal Opportunities Complaint of Angelides for Governor Campaign Against 11 California Television Stations*, 21 FCC Rcd at 11924.

⁶⁸ *See, e.g., Donahue*, 56 Rad. Reg. 2d at 146–147 & n.11 (noting that program “Youth Wants To Know” was the type of innovative programming that Congress intended to fall into the exemption for news interviews added in 1959 and that the format of the program was “questions posed by students, not professional journalists” (emphasis added)); *ABC Declaratory Ruling*, 15 FCC at 1355 (describing host Bill Maher as a “satirist and humorist” (not a journalist) before granting exemption); *Petition of The Christian Broadcasting Network for Declaratory Ruling*, 23 FCC Rcd 7165, 7166 (MB 2008) (in issuing declaratory ruling for *The 700 Club*, noting that the

alternative—a federal agency vetting speakers to decide who qualifies as a journalist—would be the kind of speech licensing the First Amendment was designed to make unthinkable.

The View well illustrates why requiring co-hosts to be government-approved “journalists” is unnecessary and wrong. The co-hosts have conducted live, on-air interviews five days a week, forty-seven weeks a year, for years. Beyond on-the-job experience, they bring expertise in journalism, politics, government, and law.⁶⁹ Their ability to conduct engaging, informative interviews is part of what has drawn millions of viewers—and many of the most consequential public figures of our age—to *The View* for nearly 30 years.

Requiring hosts to meet a government-approved definition of journalist is fundamentally antidemocratic. Where will the Commission draw the line? An undergraduate journalism degree? A graduate degree? Specific work experience? A willingness to express viewpoints the government finds acceptable? The explosion of alternative platforms—YouTube, TikTok, podcasts—has proven that a journalism degree is no prerequisite to interviewing important guests on newsworthy topics.

Most fundamentally, government scrutiny of whether an on-air speaker is a journalist is an unconstitutional speaker-based discrimination; the government may not condition speech on those terms.⁷⁰

petitioner stated that questions would be based upon “journalistic news principles” but not that the interviewers would themselves be trained journalists).

⁶⁹ Petition at 21-24.

⁷⁰ See *infra* Part VI.A.

E. Commenter CAR's Newly Invented Test Must Be Rejected.

Finally, CAR urges the Commission to discard the well-established test in favor of a brand-new test invented for this proceeding,⁷¹ ignoring decades of judicial and Commission precedent giving effect to the statutory term “bona fide news.”⁷²

Instead of the well-known and well-understood congressionally mandated test for bona fide news interviews, CAR would have the Commission evaluate (1) whether the program has a history of exhibiting favoritism or bias toward one set of candidates or party; (2) whether the interview is conducted or controlled by professional journalists; and (3) whether the interview is conducted or controlled by clear partisans.⁷³ These factors are unmoored from the statutory text of the bona fide news interview exemption and rife with constitutional problems.

CAR's first proposed factor (whether a broadcaster demonstrated an unacceptable level of bias) would require the Commission to engage in content- and viewpoint-based regulation. This factor is irreconcilable with the First Amendment and based on plainly wrong applications of *King Broadcasting*,⁷⁴ *Fox Broadcasting*,⁷⁵ and *Greater Washington Education Telecommunications*

⁷¹ See CAR Comment at 13–24.

⁷² CAR also urges that the text of 47 U.S.C. § 315(a) includes “a specific congressional grant of discretion” to interpret the statute. *Id.* at 4 (citing *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394–396 (2024)). But CAR overreads *Loper*. In *Loper*, the Supreme Court emphasized that judicial review of agency interpretations of statutes will examine whether an interpretation was “issued contemporaneously with the statute” and has “remained consistent over time.” 603 U.S. at 394. If the Commission were to change its longstanding interpretation issued much closer to the 1959 amendments, no deference would be due to a new interpretation. See also Comment of TechFreedom at 13–14 (noting the agency’s about-face “lacks the power to persuade any court”).

⁷³ CAR Comment at 13–20.

⁷⁴ *Request of King Broadcasting Co. for Declaratory Ruling*, Memorandum Opinion and Order, 6 FCC Rcd 4998 (1991) (“*King Broadcasting*”).

⁷⁵ *Fox Broadcasting Company, Public Broadcasting Service, and Capital Cities/ABC, Inc.*, 11 FCC Rcd 11101 (1996) (“*Fox Broadcasting*”).

*Association, Inc.*⁷⁶ Those three cases addressed “on the spot coverage of a bona fide news event” under Section 315(a)(4)—not the bona fide news interview exemption under Section 315(a)(2). But that is a different exemption that requires different analysis. Critically, with respect to “bona fide news events,” the Commission has considered structural balance of candidates in debates (*King Broadcasting* and *Fox Broadcasting*) and the nonpartisan nature of a cultural event (*Greater Washington*). But those factors only mattered in that context because, unlike “bona fide news interviews,” “bona fide news events” do not require broadcaster control or that the program be regularly scheduled (the latter of which *King Broadcasting* recognized as “an additional safeguard against broadcaster abuse for programs falling under the news interview exemption”). By contrast, because “bona fide news interviews” *do* involve broadcaster control and regular scheduling, the balance and viewpoint factors CAR imports from *King Broadcasting* and *Fox Broadcasting* are inapposite.⁷⁷

CAR’s proposed second factor (whether an interview is conducted by professional journalists) fares no better. Requiring government-certified “journalists” is anathema to the First Amendment, and the Commission has rightly rejected this contention for decades.⁷⁸ But CAR’s argument fails on its own terms. On the very same page where CAR insists programs must be conducted by professional journalists, it argues that conservative talk radio programs hosted by politicians are fine because the callers—ordinary members of the public—were doing the interviewing.⁷⁹ CAR cannot demand journalistic credentials as a condition of the exemption in

⁷⁶ *Greater Washington Education Telecommunications Association, Inc.*, 26 FCC Rcd 1609 (MB 2011).

⁷⁷ *Id.*

⁷⁸ *See supra* Part III.D.

⁷⁹ Compare CAR Comment at 17, with *id.* at 17 n.13 (referencing the *NBA Declaratory Ruling*).

one breath and excuse their absence in the next when the result would be inconvenient. A test that bends to reach a preferred outcome is not a legal standard.

The Commission should likewise reject CAR’s third proposed factor (whether the interview is conducted by partisans). Repeating its error, CAR misreads isolated statements from *King Broadcasting* and *Fox Broadcasting*—which addressed the bona fide news *event* exemption—as if they applied here.⁸⁰ Tying the exemption’s applicability to hosts’ or producers’ viewpoints would squarely violate the First Amendment.⁸¹ The Commission must reject these attempts to import unconstitutional factors into a congressionally mandated test that has worked for decades.

IV. THE FIRST AMENDMENT MUST GOVERN THE COMMISSION’S ACTIONS.

Adopting any of these novel factors would compound the serious constitutional problems with the equal opportunities rule and the bona fide news exemptions. Any rule that compels speech to fit the government’s preferred balance of viewpoints is deeply suspect; the equal opportunities rule cannot survive First Amendment scrutiny without a robust bona fide news exemption. The Commission can, and should, recognize as much here.

A. The Equal Opportunities Rule Raises Profound First Amendment Concerns.

The Supreme Court has made crystal clear that the First Amendment protects editorial decisions about what stories, guests, and topics to feature. The Court “has many times held, in many contexts, that it is no job for government to decide what counts as the right balance of private

⁸⁰ See CAR Comment at 17–18.

⁸¹ See Petition at 35 (stating an exemption based on “neutral” broadcasts would penalize a wide array of programs “based on nothing more than the content and viewpoint of their speech.”).

expression—to ‘un-bias’ what it thinks biased, rather than to leave such judgments to speakers and their audiences.”⁸² The equal opportunities rule is irreconcilable with that principle.

Commenters opposing the Petition insist that *Red Lion* establishes a different rule for broadcast media, and that that rule controls here. That is wrong, both on *Red Lion*’s holding and on its factual predicates. First, as to the holding: *Red Lion*’s discussion of the equal opportunities rule is *dicta*. As for *Farmers Educ. & Coop. Union v. WDAY*,⁸³ *Red Lion* says it all: “The constitutionality of the statute under the First Amendment was unquestioned.”⁸⁴

Second, as to the predicates: whatever was true in 1969, *Red Lion*’s predicate considerations of spectrum scarcity and lack of public access to information have long since evaporated. Some commenters claim that the Petition mistakes the object of *Red Lion*’s “scarcity” holding—that it is scarcity of spectrum, not of informational options across media, that matters.⁸⁵ To be sure, spectrum remains finite, just as paper and ink and cloud storage are not unlimited.⁸⁶ But technological advances, like multicasting, have augmented terrestrial broadcast channels, allowing from three-to-seven in 1969 to a myriad of channels today.⁸⁷ And, contrary to what some

⁸² *NetChoice*, 603 U.S. at 719.

⁸³ 360 U.S. 525 (1959).

⁸⁴ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 391 (1969) (“*Red Lion*”). The issue was not raised by the parties or examined by the Court because *WDAY* arose in the context of a broadcaster’s defense against a *defamation* claim, a context worlds away from the question of whether broadcasters can be subjected to a regime of speech restrictions unthinkable in any other medium.

⁸⁵ CAR Comment at 30.

⁸⁶ See *Telecommunications Research & Action Center v. FCC*, 801 F.2d 501, 508 (D.C. Cir. 1986) (Bork, J.).

⁸⁷ See S&P Global Market Intelligence, *US TV Station Digital Multicast Database*, 2025 (Dec. 30, 2025),

<https://www.capitaliq.spglobal.com/web/client#news/docviewer?mid=253595009&KeyProductLinkType=2>.

commenters argue, the availability of other information sources cannot be discounted. As the Commission recognized in *Syracuse Peace Council*,⁸⁸ the two are intertwined: spectrum scarcity carried the day in *Red Lion* precisely because spectrum scarcity could threaten “the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences.”⁸⁹ The world is fundamentally different today;⁹⁰ terrestrial broadcast (unlike in the 1960s) accounts for only one slice of the average American’s varied information diet. The public’s access to information, including about candidates, does not depend on compelling broadcaster speech.

Opposing commenters nonetheless insist that the broadcast medium is inherently different and will always merit diluted First Amendment protections. Some commenters defend second-class status for broadcasters as a function of the government’s ability to condition licenses and subsidies.⁹¹ That is wrong. Regardless of the medium, any government interest in restricting or compelling protected editorial discretion must be “unrelated to the suppression of free expression.”⁹² And the equal opportunities rule, which compels and chills speech for the avowed purpose of achieving “the right balance of private expression,”⁹³ is *entirely and exclusively* justified by reference to the suppression of free expression. Even assuming some unique attributes

⁸⁸ *Complaint of Syracuse Peace Council against Television Station WTVH*, Memorandum Opinion and Order, 2 FCC Rcd 5043, 5054 ¶ 75 (1987).

⁸⁹ *Red Lion*, 395 U.S. at 390.

⁹⁰ Indeed, the world was already very different almost 40 years ago, when this Commission found that “there is no longer a scarcity in the number of broadcast outlets.” *Syracuse Peace Council*, 2 FCC Rcd at 5054 ¶ 75.

⁹¹ CAR Comment at 32.

⁹² *NetChoice*, 603 U.S. at 740.

⁹³ *Id.* at 719.

of the broadcast medium justify, for example, restrictions on indecency⁹⁴ or the compulsion of certain categories of content⁹⁵ (like children’s television programming), regulations like that are a far cry from compelling or chilling candidate appearances in a misbegotten quest for an even playing field.⁹⁶

And the condition-on-a-license-or-subsidy argument from certain commenters fails on its own terms.⁹⁷ A broadcast license is not a “cash subsid[y] or [its] equivalent”—the government does not pay broadcasters; broadcasters pay the government, in the form of application and regulatory fees.⁹⁸ “Cases like *Rust* and *Finley*,” therefore, “are not instructive in analyzing the constitutionality of restrictions on speech” in this context.⁹⁹ Nor does the grant of a license justify restricting editorial discretion. Broadcasters do not merely employ speech as part of their business, protected speech *is* their business. And while spectrum scarcity may provide a rationale for “a system of administrative regulation as opposed to a free market approach to stations, the theory

⁹⁴ See CAR Comment at 32; NRSC/NRCC Comment at 11. Restrictions on indecency, or content that is obscene as to minors, raise very different questions from the compulsion of candidate appearances to “balance” a speaker’s offering. Cf. *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 489 (2025).

⁹⁵ Cf. *Turner Broadcasting Sys. v. FCC*, 512 U.S. 633, 652 (1994) (“must-carry provisions are not designed to favor or disadvantage speech of any particular content”).

⁹⁶ *NetChoice*, 603 U.S. at 742.

⁹⁷ See CAR Comment at 32 (citing *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976) and *Rust v. Sullivan*, 500 U.S. 173 (1991)); NRSC/NRCC Comment at 10-11; Comment of Media Research Center at 10.

⁹⁸ 47 U.S.C. §§ 158-159; 47 CFR §§ 1.1104, 1.1153; see also FCC, Application Fee Filing Guide for Media Bureau (May 23, 2025), <https://docs.fcc.gov/public/attachments/DOC-414720A1.pdf>. Moreover, licensees have transformed once-empty spectrum into a rich information and media distribution system through investment and innovation.

⁹⁹ *Matal v. Tam*, 582 U.S. 218, 240, 241 (2017).

does not justify reduced First Amendment protection.”¹⁰⁰ The license is a mechanism for allocating spectrum, not a lever for controlling what broadcasters say.¹⁰¹

B. The Equal Opportunities Rule Cannot Survive Constitutional Scrutiny Without a Robust Bona Fide News Exemption.

As explained in the Petition (at 12-20), at minimum, the equal opportunities rule cannot survive constitutional scrutiny without a robust bona fide news exemption.¹⁰² “The Commission’s settled interpretation of Section 315 is what keeps the equal-opportunities rule from becoming a roving license for officials to decide which programs count as news.”¹⁰³ Without that breathing room, the equal opportunities rule gives officials boundless discretion to police their own conception of what news is legitimate. One commenter, citing *King Broadcasting*, argues that the equal opportunities rule “was constitutional as statutorily enacted in section 315, even absent the flexibility added through the 1959 exemptions.”¹⁰⁴ That passage from *King* is *dicta* about *dicta*: *King*, which discussed *Red Lion*’s treatment of *WDAY*, did not “rul[e] on the constitutional question.”¹⁰⁵ And, as explained above, neither *Red Lion* nor *WDAY* held that the equal opportunities requirement was constitutional. In any event, whatever the Court would have held in 1959, Congress clearly perceived constitutional problems with the equal opportunities rule once

¹⁰⁰ *Action for Children’s Television v. FCC*, 58 F.3d 654, 676 (D.C. Cir. 1995) (Edwards, C.J., dissenting).

¹⁰¹ *Compare Vidal v. Elster*, 602 U.S. 286, 300 (2024) (declining to apply heightened scrutiny to the “uniquely content-based nature of trademark regulation” in and of itself) *with Tam*, 582 U.S. at 244 (invalidating content and viewpoint-based bar on disparaging trademarks).

¹⁰² See CEI Comment at 6.

¹⁰³ Public Knowledge Comment at 33.

¹⁰⁴ CAR Comment 33 (quoting *King Broadcasting Co. v. FCC*, 860 F.2d 465, 468 n.3 (D.C. Cir. 1988)).

¹⁰⁵ *King Broadcasting*, 860 F.2d at 468 n.3.

the Commission stopped “interpret[ing] the equal time rule with a sort of news exemption.”¹⁰⁶ That is why it passed the 1959 amendments that added the bona fide news exemptions.

C. The Commission Must Act Consistent with the Constitution.

CAR says that the Commission “does not have jurisdiction to declare statutes unconstitutional.”¹⁰⁷ Neither does it have jurisdiction to violate the First Amendment as applied to this proceeding. The Commission’s mandate is to reconcile the Constitution and Section 315(a),¹⁰⁸ which it has done for forty-odd years by construing the bona fide news exemptions to grant broadcasters editorial leeway.¹⁰⁹ Nothing compels the Commission to violate ABC’s fundamental rights or to force a constitutional showdown. Indeed, the Commission has steered clear of those shoals for decades; running into them now is a considered and unprecedented choice.

CAR’s authorities are not to the contrary. In *Branch v. FCC*, the D.C. Circuit noted that “administrative agenc[ies] may be influenced by constitutional considerations in the way [they] interpret or apply statutes.”¹¹⁰ Exactly so: in *Meredith Corp. v. FCC*, the D.C. Circuit reversed the Commission for refusing to consider constitutional issues that were raised as part of an enforcement proceeding.¹¹¹ CAR’s cases only confirm that the Commission can, and should, read its statutory mandate to conform to the Constitution.

¹⁰⁶ CAR Comment at 34.

¹⁰⁷ *Id.* at 32 (quoting *Branch v. FCC*, 824 F.2d 37, 47 (D.C. Cir. 1987)).

¹⁰⁸ Petition at 12 (“When legislation and the Constitution brush up against each other, an agency’s task is to seek harmony, not to manufacture conflict.” (quoting *United States v. Hansen*, 599 U.S. 762, 781 (2023) (internal quotations omitted))).

¹⁰⁹ *Paramount Declaratory Ruling*, 3 FCC Rcd at 245.

¹¹⁰ *Branch*, 824 F.2d at 47.

¹¹¹ *Meredith Corp. v. FCC*, 809 F.2d 863, 872–73 & n.11 (D.C. Cir. 1987). *Thunder Basin Coal Co. v. Reich* is inapt because it involved a due process challenge to the entire statutory scheme for agency adjudication rather than a matter of statutory construction. 510 U.S. 200, 215 (1994).

V. SUBJECTING *THE VIEW* TO THE EQUAL OPPORTUNITIES RULE WOULD VIOLATE THE FIRST AMENDMENT.

A. The Equal Opportunities Rule Cannot Be Applied to *The View* Consistent with the First Amendment.

As the Petition explains, the equal opportunities rule cannot constitutionally be applied to *The View*. Doing so would compound the many existing problems with the statute by subjecting an unprecedentedly large swath of programming to disfavored treatment based on the content and viewpoint of their speech. Exempting only favored bona fide news programming, but not programming expressing disfavored views or featuring disfavored hosts or guests, is a blatant content and speaker-based distinction. And the Supreme Court has already struck down a similar content- and speaker-based distinction between “bona fide news” and “the expression of editorial opinion on ‘controversial issues of public importance’” in *League of Women Voters*.¹¹² Giving the Commission carte blanche to decide what is bona fide news programming and what is opinion commentary heightens concerns that the Commission will exercise its authority to punish disfavored content and viewpoints. And those problems are exacerbated if the government pretends to have authority to decide who is, and who is not, a “real” journalist.¹¹³ Because “governmental officials cannot make principled distinctions” in this area,¹¹⁴ the First Amendment leaves judgments about which “ideas and beliefs [are] deserving of expression [and] consideration”¹¹⁵ to private parties, not the government.

¹¹² *FCC v. League of Women Voters of California*, 468 U.S. 364, 381 (1984).

¹¹³ *Cf. Citizens United*, 558 U.S. at 352 (“[T]he institutional press has [no] constitutional privilege beyond that of other speakers.”).

¹¹⁴ *Cohen v. California*, 403 U.S. 15, 25 (1971).

¹¹⁵ *Turner Broad. Sys.*, 512 U.S. at 641.

Opposing commenters wave these concerns away, insisting that “there is no reason to suppose”¹¹⁶ that overzealous officials will discriminate against disfavored viewpoints and that the Commission here is simply “doing its job” by attempting to dismantle “a viewpoint monolith.”¹¹⁷ But one need look no further than this docket to see that the risk of viewpoint discrimination is real. The comments opposing the Petition, which generally urge the Commission to punish a perceived ideological opponent, are openly critical of *The View*, its hosts, and its guests. The Commission is told, for example, that “as of April 27,” “27 of the show’s guests defended liberal views, while just one offered a conservative perspective.”¹¹⁸ In short, the opposing commenters do not approve of the viewpoints they associate with *The View*, its hosts, and its guests; they think that *The View* does not book enough conservative guests (or, at least, enough of the right kind of conservative);¹¹⁹ and they would like the Commission to enforce a different mix of views on the program.

Any statutory construction that would deploy governmental power on the basis of those grievances is, as Senator Ted Cruz warned, “dangerous as hell.”¹²⁰

¹¹⁶ NRSC/NRCC Comment at 12.

¹¹⁷ CAR Comment at 35.

¹¹⁸ NRSC/NRCC Comment at 6. *See also* Comment of Article III Project at 1-2

¹¹⁹ CAR Comment at 24 n.16 (complaining that *The View* “will only interview Democrats or a certain type of Republican”).

¹²⁰ Alexandra Koch, *Cruz warns conservatives ‘will regret’ FCC censorship push against ABC, other media outlets*, Fox News (Sept. 19, 2025), <https://www.foxnews.com/politics/cruz-warns-conservatives-will-regret-fcc-censorship-push-against-abc-other-media-outlets?msockid=3826485071776c6237355b5570756d88>.

B. This Proceeding is Independently Barred by the First Amendment to the Extent it is Based on the Viewpoints Expressed on *The View*.

Concerns about unbridled discretion leading to viewpoint discrimination are not hypothetical. As explained in the Petition (at 36-39) the Commission is wielding its enforcement authority “in order to punish or suppress [ABC’s] protected expression.”¹²¹ The opposing commenters—studiously avoiding the many statements by the Commission and other senior government officials attacking *The View* on partisan, viewpoint-based grounds,¹²² as well as the unprecedented nature of the Commission’s decisions to call in ABC’s licenses early and to use *The View* as a vehicle to rethink decades-old Commission precedent—contend there is no cause for concern. These commenters effectively concede that the Commission has not applied its newly rigorous equal-opportunities requirements to talk radio, which often favors conservative views. Their only answer is that talk radio is not similarly situated to *The View*. That distinction, which just so happens to insulate programs whose politics align with those of the current administration, is meritless.

Talk radio features notable conservative opinion voices like *The Glenn Beck Program*, *The Clay Travis & Buck Sexton Show*, *The Sean Hannity Show*, *The Hugh Hewitt Show*, *The Mark Levin Show*, *The Armstrong & Getty Show*, *The Erick Erickson Show*, *The Guy Benson Show*, and *The John Fredericks Show*, to name just a few.¹²³ These programs, among others, frequently host

¹²¹ *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 196 (2024).

¹²² See, e.g., Public Knowledge Comment at 25, 27-31.

¹²³ Many of these shows regularly host political candidates. Despite that these nationally distributed talk radio shows are available on the airwaves, it does not appear that the stations airing these programs routinely notify the public of such candidate appearances in their online public inspection files. For example, WMAC(AM), Macon, Georgia, airs *The Erick Erickson Show*, which, on April 28, 2026, featured an interview with Rick Jackson, who is running for Governor, although WMAC(AM) has not uploaded any documents concerning Jackson’s appearance into the station’s 2026 online political file. Similarly, Steve Hilton, a California gubernatorial candidate, appeared on *The Clay Travis & Buck Sexton Show* on May 20, 2026;

candidates for public office without also hosting their opponents. And, even assuming for the sake of argument that *The View*'s hosts "constantly express [] pro-Democratic opinions,"¹²⁴ these popular talk radio programs have a decided editorial slant of their own. There is no principled basis for disparate treatment. Combined with statements on the public record by senior government officials, the natural inference is that certain television programs are being singled out because of their speech. Other commenters agree.¹²⁵ Indeed, the comments here make clear that the Commission's focus on late night and daytime television—but not talk radio—has at the very least driven a public perception that the Commission is acting based on political animus against disfavored speakers.¹²⁶ The Commission can end further erosion of the public's trust—not to mention address meritorious claims for retaliation, coercion, and viewpoint discrimination—by re-affirming that the 2002 Declaratory Ruling for *The View* still stands.

VI. THE FULL COMMISSION SHOULD RULE ON THE PETITION.

Multiple commenters agree with ABC that the full Commission should issue a decision in the present proceeding.¹²⁷ The reason is straightforward: an overwhelming consensus of

The Clay Travis & Buck Sexton Show airs on several California radio stations, including KYOS(AM), Merced, California, and KALZ(AM), Fresno, California. Neither of these stations appears to have placed any information about this appearance in their 2026 online political files. See also Petition at 37-38 (listing other examples).

¹²⁴ Bull Moose Comment at 2.

¹²⁵ See, e.g., Comment of Free Press at 11–13; Comment of Foundation of Individual Rights and Expression ("FIRE") at 37–38; Public Knowledge Comment at 17.

¹²⁶ See, e.g., Public Knowledge Comment at 23 (noting the Commission's request to have other stations place the Talarico appearance in their political files); Comment of Free Press at 13–15 (noting facts giving rise to inference that the Commission is retaliating against ABC based on its speech); Comment of FIRE at 36–37 ("The Commission's Public Notice targeting *The View* has all the hallmarks of an unconstitutional government campaign designed to suppress speech, combining both formal and informal actions.").

¹²⁷ Petition at 6; see, e.g., Comment of American Society of Journalists and Authors *et al.* at 1-2 ("It is the full Commission—not the Media Bureau alone—that can change this precedent, and only through a transparent and deliberative process."); Public Knowledge Comment at 21 ("[The

comments soundly argues that the Commission should re-affirm its long-held precedents, and a full Commission decision would make clear that the bona fide news exemption applies evenhandedly, regardless of which political party holds power. The Commission should act expeditiously. Its actions are already chilling speech ahead of the fast-approaching 2026 general election, and every day of uncertainty compounds that harm.

Any other outcome faces barriers that are, at this point, largely insurmountable. The Media Bureau lacks authority to overturn longstanding Commission precedent on its own—under the Commission’s own regulations, matters presenting novel questions of law, fact, or policy must be referred to the full Commission. Chairman Carr himself recognized as much when he was a Commissioner, stating that “the [Media] Bureau does not have authority to” make “new and novel decisions without authorization from the full Commission.”¹²⁸ That principle binds the Commission now no less than it did then.

Nor could even the full Commission reverse course without satisfying requirements that this proceeding cannot meet. Under the Administrative Procedure Act, an agency changing its position must at minimum acknowledge that it is doing so and demonstrate good reasons for the new policy.¹²⁹ Where the change contradicts prior factual findings or disrupts serious reliance interests—and a twenty-four year old declaratory ruling on which ABC has structured its operations plainly qualifies—the agency must provide substantially more. And black letter administrative law requires the agency to treat like cases alike; the Commission’s failure to address

Bureau must also recognize that it acts on delegated authority. It has no power to alter precedent established by the full Commission.”).

¹²⁸ *Carr Statement on FCC’s Denial of WADL TV’s Application* (Apr. 23, 2024), <https://docs.fcc.gov/public/attachments/DOC-402042A1.pdf> (statement of then-Commissioner Carr criticizing a decision for being issued by a Commission bureau on delegated authority) (citing 47 C.F.R. § 0.283).

¹²⁹ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

identically situated talk radio programming is, on its own, the “quintessence of arbitrariness and caprice.”¹³⁰ Any reversal would also face the constitutional barriers described above—barriers that are not procedural inconveniences but fundamental limits on the Commission’s power.¹³¹

VII. CONCLUSION

As ABC emphasized in the Petition, it is committed to full compliance with the Communications Act and the Commission’s rules. ABC respectfully requests that the Commission remain similarly committed and affirm that—consistent with decades-old precedent—*The View* continues to qualify for the bona fide news interview exemption under Section 315(a).

Respectfully submitted,

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July 6, 2026

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¹³⁰ *Colorado Interstate Gas Co. v. FERC*, 850 F.2d 769, 774 (D.C. Cir. 1988).

¹³¹ *Cf.* Public Knowledge Comment at 31–34 (noting ways in which the Commission’s actions and surrounding circumstances seriously call into question the Commission’s motivations here).