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GOMEZ: FCC's EGREGIOUS ASSAULT ON THE FIRST AMENDMENT WILL FAIL

Politically Motivated Effort to Censor Speech Could Take Years

WASHINGTON — FCC Commissioner Anna M. Gomez issued the following statement today after the FCC's Media Bureau took the unprecedented step of directing Disney-owned local TV stations to file early license renewals. The FCC cannot revoke any broadcast licenses without a lengthy review process that can be appealed to the full Commission and challenged in federal court, a process that could take years:

"This is the most egregious action this FCC has taken in violation of the First Amendment to date. As part of its ongoing campaign of censorship and control, the White House called publicly for the silencing of a vocal critic, and this FCC has now answered that call. This is an unprecedented and politically motivated attempt to interfere with how broadcasters operate, and this unlawful overreach will fail. This should be a lesson to media companies that no amount of capitulation to this Administration will buy them protection. The only choice is to stand up and stand firm in defense of the First Amendment."

Background: The FCC is moving to force early license renewal reviews of Disney's eight ABC-owned television stations, a politically targeted action that experts say is without modern precedent. Disney as the parent company is not the license holder, its subsidiary owns the stations and they are individually licensed. Each individual station would face its own lengthy review process.

Broadcast licenses are normally renewed on an eight-year cycle, with renewals processed on a staggered schedule by state. An early renewal order forces stations to file renewal applications ahead of schedule, opening the door to formal scrutiny of their licenses before that review would otherwise occur.

Under normal practice, any effort to revoke or deny a license renewal requires a public comment and reply period, followed by the designation for a hearing before an FCC Administrative Law Judge, a full evidentiary proceeding that can take months or years. The ALJ's decision can then be appealed to the full Commission, and any final Commission action can be challenged in federal court. Any attempt to bypass a review by an independent ALJ would call for additional legal scrutiny.

The FCC bears the burden of proof at every stage. Any action premised on a broadcaster's content or editorial choices runs directly into the Communications Act's prohibition on

censoring broadcaster content and the First Amendment, barriers courts have consistently upheld. The government cannot weaponize the licensing process to punish speech it disapproves of and attempts to do so have consistently failed. Efforts like this one are exceedingly rare, almost never succeed, and face even longer odds when the underlying motivation is silencing speech the government dislikes.

Even if the FCC grounds its case in a different legal theory, the broader pattern of political threats against broadcasters is part of the public record, and Disney can use that record in its defense. Courts take motivation seriously, and the motivation here is clear.

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).