REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

PO Box 34176
Washington, DC 20043
(202) 795-9300 • www.rcfp.org

PRESIDENT
Bruce D. Brown

STEERING COMMITTEE CHAIR
STEPHEN J. ADLER

VICE CHAIR
MARGARET LOW
WBUR

SECRETARY-TREASURER
MASSIMO CALABRESI
TIME

EXECUTIVE COMMITTEE MEMBERS
DAVID BOARDMAN
Temple University
THEODORE J. BOUTROUS, JR.
Gibson, Dunn & Crutcher LLP
GAIL GOVE
NBCUniversal
LAURA HANDMAN
Davis Wright Tremaine
DIEGO IBARGÜEN
Hearst
THOMAS C. RUBIN
OpenAI

STEERING COMMITTEE MEMBERS
WOLF BLITZER
CNN
SEWELL CHAN
Columbia Journalism Review
LYNETTE CLEMETSON
University of Michigan
JASON CONTI
Dow Jones
NIKHIL DEOGUN
Brunswick Group
MANNY GARCIA
Houston Landing
EMILIO GARCIA-RUIZ
The San Francisco Chronicle
JOSH GERSTEIN
POLITICO
ALEX GIBNEY
Jigsaw Productions
JAMES GRIMALDI
National Catholic Reporter
KAREN KAISER
The Associated Press
KIMBRIELL KELLY
DAVID LAUTER
Los Angeles Times, Ret.
COLLEEN MCCAIN NELSON
The McClatchy Company
JAMES NEFF
Philadelphia Inquirer
NORMAN PEARLSTINE
New York, New York
CHARLIE SAVAGE
The New York Times
JENNIFER SONDAG
Bloomberg News
NABIHA SYED
Mozilla
ADAM SYMSON
The E.W. Scripps Company
MATT THOMPSON
The New York Times
VICKIE WALTON-JAMES
NPR

Affiliations appear only for purposes of identification.

Submitted via ECFS March 7, 2025

The Honorable Brendan Carr
Chairman, Federal Communications Commission
45 L Street NE,
Washington, D.C. 20554

Re: MB Docket No. 25-73

Dear Chairman Carr:

The Reporters Committee for Freedom of the Press submits this comment to register its concern with the decision to reopen the above-docketed proceeding and to initiate this comment cycle regarding the news distortion complaint against CBS Broadcasting Inc., licensee of WCBS-TV in New York City. Founded in 1970, the Reporters Committee is a nonprofit organization that provides pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

To preserve the free press, a news distortion complaint must meet a high evidentiary bar before *any* enforcement action – which would include this request for public comment – is warranted or wise. *See In re Complaints Concerning CBS Program, Hunger in America*, 20 F.C.C. 2d 143, 151 (1969) ("[T]he Commission is not the national arbiter of the truth."); *Galloway v. FCC*, 778 F.2d 16, 23 (D.C. Cir. 1985) (explaining that the news distortion policy "requires a substantial prima facie case before proceeding against a broadcaster").

The Commission has made clear for six decades that "in the absence of extrinsic evidence . . . that a licensee has engaged in *deliberate* distortion, for the Commission to review [the] editing process would be to enter an impenetrable thicket." *In re Complaint Concerning the CBS Program 'The Selling of the Pentagon'*, 30 F.C.C. 2d 150, 152-53 (1971) (emphasis added). Or as a Supreme Court majority of Chief Justice John Roberts and Justices Elena Kagan, Brett Kavanaugh, Sonya Sotomayor, and Amy Coney Barrett put it last year in a case implicating similar First Amendment concerns: "On the spectrum of dangers to free expression, there are few greater than allowing the government to change the speech of private actors in order to achieve its own conception of speech nirvana." *Moody v. NetChoice, LLC*, 603 U.S. 707, 741-42 (2024).

There is zero evidence of distortion here, let alone substantial extrinsic evidence of deliberate distortion. On the face of the complaint, the only allegation, and the only evidence presented, is that CBS edited an interview to use certain footage in a promotional spot and other footage in

the ultimate broadcast, an entirely routine and unexceptional news reporting technique.

Indeed, here, the CBS licensee has produced to the Commission the raw interview footage and transcript, both of which have been made public by the Commission as part of this comment cycle. That material confirms that CBS featured certain portions of a 60 Minutes interview in a promotional spot on Face the Nation and then other portions in the ultimate broadcast. In fact, the record before the Commission shows that all CBS did was use different portions of answers to the same interview questions in the two clips. News organizations can and do edit news content every day, including for length and clarity. That cannot be and never has been a violation of the news distortion policy.

Further, the lack of extrinsic evidence of deliberate distortion in the complaint makes the Chair's decision to reopen this proceeding and initiate a public comment cycle doubly concerning. *See Galloway*, 778 F.2d at 20 (emphasizing that deliberate distortion must be supported by "evidence other than the broadcast itself, such as written or oral instructions from station management, outtakes, or evidence of bribery").

The danger of not requiring complainants to meet their burden before proceeding with a complaint is manifest. Interference by any regulatory body into the editorial judgments of journalists and news organizations threatens to both suppress news in the public interest and to interfere with the flow of information that the electorate needs to oversee the government. *See Moody*, 603 U.S. at 719 ("[I]t is no job for government to decide what counts as the right balance of private expression – to 'un-bias' what it thinks biased, rather than leave such judgments to speakers and their audiences."); *Miami Herald v. Tornillo*, 418 U.S. 241, 259 (1974) ("We have learned, and continue to learn, from what we view as the unhappy experiences of other nations where government has been allowed to meddle in the internal editorial affairs of newspapers."). And, since the inception of the news distortion rule, the Commission itself has emphasized this point. In *Hunger in America*, which first articulated the rule, the Commission stated that it would "eschew the censor's role" and avoid "efforts to establish news distortion in situations where Government intervention would constitute a worse danger than the possible rigging itself." 20 F.C.C. 2d at 151.

The news distortion rule is especially susceptible to improper use given that, absent careful limiting, it would necessarily intrude in editorial choices by the press. Given that risk, the U.S. Supreme Court has confirmed, repeatedly, that the Commission's authority to regulate the journalistic activities of licensees is exceedingly narrow. *See, e.g.*, *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 378 (1984) ("Unlike common carriers, broadcasters are entitled under the First Amendment to exercise the widest journalistic freedom consistent with their public duties.") (cleaned up); *see also Galloway*, 778 F.2d at 18 ("The limited scope of the [news distortion] rule is consistent with the principles of the First Amendment and congressional intent to allow licensees the maximum editorial freedom consistent with their role as public trustees."). Were the Commission to expand the news distortion policy to function as a "national arbiter of truth," *Hunger in America*, 20 F.C.C.2d at 151, it would carry acute risk that the government and complainants could use enforcement actions to harry licensees to suppress news perceived as unfavorable or to prompt more favorable coverage.

And that concern is far from hypothetical. Though lost to history today, the news distortion policy's more famous cousin, the fairness doctrine, was politicized in precisely this manner under administrations of both parties. Although the Justices were unaware of it at the time, the *Red Lion* case itself, upholding the constitutionality of the fairness doctrine, had its origins in a "politically motivated campaign to use the fairness doctrine to harass stations airing right-wing commentary, an effort inspired and managed by the White House and the Democratic National Committee and financed in large measure with political contributions." Fred W. Friendly, *What's Fair on the Air?* N.Y. Times (March 30, 1975), https://perma.cc/V6EE-E3R4; *Red Lion Broadcasting Co. FCC*, 395 U.S. 367 (1969); *see generally* Paul Matzko, The Radio Right (2020). The Nixon administration and its allies then sought to use targeted complaints against news coverage it perceived to be unfavorable. *See* Friendly, *supra* ("[*Red Lion*] would later embolden the Nixon Administration in its attempts to lean on broadcasters unfriendly to the President.").

We cite this history to underscore the danger that content-based regulations of news content pose to the free press. Because the news distortion policy carries such a heavy pleading burden for a complainant, it has not yet been politicized like the fairness doctrine during the Kennedy, Johnson, and Nixon administrations. That the Chair has chosen to reopen this proceeding, and to call for public comment, without any extrinsic evidence of deliberate distortion, is therefore deeply troubling.

* * *

For the reasons detailed above, the Reporters Committee urges you to immediately dismiss this inquiry and to ensure that the news distortion rule will not be used selectively to target news coverage perceived as critical or unfavorable. Please feel free to contact Gabe Rottman, the Reporters Committee's Vice President of Policy, at grottman@rcfp.org with any questions you may have.

Sincerely,

The Reporters Committee
for Freedom of the Press