CID continued until the Petition was timely filed on November 5, 2007. Petition at 10-13. 1t should be noted that WAM claims to have provided some material responsive to the CID; however, Staff and WAM have divergent opinions on the extent to which these materials substantially comply with the CID as a whole.[2]

The CID was issued as part of the Commission's investigation to determine whether WAM, a debt collection firm, may have violated either the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*. or the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq*. WAM has requested that the CID be limited "because: (1) the requests are unduly burdensome and can be reasonably limited without adversely impacting the FTC's investigation; and (2) the requests require the disclosure of confidential and personally identifiable consumer and client information[3] that is not relevant in any manner to the FTC's investigation." Petition at 2. WAM seeks to withhold production of confidential and sensitive information on the grounds of relevance;[4] however, the relevance of information

[2] *Compare* Petition at 11 n.2 ("This conference call is but one example of the extraordinary efforts WAM made to assist the FTC.") *with* Petition at 13 n.3 ("In this letter [Petition, Exhibit S, Letter from Bradley Elbein to Andrew Berg dated Oct. 26, 2007], Mr. Elbein stated his belief that WAM had not retained audio recordings pursuant to its obligations under the CID. . . .") *and* Petition, Exhibit O (Letter from Robin Rock to Andrew Berg dated Oct. 19, 2007) at 2 ("Although no qualification or objection was raised in response to Document Request No. 21, it now appears that WAM made a significantly less than complete production of its business records.").

[3] Except where context might otherwise require, this opinion will use the phrase "confidential information" to refer collectively to the types of information WAM seeks to withhold from its responses to the CID, including confidential business information, client identity information, personally identifiable consumer information, and protected health information.

[4] The Petition's actual claim is not that information identifying potential witnesses would be irrelevant to this investigation; rather, it is that WAM should be permitted to redact such identifying information because a mere theoretical risk of disclosure should outweigh the Commission's need for witness information. Petition at 27-28. With respect to client identity information, WAM proposes to insert a unique identifier into the records being produced, and the identifying information would be produced, if necessary, in response to a subsequent request from the Commission. *Id*. WAM notes that Staff had previously agreed to this procedure, *id*. at 27, but fails to note that "WAM has made it patently obvious that

regarding the identity and location of consumers and clients, each of whom may, in turn, have information regarding WAM's business practices, is beyond legitimate question.[5]

WAM notes that the Regional Director for the Commission's Southeast Region offered to modify the CIDs in several respects on October 26, 2007.[6] Petition at 2-3. WAM, however, claims those proposed modifications "make no meaningful difference." *Id*. at 3. Accordingly, the Commission will review and, for the reasons set out below, enforce the CID as issued.[7]

WAM's arguments against enforcement of the CID intertwine the issues of burden and the handling of confidential information.

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redacting its clients' identities is time consuming and costly, and negatively impacts its ability to comply with the CID. Therefore, although we have thoroughly considered WAM's suggestion that it replace client information with another identifier, we cannot accommodate this request without significantly undermining our investigation. We, therefore, decline to acquiesce to this request." Petition, Exhibit A at 3, Letter from Dama Brown to Andrew Berg dated Oct. 26, 2007.

[5] This is especially so in this case where we do not know whether WAM is primarily engaging in debt collection for its own account or as the agent of its client, including, for example, a client who may have directed, audited, or ratified practices of WAM for which the Commission might seek legal redress from both WAM and its client. As a result, such redaction could mask the identity of witnesses, as well as that of potential respondents or defendants in an enforcement action, clearly information which is relevant in a Commission investigation.

[6] WAM indicates this was the first and only time the Regional Director offered to modify the CID to address its burden concerns. *But see* Petition, Exhibit E (Letter from Brad Elbein to Andrew Berg dated August 31, 2007). Even if the claim were literally correct, it still fails to note that the Commission Staff offered several concessions to accommodate WAM's burden concerns during the investigation prior to issuance of the CID. Petition, Exhibit D (Letter from Robin Rock to Andrew Berg, dated March 23, 2007).

[7] Commission Staff and WAM each have an incentive to insure that WAM's burden of responding to the CID is no greater than necessary. The Commission's Rules are sufficiently flexible to permit reasonable adjustments in the scope, scale, and timing of WAM's responses to the CID. *See, e.g.*, 16 C.F.R. § 2.7(c). This Letter Ruling will deal with the thorny issues regarding confidential information. Thereafter, well-motivated counsel for both sides can and should apply themselves to the task of insuring that WAM's burden is no greater than necessary.

But, these issues actually are not inseparable. For instance, if the burden of production for a particular class of records lies almost exclusively in the time and costs necessary to redact particular information within those records, it would be illogical to attempt resolution of the burden issue before addressing the information confidentiality issues.

Before turning to those issues, however, it is necessary to emphasize the fact that the party who moves to limit the enforcement of a CID bears the burden of demonstrating that a particular CID specification is unreasonable – the Commission does *not* need to demonstrate that a specification is reasonable. "[T]he burden of showing that an agency subpoena is unreasonable remains with the respondent, . . . and where, as here, the agency inquiry is authorized by law and the materials sought are relevant to the inquiry, that burden is not easily met. (Citations omitted)." *Fed. Trade Comm'n v. Rockefeller*, 591 F.2d 182, 190 (2nd Cir. 1979), *quoting Sec. and Exchange Comm'n v. Brigadoon Scotch Distributing Co.*, 480 F.2d 1047, 1056 (2nd Cir. 1973), *cert. denied*, 415 U.S. 915 (1974). Petitioner repeatedly and inappropriately structures its arguments for relief by contending that the Commission failed to show that a specification is necessary or reasonable. *See, e.g.*, Petition at 27 ("The FTC has not shown that the disclosure of creditor identifying information. . . is needed for its investigation."). Thus, the Petitioner inappropriately attempts to shift the burden regarding the reasonableness of the CID's specifications from WAM to the Commission.

II. WAM Is Not Entitled to Withhold Confidential Information.[8]

WAM has not asserted a legally cognizable claim of privilege as to any portion of its records. It instead relies on statutory confidentiality provisions of federal law, e.g., the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191 (Aug. 21, 1996) *as amended by* Pub. L. 105-33 (Aug. 5, 1997) *and* Pub. L. 105-34 (Aug. 5, 1997) ("HIPAA"), and on the confidentiality and data security provisions of contracts with its clients. As a general matter, confidentiality or privacy concerns do not provide a ground for exclusion, in the absence of a claim of privilege, unless "compliance threatens to unduly disrupt or seriously hinder normal business operations." *Fed. Trade Comm'n v. Texaco, Inc.*, 555 F.2d 862, 882 (DC Cir. 1976). The DC Circuit in *Invention Submission Corp.* did not lighten or change this standard just because disclosing the identity of potential witnesses to the FTC might place the respondent under a "cloud of suspicion and speculation." If the mere creation of a cloud of suspicion were sufficient to stay enforcement, then every CID in every investigation would be suspect. *Fed. Trade Comm'n v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (DC Cir. 1992). WAM has not shown that disclosure of confidential

[8] WAM has made no showing that the confidentiality provisions of 15 U.S.C. § 57b-2 are inadequate to protect WAM's legitimate interests in avoiding public disclosure of confidential information. Contrary to WAM's assertion that the "FTC offers no guarantee the information will be kept confidential," Petition at 25, the FTC is not required to do so. It is, rather, WAM's burden to show that production of confidential information to the Commission is highly likely to result in the public disclosure of that information. *Exxon Corp. v. Fed. Trade Comm'n*, 589 F.2d 582, 589 n.14 (DC Cir. 1978) ("[J]udicial intervention to prevent potential injury from prospective governmental misconduct is only justified when such misconduct is imminent, not merely hypothetical"). WAM correctly notes that two FTC laptops with confidential information were once stolen. *See* Petition at 26. It is, however, entirely inappropriate to extrapolate from that a high likelihood that WAM's confidential information is or will ever be publicly disclosed to anybody. Petitioner offers no basis to support even *speculation* that the Commission's privacy and data security procedures, either before or after the laptop thefts, are or would be inadequate to protect WAM's legitimate data privacy and protection needs.

information to the FTC threatens to unduly disrupt or hinder its business operations.

A. HIPAA Does Not Support WAM's Right to Withhold Confidential Information.

Regulations adopted by the Department of Health and Human Services govern when otherwise protected health information may be disclosed to law enforcement officials. Those regulations do not support WAM's confidentiality claims in this matter. In pertinent part, 45 C.F.R. § 164.512(f) permits a covered entity[9] to disclose protected health information[10] to a law enforcement official under certain circumstances. In this particular case, the protected health information sought by the CID is relevant and material to a legitimate law enforcement inquiry under the FDCPA, the requests are specific and limited in scope to the extent practicable in light of the circumstances, and de-identified information would not permit the FTC to identify potential witnesses within the meaning of 45 C.F.R. § 164.512(f)(1)(ii)(C)(1 - 3).[11] HIPAA provides no basis for WAM to withhold protected health information from its responses to the CID.

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[9] WAM effectively claims to be a covered entity by reason of client contract provisions making its operations subject to HIPAA when it provides collection services to medical services providers. Petition at 23-24.

[10] The Commission assumes without deciding that all of the confidential information WAM seeks to withhold by reason of the data security provisions of HIPAA is protected health information within the meaning of HIPAA.

[11] A police officer *without a subpoena* can obtain more protected health information under 45 C.F.R. § 164.512(f)(2)(i)(A - H) than WAM's interpretation would have provided to the FTC with a CID under 45 C.F.R. § 164.512(f)(1). Rule 164.512(f)(2) permits an officer without subpoena to obtain name and address, date and place of birth, social security number, ABO blood type and rh factor, type of injury, date and time of treatment, and date and time of death (if applicable), as well as distinguishing physical characteristics, in order to identify or locate a suspect, fugitive, material witness, or missing person.

B. WAM's Client Contracts Do Not Support Withholding Confidential Information.

WAM cites no legal authority for the proposition that a person can shield its business records from all law enforcement scrutiny simply by signing a contract with a business partner which so provides. This is not surprising. It makes no sense for parties to a private contract to be able to trump the Commission's Congressionally-mandated investigative authority through such a simple business expedient. Thus, unless WAM can show that disclosing the identity of its clients would as a practical matter destroy its business, *Invention Submission Corp*. precludes any relief here for WAM.[12]

WAM's Petition at page 25 makes an unsubstantiated claim that disclosure of consumer information, or seeking client authorizations to disclose confidential information, to the FTC would cause it significant commercial harm. The nature of this harm appears to be that disclosure to its clients of "the pendency of the FTC's investigation would unduly punish WAM and cause significant business harm. . . ." Petition at 28. WAM's argument ignores the fact that the Commission Rules expressly provide that "[a]ll petitions to limit or quash investigational subpoenas or civil investigative demands and the responses thereto" are part of the public records of the Commission, except for certain information that is exempt from disclosure in certain circumstances. 16 C.F.R. §§ 2.7(g), 4.9(b)(4)(i)(2008). Thus, while the Rules may permit confidential treatment of certain information contained within a given petition – provided that such information satisfies the criteria

[12] 965 F.2d at 1090. The District Court in that case expressly rejected a CID respondent's claim that the terms of private contracts could exempt it from compliance with compulsory process issued by the FTC. *Fed. Trade Comm'n v. Invention Submission Corp*., 1991-1 Trade Cas. (CCH) ¶ 69,338 at 65,353 (D.D.C. 1991) ("Congress, in authorizing the Commission's investigatory power, did not condition the right to subpoena information on the sensitivity of the information sought[;] . . . any other state of affairs would undermine the Commission's mandate to investigate unfair business practices. . . simply by protecting all information under confidentiality agreements.").

prescribed by Commission Rule 4.10(a), 16 C.F.R. § 4.10(a) – the Rules do not authorize the filing of "*In re John Doe*" petitions, and thereby prevent public disclosure of the existence of a petition or the identity of the petitioner.

Petitioner provided three redacted exemplars of client contracts as Exhibits V, X, and Y to the Petition. A review of the provisions of WAM's client contracts, however, does not support WAM's argument that its provision of confidential information to the FTC in response to the CID would violate such contracts. The express provisions of Paragraph II.C. of Exhibit Y require WAM to promptly notify its clients whenever it is served with a CID for confidential information. The contract also requires WAM to permit its clients to participate in any challenge to "the legal validity of such subpoena or other legal process." Petition, Exhibit Y, ¶ II.C.[13] This provision obligated WAM to provide prompt notice to its clients of the pendency of the CID after its service on WAM. Given that, it would be inappropriate for the Commission to take cognizance of a harm to WAM (continued client ignorance of the pendency of this investigation) that can only occur through a breach of WAM's contractual obligations to its clients.[14]

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[13] WAM's reliance on language quoted out of context from Paragraph II.E. of Exhibit Y is not helpful to its argument. Petition at 27. The first sentence of Paragraph II.E. quoted by WAM, indeed requires prior written approval from the client before WAM can disclose "the business relationship between" client and WAM. The remaining provisions of the paragraph, however, clearly show that the intent of this paragraph is to preclude WAM from using the fact of its relationship with the client to promote or sell WAM's collection services to others. WAM cites no authority which would compel, or even permit, the Commission to allow a general prohibition of advertising to void the specific contract provisions defining the obligations of the parties regarding receipt of compulsory process for confidential information. WAM's construction of Exhibit Y, therefore, is unreasonable.

[14] The other two contract exemplars fare no better when read properly. Exhibit V, for instance, prohibits any uses of "Protected Health Information. . . other than as permitted by HIPAA." Petition, Exhibit V ¶ 14 at 9. HIPAA permits disclosure of confidential information to the FTC in this matter. Point II.A., *supra*. The Force Majeure provision in Exhibit X provides, "In the event that either party is unable to perform any of its obligations under this Agreement. . . because of. . . action or decrees of governmental bodies. . . the party who has been so effected shall

Petitioner has not shown that the Commission should excuse it from providing confidential information in its CID responses either as a matter of fact, law, or discretion.

III. WAM Has Not Shown That Compliance with the CID Is Unreasonably Burdensome.

Allegations of burden must be supported with specificity.[15] *In re National Claims Service, Inc., Petition to Limit Civil Investigative Demand*, 125 F.T.C. 1325, 1328-29, 1998 FTC LEXIS 192, *8 (1998). *National Claims* teaches that "At a minimum, a petitioner alleging burden must (i) identify the particular requests that impose an undue burden; (ii) describe the records that would need to be searched to meet that burden; and (iii) provide evidence in the form of testimony or documents establishing the burden (e.g., the person-hours and cost of meeting the particular specifications at issue)." *Id*. WAM's Petition fails to meet this burden.

WAM supports its Petition with a Declaration by Nancy Van Hoven which was included as an attachment to the Petition. WAM claims that it would take over two hundred days and cost more than $300,000.00 to comply with CID Requests 23-27.[16] Petition at 16,

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immediately give written notice to the other party and shall do everything possible to resume performance." Petition, Exhibit X ¶ 22 at 7. The CID is clearly an action or decree of a governmental body within the meaning of this paragraph. Further, reading this provision in that manner is consistent with other provisions of paragraph 3 of Exhibit X. Those provisions, for instance, require WAM to conduct its business in accordance with the provisions of FDCPA, which is enforceable by the FTC. *Id*. ¶ 3 at 1.

[15] WAM has challenged the burdensomeness of CID Requests 23-27, and the inclusion of confidential information in Interrogatories 8, 22, and 26, and in Document Requests 21- 27. Petition at 13-14.

[16] These statements of time and cost estimates are not factually supported. Even if each time and cost estimate were both accurate and verifiable, it still is not clear how much time it would take WAM to comply with the CID. For instance, to say a particular task takes 80 person/hours; does that mean it will be accomplished by ten people in one day or by one person in 10 days? If a project has five discrete steps or stages, each of which has a separately stated duration, will the accomplishment of those steps or stages be sequential or parallel, and will the time

Decl. of Van Hoven ¶¶ 10-32, and Exhibit T. A substantial portion of those costs, however, appears to be costs associated with data reformatting and data deletion that do not appear to be necessary. For instance, it is not clear why electronic records of telephone conversations required under Document Request 25 have to be converted from "Voice Track" to "WAV" files in order to make them accessible to the Commission. Petition at 16. Paragraph 24 of the Van Hoven Declaration includes a conclusory statement to that effect, but it is unsupported by any fact. The Commission is not told whether this data conversion is required for any reason other than to permit the unnecessary redaction of confidential (but not privileged) information. There is no evidence in the record that WAM would incur substantial costs by producing the unredacted data to the FTC that is requested by the CID.

Even assuming that there were some merit to the cost estimates in the Van Hoven Declaration, these costs would only be the beginning of the analysis. In considering a petition to limit a CID the Commission must look at burden to the Petitioner in the context of the size and scope of the investigation and of the Petitioner in order to determine whether responding to the CID is likely to "pose a threat to the normal operation of [WAM's business] considering [its] size." *Fed. Trade Comm'n v. Rockefeller*, 591 F.2d 182, 190 (DC Cir. 1979).[17] Here, given the scope and scale of WAM's business, compliance with the CID will not likely pose such a threat to WAM. WAM is a wholly-owned subsidiary of West Corp. (a closely-held, multibillion dollar company) which generates nearly $300 million in gross revenue per year, and the magnitude of its collection business is quite large both in number of collection efforts and dollar magnitude.[18] As a result, the Commission finds that, even assuming

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periods follow seriatim or overlap? Thus, the Petition's claim that it will take in excess of 200 days for WAM to comply with the CID is largely unsupported.

[17] *See also Federal Trade Comm. v. Standard American, Inc.*, 306 F.2d 231, 235 (3rd Cir. 1962) (finding petitioner had not provided sufficient evidence that compliance would lead to the "virtual destruction" of a business).

[18] *West Reports Increase in Revenue for Collection Unit*, INSIDE ARM, Oct. 18, 2007, available at *http://www.insidearm.com/go/arm-news/west-reports-increase-in-revenue-for-collection-unit*.

the accuracy of the Van Hoven Declaration, the record does not support a finding that WAM's burden of complying with the CID is likely to pose a sufficient threat to WAM's business operations to warrant limiting the CID.

V. CONCLUSION AND ORDER

For all the foregoing reasons, **IT IS ORDERED** that WAM's Petition be, and it hereby is, **DENIED**. Pursuant to Rule 2.7(e), Petitioner must comply with the CID by May 8, 2008.

By direction of the Commission.

Responses to Petitions to Quash

WELLNESS SUPPORT NETWORK, INC.

FTC File No. 072 3179 – Decision, April 24, 2008

RESPONSE TO WELLNESS SUPPORT NETWORK'S REQUEST FOR FULL COMMISSION REVIEW OF DENIAL OF PETITION TO QUASH CID

Dear Mr. Fuerst:

This letter advises you of the Commission's disposition of Wellness Support Network's ("WSN") Request for Full Commission Review of Denial of Petition to Quash CID ("Request for Review) issued in conjunction with an investigation of WSN by the Federal Trade Commission (hereinafter "FTC" or "Commission"). The Request for Review is dismissed for the reasons stated below.

I. Background and Summary

On July 27, 2007, the Commission issued a CID to WSN in connection with the Commission's investigation into advertising claims made by WSN regarding WSN® Diabetic Pack and WSN® Nerve Support Formula (hereinafter "WSN's products"). The CID was issued pursuant to the Commission's Resolution of May 12, 2006. On August 27, 2007, WSN timely filed its Petition to Quash.

WSN's Petition to Quash claimed that the CID should be quashed for three reasons: (1) the FTC "has neither the authority nor the expertise to make a determination as to whether a product is a drug, medical food or a dietary supplement;" Petition at 4; (2) "the CID was not properly tailored to yield information that is relevant and material to this request for information;" *id*. at 9; and (3) the "CID is unreasonably overbroad and unduly burdensome," *id*.

Commissioner Harbour, acting as the Commission's delegate, *see* 16 C.F.R. § 2.7(d)(4), directed the issuance of a Letter Ruling on October 25, 2007 denying WSN's Petition to Quash finding that the Commission had jurisdiction to investigate WSN's advertising

claims, that the information being sought was within the scope of the investigation, and that WSN had failed to establish that compliance with the CID would be unduly burdensome. The Order further directed WSN to comply with the CID by November 5, 2007.[1]

WSN filed its Notice of Appeal on November 1, 2007 and submitted its Memorandum in Support of Request for Review ("Mem. in Support") on the following day. On this appeal, WSN seeks review of the denial of its Petition to Quash, Mem. in Support at 1, and supplements its Petition to Quash with additional claims for relief not previously raised. WSN now claims for the first time that the CID must also be quashed because: (1) the FTC should defer to the Food and Drug Administration's ("FDA") consideration of WSN's pending request for an advisory opinion on whether WSN's products should be classified as medical foods, Mem. in Support at 2; (2) *res judicata* and collateral estoppel doctrines bar further investigation of WSN's advertising claims because of the pendency of the FDA's consideration of WSN's request for an advisory opinion, *id.* at 7; (3) the FTC has no authority to regulate the practice of medicine, *id*.; and (4) compliance with the CID is unduly burdensome during the pendency of the FDA's consideration of WSN's request for an advisory opinion. *Id*. at 10. Neither WSN's Petition to Quash nor its Mem. in Support provide any substantial legal or factual support for any of WSN's claims for relief, including those first raised in this appeal.

II. WSN Waived Its Supplemental Grounds for Relief By Failing to Include Them In Its Petition to Quash.

[1] In its Mem. in Support at 1, WSN requested a stay of the requirement to comply with the CID by November 5 pending disposition of its appeal. The Commission, however, has reason to believe that WSN mooted its application for a stay pending appeal when it requested and received an extension of time from staff within which to comply with the CID until November 14, 2007. The Commission further has reason to believe that WSN substantially complied with the CID on that date. At a minimum, WSN's substantial compliance with the CID also moots any claim that compliance with the CID would be unduly burdensome.

The Commission's rules expressly provide that a Petition to Quash "shall set forth all assertions of privilege or other factual or legal objections to the subpoena or civil investigative demand, including all appropriate arguments, affidavits and other supporting materials." 16 C.F.R. § 2.7(d)(1). The rule is clear on its face that all grounds for challenging a CID shall be joined in the initial application, absent some extraordinary circumstances. To construe the rule in any other fashion would serve no purpose other than inviting piecemeal challenges to CIDs and a parade of dilatory motions seeking seriatim deconstruction of each CID. WSN has made no showing that extraordinary circumstances should excuse it for not having included its supplemental arguments in its Petition to Quash. Accordingly, the Commission deems that WSN has waived any entitlement to relief on those supplemental grounds, and will not consider them on this appeal.[2]

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[2] Consideration of the merits of WSN's supplemental claims would not change the outcome of this appeal. First, WSN concedes that the FTC and the FDA have concurrent jurisdiction over its advertising claims. Mem. in Support at 5. Neither the FDA warning letter nor WSN's request for an advisory opinion are in any way duplicative of the FTC's investigation of false advertising claims under the Federal Trade Commission Act, 15 U.S.C. §§ 41-58. Concurrent investigation and litigation of claims by the FTC and FDA, each seeking different remedies under different federal laws, is not uncommon. For example, the FTC and FDA both filed complaints against Seasilver USA, Inc. in federal district court. *See* Press Release, Fed. Trade Comm'n, Marketers of Seasilver Agree to Pay $4.5 Million to Settle FTC Charges, *available at* www.ftc.gov/opa/2004/03/seasilver.shtm. Second, WSN has not identified any final judgment which could be capable of supporting its claims of *res judicata* or collateral estoppel. Indeed, the fact that the FDA sent a warning letter to WSN does not mean that the FDA has opened an investigation of WSN, much less reached a final judgment. An advisory opinion from the FDA addressing the classification of WSN's products for FDA purposes has no relevance to whether WSN's advertising claims are false or deceptive in violation of Section 5 of the FTC Act. Third, WSN's claim that the FTC lacks the authority to regulate the practice of medicine is inapposite. WSN, in its Petition to Quash, does not assert that WSN, its principals, or its employees practice medicine. Even if they did, the FTC, pursuant to the powers granted to it by Congress, has the authority to investigate whether WSN's advertising claims for its products are false or unsubstantiated. Finally, WSN mooted its burden of production arguments by substantially complying with the CID.

III. WSN's Substantial Compliance with the CID Moots This Appeal from the Denial of the Petition to Quash

WSN's Petition to Quash in effect claimed that the Commission lacked jurisdiction to investigate its advertising activities. The Commission's "investigations should not be bogged down by premature challenges to its regulatory jurisdiction." *Federal Trade Comm'n v. Monahan*, 832 F.2d 688, 690 (1st Cir. 1987) (then-Judge Breyer) (quoting *Federal Trade Comm'n v. Swanson*, 560 F.2d 1, 2 (1st Cir. 1977). Resolution of the jurisdictional issue with respect to whether the Commission has jurisdiction to investigate does not compromise any jurisdictional claim WSN might later raise as a defense to an FTC enforcement action or suit. *See Monahan*, 832 F.2d at 689. WSN's Petition to Quash also claimed that the CID sought material outside of the scope of the investigation, and that compliance would be unduly burdensome on WSN. Substantial compliance with the CID moots each of these claims that WSN should be granted relief by being excused from CID compliance that has already occurred.[3]

IV. Order

For the reasons set forth herein, the WSN's Request for Review should be, and it hereby is, **DISMISSED**.

By Direction of the Commission.

[3] Had the Commission reached the merits of WSN's appeal from the denial of its Petition to Quash, the Letter Ruling of October 25, 2007 would have been affirmed for substantially the reasons stated therein.

Responses to Petitions to Quash

BANNER HEALTH

FTC File No. 081 0054 – Decision, May 15, 2008

RESPONSE TO BLUE CROSS BLUE SHIELD OF ARIZONA, INC.'S PETITION TO QUASH OR LIMIT SUBPOENA DUCES TECUM

Dear Ms. Peck:

This letter advises you of the disposition of the Petition to Quash or Limit Subpoena Duces Tecum ("Petition") filed by Blue Cross Blue Shield of Arizona, Inc. ("Petitioner" or "BCBSAZ"). The subpoena duces tecum ("subpoena") was served on BCBSAZ in conjunction with the Federal Trade Commission's ("FTC" or "Commission") investigation of a proposed merger between two hospital services providers located in Arizona. The Petition is denied for the reasons hereinafter stated. The new date for Petitioner to comply with the subpoena is May 27, 2008.

This ruling was made by Commissioner Pamela Jones Harbour, acting as the Commission's delegate. *See* 16 C.F.R. § 2.7(d)(4). Petitioner has the right to request review of this matter by the full Commission. Such a request must be filed with the Secretary of the Commission within three days after service of this letter.[1]

I. Background and Summary

Petitioner is a health insurer that provides a variety of "health insurance products, services and networks to more than 1 million Arizonans[, including] . . . various health plans for individuals, families, and small and large businesses." Petition at 1-2. The Commission is conducting an investigation to determine whether the proposed merger of two hospital services providers in Arizona is likely to violate § 7 of the Clayton Act, 15 U.S.C. § 18, or § 5 of the

[1] This letter decision is being delivered by facsimile and express mail. The facsimile copy is being provided as a courtesy. Computation of the time for appeal, therefore, should be calculated from the date you received the original by express mail.