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Sent: Thursday, September 15, 2005 4:34 PM
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Subject: E-filing, Docket 041269-TP
Attachments: Objections and Motion to Quash 9-15-05.pdf

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Docket No and title:	In Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law Docket 041269-TP	CMP _____
Filed on behalf of:	Telepak Networks, Inc.	COM <u>3</u>
Number of pages:	7	CTR _____
Document attached:	Objections and Motion to Quash BellSouth's Subpoena Duces Tecum Without Deposition	ECR _____
		GGI _____
		OPC _____
		RCA _____
		SCR _____
Peg G. Griffin Assistant to Vicki Gordon Kaufman Moyle, Flanigan, Katz, Raymond & Sheehan, P.A. 118 N. Gadsden Street Tallahassee, FL 32301 Telephone: (850) 681-3828 Facsimile: (850) 681-8788 E-mail: pgriffin@moylelaw.com		SGA _____
		SEC <u>1</u>
		OTH <u>kimp</u>

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DOCUMENT NUMBER-DATE

08728 SEP 15 05

9/15/2005

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Establish Generic Docket to)	Docket No. 041269-TP
Consider Amendments to Interconnection)	
Agreements Resulting From Changes of Law)	Filed: September 15, 2005
<hr/>		

**TELEPAK NETWORKS, INC.'S OBJECTIONS AND
MOTION TO QUASH BELL SOUTH'S
SUBPOENA DUCES TECUM WITHOUT DEPOSITION**

Telepak Networks, Inc. (Telepak), by and through its undersigned counsel, hereby objects and moves to quash the Subpoena Duces Tecum Without Deposition (copy attached) directed to Charles L. McBride, Jr. Esq. by BellSouth Telecommunications, Inc. (BellSouth). Telepak is not a party to this docket. Further, although the document is styled a Subpoena Duces Tecum Without Deposition, the subpoena is not directed to the inspection of documents; rather, attached to the subpoena is a Request for Admission -- the very same discovery previously served improperly on Telepak and to which Telepak objected on August 25, 2005. Therefore, Telepak objects to the Non-Party Subpoena pursuant to Rule 1.351 and 1.410, Florida Rules of Civil Procedure, and to the extent necessary, moves to quash the Subpoena Duces Tecum under Rule 1.280(c), Florida Rules of Civil Procedure. Nevertheless, notwithstanding and without waiving its objections and without becoming a party to this docket, Telepak will furnish an answer to BellSouth. In support thereof, Telepak states:

1. On August 8, 2005, BellSouth served its First Requests for Admissions on Telepak. Telepak served its objections to the discovery on August 26, 2005, noting that it is not a party to this docket and thus has no obligation to respond to discovery.
2. On September 5, 2005 Mr. McBride received by mail a copy of a Subpoena Duces Tecum Without Deposition. This Non-Party Subpoena was not personally served as

required under rule 1.410(d), Florida Rules of Civil Procedure, Rule 28-106.212, Florida Administrative Code, and other applicable law. Further, Mr. McBride is not a registered agent for Telepak. Thus, service in this instance was not lawfully achieved.

3. Traditional forms of discovery, such as the admissions BellSouth seeks here, may not be sought from a non-party until jurisdiction of the court has been established over those non-parties; rather, discovery to the non-parties must be procured through means of a duly served subpoena. *Far Out Music v. Jordan*, 438 So.2d 912, 913 (Fla. 3rd DCA 1983).

4. Moreover, the discovery BellSouth seeks is not for the inspection of documents as the subpoena notes. Although the subpoena is styled "Subpoena Duces Tecum Without Deposition," BellSouth seeks a request for admission, not document inspection. Thus, this request is not within the scope of Rules 1.351 and 1.410, Florida Rules of Civil Procedure. As noted above, the requested information is the same information BellSouth sought in its First Requests for Admission improperly propounded on Telepak on August 8. BellSouth is now attempting to do indirectly what it could not do directly by sending written discovery under Rule 1.370, Florida Rules of Civil Procedure, to a non-party.¹

5. Rule 1.351, Florida Rules of Civil Procedure, states that a "party may seek inspection and copying of any documents or things within the scope of Rule 1.350(a) from a person who is not a party by issuance of a subpoena directing the production of the documents or things when the requesting party does not seek to depose the custodian or other person in possession of the documents or things." Subsection (b) of this rule requires a party to serve "notice on every other party of the intent to serve a subpoena under this rule at least 10 days

¹ It is interesting to note that BellSouth has sought, and will receive, the very same information it is seeking from Telepak via subpoena in the Mississippi Generic docket, Docket 2005-UA-139. In contrast to this case, Telepak is a party to the Mississippi case. It is unclear why BellSouth is pursuing inappropriate discovery here.

before the subpoena is issued if service is by delivery and 15 days before the subpoena is issued if the service is by mail.” Such notice was not provided in compliance with the rule.

6. In addition, the information which BellSouth seeks concerns wire centers which are *not* located in Florida. Therefore, the information sought can have no relevance to the Commission’s deliberations in this matter and is objectionable for that reason as well.

7. Nonetheless, as indicated above, Telepak will furnish a response to BellSouth, reserving and without waiving its objections to the Non-Party Subpoena stated herein and its objections set forth in response to the original discovery.

8. Telepak reiterates that it is not a party to this proceeding. Neither Telepak’s objections filed in this docket nor any answer furnished as a courtesy to BellSouth should be construed as an intervention or appearance either as a party or an interested party in connection with this proceeding, or as Telepak’s agreement or consent to respond to further discovery in connection with this matter.

WHEREFORE, Telepak requests that the Prehearing Officer enter an Order quashing the Non-Party Subpoena in question and finding that discovery not be had.

S/ Vicki Gordon Kaufman

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CERTIFICATE OF SERVICE
Docket No. 041269-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Quash was served via Electronic Mail and First Class United States Mail this 15th day of September, 2005, to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COPY

IN RE: Docket No. 041269-TP Petition to)
establish generic docket to consider)
amendments to interconnection agreements)
resulting from changes in law, by)
BellSouth Telecommunications, Inc.)

**SUBPOENA DUCES TECUM
WITHOUT DEPOSITION**

THE STATE OF FLORIDA

TO: Telepack Networks, Inc. c/o Charles L. McBride, Jr. Esq., Brunini, Grantham, Grower & Hewes, PLLC, Attorneys at Law, 248 Capitol Street, Suite, 1400, Jackson, MS 39201

YOU ARE COMMANDED to appear at offices of BellSouth Telecommunications, Inc., 150 S. Monroe Street, Suite 400, Tallahassee, FL 32301, on September 12, 2005, at 12:00 p.m., or at such other time and place as may be mutually agreed upon by counsel, and to have with you at that time and place the following: Information set forth in Attachment 1.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. **THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN.**

YOU ARE SUBPOENAED by the following attorney to (1) appear as specified, or (2) furnish the records instead of appearing as provided above, and, unless excused from this subpoena by this attorney or the Commission, you shall respond to this subpoena as directed.

DATED on September 2, 2005.

Blanca S. Bayó, Director
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission

(SEAL)

By: Kay Flynn
Kay Flynn, Chief, Bureau of Records

BellSouth Telecommunications, Nancy B. White c/o Nancy H. Sims, 150 S. Monroe Street, Suite 400, Tallahassee, Florida, 32301