

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN BROADCASTING
COMPANIES, INC. *et al.*,

Plaintiffs,

v.

FEDERAL COMMUNICATIONS
COMMISSION, *et al.*,

Defendants.

Civil Action No. 26-2902 (LLA)

NOTICE OF SUPPLEMENTAL AUTHORITY

The Federal Communications Commission respectfully submits this notice to inform the Court of a decision issued by the U.S. Court of Appeals for the D.C. Circuit on September 25, 2026, after the close of briefing on the motions pending in this case. *See Anthropic v. Dep't. of War*, No. 26-1049, 2026 WL 2881404 (D.C. Cir. Sept. 25, 2026).

In *Anthropic*, a government contractor challenged the Department of War's decision to exclude an artificial intelligence product from the Department's supply chain. *Id.* at *1. The contractor argued that the Department's decision constituted retaliation in violation of the First Amendment. *See id.* at *17. As evidence for this claim, the contractor pointed to what the court characterized as "pungent statements" in a social media post by the Secretary of War. *Id.* The court explained, however, that a government official's "rhetoric seldom provides a sound basis for judging the lawfulness of federal executive action." *Id.* (citing *Mullin v. Doe*, 146 S. Ct. 2121, 2139 (2026); *Trump v. Hawaii*, 585 U.S. 667, 700–02 (2018)). It accordingly held that the contractor had failed to establish the "causal link" element of its retaliation claim. *See id.* So too here, the public statements of Chairman Carr and President Trump on which Plaintiffs rely to show

animus are not sufficient for that purpose. *See, e.g.*, Defs.’ Mot. (Dkt 23) at 45 (public officials may speak vigorously, and even colorfully, to spark debate); *see also* Compl. (Dkt. 1) ¶ 141 (arguing that “the President and Chairman’s own statements and the timing of the Administration’s public statements relative to the Commission’s actions” establish causation).

Anthropic is also noteworthy because it confirms that a private party may advance a First Amendment retaliation claim as part of a petition for review in the court of appeals. *See* 2026 WL 2881404, at *2. Here, too, as Defendants have explained, the Hobbs Act and the Commissions Act channel Plaintiffs’ claims to the courts of appeals, including the D.C. Circuit, and thereby divest this Court of subject-matter jurisdiction. *See* Defs.’ Mot. (Dkt. 23) at 23-31; Reply (Dkt. 52) at 5-20.

Dated: September 30, 2026

Respectfully submitted,

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