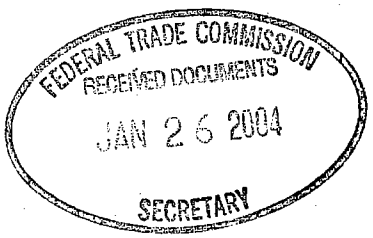

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	Docket No. 9312
North Texas Specialty Physicians,	)	
Respondent	)	

BLUE CROSS BLUE SHIELD OF TEXAS' MOTION FOR LEAVE TO REPLY TO NORTH TEXAS SPECIALTY PHYSICIANS' RESPONSE TO BLUE CROSS BLUE SHIELD OF TEXAS' MOTION TO QUASH AND/OR LIMIT SUBPOENA DUCES TECUM

TO THE HONORABLE JUDGE OF SAID COURT:

Blue Cross Blue Shield of Texas ("BCBSTX"), a non-party in the above-entitled and numbered matter, respectfully moves for leave to Reply to North Texas Specialty Physicians' Response to Blue Cross Blue Shield of Texas' Motion to Quash and/or Limit Subpoena Duces Tecum.

I.

NTSP's Response mischaracterizes and misconstrues both the facts and the law of this case. BCBSTX seeks leave to reply and clarify disputed issues. BCBSTX's Reply is attached as Exhibit A.

WHEREFORE, PREMISES CONSIDERED, Blue Cross Blue Shield of Texas requests it be granted leave to Reply to North Texas Specialty Physicians' Response to Blue Cross Blue Shield of Texas' Motion to Quash and/or Limit Subpoena Duces Tecum.

Respectfully submitted,

HULL HENRICKS & MACRAE LLP
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(512) 472-4554
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By:_____
MICHAEL S. HULL
State Bar No. 10253400
ANDREW F. MacRAE
State Bar No. 00784510

ATTORNEYS FOR BLUE CROSS
BLUE SHIELD OF TEXAS

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been sent to the following counsel of record via overnight delivery on this 22nd day of January 2004.

Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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Washington, DC 20580

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Federal Trade Commission
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Gregory D. Binns
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1700 Pacific Ave., Suite 3300
Dallas, TX 75201

Michael S. Hull / Andrew F. MacRae

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	Docket No. 9312
North Texas Specialty Physicians,	)	
Respondent	)	

BLUE CROSS BLUE SHIELD OF TEXAS' REPLY TO NORTH TEXAS SPECIALTY PHYSICIANS' RESPONSE TO BLUE CROSS BLUE SHIELD OF TEXAS' MOTION TO QUASH AND/OR LIMIT SUBPOENA DUCES TECUM

TO THE HONORABLE JUDGE OF SAID COURT:

Blue Cross Blue Shield of Texas ("BCBSTX"), a non-party in the above-entitled and numbered matter, files this Reply to North Texas Specialty Physicians' Response to Blue Cross Blue Shield of Texas' Motion to Quash and/or Limit Subpoena Duces Tecum.

I. INTRODUCTION

On December 23, 2003, BCBSTX was served with a Subpoena Duces Tecum issued at the behest of Respondent North Texas Specialty Physicians ("NTSP"). BCBSTX moved to quash or limit the Subpoena on January 6, 2003, and NTSP responded on January 13, 2004. BCBSTX submits this Reply to address inaccuracies and inconsistencies in NTSP's Response.

II. ARGUMENT

A. Unreasonable Time Constraints

NTSP argues in its Response that it gave BCBSTX a reasonable time within which to comply with the subpoena, and regardless, NTSP needs the information to meet upcoming deadlines. This is both absurd and inconsistent at the same time.

This action was filed on September 17, 2003, and a scheduling order entered on October 16, 2003, setting a deadline of January 30, 2004 for the parties to complete discovery. Yet the subpoena in question was not issued until November 24, 2003, and NTSP sat on it until December 18, 2003, at which time, rather than sending the subpoena overnight or having it hand-delivered to an address that MapQuest reveals is just 11.9 miles from the offices of NTSP's counsel, NTSP chose to deliver the subpoena by certified mail, which took another five days. These are not the actions of a prudent party for which discovery is a high priority, and it should not be up to BCBSTX to pick up NTSP's slack.

B. Burden of Proof

NTSP argues that BCBSTX has the burden to establish the subpoena is unduly burdensome, but ignores its own burden as to relevance. For a subpoena to meet the requirements for enforcement, "the demand [must] not [be] too indefinite, and the information sought [must be] reasonably relevant." *Adams v. F.T.C.*, 296 F.2d 861, 866 (8th Cir. 1961); *F.C.C. v. Cohn*, 154 F. Supp. 899, 908 (S.D.N.Y.1957) (noting that "courts will plainly refuse to enforce an administrative subpoena which is not within the bounds of reasonableness"). NTSP has not even attempted to carry its burden as to these requirements. The subpoena does nothing more than identify broad categories of documents, and is replete with conjecture as to the contents of the materials that might turn up. "If it is made to appear that the demand is too indefinite or that the data sought is not reasonably relevant, the agency action is generally regarded as being unreasonable and arbitrary, and the courts will deny enforcement."[1] *Id.* (stating that the courts will

[1] "Of course the subpoena power must at all times be confined to the rudimentary principles of justice." *Id.*

plainly refuse to enforce an administrative subpoena which is not within the bounds of reasonableness).

Further, assuming for the sake of argument that NTSP's broad requests do in fact seek relevant documents, BCBSTX has met its burden to establish both that the document requests are burdensome and that the information sought is confidential. (See Affidavit of Rick Haddock[2], establishing both that particular documents sought are confidential, and that the cost to respond to Requests Nos. 2 and 3 would be $684,000.)

C. Responses to Specific Arguments

With respect to NTSP's arguments relating to specific requests, BCBSTX makes the following concise observations:

Request No. 1. NTSP established in its Response why BCBSTX need not respond to this part of the subpoena: "Complaint Counsel has all information previously provided by BCBSTX available for use." (NTSP Response, p. 4.) If so, NTSP should get that information from Complaint Counsel and not harass a non-party.

Requests Nos. 2 and 3. NTSP characterizes the burden of those requests as "minimal," and alleges it "merely tried to save BCBSTX time and money." (NTSP Response, pp. 5-6.) BCBSTX has established this "minimal burden" would actually encompass 9,000 person-hours and cost $684,000. This is anything but minimal.

For the remaining specific requests, BCBSTX refers the Administrative Law Judge to its original Motion.

[2] In its Response, NTSP represented that it did not receive the Affidavit of Rick Haddock. However, BCBSTX delivered Mr. Haddock's Affidavit to NTSP by UPS on January 9, 2004 at 9:39 a.m., and Freeman in NTSP's mailroom signed for the envelope. (See Exhibit A)

III.
CONCLUSION

As set forth above, NTSP has not demonstrated the documents it seeks are relevant. Furthermore, many of the documents requested by the Subpoena contain sensitive and confidential financial information, and the cost to BCBSTX to respond to the subpoena would be prohibitive. The subpoena should be quashed in its entirety.

WHEREFORE, PREMISES CONSIDERED, BCBSTX respectfully requests the Subpoena Duces Tecum be quashed and/or limited, and that it be awarded its reasonable attorney's fees and costs, as well as such other relief, both legal and equitable, to which it may show itself justly entitled.

Respectfully submitted,

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(512) 494-0022 (Facsimile)

By: _____
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State Bar No. 10253400
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State Bar No. 00784510

ATTORNEYS FOR BLUE CROSS
BLUE SHIELD OF TEXAS

CERTIFICATE OF CONFERENCE

Andrew MacRae, counsel for non-party Movant BCBSTX, spoke with Gregory Binns, counsel for NTSP, on December 30, 2003, January 5, 2004, and again on January 12, 2004, in an attempt to resolve any disputes concerning the Subpoena that is the subject of the foregoing motion. As of the time this motion is filed, the issues in dispute have not been resolved.

Michael S. Hull / Andrew F. MacRae

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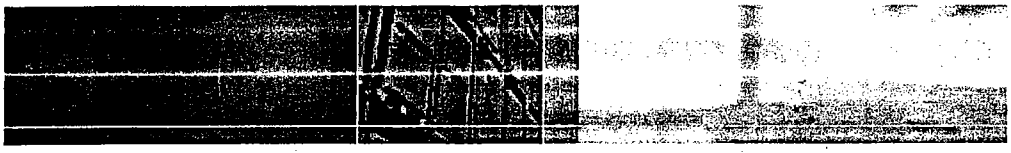

Tracking

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Delivered on:	Jan 9, 2004 9:39 A.M.
Signed by:	FREEMAN
Location:	MAIL ROOM
Delivered to:	DALLAS, TX, US
Shipped or Billed on:	Jan 8, 2004
Tracking Number:	1Z A07 6X0 22 1000 439 8
Service Type:	NEXT DAY AIR
Weight:	1.00 Lb

Package Progress:

Date	Time	Location	Activity
Jan 9, 2004	9:39 A.M.	DALLAS, TX, US	DELIVERY
	8:01 A.M.	DALLAS, TX, US	OUT FOR DELIVERY
	7:38 A.M.	DALLAS, TX, US	OUT FOR DELIVERY
	6:14 A.M.	DALLAS, TX, US	ARRIVAL SCAN
	5:48 A.M.	DALLAS/FT. WORTH A/P, TX, US	DEPARTURE SCAN
	5:04 A.M.	DALLAS/FT. WORTH A/P, TX, US	ARRIVAL SCAN
	4:10 A.M.	LOUISVILLE, KY, US	DEPARTURE SCAN
	1:03 A.M.	LOUISVILLE, KY, US	ARRIVAL SCAN
Jan 8, 2004	9:46 P.M.	AUSTIN, TX, US	DEPARTURE SCAN
	8:40 P.M.	AUSTIN, TX, US	ORIGIN SCAN
	8:00 P.M.	US	BILLING INFORMATION RECEI
	7:51 P.M.	AUSTIN, TX, US	PICKUP SCAN

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