

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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February 23, 2024

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Chair Khan:

On April 12, 2023, the Committee on the Judiciary issued a subpoena compelling you to produce documents regarding the Federal Trade Commission (FTC or Commission) investigation of Twitter within two weeks.¹ After more than a month had passed without *any* documents being produced, on June 8, 2023, the Committee offered to allow the FTC to prioritize the production of certain documents responsive to the subpoena, as an accommodation to the Commission.² At that time, the Committee also warned that it may pursue contempt of Congress against you if the FTC failed to comply with the subpoena. On September 25, 2023—over four months after our June letter—the FTC managed to provide only a single, publicly available document in response to the Committee’s subpoena.³ While the Committee continued to engage with the FTC to obtain status updates and attempted to procure your compliance with the subpoena after the production of that single document, the FTC’s refusal to produce any documents stymied the Committee’s progress until last week.

The Committee gave the FTC one more opportunity to comply with its subpoena when, on February 14, 2024, it pointed out the obvious fact that the FTC’s production of a single, publicly available document was not sufficient to satisfy its legal obligations under the Committee’s subpoena.⁴ The Committee explained that your non-compliance with the subpoena substantially hindered the Committee’s investigation and that the Committee required a complete response to its subpoena.⁵ Offering yet another accommodation to the Commission, the Committee gave you until February 21, 2024, to fully comply with the subpoena, and again warned that it may be forced to consider a resolution holding you in contempt of Congress if the FTC continued to ignore the subpoena.

¹ Letter from Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm’n (Apr. 12, 2023).

² Letter from Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm’n (June 8, 2023).

³ Letter from Lina Khan, Chair, Fed. Trade Comm’n to Jim Jordan, Chair, H. Comm. on the Judic. (Sept. 25, 2023).

⁴ Letter from Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm’n (Feb. 14, 2024).

⁵ *Id.*

This effort finally yielded some results. On February 21, 2024, ten months after the subpoena and only after Committee staff reiterated to FTC staff the possibility of contempt proceedings, the Commission provided the Committee with a new production of 391 documents.⁶ This latest production, however, does not fully satisfy the Committee's subpoena or alleviate our concerns about the FTC's insufficient compliance with the Committee's oversight.

Notably, the FTC's production did not include any documents that the Committee previously indicated that the Commission should prioritize when producing documents.⁷ Instead of including the priority documents identified by the Committee in June 2023, the vast majority of the 391 documents in the FTC's latest production are non-substantive. For example, the production contains several non-substantive email chains regarding scheduling or negotiating depositions, calls, interviews, and document productions related to the FTC's investigation of Twitter. The other documents in the production are similarly administrative in nature, such as emails sharing external documents including, for example, deposition notices, copies of subpoenas, and public letters from members of Congress. None of the documents even begin to explain the FTC's reasoning for, or findings in, its investigation of Twitter—which are documents directly responsive to the Committee's subpoena. Worse yet, the FTC continues to refuse to provide key documents the Committee previously prioritized: all recommendation memoranda relating to the investigation into Twitter's compliance with 2011 Commission Order.⁸ The Committee prioritized these specific documents, in part, because they should be easy for the FTC to find and produce.

The Commission's choice to slowly produce non-substantive, non-priority documents has hindered the Committee's oversight obligations. Although the Director of the FTC's Office of Congressional Relations recently represented that the FTC will produce some undefined set of documents on some undetermined date during the week of February 26,⁹ you remain noncompliant with the Committee's subpoena of April 12, 2023. As one final accommodation, the Committee will allow the FTC additional time to comply with the subpoena by producing all responsive documents by March 8, 2024. The Committee additionally expects that the FTC, as your staff has represented, will produce additional documents next week and that those documents will be responsive to the Committee's subpoena, substantive in nature, and include priority documents. If the FTC does not meet these expectations, the Committee will be prepared to consider a resolution holding you in contempt of Congress.

Sincerely,



Jim Jordan
Chairman

⁶ Call between Committee Staff and FTC Staff (Feb. 20, 2024); Letter from Lina Khan, Chair, Fed. Trade Comm'n to Jim Jordan, Chair, H. Comm. on the Judic. (Feb. 21, 2024).

⁷ Letter from Jim Jordan, Chair, H. Comm. on the Judic. to Lina Khan, Chair, Fed. Trade Comm'n (June 8, 2023).

⁸ *See id.*

⁹ Email from FTC Staff to Committee Staff (Feb. 22, 2024).

The Honorable Lina M. Khan

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cc: The Honorable Jerrold Nadler, Ranking Member