

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
News Distortion Complaint Involving CBS) MB Docket No. 25-73
Broadcasting Inc., licensee of WCBS,)
New York, NY)

REPLY COMMENTS OF FREE PRESS

Free Press submits these reply comments in response to the Federal Communications Commission’s (Commission or FCC) request for comment on the Center for American Rights’ (CAR) news distortion complaint¹ (Complaint) against CBS. This reply: (1) shows that the record overwhelmingly supports the arguments raised in Free Press’s Comment;² (2) explains where the few comments supporting the Complaint fall short; and (3) emphasizes that this docket, and its legitimization of a threadbare complaint, will impact journalists and their editorial freedoms (and likely already has). Bolstered by the record, Free Press emphasizes the impropriety of anything less than dismissal of the Complaint and closure of this docket.

I. THE COMMENTS SUPPORT THE COMPLAINT’S DISMISSAL AND QUESTION THE PROPRIETY OF THIS DOCKET.

Commenters generally confirmed the issues raised in Free Press’s Comment. First, the record reflects consensus that the transcript revealed there to be no distortion by CBS, and that instead, its choice to air different parts of former Vice President Harris’s longer response was basic

¹ Center for American Rights, Complaint (filed Oct. 16, 2024) [hereinafter Compl.].

² Comments of Free Press, MB Docket No. 25-73 (filed Mar. 7, 2025) [hereinafter Free Press Comments]. Unless otherwise stated, all comments were filed in MB Docket No. 25-73 on March 7, 2025.

editorial discretion. For example, the Radio Television Digital News Association (RTDNA) explained that broadcasters “routinely shorten responses” to “save valuable airtime” and “effectively convey information, working within the time constraints and challenges unique to each platform.”³

Second, multiple filings flagged the procedural peculiarity of opening this docket. Public Knowledge, for instance, noted that the Complaint “represents a procedural anomaly by operating outside any licensing proceeding” and that “[f]urther compounding this procedural irregularity is the unprecedented nature of this action as a reopening of an already-dismissed complaint,” with no appeal or new evidence justifying the reversal.⁴ As Free Press predicted,⁵ the incongruity between the facially deficient Complaint and the Commission’s disproportionate recognition of it aroused suspicion.⁶ FIRE understandably drew the conclusion that “[t]his proceeding is designed to exert maximum political leverage on the CBS network at a time when President Trump is engaged in frivolous litigation against it over the same *60 Minutes* broadcast, with the FCC using other regulatory approvals the network needs to exert added pressure.”⁷ By overstepping so

³ Comments of RTDNA at 5 [hereinafter RTDNA Comments]; *see also* Comments of TechFreedom at 6 [hereinafter TechFreedom Comments] (“Such editing lies at the core of what broadcasters do. They have to. When you have raw footage exceeding the time available, edits *must* occur. And those edits—those editorial judgments—lie at the core of broadcasters’ First Amendment protections”).

⁴ Comments of Public Knowledge at 2, 4 [hereinafter PK Comments]; *see also* Comments of Foundation for Individual Rights and Expression at 6 [hereinafter FIRE Comments]; Comments of Christopher Terry and J. Israel Balderas at 3–4 (filed Mar. 2, 2025) [hereinafter Terry & Balderas Comments] (raising concerns about the Commission reversing course without a formal vote).

⁵ Free Press Comments at 12 n.12.

⁶ *See, e.g.*, FIRE Comments at 7; PK Comments at 6–7; Terry & Balderas Comments at 6.

⁷ FIRE Comments at 7–8; *see also* PK Comments at 6 (“The CBS news distortion investigation resembles less a neutral application of broadcasting standards and more a concerning case of weaponizing government oversight tools to settle political scores or pursue personal vendettas.”).

blatantly, the Commission has drawn more attention to the question of whether its actions are consistent with its regulatory authority and the Constitution than it has to CBS's editing choices.⁸

Third, the very few institutional commenters supporting the Complaint attempted to provide rationales for why CBS's editing amounted to distortion, but these simply confirm the impropriety of the Commission's involvement here. For example, the America First Policy Institute (AFPI) asserted that CBS's editing made Harris seem "more polished" and created "a misleadingly favorable and persuasive portrayal of her responses."⁹ As Free Press and others have noted in the record, that sort of assessment is not for the Commission to make.¹⁰

Fourth, commenters mostly found the Complaint deficient to raise a cognizable news distortion claim. Multiple filings pointed out that the Complaint fails to allege a prima facie case

⁸ See FIRE Comments at 29 ("This proceeding is an illegitimate show trial, and for the FCC to conduct it flies in the face of recent—and unanimous—Supreme Court authority barring unconstitutional jawboning."). Indeed, the Commission's overreach has encouraged commenters to take the opportunity to question its limited authority to regulate broadcasters' content consistent with the First Amendment under the scarcity rationale. See, e.g., Comments of National Association of Broadcasters at 16 [hereinafter NAB Comments]; FIRE Comments at 22; Comments of the Center for Democracy and Technology at 8 [hereinafter CDT Comments]; Comments of CBS Broadcasting, Inc. at 12 [hereinafter CBS Comments].

⁹ Comments of AFPI at 1 (filed Mar. 6, 2025) [hereinafter AFPI Comments]; see also Comments of CAR at 7 [hereinafter CAR Comments] (complaining that CBS's editing "ma[de] her appear infinitely more in command and presidential"); Comments of Fair Election Fund at 4–5 (filed Mar. 6, 2025) [hereinafter Fair Election Fund Comments] (likewise arguing that the interview portrayed Harris in a "more favorable light").

¹⁰ See Free Press Comments at 9–10 (citing *Complaints Covering CBS Program "Hunger in America"*, Memorandum Opinion, 20 F.C.C.2d 143, 147 (1969) [hereinafter, *Hunger in America*]). Furthermore, several commenters pointed out that questions about Harris's suitability as a presidential candidate are best left to the marketplace and out of the Commission's hands. See, e.g., Comments of Fair Media Council at 2 (filed Mar. 5, 2025) [hereinafter Fair Media Council Comments] ("[I]f the argument is that the editing made Ms. Harris a stronger candidate and was done to tip the scales in her favor, the outcome of the election proves otherwise."); PK Comments at 9 ("CBS broadcast both clips to the public. Any viewer—such as CAR—could judge whether Harris's answers were inconsistent. Critics of Harris and supporters of Trump—such as CAR—were free to use both clips to make their case to the public that Harris provided inconsistent answers on matters of public importance."); TechFreedom Comments at 8–10.

of news distortion.¹¹ Even more flagged that the Complaint lacks *any* extrinsic evidence supporting an inference that CBS or WCBS intended to mislead viewers, the most crucial requirement of the inquiry.¹² The record also reflects the fact that the Complaint fails to allege or support the inference that the licensee or management directed any deliberate distortion.¹³

Fifth, like Free Press, several other commenters identified CBS's conduct as precisely the type of basic press freedom protected by the First Amendment.¹⁴ Others also identified Section 326 of the Communications Act as a statutory barrier to the Commission's actions here.¹⁵

Finally, several commenters also noted the irony of Chairman Carr's vocal advocacy for free speech in light of the Commission establishing this docket, which actively undermines it.¹⁶ For example, Public Knowledge situated the Commission's choice to revive the Complaint within the greater context of Chairman Carr also sending letters to PBS and NPR about underwriting practices and to Comcast about DEI commitments, as well as initiating an investigation into KQED's coverage of an ICE raid.¹⁷

¹¹ See NAB Comments at 6; RTDNA Comments at 10–11.

¹² See Comments of Reporters Committee for Freedom of the Press at 1–2 [hereinafter RCFP Comments] (“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.”); see also CBS Comments at 7; CDT Comments at 4–5; FIRE Comments at 13–15; NAB Comments at 6; PK Comments at 8–9; RTDNA Comments at 11–12; Terry & Balderas Comments at 3; TechFreedom Comments at 6.

¹³ See, e.g., NAB Comments at 7.

¹⁴ See CDT Comments at 6; FIRE Comments at 20–21, 24–27; NAB Comments at 16–17; PK Comments at 9–10; RTDNA Comments at 3; Terry & Balderas Comments at 6–7.

¹⁵ See CBS Comments at 13–15; FIRE Comments at 17–18; NAB Comments at 9; PK Comments at 10–11; RTDNA Comments at 8–9.

¹⁶ See CBS Comments at 18–19; FIRE Comments at 17; RTDNA Comments at 7–8.

¹⁷ PK Comments at 12–13; see also Terry & Balderas Comments at 8–9 (“Chairman Carr’s response [to Harris’s SNL appearance] was to take to political[ly] friendly news outlets to decry this situation as a violation of NBC’s Equal Time Obligations under §315. Yet a FOIA request

II. COMMENTS SUPPORTING THE COMPLAINT ARE FATALLY FLAWED BECAUSE THEY IGNORE HOW THE COMMISSION HAS PREVIOUSLY ANALYZED NEWS DISTORTION.

Three organizations' comments supported the Complaint, but each ignored how the Commission has actually applied its new distortion policy in practice. First and fatally, none of these comments in support of the Complaint can point to any intent to distort, a key requirement for a cognizable news distortion claim. So they gloss over it. AFPI correctly identified that a news distortion claim must involve an allegation of deliberate intent to mislead, but only conclusorily stated that "CBS's deliberate omission of key portions of Harris's interview demonstrates a calculated effort to manipulate the narrative."¹⁸ It gestured at the unedited outtakes of the interview; but as stated multiple times in this record, the outtakes merely show that "60 Minutes" and "Face the Nation" used different portions of the same answer and do not indicate that CBS made that choice based on an intent to mislead the public.¹⁹ CAR and the Fair Election Fund similarly posited that the unedited outtakes show that CBS aired different portions of Harris's longer answer,²⁰ but that is distinct from evidence that CBS intended to mislead the public. On that front, they do not, and cannot, proffer a shred of evidence.

demonstrated that . . . Carr not only kn[e]w NBC had complied with their obligations, he himself had even emailed links that included copies of the relevant documents to the producers at Fox News before going on the air to suggest that NBC was violating the law."); CDT Comments at 10–11.

¹⁸ AFPI Comments at 2–3.

¹⁹ Additionally, AFPI stated that the "court's" ruling in *Hunger in America* is instructive at this step, holding CBS "responsible" for selective editing of a news report. *Id.* at 3. This is a flatly incorrect statement of the Commission's conclusion there, which was instead that "no further action is warranted here with respect to the issue of slanting the news." *Hunger in America*, 20 F.C.C.2d at 151. *Hunger in America* is instructive, not for the reason AFPI states but because it stands for the proposition that it is inappropriate for the Commission to "enter the quagmire of investigating the credibility of the newsman and the interviewed party" where someone merely claims that a person quoted on a news program "very clearly said something else." *Id.* at 150–51.

²⁰ CAR Comments at 3; Fair Election Fund Comments at 5.

These comments rely on faulty reasoning on other grounds as well. For example, the Fair Election Fund argued, “Rearranging is not editing!”²¹ But this either grossly misunderstands the Commission’s news distortion policy, or deliberately ignores how it has been applied. *Galloway* and *WPIX, Inc.* directly contradict the Fair Election Fund’s assertion.²² The Fair Election Fund also took issue with CBS’s “failure” to “report on the plagiarism allegations against Ms. Harris.”²³ This gripe is a textbook type of inquiry in which the Commission has stated that it cannot involve itself—an editorial organization’s choice of what to include in its coverage is a pure question of journalistic judgment.²⁴ Additionally, the Fair Election Fund accused CBS of violating the Federal Election Campaign Act,²⁵ but that is not a matter over which this Commission has jurisdiction.

AFPI’s comment argued that the First Amendment is not a limiting factor for FCC enforcement here, as fraud is beyond the scope of First Amendment protection.²⁶ This claim is inapposite to the facts at issue in the Complaint. As established in the record, there is no false statement of fact implicated here; CBS aired Harris’s actual answers to the question posed, but

²¹ Fair Election Fund Comments at 3.

²² See Free Press Comments at 22–23 (listing various editorial choices the Commission has found to be permissible, including rearranging footage, in *Galloway v. FCC*, 778 F.2d 16 (D.C. Cir. 1985) and *Applications of WPIX, Inc. (WPIX), New York, New York for Renewal of License; Forum Communications, Inc., New York, New York for Construction Permit for New Television Broadcasting Station*, 68 F.C.C.2d 381 (1978)).

²³ Fair Election Fund Comments at 5.

²⁴ See *Complaints Concerning Network Coverage of the Democratic National Convention*, 16 F.C.C.2d 650, 656 (1969) (“But the judgment when to turn off the lights and send the cameras away is again not one subject to review by this Commission. We do not sit to decide: ‘Here the licensee exercised good journalistic judgment in staying’; or ‘Here it should have left.’”).

²⁵ See Fair Election Fund Comments at 6–9.

²⁶ Additionally, on its point about the fairness doctrine, AFPI failed to recognize that the Commission retired the fairness doctrine almost forty years ago. See *Syracuse Peace Council v. FCC*, 867 F.2d 654, 657 (D.C. Cir. 1989).

simply shortened them. Neither the Complaint nor its supporters have done any of the necessary work to establish that this standard editorial choice constitutes otherwise.

Furthermore, even if there were falsity involved, false speech still receives protection under the First Amendment. The Supreme Court has noted, “[a]bsent from those few categories where the law allows content-based regulation of speech is any general exception to the First Amendment for false statements. This comports with the common understanding that some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, expression the First Amendment seeks to guarantee.”²⁷ The cases AFPI cited fall under those few identified categories,²⁸ but the editorial decision that CBS made here does not.

AFPI’s assertion that CBS’s actions here are not protected by the First Amendment has a calamitous logical conclusion—if CBS is presumed to have engaged in “fraud” by shortening Harris’s response, then journalists risk their constitutional protection any time they shorten or edit their interviews with politicians.

²⁷ See *United States v. Alvarez*, 567 U.S. 709, 718–19 (“Even when considering some instances of defamation and fraud, moreover, the Court has been careful to instruct that falsity alone may not suffice to bring the speech outside the First Amendment.”); *N.Y. Times v. Sullivan*, 376 U.S. 254, 271–72 (1964) (recognizing that an “erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the breathing space that they need to survive”) (internal citations omitted).

²⁸ See *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 478 (1976) (commercial fraud); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974) (defamation); *League of Women Voters of Kan. v. Schwab*, 317 Kan. 805 (2023) (fraud). Free Press notes that the Supreme Court distinguished fraud and defamation cases from merely false statements in terms of First Amendment protection, and that AFPI does not establish why, even if one were to assume CBS aired a false statement, it would be tantamount to fraud. See *Alvarez*, 567 U.S. at 719 (“These quotations all derive from cases discussing defamation, fraud, or some other legally cognizable harm associated with a false statement, such as an invasion of privacy or the costs of vexatious litigation. . . . The Court has never endorsed the categorical rule the Government advances: that false statements receive no First Amendment protection.”). Additionally, though AFPI cited *Alvarez* in support of its argument that CBS should not receive protection here, the Supreme Court in that case invalidated the Stolen Valor Act for violating the First Amendment, as false statements do receive constitutional protection. See *id.* at 722, 729–30.

CAR's comment is of no persuasion either. It largely relied on *Serafyn v. FCC* to support its Complaint.²⁹ But it divorced *Serafyn* from its underlying facts, and misapplied the standard stated therein. First, the petitioner in *Serafyn* made more significant allegations of distortion, including “misleading sound editing, incorrect language translation, and soundbites of interviews taken out of context,” all while submitting significantly more evidence than CAR did in its Complaint, including “the broadcast itself, outtakes of interviews, a letter from an interviewee stating that his words were taken out of context, a statement from another interviewee that the producer of the show misled him, viewer letters, a dictionary supporting petitioner’s claim that a word in the broadcast was mistranslated, historical information about the subject matter covered, information that CBS had rebuffed the offer of a history professor to help it understand the subject, and ‘seven other items of evidence.’”³⁰ CAR also ignored the analytical framework articulated by the D.C. Circuit for news distortion complaints, which at its core focuses on extrinsic evidence indicating an intent to distort.

Finally, CAR, perhaps sensing the limits of its news distortion claim, laid its motivating concern bare in its comment. It noted, “[t]he problem is that viewers are not getting a marketplace of ideas on broadcast news. They are getting a monolith of the same ideas whether they tune in to CBS, NBC, ABC, or PBS. The slanting, suppression, and distortion always seems to help one side and hurt the other side. That cannot continue, because it does not serve the public.”³¹ As the National Association for Broadcasters noted, however, this grievance sounds not in news

²⁹ See CAR Comments at 2–3.

³⁰ Free Press Comments at 19–20 (citing *Serafyn v. FCC*, 148 F.3d 1213, 1217–18, 1223 (D.C. Cir. 1998)).

³¹ CAR Comments at 9.

distortion, but in the fairness doctrine.³² That doctrine has been extinct for the precise free speech concerns that flare up from the contrived Complaint.³³

III. JOURNALISTS BEAR THE ULTIMATE COST OF THE COMMISSION'S ACTIONS HERE.

Much has been made in the record about the deficiencies of the Complaint and the impropriety of its revival. But the very material burden this spectacle imposes on journalists cannot be overstated. As Commissioner Gomez has noted, the Commission's speech-restrictive actions have already prompted broadcasters to tell "their reporters to be careful about how they cover stories because they fear government retribution."³⁴ This is precisely the chilling effect that Free Press warned of in its Comment, and that the First Amendment guards against.³⁵

The record reflects broad consensus about this concern. The Reporters Committee for Freedom of the Press flagged that interference by the Commission "threatens to suppress the news in the public interest and to interfere with the flow of information that the electorate needs to oversee the government."³⁶ The Fair Media Council asserted that encroaching on CBS's free speech here "will result in a trickle-down effect throughout all American media outlets, regardless of platform or channel"—and ultimately "the trickle down will restrict what every American can

³² See NAB Comments at 3.

³³ CAR also outlined "steps" for CBS to take "to minimize the risk of future news distortion." Compl. at 10. While these are certainly policy practices CBS could choose to adopt on its own volition, Free Press hopes it is obvious that these are not obligations that the Commission can impose on CBS for a variety of reasons, including the limits of its own authority and First Amendment restrictions on compelled speech.

³⁴ Anna Gomez (@agomezfcc.bsky.social), Bluesky (Feb. 28, 2025, 2:18 PM), <https://bsky.app/profile/agomezfcc.bsky.social/post/3ljb4qn3qnk2v>.

³⁵ See Free Press Comments at 8, 12–13, 31.

³⁶ RCFP Comments at 2.

say or express.”³⁷ TechFreedom also noted the possible disastrous effects, remarking, “if the new standard for triggering a news distortion analysis is that any edits of raw interview video can be subject to challenge, then the FCC will spend the next four years, at least, fielding dozens, hundreds, thousands of news distortion complaints.”³⁸ These concerns animate the Commission’s narrow application of its news distortion policy and weigh in favor of the Commission promptly discontinuing this inquiry to stem the damage to press freedoms already inflicted.

IV. CONCLUSION

The record shows that the Commission’s historical application of its news distortion policy can lead to only one outcome—the dismissal of this deficient Complaint. As the Commission and federal courts have underscored repeatedly, editorial freedom is at the core of the First Amendment’s protections. Yet that freedom is the target of regulatory inquiry here. For the foregoing reasons, the Commission should dismiss the Complaint and close this docket.

Respectfully submitted,

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³⁷ Fair Media Council Comments at 3.

³⁸ TechFreedom Comments at 7.