

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

In the Matter of)
)
Emergency Petition for Inquiry into) ___ Docket No. 20-___
Broadcast of False Information on COVID-19)
)
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**FREE PRESS EMERGENCY PETITION FOR INQUIRY
INTO BROADCAST OF FALSE INFORMATION ON COVID-19**

In this extraordinary moment, as our country faces a deadly global pandemic, Free Press submits this Emergency Petition for Inquiry, pursuant to 47 C.F.R. § 1.41, to request an urgent investigation into the broadcast of:

- False information about COVID-19;
- Disinformation about public health measures, guidance and warnings; and
- Deadly false assertions about untested “cures” and home remedies that are endangering public health, and that have already led to the death of at least one person in Arizona.¹

The Federal Communications Commission (“FCC” or “Commission”) possesses both the authority and the responsibility to ensure the public airwaves are utilized in the public interest.² This duty is heightened in times of crisis. Specifically, broadcasters are prohibited from knowingly airing false information about a catastrophe that causes “substantial public harm.”³

¹ See Theresa Waldrop, Dave Alsup and Elliott C. McLaughlin, “Fearing coronavirus, Arizona man dies after taking a form of chloroquine used to treat aquariums,” CNN (Mar. 25, 2019), <https://www.cnn.com/2020/03/23/health/arizona-coronavirus-chloroquine-death/index.html>.

² See, e.g., 47 U.S.C. § 309(a).

³ 47 C.F.R. § 73.1217.

People across the United States are turning to broadcast radio and television for news and information about how to protect themselves, their families, and their communities. In these scary and uncertain times, and as terrifying new news breaks minute-by-minute, people are particularly vulnerable to disinformation.

In 1992, when the Commission adopted its rule against broadcast hoaxes, it weighed the public interest obligations of its licensees against their First Amendment rights and concluded that “the government has a compelling interest in preventing substantial public harm, such as the substantial diversion of police and emergency resources from their duties,” further noting that “the First Amendment does not preclude civil liability for broadcasts that create a foreseeable risk of personal injury.”⁴

Yet it appears myriad radio and television broadcasters across the country have been airing false and misleading information about coronavirus and COVID-19, a clear public health catastrophe, without the necessary context or disclaimers suggested by the broadcast hoax rule.⁵

Of particular and urgent concern is the deadly disinformation broadcast on television stations across the country in the form of context-less coverage of President Donald Trump’s press conferences and other statements. These falsehoods have been documented extensively by

⁴ *Amendment of Part 73 Regarding Broadcast Hoaxes*, MM Docket No. 91-314, Report and Order, 7 FCC Rcd 4106, ¶¶ 10 - 11 (1992), <https://docs.fcc.gov/public/attachments/FCC-92-208A1.pdf>.

⁵ The regulation provides that “[a]ny programming accompanied by a disclaimer will be presumed not to pose foreseeable harm if the disclaimer clearly characterizes the program as a fiction and is presented in a way that is reasonable under the circumstances. 47 C.F.R. § 73.1217.

media watchdogs⁶ and other⁷ news organizations.⁸ They have materially contributed to this crisis, causing “substantial public harm.”

The president’s mischaracterization of the efficacy of chloroquine phosphate is an acute example. Broadcast of that statement led to a nation-wide shortage of a drug integral to treating other ailments — exacerbating this health crisis.⁹ It also precipitated the death of an Arizona man and hospitalization of his wife earlier this week, when they ingested the drug because they said they had “watched televised briefings during which President Trump talked about the potential benefits of chloroquine” and believed it was safe because “it was all over TV.”¹⁰

On Mar. 19, several days before this tragedy occurred, the president said — and broadcasters around the country aired without qualification — that “[Hydroxychloroquine has] been around for a long time, so we know if things don't go as planned it's not going to kill

⁶ See Parker Molloy, “Why can't mainstream media stop echoing Trump’s coronavirus misinformation?”, Media Matters for America (Mar. 15, 2020), <https://www.mediamatters.org/coronavirus-covid-19/why-cant-mainstream-media-stop-echoing-trumps-coronavirus-misinformation> (hereinafter “Trump Coronavirus Misinformation”).

⁷ See David Leonhardt, “Complete List of Trump’s Attempts to Play Down Coronavirus,” N.Y. Times (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/opinion/trump-coronavirus.html>.

⁸ See Daniel Dale and Tara Subramaniam, “Trump made 33 false claims about the coronavirus crisis in the first two weeks of March,” CNN (Mar. 22, 2020), <https://www.cnn.com/2020/03/22/politics/fact-check-trump-coronavirus-false-claims-march/index.html>.

⁹ See Topher Sanders, David Armstrong and Ava Kofman, “Doctors Are Hoarding Unproven Coronavirus Medicine by Writing Prescriptions for Themselves and Their Families”, ProPublica (Mar. 24, 2020), <https://www.propublica.org/article/doctors-are-hoarding-unproven-coronavirus-medicine-by-writing-prescriptions-for-themselves-and-their-families>.

¹⁰ See Erika Edwards and Vaughn Hillyard, “Man dies after taking chloroquine in an attempt to prevent coronavirus”, NBC News (Mar. 23, 2020), <https://www.nbcnews.com/health/health-news/man-dies-after-ingesting-chloroquine-attempt-prevent-coronavirus-n1167166>.

anybody.... It's shown very, very encouraging early results, and we're going to be able to make that drug available almost immediately."¹¹

Wide broadcast of other of the president's false statements have also contributed to the cavalier attitude some have taken toward containing coronavirus and mitigating its spread. Those statements include:

- Feb. 10: "Now, the virus that we're talking about having to do — you know, a lot of people think that goes away in April with the heat — as the heat comes in. Typically, that will go away in April."¹²
- Feb. 28: "But we have done an incredible job. We're going to continue. It's going to disappear. One day — it's like a miracle — it will disappear."¹³
- Mar. 6: "Anybody that wants a test can get a test. That's what the bottom line is." And: "Anybody right now and yesterday — anybody that needs a test gets a test. We — they're there. They have the tests. And the tests are beautiful. Anybody that needs a test gets a test."¹⁴
- Mar. 6: "...I hear the numbers are getting much better in Italy."¹⁵
- Mar. 15: "This is a very contagious — this is a very contagious virus. It's incredible. But it's something that we have tremendous control of."¹⁶

Radio personalities have also made misleading statements over the public airwaves, downplaying the threat, often echoing the president's inaccurate information. Rush Limbaugh's on-air statements include:

¹¹ See @cspan, Twitter (12:10 PM Mar. 19, 2020), <https://twitter.com/cspan/status/1240672025989001221> (emphasis added).

¹² See "Remarks: Donald Trump Addresses Governor's Business Session at The White House - February 10, 2020," FactBase (Feb. 10, 2020), <https://factba.se/transcript/donald-trump-remarks-business-meeting-governors-february-10-2020>.

¹³ See "Remarks by President Trump in Meeting with African American Leaders," WhiteHouse.Gov (Feb. 28, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-meeting-african-american-leaders/>.

¹⁴ See Trump Coronavirus Misinformation, *supra* note 6.

¹⁵ *Id.*

¹⁶ *Id.*

- Feb. 24: “The coronavirus is the common cold, folks.”¹⁷
- Mar. 10: “The coronavirus is one of those moments for the Drive-By Media, and just as a hurricane is an opportunity to blame people who don’t believe in climate change — man-made climate change. Just as a hurricane is exaggerated and built up and lied about before anybody knows its true strength and nature in order to advance a political agenda (i.e., climate change), coronavirus is being used to advance the agenda that Donald Trump...is incompetent....”¹⁸
- Mar. 11: “I’m telling you, folks, there’s so many red flags about things happening out there. This coronavirus? All of this panic is just not warranted....I’m telling you, when I’ve told you that this virus is the common cold? When I said that, it was based on the number of cases. It’s also based on the kind of virus this is. Why do you think this is COVID-19? This is the 19th coronavirus! They’re not uncommon. Coronaviruses are respiratory cold and flu viruses. There is nothing about this except where it came from and the itinerant media panic.”¹⁹

Other misleading broadcast statements include:²⁰

- Mar. 13: “Should we be doing what we’re doing right now — and I don’t mean us on this show, I mean in this country, on the globe, when it comes to this pandemic? No. I think that it’s overblown for political reasons.” - Joe “Pags” Pagliarulo²¹
- Mar. 16: “I don’t want to be part of the hype machine ... People on TV who lied to you about Russia and the Ukraine and so forth, trashing the president, using this as another opportunity to hype and dramatize their agenda.” - Mark Levin on Westwood One²²

¹⁷ See Rush Limbaugh, “Overhyped Coronavirus Weaponized Against Trump,” RushLimbaugh.com (Feb. 24, 2020), <https://www.rushlimbaugh.com/daily/2020/02/24/overhyped-coronavirus-weaponized-against-trump/>.

¹⁸ See Rush Limbaugh, “They’re Covering the Coronavirus Like a Hurricane,” RushLimbaugh.com (Mar. 10, 2020), <https://www.rushlimbaugh.com/daily/2020/03/10/were-watching-hurricane-coronavirus-coverage/>.

¹⁹ See Rush Limbaugh, “A Biothreat from China Is Accomplishing All the Goals of Trump’s Enemies,” RushLimbaugh.com (Mar. 11, 2020), <https://www.rushlimbaugh.com/daily/2020/03/11/what-you-cant-say-about-the-coronavirus-panic/>.

²⁰ See Jack Gillum and Derek Willis, “Even After Trump Declared a National Emergency, Some Talk Radio Hosts Weren’t Convinced,” ProPublica (Mar. 25, 2020), <https://www.propublica.org/article/even-after-trump-declared-a-national-emergency-some-talk-radio-hosts-werent-convinced>.

²¹ *Id.*

²² *Id.*

- Mar. 17: “They are contributing to the hysteria, which has caused the entire planet to basically shut down.... [The coronavirus is] the flu on steroids. It’s serious. But the media is creating hysteria by blowing the figures out of proportion. The media’s not putting that into perspective.” - George Noory on Coast to Coast AM²³
- Mar. 18: “[Stay at home order means we must] fork over money and spend time behind bars simply because you refuse to go along with a nonsensical overreaction to a disease that has affected 1,300 Americans.” - John Muir on News Talk WTAQ²⁴
- Mar. 19: “It wasn’t just the media, though [that covered swine flu and H1N1 differently]. It was a difference in president. So you have [Barack] Obama, who they fiercely defended.... Why the fervor to cover this like the plague when legitimately we lost 13,000 Americans? Where was the breathless coverage then? ... Why wasn’t the market a complete disaster?” - Wendy Bell on KDKA²⁵

The harms from broadcast stations’ failure to contextualize presidential statements and their choice to air other falsehoods is borne out by polling showing that only 49 percent of radio listeners say they are “worried” about the virus, as opposed to 72 percent of national newspaper readers and more than of 70 percent of CNN and MSNBC viewers.²⁶

The FCC must ensure that broadcasters are proactively protecting the health and safety of Americans and use its powers to make sure that the public receives accurate information about this deadly pandemic. Other agencies, like the Federal Trade Commission,²⁷ the Department of Justice,²⁸ and the Food and Drug Administration have issued guidance for entities within their jurisdiction to protect consumers and the public. The FCC must act too.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See “The Economist/YouGov Poll March 15 - 17, 2020 - 1500 US Adult citizens,” <https://docs.cdn.yougov.com/fcdckgt368/econTabReport.pdf>.

²⁷ See Colleen Tressler, “FTC & FDA: Warnings sent to sellers of scam Coronavirus treatments,” Federal Trade Commission (Mar. 9, 2020), <https://www.consumer.ftc.gov/blog/2020/03/ftc-fda-warnings-sent-sellers-scam-coronavirus-treatments>.

²⁸ See “COVID-19 FRAUD,” Justice.gov, <https://www.justice.gov/coronavirus> (last visited Mar. 25, 2020).

When the president tells dangerous lies about a public health emergency, broadcasters have a choice: don't air them, or put those lies in context with disclaimers noting that they may be untrue and are unverified. And certainly the FCC has a duty to rein in radio broadcasters that seed confusion with lies and disinformation.

For these reasons, we urge the FCC to conduct an urgent examination into the extent to which broadcasters have aired hoaxes and false or misleading information about COVID-19, and immediately issue an emergency policy statement or enforcement guidance recommending that broadcasters prominently disclose when information they air is false or scientifically suspect. We recommend that television disclosures appear in writing in the lower third and orally, and that radio broadcasters correct misinformation about COVID-19 in oral reporting after press conferences and immediately following other instances when false information airs.

In the interest of sober and factual information to keep the public informed, safe, and healthy during this crisis, we respectfully submit this petition for inquiry. This is a life or death issue, and we request the Commission's urgent attention.

Respectfully Submitted,

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