

September 30, 2025

Brendan Carr
Chairman
Federal Communications Commission

Dear Chairman Carr:

We are more than seventy scholars of the First Amendment, constitutional law, telecommunications law, and journalism, First Amendment litigators, and civil society organizations committed to free speech. We write regarding your recent suggestion that ABC-affiliated broadcast licensees violated their “public interest” obligations, engaged in “news distortion,” or perpetrated a hoax when they aired comedian Jimmy Kimmel’s comments about partisan reactions to Charlie Kirk’s murder. “We can do this the easy way or the hard way,” you warned them, adding: “These companies can find ways to take action on Kimmel or, you know, there’s going to be additional work for the FCC ahead.”¹

“It is unbelievably dangerous for government to put itself in the position of saying we’re going to decide what speech we like and what we don’t, and we’re going to threaten to take you off air if we don’t like what you’re saying.”² Thus responded, Sen. Ted Cruz, Chairman of the Senate Commerce Committee, which oversees the FCC. “I gotta say, that’s right out of *Goodfellas*,” Cruz continued: “That’s right out of a mafioso coming into a bar going, ‘nice bar you have here, it’d be a shame if something happened to it.’³ We couldn’t have put it better: your extortion is “dangerous as hell.”⁴

Actually, you put it perfectly back in 2019: “The FCC does not have a roving mandate to police speech in the name of the ‘public interest.’”⁵ Yet that’s exactly what you’re now doing. As a former General Counsel of the FCC, you know the “FCC does not have the authority, the ability, or the constitutional right to police content or punish broadcasters for speech the government dislikes.”⁶

¹ PalmBeachPost, *FCC vs. Jimmy Kimmel: Brendan Carr condemns Charlie Kirk comments, challenges local broadcasters*, YouTube (Sept. 19, 2025), <http://bit.ly/3VKEXns>.

² Verdict with Ted Cruz, *Jimmy Kimmel Fired*, YouTube (Sept. 19, 2025) (*Cruz Comments*), <http://bit.ly/3Kt9mEr>.

³ *Id. See generally Goodfellas* (Warner Bros. 1990).

⁴ *Cruz Comments*.

⁵ Brendan Carr (@BrendanCarrFCC), X (Feb. 14, 2019, 10:05 AM), <http://bit.ly/4npMJzd>.

⁶ Fed. Comm’ns Comm’n, *Commissioner Gomez on Jimmy Kimmel Suspension and Government Censorship*, <http://bit.ly/4pN4slH> (Sept. 18, 2025).

The Supreme Court has been clear: government has no “power to restrict expression because of its message, its ideas, its subject matter, or its content,” and even false speech is protected by the First Amendment.⁷ 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 expression—to ‘unbias’ what it thinks biased, rather than to leave such judgments to speakers and their audiences.”⁸ Indeed, when Congress created the FCC in 1934, it explicitly denied “the Commission the power of censorship” or the ability to “interfere with the right of free speech.”⁹

You suggested that ABC affiliates may have violated the FCC’s 1949 News Distortion Policy. This requires a “deliberate distortion,” as distinct from “mere inaccuracy or difference of opinion.”¹⁰ There must be extrinsic evidence (*i.e.*, beyond the broadcast itself) demonstrating that the broadcaster deliberately distorted or staged the news.¹¹ The “crucial distinction” drawn by the FCC is that “between deliberate distortion and mere inaccuracy or difference of opinion.”¹² Likewise, the FCC’s Broadcast Hoax Rule applies if a licensee *knows* that information it broadcasts is false.¹³

Both doctrines set a very high bar—even higher than in defamation suits brought by public figures, who may establish that a defendant acted with the necessary “actual malice” *either* by showing that they acted with “knowledge that [a statement] was false *or* with reckless disregard of whether it was false or not.”¹⁴ Kimmel may have been mistaken about some aspects of the public reaction to the rapidly evolving story of Kirk’s murder, but it would be exceedingly difficult to prove that he *knew* his comments were false.

Kimmel, of course, works for Disney, not ABC-affiliated stations, but both the policy and the rule apply only to distortions made by broadcast licensees themselves.¹⁵ Even then, extrinsic evidence must show that the distortion involved the “principals, top management, or news

⁷ United States v. Alvarez, 567 U.S. 709, 718 (2012) (plurality opinion).

⁸ Moody v. NetChoice, LLC, 603 U.S. 707, 719 (2024).

⁹ 47 U.S.C. § 326.

¹⁰ Galloway v. FCC, 778 F.2d 16, 20 (D.C. Cir. 1985).

¹¹ See *Hunger in America*, 20 F.C.C.2d 143, 150-51 (1969).

¹² 778 F.2d at 12.

¹³ 47 C.F.R. § 73.1217.

¹⁴ *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964) (emphasis added).

¹⁵ Fed. Commc’n’s Comm’n, Letter re *Preserving the First Amendment*, GN Docket No. 25-11 (Jan. 16, 2025), <https://docs.fcc.gov/public/attachments/DOC-408899A1.pdf>. *See also* 47 C.F.R. § 73.1217(a) (“No licensee or permittee of any broadcast station shall broadcast false information concerning a crime or a catastrophe if: (1) The licensee knows this information is false; (2) It is foreseeable that broadcast of the information will cause substantial public harm, and (3) Broadcast of the information does in fact directly cause substantial public harm.” (emphasis added)).

management” of the licensee, as opposed to other employees.¹⁶ That’s why the FCC, under Democratic leadership, refused to consider revoking a Fox affiliate’s license¹⁷ even after a state court ruled that it was “CRYSTAL clear that none of the Statements” carried by Fox News cable network “relating to Dominion [Voting Systems] about the 2020 election are true.”¹⁸

The Commission and courts established these limits to respect the First Amendment and the Communications Act’s prohibition on censorship by the FCC. By ignoring these limits, you are doing what Ajit Pai, the last Republican FCC Chair, once declared the FCC must never do: “act as a self appointed, free-roving arbiter of truth in journalism.”¹⁹

What makes your threats against ABC licensees “dangerous as hell” is that they work *despite* their unconstitutionality. The Supreme Court recently noted that, “the greater and more direct the government official’s authority, the less likely a person will feel free to disregard a directive from the official.”²⁰ Your threats exploit the chasm between the FCC’s *apparent* authority over broadcasters and what the courts would actually uphold if any licensee had the courage to risk everything by spending years in litigation. You are leveraging flimsy legal claims to coerce changes in speech.²¹ This is classic jawboning. Facing loss of their licenses, or regulatory harassment, many will interpret your threats as “an offer [they] can’t refuse.”²²

Indeed, your threats have achieved at least some of their intended result: Disney suspended Kimmel “to avoid further inflaming a tense situation” and reinstated him six days later only after “having thoughtful conversations with Jimmy[.]”²³ Upon his return, Kimmel thanked Disney for reinstating him, but noted that this, “unfortunately, and I think unjustly, this puts

¹⁶ *Hunger in America*, 20 F.C.C.2d at 150.

¹⁷ Memorandum Opinion and Order at 6 & nn.48-49, GN Docket 25-11, MB Docket No. 23-293 (Jan. 16, 2025), <https://docs.fcc.gov/public/attachments/DA-25-57A1.pdf>.

¹⁸ US Dominion, Inc. v. Fox News Network, Inc., 293 A.3d 1002 (Del. Super. Ct. 2023) (emphasis original).

¹⁹ Fed. Commc’ns Comm’n, *Free Press Emergency Petition For Inquiry Into Broadcast of False Information on Covid-19* (Apr. 6, 2020), <http://bit.ly/46rJm4U>.

²⁰ Nat’l Rifle Ass’n of Am. v. Vullo, 602 U.S. 175, slip op. at 1, 12 (2024).

²¹ Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 67 (1963) (holding unconstitutional a state commission’s practice of informally pressuring book distributors not to carry “objectionable” publications) (“the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation” can be “informal censorship”); Nat’l Rifle Ass’n of Am. v. Vullo, 602 U.S. 175, slip op. at 1, 12 (2024) (“Government officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors.”). The Supreme Court’s standard for proving jawboning would easily be satisfied by your threats: “To state a claim that the government violated the First Amendment through coercion of a third party, a plaintiff must plausibly allege conduct that, viewed in context, could be reasonably understood to convey a threat of adverse government action in order to punish or suppress the plaintiff’s speech.” *Id.*

²² *The Godfather* (Francis Ford Coppola dir., Paramount Pictures 1972).

²³ NPR Staff, *Jimmy Kimmel will be back on Air on Tuesday, but not all stations will carry it*, NPR (Sept. 22, 2025), <http://bit.ly/4mF9q12>.

them at risk” from an FCC “using mob tactics to suppress free speech.”²⁴ Regarding Kirk, he struck a notably different chord, calling for forgiveness and reconciliation.

Make no mistake: critical speech has been chilled. Many broadcasters, journalists and comedians will now self-censor to avoid retaliation. Disney, a company worth over \$200 billion, bent under pressure, even if it did ultimately not break completely. Even after Kimmel’s reinstatement, two broadcaster groups, representing “almost a quarter of ABC affiliate stations,”²⁵ refused to run the show for another week; they reconsidered only after intense public outcry.²⁶ One group, Nexstar, is particularly vulnerable: its planned merger with Tegna, a deal worth \$6.2 billion, requires FCC approval.²⁷

In general, “anticipatory obedience” undermines democracy and the rule of law. “Most of the power of authoritarianism is freely given,” warns historian Timothy Snyder.²⁸ “In times like these, individuals think ahead about what a more repressive government will want, and then offer themselves without being asked. A citizen who adapts in this way is teaching power what it can do.”²⁹ A lesson has been learned here: jawboning works, at least partially.

You claim not to have threatened anyone or to have prejudged whether ABC stations have violated the law by airing Kimmel’s remarks.³⁰ But Sen. Cruz understood your message perfectly—“nice bar you have here, it’d be a shame if something happened to it”³¹—and so would every company with something to lose. An agency’s “reputation for objectivity” is in question if “a disinterested observer may conclude that it has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.”³² Public comments evincing pre-judgment have disqualified commissioners from judging cases and “[w]herever there may be reasonable suspicion of unfairness,” courts say “it is best to disqualify.”³³ After an agency has already decided a case, courts have entirely voided agency decisions because

²⁴ Jimmy Kimmel Live, *Jimmy Kimmel is Back!*, YouTube (Sept. 23, 2025), <http://bit.ly/470Lfpj>.

²⁵ Adrian Horton & Anna Betts, *Jimmy Kimmel Says silencing Comedians is “Anti-American,” as his show Returns After Suspension*, The Guardian (Sept. 24, 2025), <http://bit.ly/3WdHTci>.

²⁶ Ted Johnson, *Sinclair Will Preempt Jimmy Kimmel’s Show When It Returns To ABC But Says Discussions Are Ongoing With Network*, Deadline (Sept. 22, 2025), <http://bit.ly/42NPWQS>. Ben Mullin (@BenMullin), X (Sept. 23, 2025, 10:47 AM), <http://bit.ly/3KqwinP>.

²⁷ Dan Whateley, *A \$6.2 billion deal looms over Jimmy Kimmel’s suspension*, Business Insider (Sept. 18, 2025), <http://bit.ly/3IATyyW>.

²⁸ Timothy Snyder, *On Tyranny*, Timothy Snyder, (2025), <https://timothysnyder.org/on-tyranny>.

²⁹ *Id.*

³⁰ Brendan Carr (@BrendanCarrFCC), X (Sept. 22, 2025, 1:48 PM), <http://bit.ly/4gMLsQh>.

³¹ *Cruz Comments* *supra* note 2.

³² Gilligan, Will Co. v. SEC, 267 F.2d 461, 468-69 (2nd Cir. 1959).

³³ American Cyanamid Co. v. FTC, 363 F.2d 757, 767 (6th Cir. 1966).

of a Commissioner's prior public accusations that specific companies had violated the law.³⁴ Such statements may "entrench[] a Commissioner in a position which he has publicly stated, making it difficult, if not impossible, for him to reach a different conclusion."³⁵ Given your statements, no reasonable person would believe you could fairly apply the law here. Thus, your threats violate not only the First Amendment, but also the Constitution's guarantees of due process.

Your jawboning of Disney/ABC is the latest in a pattern of escalating attacks on broadcasters and other media. You have reinstated complaints that the former leadership of the Commission closed in order to respect the First Amendment: allegations of news distortion by Disney/ABC regarding the moderation of a presidential debate,³⁶ and against CBS regarding editing of an election-season interview with then-presidential candidate Kamala Harris on *60 Minutes* and *Face the Nation*.³⁷ You held up the merger of Paramount (parent company of CBS) and Skydance³⁸ until Paramount agreed to settle, for \$16 million, a lawsuit filed by President Donald Trump regarding the *60 Minutes* interview, which "[l]egal scholars nationwide agreed ... was without merit."³⁹ The two companies agreed to create an internal ombudsman "who will receive and evaluate any complaints of bias or other concerns involving CBS."⁴⁰ You trumpeted this nominally voluntary concession as a way to "root out the bias that has undermined trust in the national news media,"⁴¹ but the ombudsman is

³⁴ Because regulatory agencies carefully avoided prejudgment for decades, there is scant litigation on the question. The most relevant cases involve the Federal Trade Commission in the 1960s. For example, FTC Chair Rand Paul Dixon once told an audience that "your problems are ours because they arise from practices prohibited by two of the most important statutes administered by the Commission... You know the practices — price fixing, price discrimination, and overriding commissions on TBA. You know the companies — Atlantic, Texas, Pure, Shell, Sun, Standard of Indiana, American, Goodyear, Goodrich, and Firestone." *Texaco, Inc. v. FTC*, 336 F.2d 754, 759-60 (D.C. Cir. 1964). The court voided a subsequent FTC order. *Id.* The Court voided another FTC order because Dixon's public remarks clearly alluded to one company's guilt even though he did not specifically name it. *Cinderella Career Finishing Sch. v. FTC*, 425 F.2d 583, 590 (D.C. Cir. 1970).

³⁵ *Id.*

³⁶ Dominick Mastrangelo, *FCC reopens complaints against top broadcasters*, The Hill (Jan. 23, 2025), <http://bit.ly/46u2sr1>. See also Federal Commc'n's Comm'n, *Enforcement Bureau Letter*, DOC-408880A1 (Jan. 16, 2025), <http://bit.ly/3KulGEk>.

³⁷ Federal Commc'n's Comm'n, *FCC Establishes MB Docket No. 25-73 and Comment Cycle for News Distortion Complaint Involving CBS Broadcasting Inc., Licensee of WCBS, New York, NY, DA-25-107* (rel. Feb. 5, 2025), <http://bit.ly/46u2tLB>.

³⁸ Fed. Commc'n's Comm'n, *FCC Approves Skydance's Acquisition of Paramount CBS* (Jul. 24, 2025), <http://bit.ly/46T0xLQ>.

³⁹ Ken Paulson, *What you need to know about Trump's settlement with Paramount*, MTSU Free Speech Center (July 2, 2025), <http://bit.ly/4pMeeol>.

⁴⁰ *In the Matter of Applications for Consent to the Transfer of Control of Paramount Global*, MB Docket No. 24-275, Adopted July 24, 2025, ¶ 59 (citing Letter from Stephanie Kyoko McKinnon, General Counsel and Co-President Business Operations, Skydance Media to Hon. Brendan Carr, Chairman, FCC, MB Docket No. 24-275 (filed July 22, 2025), <http://bit.ly/3KI79ej>).

⁴¹ Office of Chairman Brendan Carr, *FCC Approves Skydance's Acquisition of Paramount CBS* (July 24, 2025), <http://bit.ly/4mKJDoz>.

nothing less than your man on the inside—another move straight out of *Goodfellas*. You have even threatened media that are clearly beyond the FCC’s jurisdiction, such as interrogating YouTube TV about its decision not to carry a Christian broadcaster.⁴² You have no authority to do *any* of this—to impose your personal vision of “the right balance of private expression” or to “un-bias” the media.⁴³

You claim that Disney’s decision to suspend Kimmel merely reflected viewer preferences, saying: “We are in the midst of a massive shift in dynamics in the media ecosystem for lots of reasons, again, including the permission structure that President Trump’s election has provided.”⁴⁴ You have no business telling publishers what their viewers really want, let alone trying to shape the “permission structure” in which media companies make editorial judgments. As you yourself have declared, a “newsroom’s decision about what stories to cover and how to frame them should be beyond the reach of any government official, not targeted by them.”⁴⁵ The First Amendment requires you to “leave such judgments to speakers and their audiences.”⁴⁶ In a word: “*fuggedaboutit!*”⁴⁷

Sincerely,

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⁴² Brendan Carr (@BrendanCarrFCC), X (Mar. 7, 2025), <http://bit.ly/46Zoq5o>.

⁴³ *Moody*, 603 U.S. at 719.

⁴⁴ Dan Mangan, *FCC Chair Carr says ‘we’re not done yet’ after Jimmy Kimmel suspension by ABC*, CNBC (Sept. 18, 2025), <http://bit.ly/4884dvm>.

⁴⁵ Fed. Commc’ns Comm’n, FCC Commissioner Carr Responds To Democrats’ Efforts to Censor Newsrooms, (Feb. 22, 2021), <http://bit.ly/3IQ9sFD>.

⁴⁶ *Moody*, 603 U.S. at 719.

⁴⁷ *Donnie Brasco* (Mandalay Pictures 1997) (at 1:14:52).

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