

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Andrew N. Ferguson, Chairman
Mark R. Meador**

In the Matter of

**CIVIL INVESTIGATIVE DEMAND TO
NEWSGUARD TECHNOLOGIES, INC.
DATED MAY 20, 2025**

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) **File No. 251-0061**
) **PUBLIC**
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**ORDER DENYING PETITION TO QUASH
CIVIL INVESTIGATIVE DEMAND**

By FERGUSON, Chairman:

NewsGuard Technologies, Inc. (NewsGuard) petitions the Commission to quash in its entirety a Civil Investigative Demand (CID) issued on May 20, 2025, in connection with the Commission’s investigation into whether any natural persons, partnerships, corporations, associations, or other legal entities have engaged in unfair methods of competition, including boycotts or other forms of collusion or coordination, with respect to withholding, degrading, increasing the cost of, or otherwise diminishing the quantity of advertising placed on news outlets, media platforms, or other publishers in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, or Section 5 of the FTC Act, 15 U.S.C. § 45.

NewsGuard requests that the Commission quash the CID because (1) the CID constitutes retaliation against NewsGuard for its First Amendment-protected activities, and (2) the CID is overbroad and requests sensitive information in violation of the First and Fourth Amendments. *Petition*, at 6–7. For the reasons set forth below, we deny NewsGuard’s petition.

I. BACKGROUND

NewsGuard is a New York City-based company that “rate[s] and review[s] the reliability of news sources across the open web, social media, and content platforms” including television and podcasts.¹ NewsGuard assigns reliability scores and ratings to over 35,000 content publishers,² then “makes money by selling subscriptions to its browser extension and Reality Check newsletter, and by licensing access to its databases of ratings and false claim fingerprints to companies.”³ According to NewsGuard, its ratings “enable brands to advertise safely on

¹ NewsGuard, *News Reliability Ratings*, <https://www.newsguardtech.com/solutions/news-reliability-ratings/>.

² *Id.*

³ NewsGuard, *NewsGuard FAQ: How does NewsGuard make money?*, <https://www.newsguardtech.com/newsguard-faq/>.

reliable news sources while avoiding brand-safety risk.”⁴ In addition to providing ratings, NewsGuard produces reports and research related to online misinformation and disinformation, and engages in outreach to industry participants and policymakers.⁵ NewsGuard asserts that it has become “a leading source of journalism about information reliability.” *Petition*, at 2. Its work addresses a range of topics, including what it views as foreign and domestic disinformation campaigns and online propaganda. *See id.*

On May 20, 2025, under the authority of a Commission resolution authorizing the use of compulsory process, the Commission issued a CID to NewsGuard pursuant to Section 20 of the FTC Act, 15 U.S.C. § 57b-1. The NewsGuard CID was one of seventeen still-outstanding CIDs issued as part of the Commission’s investigation into whether entities have conspired to withhold, degrade, increase the cost of, or otherwise diminish the quantity of advertising placed on news outlets, media platforms, or other publishers in violation of Section 1 of the Sherman Act and Section 5 of the FTC Act, under the guise of promoting “brand suitability” and “brand safety” against “misinformation.” Specifically, the Commission is investigating whether online advertisers and/or advertising agencies have unlawfully agreed to use certain lists promulgated by other industry participants that categorize or rate content publishers as not “brand suitable” or not “brand safe,” to coordinate the placement of ads. As such, CID recipients to date include multiple advertising agencies as well as entities that the Commission has reason to believe possess information relating to the use of such lists to coordinate ad placement. These entities include several advertising trade associations, several brand safety/suitability rating organizations such as NewsGuard, and several policy/advocacy groups.

The CID to NewsGuard seeks information pertaining to NewsGuard’s organizational structure; documents and data relating to NewsGuard’s ratings of content publisher entities; communications with other entities related to the subject of the investigation; the methodology by which NewsGuard determines the ratings, labels, or categorizations that it applies to news or information sites; lists that NewsGuard has provided to third parties that evaluate or categorize content publisher entities; identification of NewsGuard’s customers and its communications with those customers; and NewsGuard’s financial information, among other subjects. *See generally Petition Ex. 1*, at 1–6. The CID contains 31 specifications. *Id.* The relevant time period for NewsGuard’s responses is from January 1, 2018 to the present. *Id.* at 8.

NewsGuard appears to have had at least ten substantive meet-and-confer sessions with Commission staff. *See Petition Ex. 2*, at 1–6 (Statement of Counsel Pursuant to 16 C.F.R. § 2.10(a)(2)). During those sessions, NewsGuard raised concerns about the CID based on the First Amendment and unreasonable burden. *See, e.g., id.* ¶ 3. Despite its concerns, NewsGuard has responded to a substantial portion of the CID: it has produced 41,183 pages of documents and provided other information sought by the CID through letters, emails, and phone calls. *See id.* ¶ 26.

On January 15, 2026, staff sent NewsGuard a letter that substantially modified the scope of the original CID. *Petition Ex. 3*. The letter modified Specifications 8, 11, 15, and 26 to address NewsGuard’s burden concerns by limiting the scope of the information requested in each

⁴ NewsGuard, *NewsGuard: Global Leader in Information Reliability*, <https://www.newsguardtech.com/about-newsguard/>.

⁵ NewsGuard, *NewsGuard: The leading datasets for studying misinformation, disinformation, and online information reliability*, <https://www.newsguardtech.com/industries/researchers/>.

Specification. For example, the letter narrowed Specification 26 to cover only customers that use NewsGuard’s news reliability ratings and to exclude all customers who are natural persons. *Id.* at 3. The letter also provided that, except for those four Specifications (as modified) and Specification 12, staff deemed NewsGuard to have satisfied its CID obligations through its prior productions. *Id.*

The following day, January 16, 2026, NewsGuard timely filed its petition to quash the CID.⁶

II. ANALYSIS

A. The CID Does Not Constitute Retaliation in Violation of the First Amendment.

NewsGuard first argues that the CID should be quashed because it is part of an unconstitutional retaliation campaign targeting NewsGuard’s protected First Amendment activities. *Petition*, at 7. To prevail on this claim, NewsGuard must show that (1) it “engaged in conduct protected under the First Amendment,” (2) the FTC “took some retaliatory action sufficient to deter a person of ordinary firmness in [NewsGuard’s] position from speaking again,” and (3) there is “a causal link between the exercise of a constitutional right and the adverse action.” *Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016) (cleaned up). For purposes of this Order, the Commission assumes without deciding that NewsGuard engages in some protected First Amendment activities. But its claim fails at each of the other two prongs: it has not shown that the CID has caused a sufficient chilling effect, and it has not shown a causal link between the CID and its First Amendment-protected activities.

1. Chilling Effect

NewsGuard argues that the “draconian” CID, which it claims the Commission issued “to punish or suppress [its] disfavored expression,” is “plainly sufficient to chill” its First Amendment-protected speech. *Petition*, at 8 (quoting *NRA v. Vullo*, 602 U.S. 175, 188 (2024)). NewsGuard identifies four “adverse consequences” resulting from the Commission’s investigation that allegedly chill its expression: (1) the fact that it incurs costs to review its internal documents to identify responsive materials; (2) the fact that its internal resources are diverted to respond to the CID; (3) the possibility that the CID will result in the disclosure of NewsGuard’s customer lists; and (4) the fact that the CID is enforceable in federal court. *Petition*, at 8–9.

To the extent that NewsGuard is alleging that the Commission initiated a retaliatory investigation it appears unlikely that such a claim is even cognizable. The Supreme Court and the U.S. Court of Appeals for the District of Columbia Circuit have declined to resolve the question. *See Hartman v. Moore*, 547 U.S. 250, 262 n.9 (2006); *Media Matters for Am. v. Paxton*, 138 F.4th 563, 584–85 (D.C. Cir. 2025). Several courts of appeals have suggested that such claims

⁶ Commission staff granted several extensions to the deadline for NewsGuard to file a petition to limit or quash the CID. Under the latest extension, NewsGuard’s deadline was January 16, 2026. Under Commission Rule 2.10(c), 16 C.F.R. § 2.10(c), the Commission had 40 days, or until March 2, 2026, to issue an order ruling on NewsGuard’s petition. Due to the lapse in federal government appropriations from January 31 through February 3, 2026, this date has been extended until March 6, 2026.

should not be recognized. *See Archer v. Chisholm*, 870 F.3d 603, 620 (7th Cir. 2017); *Breaux v. City of Garland*, 205 F.3d 150, 157–61 (5th Cir. 2000); *see also J.T.H. v. Mo. Dep’t of Soc. Servs. Child.’s Div.*, 39 F.4th 489, 493 (8th Cir. 2022) (“[W]e have never recognized a retaliatory-investigation claim of this kind. Nor have other courts around the country. . . .”); *Sivella v. Twp. of Lyndhurst*, No. 20-2342, 2021 WL 3356934, at *3 (3d Cir. Aug. 3, 2011) (“Since *Hartman*, no Supreme Court case has addressed the issue of whether the initiation of a retaliatory investigation can constitute a First Amendment violation . . . an absence of relevant Supreme Court precedent strongly supports a finding that a particular right is not clearly established.”). And the U.S. Court of Appeals for the Eleventh Circuit has squarely held that “a retaliatory investigation” “does not implicate a federal constitutional right.” *Rehberg v. Paulk*, 611 F.3d 828, 850 & n.24 (11th Cir. 2010), *aff’d*, 566 U.S. 356 (2012); *Thompson v. Hall*, 426 F. App’x 855, 858 (11th Cir. 2011) (per curiam) (same).

Even if a retaliatory investigation claim were theoretically cognizable—which only one federal court of appeals appears to have assumed—it could arise only in extraordinary circumstances. *See Moore v. Garnand*, 83 F.4th 743, 752 (9th Cir. 2023) (recognizing that while no case had “held that a retaliatory investigation by itself was unconstitutional,” it was possible that the entire “scope and manner” of a given investigation could violate the First Amendment). Such extraordinary circumstances might include “campaigns of harassment and humiliation,” *Coszalter v. City of Salem*, 320 F.3d 968, 975 (9th Cir. 2003), threats of arrest, *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 909–10, 917 (9th Cir. 2012), or “other means of coercion, persuasion, and intimidation” such as a substantial fine, *White v. Lee*, 227 F.3d 1214, 1228 & n.8 (9th Cir. 2000) (citing *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963)).

None of these is true of the Commission’s investigation. NewsGuard is one of numerous CID recipients in a matter indisputably of public concern and high priority for the Commission. The scope of the CID is standard for FTC investigations. *See infra* Part II.A.2.c. NewsGuard faces no threat of fines or arrest. CIDs are not self-executing, and NewsGuard will incur no penalty or other legal detriment for failing to comply unless the Commission first files a petition for enforcement in a federal court and the court, after considering NewsGuard’s arguments, rules for the Commission and orders NewsGuard to respond. *See, e.g., Gen. Fin. Corp. v. FTC*, 700 F.2d 366, 368 (7th Cir. 1983); 15 U.S.C. § 57b-1(e) (CID enforcement provision). And NewsGuard’s statement of counsel acknowledges that, far from harassing or coercing NewsGuard, Commission staff has met-and-conferred numerous times to address NewsGuard’s concerns and substantially modified the CID to reduce its scope. *See Petition Ex. 2*, at 1–6; *see also id.* Ex. 3. Indeed, NewsGuard does not allege *any* change in its speech resulting from the CID. While subjective responses are not “dispositive” and a plaintiff need not show that it “altogether” ceased speaking, *see Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005), it is telling that the CID has apparently had no impact on NewsGuard’s speech over the nine months it has been pending. Overall, the record demonstrates that the Commission’s approach to its investigation of NewsGuard is miles away from the circumstances that could give rise to a retaliatory investigation claim, assuming one is even cognizable. *Cf. Moore*, 83 F.4th at 752–53 (even “unjustifiably pursuing a criminal investigation” and “attempting to induce the IRS to open an investigation” were insufficient for a retaliatory investigation claim). For the same reasons, these circumstances also do not give rise to a sufficient chilling effect.

Moreover, the four generalized harms that NewsGuard points to as evidence of a chilling effect prove both too much and too little. They prove too much because *all* CIDs require their recipients to incur costs and divert internal resources to respond, and *all* CIDs are enforceable in federal court. *See FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980) (“[T]he expense and annoyance of litigation is part of the social burden of living under government.”) (cleaned up); *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977) (“Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency’s legitimate inquiry and the public interest.”); 15 U.S.C. § 57b-1(e). And the Commission frequently requests the identification of customers as part of its compulsory process, particularly in antitrust investigations where the Commission must understand market dynamics to make an informed enforcement decision. *See, e.g.*, Attach. to Global Disinformation Index’s Pet. to Quash CID, FTC File No. 251-0061, at 4 (Sept. 17, 2025), <https://tinyurl.com/v9mhhm8c/>; FTC, Model Request for Additional Information and Documentary Material, at 5 (Jan. 2024); *FTC v. Take-Two Interactive Software, Inc.*, No. 1:08-mc-00360-HHK, Dkt. 1-3, at 2 (D.D.C. June 5, 2008). If these consequences amount to a chilling effect, then virtually every CID the Commission issues would impermissibly chill speech.

At the same time, these generic harms prove too little because, as explained above, NewsGuard would have to demonstrate extraordinary circumstances to make out a claim that the Commission’s investigation is retaliatory (assuming such a claim is cognizable). NewsGuard has not even alleged, much less documented, that it has suffered any unusual or specific injuries because of the CID. At most, NewsGuard has alleged that the legal expense it has incurred to comply with the CID “has exceeded 28% of the revenue NewsGuard has derived from the advertising brand-safety services” that are the subject of the CID. *Petition*, at 9. But, as stated above, legal expenses incurred in responding to a CID are part and parcel of all Commission investigations; this claimed injury is plainly insufficient. Nor does NewsGuard claim to have changed its behavior in response to the CID. The absence of any allegations of actual injury renders NewsGuard’s claim that the CID chilled its speech untenable.

2. Causal Link

NewsGuard also fails to demonstrate a causal link between its speech and the CID. *Aref*, 833 F.3d at 258. To show causation, NewsGuard must demonstrate at a minimum that the CID “would not have been [issued] absent the retaliatory motive.” *Nieves v. Bartlett*, 587 U.S. 391, 399 (2019).⁷ In making that but-for showing, NewsGuard must overcome the “longstanding presumption of regularity” that attaches to government action. *Hartman*, 547 U.S. at 263. That presumption is at its apex in the context of law-enforcement investigations, an area of “executive discretion of such high order.” *Id.* As such, to meet this prong, NewsGuard must put forward sufficient evidence to displace the presumption of regularity and demonstrate that the but-for cause of the CID was NewsGuard’s protected activity—specifically, its “reports regarding the reliability of news and information websites” and its “journalism about foreign governments’

⁷ In fact, the requisite showing is more robust: NewsGuard must demonstrate that there was no reasonable basis for the CID. For example, in the similar context of retaliatory arrests, the Supreme Court has held that plaintiffs must show that the government lacked probable cause. *Nieves*, 587 U.S. at 399–400. The same logic applies here too. *See Gonzalez v. Trevino*, 602 U.S. 653, 663 (2024) (Alito, J., concurring); *cf. Media Matters for Am. v. Bailey*, No. 24-cv-147, 2024 WL 3924573, at *12–13 (D.D.C. Aug. 23, 2024) (considering the issue and ultimately declining to impose an objective basis standard, at least in part for case-specific reasons). However, as discussed in the accompanying text, NewsGuard has not satisfied even the basic but-for standard.

disinformation campaigns and other issues of information reliability.” *See Petition*, at 7–8. For two reasons, NewsGuard has not met this burden.

First, there are ample nonretaliatory explanations for the Commission’s investigation. The CID is part of a broad investigation into a high-priority issue—advertising boycotts that may violate the antitrust laws. In particular, the Commission is investigating whether various entities unlawfully agreed to withhold the placement of ads using lists that categorize content publishers as not “brand suitable” or “brand safe.” NewsGuard has hardly been singled out, as numerous other entities have also received CIDs.⁸ The investigation’s breadth refutes NewsGuard’s theory that the CID was issued in retaliation for NewsGuard’s speech. In addition, the other entities that received a CID did not engage in the same speech as NewsGuard. The fact that they received CIDs anyway demonstrates that the NewsGuard CID would have been issued regardless of any purported retaliatory motive against NewsGuard’s news-rating activities. These reasons alone vitiate any conclusion that retaliation was the but-for cause of the CID to NewsGuard.

Second, NewsGuard’s circumstantial evidence of retaliation fails to establish a causal relationship between its speech and the CID. In attempting to show such a connection, NewsGuard points to four categories of evidence: (1) certain statements by Chairman Ferguson,⁹ (2) the timing of the CID, (3) the scope of the CID, and (4) the Decision and Order in *In re Omnicom Group Inc.*, No. C-4823 ¶¶ I.D, II.A (Sept. 26, 2025) (Omnicom Consent Order).¹⁰ *Petition*, at 10–14.

a. Statements by Chairman Ferguson

NewsGuard points to three statements by Chairman Ferguson that identified NewsGuard by name:

- A November 2024 post on X in which then-Commissioner Ferguson commented on the impending closure of the Department of State’s Global Engagement Center (GEC), observing that “Congressional investigations revealed the GEC funded the Global Disinformation Index and NewsGuard, which led collusive ad-boycotts—possibly in

⁸ *See* CID to The Global Disinformation Index, Attach. to Pet. to Quash, FTC File No. 251-0061 (Sept. 17, 2025) <https://tinyurl.com/v9mhhm8c/>; CID to Media Matters for Am., Ex. 1 to Pet. to Quash, FTC File No. 251-0061 (June 18, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/2510064mediamattersptqredactedpublic.pdf.

⁹ NewsGuard also identifies statements by the Chairman of the Federal Communications Commission (FCC), *Petition*, at 4, 11–12, but these are a red herring. Remarks from “non-decisionmakers are not generally direct evidence of retaliation,” *e.g.*, *Waggel v. George Wash. Univ.*, 957 F.3d 1364, 1374 (D.C. Cir. 2020), and could only conceivably be relevant if the non-decisionmaker was involved in the decisionmaking process, *see, e.g.*, *Harris v. Wackenhut Servs., Inc.*, 648 F. Supp. 2d 53, 62 (D.D.C. 2009). The FCC Chairman was not involved in any decisionmaking regarding the FTC’s advertising boycott investigation or the CID issued to NewsGuard, and NewsGuard does not even allege as much. *See, e.g.*, *In re Architect of Capitol Emp. Disp.*, No. 24-mc-32 (TNM), 2024 WL 3359515, at *3 (D.D.C. July 10, 2024) (disregarding comments by “non-decisionmakers” who “did not work for the [relevant entity]” and whom plaintiffs “never link[ed]” to their termination); *United States v. Biden*, 729 F. Supp. 3d 410, 422 (D. Del. 2024) (any “pressure campaign from Congressional Republicans” to charge defendant was irrelevant without “credible [allegations] to suggest that the conduct of those lawmakers (or anyone else) had any impact whatsoever on the Special Counsel”).

¹⁰ https://www.ftc.gov/system/files/ftc_gov/pdf/OmnicomOrder.pdf.

violation of our antitrust laws—to censor the speech of conservative and independent media in the United States.”¹¹ *Petition*, at 3.

- A December 2024 statement in then-Commissioner Ferguson’s concurrence in *FTC v. 1661, Inc. d/b/a GOAT* that identified NewsGuard as one example of a news-rating and brand-safety organization whose activities may contribute to a “risk of advertiser boycotts that raise Sherman Act problems.” The statement observed that “the antitrust laws do not permit third parties to facilitate group boycotts among competitors” and called on the Commission to “use the full extent of its authority to protect the free speech of all Americans,” including by “investigat[ing] collusion that may suppress competition and, in doing so, suppress free speech online.”¹² *Petition*, at 3.
- A June 2025 statement by Chairman Ferguson in connection with the administrative complaint and other filings in *In re Omnicom Group / The Interpublic Group of Cos.*, FTC File No. 251-0049. NewsGuard excerpts part of the following sentence in the statement: “Numerous other industry groups and private organizations have publicly sought to use the chokepoint of the advertising industry to effect political or ideological goals.” In a parenthetical to a footnote accompanying this sentence, the statement summarized a U.S. House of Representatives committee staff report as “describing NewsGuard and other organizations’ steering of advertising revenue with ‘an unavoidable partisan lens.’”¹³ *Petition*, at 11.

Rather than suggesting retaliation, these statements reflect the Chairman’s views and understanding of entities in the advertising industry that may have engaged in censorship and highlight that investigating possible antitrust violations in that industry was a priority for the incoming Chairman. The Chairman simply observed, consistent with the findings of congressional investigations, that antitrust violations may have occurred and deserved the Commission’s attention. Such statements about enforcement priorities are commonplace for enforcement officials; indeed, it “is what we expect of public servants tasked with enforcing the law.” *Media Matters for Am. v. FTC*, No. 25-5302, 2025 WL 2988966, at *14 (D.C. Cir. Oct. 23, 2025) (Walker, J., dissenting). If anything, the statements underscore First Amendment values by reflecting the Chairman’s belief that censorship is pernicious and may violate the antitrust laws if done pursuant to an agreement. *See id.* at *18 (explaining that Chairman “Ferguson’s (far-from-incriminating) comments” reveal a “campaign against censorship”); *see also United States v. Rundo*, 108 F.4th 792, 807 (9th Cir. 2024) (statement that prosecution “was initiated to address violent attempts to ‘squell free speech’” was “not suspect” and instead “put[] the non-discriminatory motive of the prosecutors’ office on display”); *United States v. Wilson*, 123 F.4th 1021, 1032 (9th Cir. 2024) (Bumatay, J., concurring) (the “mere fact that government officials” used labels such as “‘radical left’ . . . to identify violent wrongdoers” “doesn’t suggest that they targeted the violent rioters because of their political beliefs” instead of “based on their violence alone”); *United States v. Penagaricano-Soler*, 911 F.2d 833, 838 (1st Cir. 1990) (rejecting selective prosecution claim based on public statements by high-ranking officials where “the government presented sufficient countervailing reasons of a non-discriminatory nature”).

¹¹ <https://x.com/AFergusonFTC/status/1856152760850243905>.

¹² https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-goat-concurrence.pdf.

¹³ https://www.ftc.gov/system/files/ftc_gov/pdf/omnicom-ipg-ferguson-statement_0.pdf.

NewsGuard also points to two other statements by Chairman Ferguson: a written statement that he had a “track record of standing up to . . . the radical left” and would “[i]nvestigate . . . advertiser boycotts,” and a statement on a podcast that “‘progressives’ who are ‘fighting disinformation’ were ‘not going to give up just because of the election,’ so ‘it’s really important that the FTC take investigative steps in the new administration under President Trump.’” *Petition*, at 10–11 (quoting *Media Matters for Am. v. FTC*, 805 F. Supp. 3d 105, 134 (D.D.C. 2025)). NewsGuard contends that these statements “characterize similar investigations ‘in ideological terms’” and “‘indicate at a minimum that Chairman Ferguson saw the FTC’s investigation as having a partisan bent.’” *Id.* at 10 (quoting *Media Matters*, 805 F. Supp. 3d at 134). Neither statement mentions NewsGuard, and far from suggesting retaliation, they reflect a legitimate concern about potential antitrust violations. Nor do these general statements connect the CID to NewsGuard’s First Amendment-protected activities; they do not reflect any matter-specific direction toward NewsGuard or suggest that the CID was prompted by commentary rather than by the Commission’s independent investigative interests. And framing these statements as partisan or ideological is irrelevant to NewsGuard’s retaliation claim because they do nothing to connect the CID to a particular protected activity by NewsGuard.

b. Timing of the CID

NewsGuard next argues that the timeline of this “fast-moving investigation” into advertising boycotts supports an inference of retaliation. Specifically, NewsGuard points to the following sequence of events: then-Commissioner Ferguson was chosen by President-elect Donald Trump to be Chairman in December 2024; he became Chairman in January 2025; he announced an investigation into “‘tech platform censorship’” in February 2025; and the Commission issued a CID to NewsGuard (and other entities) in May 2025. *Petition*, at 12–13 (quoting *Media Matters*, 805 F. Supp. 3d at 136; other alterations omitted). NewsGuard argues this sequence of events “further demonstrat[es] the ‘but-for’ causation between the FTC’s retaliatory motive and the NewsGuard CID.” *Id.* at 12.

NewsGuard misconstrues the timing inquiry. The relevant question is not the interval between the CID’s issuance and the FTC’s “retaliatory motive” as exemplified by Chairman Ferguson becoming Chairman—though even if it were, that four-month gap would be beyond the typical “outer limit” for establishing causation. *See Gustave-Schmidt v. Chao*, 360 F. Supp. 2d 105, 118–19 (D.D.C. 2004); *see also Hamilton v. Geithner*, 666 F.3d 1344, 1357 (D.C. Cir. 2012) (temporal proximity can support causation “only where the two events are very close in time” and even “a three-month period” may “be too lengthy”) (cleaned up). Nor is it the interval between the CID’s issuance and then-Commissioner Ferguson’s November–December 2024 comments mentioning NewsGuard (an even longer temporal gap). Instead, the causal link that NewsGuard must demonstrate is between (1) an adverse action (here, the issuance of the CID), and (2) *its own* exercise of a constitutional right. *See Aref*, 833 F.3d at 258. But NewsGuard does not identify any specific speech, on a single date, for which the CID was purportedly issued in retaliation.¹⁴ In other words, to draw an inference of retaliation from timing, an adverse Event B must closely follow a protected Event A. Here, NewsGuard does not allege an identifiable Event

¹⁴ NewsGuard argues that the Commission’s investigation “has followed the exact same timeline that the district court found troubling in *Media Matters*.” *Petition*, at 12 (citing *Media Matters*, 805 F. Supp. 3d at 136). While the Commission respectfully disagrees with the district court’s decision in that case and is currently appealing it, the plaintiff there at least identified a specific article that it claimed led to the issuance of a retaliatory CID (albeit 18 months later). *Media Matters*, 805 F. Supp. 3d at 113, 116.

A at all, much less one that was closely followed by adverse Event B. It is impossible to find a temporal connection to an unknown event. *See Lakkis v. Lahovski*, 994 F. Supp. 2d 624, 634 (M.D. Pa. 2014) (suggesting that allegations that are “not anchored in time” are insufficient to support a First Amendment retaliation claim because they do not imply “temporal proximity to enable a fact-finder to infer a causal link”).¹⁵

At any rate, the assertion that the investigation was launched promptly does not support NewsGuard’s version of events because it is equally consistent with what actually occurred: namely, a robust effort by the Commission to pursue a high-priority investigation into advertising boycotts. A fact that is equally consistent with both sides’ positions does not constitute evidence in favor of either. *See, e.g., Gonzalez v. Walgreen Co.*, 140 F.4th 663, 674 (5th Cir. 2025). And timing alone does not suggest “improper motive” because it “can merely be the sign of the government’s change in enforcement priorities.” *Rundo*, 108 F.4th at 805. Here, if the Commission acted promptly to issue a CID to NewsGuard, that action only establishes (if anything) a causal connection between the CID and the Commission’s substantive enforcement priorities. It is not evidence of retaliation.

c. Scope of the CID

Next, NewsGuard argues that the “scope of the CID suggests pretext on the part of the FTC,” which bolsters its contention that the CID is retaliatory. *Petition*, at 13 (quoting *Media Matters*, 805 F. Supp. 3d at 137). NewsGuard asserts that the CID’s “demands . . . go well beyond the investigation’s purported scope” and, as an example, points to two CID specifications that request NewsGuard’s financial information. *Id.* (quoting *Media Matters*, 805 F. Supp. 3d at 137).

The CID’s scope, consisting of 31 specifications, is far from unusual. For example, another CID from the same investigation, which became public after the recipient filed a petition to quash, contains 29 specifications (only two fewer than the CID to NewsGuard) and covers the same relevant time period.¹⁶ The scope of the NewsGuard CID is also in line with the typical CID issued in Commission investigations. *See Texaco*, 555 F.2d at 882 (“There is no doubt that these subpoenas are broad in scope, but the FTC’s inquiry is a comprehensive one and must be so to serve its purposes.”).¹⁷ And all of the CID’s specifications follow naturally from the Commission’s objective of investigating potential advertising boycotts. As to NewsGuard’s financial information specifically, it could shed light on whether NewsGuard expended funds on (or received funds for) coordinating activities. *See FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089–90 (D.C. Cir. 1992) (recognizing that “financial information can be relevant to a pre-complaint investigation”). More fundamentally, it is the Commission’s prerogative to define the scope of the investigation, subject to the requirement that “the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.” *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). As explained further below, the

¹⁵ To the extent NewsGuard may argue that it regularly issues ratings and is therefore continually speaking, that argument proves too much: *any* adverse regulatory action taken during NewsGuard’s existence would be transformed into something temporally proximate and indicative of retaliation.

¹⁶ *See* CID to The Global Disinformation Index, Attach. to Pet. to Quash, FTC File No. 251-0061 (Sept. 17, 2025), <https://tinyurl.com/v9mhbm8c/>.

¹⁷ *E.g., FTC v. Cigna Grp.*, No. 1:25-mc-00004, Dkt. 1-2 (D.D.C. Jan. 15, 2025) (43 specifications); *FTC v. IT Media, Inc.*, No. 2:15-cv-09483, Dkt. 1-2 (C.D. Cal. Dec. 12, 2016) (30 specifications).

NewsGuard CID easily satisfies this requirement, and NewsGuard does not argue that the CID fails to provide adequate notice of the scope of the Commission’s investigation.

NewsGuard’s argument regarding the CID’s scope is further undercut by the January 15 letter from staff, which granted “substantial” “modifications” to the CID. *Petition* Ex. 3, at 3. As NewsGuard acknowledges, the letter deemed NewsGuard to have “‘satisfied its CID obligations, except for’ Specifications 8, 11, 12, 15, and 26.” *Petition* Ex. 2 ¶ 26; *see Petition*, at 13 n.14 (recognizing that the modified CID no longer seeks NewsGuard’s financial information). And as to the five outstanding Specifications, the letter modified all but one “to limit” their scope. *Petition* Ex. 3, at 2–3. These modifications to the CID’s scope demonstrate the Commission’s “good-faith effort to reduce NewsGuard’s burden” to the extent “consistent with the Commission’s need for information” to further the investigation. *Id.*; *see Texaco*, 555 F.2d at 882–83 (recognizing that concerns over burdensomeness of an FTC subpoena were “‘substantially mitigated’ during the course of extensive negotiations with Commission attorneys”).

d. Omnicom Consent Order

Finally, NewsGuard argues that the Omnicom Consent Order provides further evidence of a “retaliatory nexus” between the CID and NewsGuard’s First Amendment-protected activity because it prohibits the merged entity in that case from using services, “such as NewsGuard’s,” that “evaluate ‘viewpoints as to the veracity of news reporting’ and ‘adherence to journalistic standards or ethics.’” *Petition*, at 13–14 (quoting Omnicom Consent Order).

On June 23, 2025, the Commission approved the acquisition of one large advertising agency (IPG) by another (Omnicom), subject to a consent order. Together with the consent order, the Commission issued an administrative complaint that alleged, in part: “Major advertisers have discussed and ultimately declined to advertise on certain websites and applications. These decisions appear to have been coordinated through one or more associations of advertising industry players, including ad agencies.”¹⁸ To address this allegation, the June 2025 consent order contained a provision prohibiting the merged entity from entering into agreements with any third party that affect advertising spend based on the political or ideological viewpoints of sellers of advertising inventory. *See Decision & Order, In re Omnicom Grp. Inc.*, No. 251-0049 ¶ II.A (June 23, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/Omnicom-DandO.pdf.

In September 2025, in response to public comments, the Commission modified the consent order to more specifically define “political or ideological viewpoints” to include “viewpoints as to the veracity of news reporting or other politically or ideologically contested facts, such as their characterization as ‘misinformation,’ ‘disinformation,’ ‘bias,’ or similar terms” and “adherence to journalistic standards or ethics.” *See Omnicom Consent Order* ¶ I.D. NewsGuard now complains that these prohibitions “‘coerce a private party to punish or suppress disfavored speech on [the government’s] behalf,’” including speech by NewsGuard. *Petition*, at 13–14 (quoting *Vullo*, 602 U.S. at 190).

¹⁸ Complaint, *In re Omnicom Grp. Inc.*, No. 251-0049 ¶ 17, https://www.ftc.gov/system/files/ftc_gov/pdf/Omnicom-Complaint.pdf.

The Commission disagrees that the Omnicom Consent Order shows retaliation against NewsGuard. Instead, the evidence reflects the Commission’s nonretaliatory reasons for adopting the Omnicom Consent Order. As the administrative complaint alluded to, and the Commission’s analysis of the proposed order explained, Omnicom’s acquisition of IPG would increase market concentration in the advertising industry, making it far easier for market participants to engage in anticompetitive, collusive boycotts of disfavored media publishers, just as the Commission found they had done in the recent past. *See* 90 Fed. Reg. 27304, 27305–06 (June 26, 2025). The proposed order sought to remedy this problem by “eliminating Omnicom’s ability to participate in [such] ongoing or future coordination.” *Id.* at 27304. During the public comment period, however, several commenters expressed concern that the initial order as written might not achieve that goal. *See* Regulations.gov, *Comment from CPAC & Independent Media Council* (July 29, 2025), <https://tinyurl.com/yf5nw8p2>; *Comment from GB News Limited* (July 29, 2025), <https://tinyurl.com/4jcumwyp>; *Comment from Newsmax Media Inc.* (July 28, 2025), <https://tinyurl.com/3ruxx5vp>. After considering the submitted comments, the Commission entered a final consent order with revised language designed to more effectively preclude Omnicom from engaging in the collusive conduct that the Commission had identified previously. NewsGuard is not named in the Omnicom Consent Order, and the challenged condition in the Order applies to Omnicom’s agreements with any brand safety organization—i.e., organizations that offer services “such as NewsGuard’s,” not just NewsGuard itself.¹⁹ This is evidence of the Commission acting to address antitrust concerns about concentration in the advertising industry that were raised by public commenters, not retaliating against NewsGuard.²⁰

B. The CID Does Not Otherwise Violate the First or Fourth Amendments.

NewsGuard’s second argument is that the CID is overly broad and unnecessarily intrusive in violation of the First and Fourth Amendments. *Petition*, at 14. While NewsGuard’s theories somewhat overlap, it essentially makes three points in support of this argument: (1) the CID improperly seeks information protected by a First Amendment journalist’s privilege; (2) the CID violates NewsGuard’s associational rights under the First Amendment; and (3) the CID is an unreasonable search under the Fourth Amendment. None of these arguments is persuasive.

1. First Amendment Journalist’s Privilege

NewsGuard argues that it is an organization that engages in “journalistic activities,” and therefore, information regarding its “deliberative process and procedures for formulating ratings”

¹⁹ Indeed, it appears that there are several other entities in this space. *See* U.S. House Judiciary Comm., Interim Staff Report at 3 (July 10, 2024), <https://tinyurl.com/2v7ej2wj> (describing “the Global Disinformation Index (GDI)” as a “news ranking organization[.]” like NewsGuard); *id.* at 26 (“Documents show that [an advertising entity] recommend[ed] that its members work with organizations *such as* GDI and NewsGuard” and “promote[ed] GDI and NewsGuard ... *over other* ‘independent fact checkers’” (emphasis added)); *id.* (quoting evidence indicating that “GDI is one of *many*” “independent fact checkers to weed out mis-and-disinfo from supply chain and ad buys,” including “NewsGuard, IFCN, etc.” (emphasis added)); *see also id.* at 33 (listing eleven “ad-tech service providers” that are engaged in “content detection and classification for the purposes of content moderation and/or monetization”).

²⁰ In addition, the Omnicom Consent Order was issued over one month *after* the NewsGuard CID, and was modified in the manner NewsGuard complains of over three months after that. Obviously, events that postdate an adverse action cannot have caused that action. *See, e.g., Hankins v. Wheeler*, 760 F. Supp. 3d 467, 482 (E.D. La. 2024) (holding “[t]here is simply no correlation, much less causation, between” alleged constitutional violations and deficiencies in an investigation “that occurred *afterward*,” since “[t]o find otherwise defies logic”).

is immune from production in response to the CID. *Petition*, at 16; *see also id.* at 15 (“[T]he First Amendment affords NewsGuard a privilege that protects it from having to disclose information.”). Here, NewsGuard appears to be invoking a journalist’s privilege under the First Amendment. We are unpersuaded that such a privilege shields NewsGuard from responding for two reasons: the public interest in effective law enforcement outweighs any qualified First Amendment privilege in withholding information that NewsGuard may hold (assuming such a privilege exists), and NewsGuard has not met its burden of showing that the information sought by the CID falls within that privilege.

Some courts have held that the First Amendment “provides journalists with a qualified privilege against compelled disclosure of information obtained through their news gathering activities.” *Hutira v. Islamic Republic of Iran*, 211 F. Supp. 2d 115, 118 (D.D.C. 2002); *see also Zerilli v. Smith*, 656 F.2d 705, 712–14 (D.C. Cir. 1981). In those courts that have recognized the privilege, the reporter invoking the privilege bears the burden of demonstrating its applicability. *See Hutira*, 211 F. Supp. 2d at 119 nn.4–5. “[T]he critical question for deciding whether a person may invoke the journalist’s privilege is whether she is gathering news for dissemination to the public.” *Shoen v. Shoen*, 5 F.3d 1289, 1293 (9th Cir. 1993). In other words, assuming the existence of the privilege,²¹ the person seeking to invoke the privilege “must demonstrate, through competent evidence, the intent to use material—sought, gathered or received—to disseminate information to the public and that such intent existed at the inception of the newsgathering process.” *von Bulow v. von Bulow*, 811 F.2d 136, 144 (2d Cir. 1987).

a. The Public Interest

The Supreme Court has held that only in limited circumstances will the First Amendment bar the government from gathering information during a law enforcement investigation. In *Branzburg v. Hayes*, 408 U.S. 665 (1972), the Court considered whether the First Amendment protected journalists from revealing confidential information and sources in response to a grand jury subpoena. The Court ruled in favor of the government, noting that it could “perceive no basis for holding that the public interest in law enforcement and in ensuring effective grand jury proceedings is insufficient to override the consequential, but uncertain, burden on news gathering that is said to result from insisting that reporters, like other citizens, respond to relevant questions put to them in the course of a valid grand jury investigation or criminal trial.” *Id.* at 690–91; *see also Zerilli*, 656 F.2d at 711 (“The Court justified this decision by pointing to the traditional importance of grand juries and the strong public interest in effective criminal investigation.”).

The Commission exercises investigative law enforcement powers akin to those of a criminal grand jury. Indeed, the Supreme Court has noted that the Commission “has a power of inquisition . . . [that] is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated.” *Morton Salt*, 338 U.S. at 642–43; *see also In re Grand Jury Proceedings*, 486 F.2d 85, 90 (3d Cir. 1973) (“Grand jury subpoenas then, when they are brought before the

²¹ *See In re Request from U.K. Pursuant to Treaty Between Gov’t of U.S. and Gov’t of U.K. on Mutual Assistance in Criminal Matters in the Matter of Dolours Price*, 685 F.3d 1, 17 n.23 (1st Cir. 2012) (“[T]here is a circuit split on whether under *Branzburg v. Hayes*, 408 U.S. 665 (1972)] there can ever be a reporter’s privilege of constitutional or common law dimensions.”); *In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141, 1145–49 (D.C. Cir. 2006) (rejecting existence of constitutional reporter’s privilege in grand jury proceedings); *cf. Chen v. FBI*, 153 F.4th 1289, 1295 (D.C. Cir. 2025) (declining to recognize a federal common law newsgathering privilege).

federal courts for enforcement, for all practical purposes are exactly analogous to subpoenas issued by a federal administrative agency on the authority of a statute, without any prior judicial control.”). As such, when the Commission acts in its law enforcement capacity, as it does here, the public interest in the ability to thoroughly gather evidence outweighs any qualified First Amendment privilege.

b. NewsGuard’s Burden

NewsGuard also fails to meet its burden to show that the material sought by the CID qualifies for the journalist’s privilege as recognized by some courts. *First*, NewsGuard broadly claims that the CID’s “requests regarding NewsGuard’s deliberative process and procedures for formulating ratings” are “intrusive” and reflect a “fishing expedition.” *Petition*, at 16–17 (quoting *Media Matters*, 805 F. Supp. 3d at 130). But these general, unsupported statements do not provide “competent evidence” demonstrating where NewsGuard obtained the information in question and whether the organization intended to disseminate the information to the public at the time it received it. *von Bulow*, 811 F.2d at 144. Such “blanket assertions” of privilege, *id.* at 147, are insufficient under both *von Bulow* and the Commission’s Rules of Practice. To properly assert a “claim of protected status” in response to the CID, NewsGuard needed to “include a detailed log of the items withheld . . . of sufficient detail to enable the Commission staff to assess the validity of the claim for each document The failure to provide information sufficient to support a claim of protected status may result in a denial of the claim.” 16 C.F.R. § 2.11(a)(1). NewsGuard submitted no such privilege log here, nor did it otherwise identify any purportedly privileged documents. Its privilege claim can be denied on that basis alone.

Second, NewsGuard’s argument conflates its commercial and journalistic activities. To the extent a First Amendment newsgathering privilege exists, it applies only where there is an intent to disseminate information to the public, which is at the heart of the “paramount public interest in . . . an[] independent press capable of participating in robust, unfettered debate.” *von Bulow*, 811 F.2d at 144 (cleaned up). By contrast, NewsGuard appears to have licensed its ratings products only to “advertisers” and “individual NewsGuard subscribers” (not the public), for a fee, via terms spelled out in private licensing agreements. *See supra* Part I; *Petition*, at 2. Those clients and subscribers were under no obligation to disseminate the materials they received from NewsGuard to the general public or otherwise put them to public use. These circumstances describe garden-variety commercial-intelligence or consulting arrangements, not journalism. Licensing a commercial product for a fee to select commercial purchasers via private contract is not “disseminat[ing] information to the public,” *von Bulow*, 811 F.2d at 147, which is required for First Amendment protection. *See also Am. Sav. Bank, FSB v. USB PaineWebber, Inc.*, No. M8-85, 2002 WL 31833223, at *2–3 (S.D.N.Y. Dec. 16, 2002) (denying motion to quash subpoena to credit rating agency that performed fee-based ratings subject to private contractual agreements, since circulating information only to private counterparties was not newsgathering and did not qualify for First Amendment privilege). If it were, business consultants who gather information about a market or firm and give that information to a client in exchange for a fee could claim the putative journalist’s privilege to avoid investigation into their business practices. No matter the status of the claims journalist’s privilege, it would never extend to such ordinary business activities.

Accordingly, assuming the First Amendment journalist’s privilege exists, we reject its application to this CID.

2. First Amendment Associational Rights

NewsGuard next argues that the CID violates its First Amendment associational rights by demanding that it identify its customers and produce communications with those customers. *Petition*, at 17.

NewsGuard cites *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 609 (2021), for the proposition that “before requiring that organizations reveal sensitive information about their members and supporters,” the government must satisfy “exacting scrutiny.” *Petition*, at 17. But that case is inapposite. There is a difference between a non-profit group’s members or the donors at issue in *Bonta*—who take part in, or donate to, a group without expecting a commercial return—and the customers of a for-profit commercial enterprise with whom the enterprise has a commercial, transactional relationship. This distinction is crucial for purposes of the First Amendment, under which commercial speech generally receives less protection than political or expressive speech. *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Comm’n of N.Y.*, 447 U.S. 557, 563 (1980). In accordance with this principle, courts hold that “[p]roducing a customer list does not offend the First Amendment because commercial transactions do not entail the same rights of association as political meetings.” *United States v. Bell*, 414 F.3d 474, 485 (3d Cir. 2005); *see also United States v. Benson*, 561 F.3d 718, 727 (7th Cir. 2009) (holding compelled disclosure of customer list did not violate the First Amendment because defendant operated a commercial enterprise, “not a membership organization”); *Edmondson v. RCI Hosp. Holdings, Inc.*, No. 16-CV-2242 (VEC), 2018 WL 2768643, at *2 (S.D.N.Y. June 8, 2018) (holding disclosure of customer identities unprotected by First Amendment associational privilege). Here, NewsGuard makes money by selling subscriptions and licensing access to its ratings databases to customers—a classic commercial exchange that places its customer lists outside of First Amendment protection.

NewsGuard further asserts that it is “a journalistic organization with a First Amendment right to associate with its customers to engage in the free exchange of ideas protected by the Constitution.” *Petition*, at 18 (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958)). Yet courts reject the existence of any such right between an organization and its customers. A First Amendment right of association “generally will not apply, for example, to business relationships.” *Sanitation & Recycling Indus., Inc. v. City of N.Y.*, 107 F.3d 985, 996 (2d Cir. 1997) (citing *Roberts v. U.S. Jaycees*, 468 U.S. 609, 620 (1984)); *see also Calm Ventures LLC v. Newsom*, 548 F. Supp. 3d 966, 975 (C.D. Cal. 2021) (“Plaintiff and its customers do not associate for the purpose of engaging in those activities protected by the First Amendment.”) (quotation omitted); *Amato v. Elicker*, 534 F. Supp. 3d 196, 209 (D. Conn. 2021) (claim of infringement on right to associate with customers “falls outside First Amendment associational protection”). Here, again, NewsGuard has a commercial relationship with the subscribers who pay for access to its products. Thus, the associational interests at issue in *NAACP*—which reversed the compelled disclosure of a political advocacy group’s membership lists, 357 U.S. at 460, 462—do not apply.

3. Fourth Amendment Search

Lastly, NewsGuard argues that the CID violates the Fourth Amendment because it is impermissibly “expansive” and an unreasonable intrusion into NewsGuard’s business affairs,

especially given the alleged First Amendment issues discussed above. *Petition*, at 14. This argument also lacks merit.

We begin with NewsGuard’s assertion that “[t]he Fourth Amendment imposes substantial restrictions on the reach of administrative subpoenas,” which it attributes to the Supreme Court’s decision in *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946). *Petition*, at 14. NewsGuard misinterprets the Supreme Court’s holding. The Court concluded that the Fourth Amendment permits administrative agencies to make broad demands for information so long as (1) the agency is authorized by law to conduct the investigation, and (2) the materials sought are relevant to the investigation. *Okla. Press*, 327 U.S. at 208–09 (holding that agency process does not violate the Fourth Amendment where “the investigation is authorized by Congress, is for a purpose Congress can order, and the documents sought are relevant to the inquiry”). The Court noted that any information request should not be “unreasonable,” by which it meant “too much indefiniteness or breadth.” *Id.* at 208; *see also In re Grand Jury Subpoena*, 829 F.2d 1291, 1298 (4th Cir. 1987) (“The critical inquiry, assuming that the hurdle of relevancy has been cleared, is whether there is too much indefiniteness or breadth in the things required to be produced by the subpoena.”). The Court reiterated this conclusion in *Morton Salt* as to the Commission specifically, noting that Commission process is appropriate so long as “the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.” 338 U.S. at 652.²²

Lower courts have applied these principles to evaluate the burden posed by Commission-issued process. In *Texaco*, the U.S. Court of Appeals for the District of Columbia Circuit considered a challenge to the scope of a Commission subpoena. The court found that a Commission information request is too “indefinite” only where it is “*unduly* burdensome or *unreasonably* broad,” as “[s]ome burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency’s legitimate inquiry and the public interest.” 555 F.2d at 882 (emphasis added); *see also Genuine Parts Co. v. FTC*, 445 F.2d 1382, 1391 (5th Cir. 1971) (“extreme breadth . . . must be accorded the Commission in conducting such an investigation”); *Adams v. FTC*, 296 F.2d 861, 867 (8th Cir. 1961) (“[B]roadness alone is not sufficient justification to refuse enforcement of a subpoena so long as the material sought is relevant.”). Thus, courts will only modify CIDs if the recipient has demonstrated that compliance “threatens to unduly disrupt or seriously hinder normal operations of a business.” *Texaco*, 555 F.2d at 882.

A Commission CID therefore does not violate the Fourth Amendment where (1) the Commission’s inquiry is in furtherance of its statutorily authorized function, (2) the materials sought are relevant to that inquiry, and (3) the request is not unduly burdensome or unreasonably broad. NewsGuard has not demonstrated that the CID here fails in any of these respects. *First*, the Commission issued the CID pursuant to its statutory authority to obtain information relating to an antitrust investigation. *See* 15 U.S.C. § 57b-1(c)(1). NewsGuard’s petition does not argue (nor could it) that the Commission lacks antitrust investigative authority or the ability to issue CIDs as part of an antitrust investigation. *Second*, the information sought by the CID is relevant

²² The Court further noted that Fourth Amendment considerations weigh less heavily for businesses than for individuals, as “[t]he Federal Government allows [businesses] the privilege of engaging in interstate commerce” and “[f]avors from [the] government often carry with them an enhanced measure of regulation.” 338 U.S. at 652. “Even if one were to regard the request for information in this case as caused by nothing more than official curiosity, nevertheless law-enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest.” *Id.*

to the Commission’s antitrust investigation. Indeed, NewsGuard’s petition identifies only two specifications (relating to NewsGuard’s financial information) that it claims are beyond the scope of the investigation. *Petition*, at 13. Yet even these specifications are clearly relevant, as they would show any payments that NewsGuard received as part of an agreement that may have violated the antitrust laws. In any event, as NewsGuard’s petition admits, staff has already confirmed that NewsGuard has satisfied its obligations as to these specifications. *See id.* at 13 n.14. *Third*, the request is not unduly burdensome or unreasonably broad, as NewsGuard has not provided any evidence that complying with the CID would “unduly disrupt or seriously hinder normal [business] operations.” NewsGuard’s argument that the CID is broad or that the information sought is “sensitive” does not establish a basis to quash the CID, let alone demonstrate a Fourth Amendment violation, especially given staff’s extensive, good faith efforts to narrow the CID.²³

III. CONCLUSION

For the foregoing reasons, NewsGuard’s petition to quash is denied.

IT IS HEREBY ORDERED THAT NewsGuard’s Petition to Quash the May 20, 2025, Civil Investigative Demand be, and hereby is, **DENIED**.

IT IS FURTHER ORDERED THAT NewsGuard shall comply in full with the Commission’s Civil Investigative Demand no later than **April 9, 2026**, or at such other date, time, and location as the Commission staff may determine.

By the Commission, Commissioner Meador recused.

April J. Tabor
Secretary

SEAL:
ISSUED: March 6, 2026

²³ This analysis remains unchanged even assuming that NewsGuard has First Amendment interests implicated by the CID. While NewsGuard is correct that the Supreme Court has noted that Fourth Amendment requirements should be applied with “exactitude” when First Amendment interests are involved, *Petition*, at 15, the Court clarified that this does not require “special showings” by the government so long as the information request is reasonable and issued pursuant to appropriate process and authority. *See Zurcher v. Stanford Daily*, 436 U.S. 547, 565 (1978). Thus, contrary to NewsGuard’s implication, any First Amendment considerations here do not create a heightened standard under the Fourth Amendment.