REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

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Submitted via email December 24, 2025

The Honorable Ted Cruz
Senate Commerce, Science, and Transportation Committee
425 Russell Senate Building,
Washington, D.C. 20510

The Honorable Maria Cantwell
Senate Commerce, Science, and Transportation Committee
425 Russell Senate Building,
Washington, D.C. 20510

Re: Written Testimony Regarding FCC Oversight Hearing

Dear Chairman Cruz and Ranking Member Cantwell:

The Reporters Committee for Freedom of the Press respectfully submits this written testimony regarding the United States Senate Commerce, Science, and Transportation Committee's Oversight Hearing of the Federal Communications Commission, held on December 17, 2025.

In response to questioning about the FCC taking enforcement actions based on constitutionally-protected editorial decisions by media organizations, FCC Chairman Brendan Carr stated that the FCC has "walked back from enforcing the public interest standard, and I don't think that's a good thing." *See Oversight of the Federal Communications Commission*: *Hearing before the U.S. Senate Commerce, Science, and Transportation Committee*, 119th Cong. (Dec. 17, 2025). He also cited the news distortion policy and the broadcast hoax rule, which derive from the public interest standard, and said that his position "is that we should be enforcing those rules and policies." *Id.*; *see also* The Benny Show, 01:30 (Apple Podcasts, Sep. 17, 2025) (interview with Chairman Carr where he pledges to reinvigorate the public interest standard, including the news distortion policy and the broadcast hoax rule).

We write to identify the serious constitutional concerns with reviving enforcement under the public interest standard – through the news distortion policy or broadcast hoax rule – to improperly target news coverage perceived as hostile or unfavorable to the administration. We also write to highlight the steep evidentiary standards the Commission must meet when making any enforcement decisions pursuant to that policy or rule.

The Reporters Committee is the nation's largest non-profit focused on providing free legal services for journalists and news organizations. It was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas

forcing reporters to name confidential sources. Today, our attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

The FCC's news distortion policy gives the Commission narrow authority to investigate complaints about deliberate "distortion" by licensees. To preserve the free press, a news distortion complaint must meet a high evidentiary bar before any enforcement action 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 where the Court firmly affirmed crucial legal precedents that protect the editorial freedom of the press: "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).

The news distortion policy is especially susceptible to improper use given that, absent careful limiting, it would necessarily intrude in constitutionally-protected 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 critical 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.").

Chairman Carr's references to the broadcast hoax rule are equally concerning, given that, like the news distortion policy, it is strong medicine that must be applied sparingly. Under 47 C.F.R. § 73.1217, a licensee is not permitted to broadcast a story it (1) knows to be false, (2) will foreseeably cause substantial public harm if broadcast, and (3) the broadcast of that information does in fact directly cause substantial public harm. Though the modern rule was created in 1992 in response to a series of radio broadcast hoaxes, the issue dates back to Orson Welles's famous 1938 radio broadcast of "War of the Worlds" about a Martian invasion, which some listeners thought was real. *See* Justin Levine, *A History and Analysis of the Federal Communication Commission's Response to Radio Broadcast Hoaxes*, 52 Fed. Comm. L. J. 274, 277 (2000).

As it stands today, the broadcast hoax rule is applicable only in the rare cases where a deliberately false broadcast has caused actual harm to a licensee's audience. *See* 47 C.F.R. § 73.1217(c) (requiring that the public harm caused by a hoax "must begin immediately, and cause direct and actual damage to property or to the health or safety of the general public, or diversion of law enforcement or other public health and safety authorities from their duties").

For example, in January 1991, a radio program in Crestwood, Missouri, cut in the middle of a broadcast to the sound of an air raid siren and an announcement that the United States was under nuclear attack. The announcement was followed by the sounds of screams and explosions, and then a proclamation that the normal broadcast would resume shortly, followed by the station's music program. The prank came just two weeks after the United States entered the Persian Gulf War, and the station received an influx of concerned callers. At the time, the FCC only had two options to punish this type of incident: send a letter of admonishment or revoke the station's license. Other incidents, including a fake story about a volcanic eruption in Hartford, Connecticut, or that a radio station had been overtaken in Scottsdale, Arizona, resulted in an influx of 911 calls and the diversion of police resources. *See* Levine, *supra*, at 300–06. As a result, the FCC created the modern iteration of the broadcast hoax rule to allow the Commission to levy fines against broadcasters who create actual public harm, defined narrowly.

At the December 17 hearing, Chairman Carr remarked that broadcasters will recognize "perhaps for the first time in years," that his FCC will "hold them accountable," including through the broadcast hoax rule. When responding to several questions about whether the FCC should be engaged in enforcement actions on the basis of viewpoint, including actions targeting satire and routine news reporting, Chairman

Carr fell back on the broadcast hoax rule as a mechanism the Commission should be using in the "public interest." This statement is deeply troubling, given the narrow scope of the rule and the high evidentiary bar that must be cleared. Were Chairman Carr to use the broadcast hoax rule pretextually to target licensees' editorial autonomy for impermissible political purposes, that would clearly violate the First Amendment and present a significant and improper extension of the rule.

Finally, during the hearing, Chairman Cruz questioned the efficacy of the statutory public interest standard in the digital age, asking whether the concept has outlasted its usefulness and should be abandoned. Given the danger of direct censorship inherent in the misuse of the public interest standard, we certainly agree that Congress has a role to play in preserving the free flow of newsworthy information to the public by clarifying the scope of the standard to prevent overreach by the Commission. We urge Congress to do so. The Reporters Committee stands ready to provide additional input on ways Congress can help preserve the editorial autonomy of newsrooms and improve checks on the Commission's authority.

Thank you for the opportunity to submit written testimony on this important topic. Please do not hesitate to contact the Reporters Committee's Vice President of Policy Gabe Rottman with any questions at grottman@rcfp.org.

Sincerely,

The Reporters Committee
for Freedom of the Press