

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

274

Majority (202) 225-2927
Minority (202) 225-3641

April 2, 2020

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

We write to urge the Federal Communications Commission (FCC) to reassure broadcasters that the FCC will not revoke licenses for airing legally protected speech. Consistent with the Constitution and the Communications Act, the FCC must refrain from censoring or interfering with broadcasters' discretion to air legally protected content.¹

As we are sure you are aware, on March 25, President Trump's campaign sent letters to certain broadcasters regarding the airing of an advertisement critical of the President's response to the coronavirus pandemic.² In the letter to broadcasters, the Trump campaign wrote that continuing to air the advertisement "could put [the] station's license in jeopardy."³ Such threats against broadcasters are contrary to the law.⁴ At a time when autocratic governments around the world are using the coronavirus pandemic as an excuse to suppress press freedoms,⁵ we must reaffirm – not undermine – America's commitment to a free press.

¹ See 47 U.S.C. §326; U.S. CONST., amend. I.

² Letter from Alex W. Cannon, Esq., Special Counsel, Donald J. Trump for President, Inc. (March 25, 2020); assets.donaldjtrump.com/2017/web/hero_images/Redacted_PUSA_Letter.pdf.

³ *Id.*

⁴ 47 U.S.C. §326; U.S. CONST., amend. I.

⁵ See Sara Fisher, *Coronavirus is being used to suppress press freedoms globally*, Axios (Mar. 31, 2020) (www.axios.com/coronavirus-press-freedom-e11cd2d3-c1c3-4b67-b985-102c882a223d.html).

By remaining silent, the FCC sends a disturbing signal that it sanctions these threats and that broadcaster licenses could be in jeopardy. Section 326 of the Communications Act and the First Amendment to the Constitution prohibit the FCC from interfering with the programming decisions of licensees to air legally protected content.⁶ As a result, the FCC itself has recognized that it cannot second guess the judgment of broadcasters.⁷ Broadcasters also are afforded broad discretion regarding the airing of advertisements.⁸

Unfortunately, this is not the first time President Trump has threatened a broadcaster's license in response to coverage with which he disagrees.⁹ On October 11, 2017, the President threatened the licenses of broadcasters because he disagreed with their news coverage. Citing the First Amendment, you appropriately assured broadcasters and the public that the FCC could not revoke a broadcaster's license based on the content of the broadcaster's programming.¹⁰

We believe the FCC has a duty to provide clear guidance to broadcasters and the public that threats by politicians about protected speech will not influence the agency or broadcaster licenses. To stay silent could undermine the First Amendment and the Communications Act. Therefore, we ask that you once again stand firm on your commitment to adhere to constitutional and statutory law. I appreciate your attention to this important matter. Should you have any questions, please contact Gerald Leverich of the Committee staff at (202) 225-2927.

Sincerely,



Frank Pallone, Jr.
Chairman



Mike Doyle
Chairman
Subcommittee on Communications
and Technology

⁶ *Id.*

⁷ Federal Communications Commission, *The Public and Broadcasting* (www.fcc.gov/media/radio/public-and-broadcasting).

⁸ *Id.*

⁹ Luis Gomez, *Trump calls to 'challenge' NBC's license. FCC responds: 'Not how it works'*, San Diego Union-Tribune (Oct. 11 2017) (www.sandiegouniontribune.com/opinion/the-conversation/sd-could-trump-revoke-nbc-license-after-nuclear-arsenal-report-20171011-htmlstory.html).

¹⁰ Brian Fung, *FCC chair on Trump's NBC tweet: 'The FCC will stand for the First Amendment'*, Washington Post (Oct. 17, 2017) (www.washingtonpost.com/news/the-switch/wp/2017/10/17/trumps-fcc-chair-has-finally-addressed-the-nbc-license-issue/).