

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Loretta Kidd)	
)	
vs.)	Docket 05-0729
)	
Illinois Bell Telephone Company)	

VERIFIED MOTION OF AT&T ILLINOIS TO DISMISS

Illinois Bell Telephone Company (“AT&T Illinois”¹) hereby seeks the entry of an order dismissing the Complaint with prejudice. Dismissal is appropriate for at least two reasons: 1) Ms. Kidd has failed to respond to discovery requests and otherwise to prosecute her case; and 2) Ms. Kidd’s claims are moot. In support of its motion, AT&T Illinois states as follows:

1. Ms. Kidd filed the Complaint on November 18, 2005. The Complaint challenges SBC Illinois’ intent to disconnect Ms. Kidd’s service because of possible identity fraud. See Complaint, pp. 1, 2. The only relief requested by the Complaint is that the Commission prevent AT&T Illinois from disconnecting Ms. Kidd’s telephone. Complaint, p. 2.

2. At a status hearing on December 12, 2005, the Administrative Law Judge (“ALJ”) established a schedule under which the parties had until January 9, 2006, to serve discovery requests on each other and until January 17 to respond to such requests. The ALJ also set an evidentiary hearing for January 23. Tr. at 11-12.

3. On December 16, 2005, counsel for SBC Illinois sent Ms. Kidd a letter (the “discovery requests”) asking her to provide certain information and documents,

¹ Effective January 1, 2006, Illinois Bell Telephone Company will identify itself in this proceeding as “AT&T Illinois” instead of “SBC Illinois”.

including information about other names she may have used, about other addresses at which she had lived, and about any instances in which she may have been a victim of identity fraud. SBC Illinois sent the discovery requests, via regular U.S. Mail, to the mailing address provided in Ms. Kidd's complaint. The discovery requests were not returned by the Postal Service.

4. Because AT&T Illinois received no response to the discovery requests, on January 19, 2006, it filed a motion asking the Commission to compel Ms. Kidd to respond to the requests or, in the alternative, to bar Ms. Kidd from contesting certain evidence that AT&T Illinois planned to present at the evidentiary hearing.

5. Ms. Kidd notified the ALJ on the morning of January 23 that she would be unable to appear at the evidentiary hearing scheduled for that day and requested a continuance until January 30, 2006. The ALJ then issued a ruling allowing Ms. Kidd until January 27 either to respond to the motion to compel or to answer the discovery requests. The ALJ also scheduled a hearing for January 30, at which the parties could discuss any issues arising from the discovery requests or, assuming that the discovery issues were resolved, participate in the evidentiary hearing.

6. Ms. Kidd did not respond to the motion to compel or answer the discovery requests by January 27. She also advised the ALJ on the morning of January 30 that she would not be present at the hearing scheduled for that day. The ALJ then issued a notice directing the Clerk of the Commission to send Ms. Kidd a copy of AT&T Illinois' motion to compel, to which the discovery requests were attached, and directing Ms. Kidd to

answer the discovery requests by February 13.² The ALJ also rescheduled the evidentiary hearing for February 27.

7. Ms. Kidd did not respond to the discovery requests by February 13. She also advised the ALJ that she could not appear at the hearing scheduled for February 27. The ALJ then issued a notice continuing the evidentiary hearing until May 1.

8. In the meantime, because Ms. Kidd had made no payments on her account, AT&T Illinois took steps to disconnect her service. Specifically, on December 19, 2005, AT&T Illinois filed with the Commission a notice of its intent to disconnect Ms. Kidd's service for nonpayment.³ This pleading also was served on Ms. Kidd and the ALJ. The company then sent Ms. Kidd a disconnection notice and, when Ms. Kidd made no response to the disconnection notice, it temporarily suspended her service on January 10, 2006. The account was permanently disconnected on January 21, 2006. See Affidavit of Jason D. Jones ("Jones Aff.") ¶ 5, attached as Appendix 1.

9. Ms. Kidd did not appear for the evidentiary hearing on May 1. Tr. 49. Counsel for AT&T Illinois made an oral motion that her Complaint be dismissed based both on her failure to prosecute her case and the mootness of her claims. Tr. 51, 52-53. AT&T Illinois also presented testimony that Ms. Kidd's account had been disconnected. Tr. 58.

10. At the direction of the ALJ, AT&T Illinois is submitting this motion to explain, in more detail, the reasons why the Complaint should be dismissed.

² Ms. Kidd had advised the ALJ that she never received a copy of the discovery requests.

³ As explained in the notice, the reason that AT&T Illinois sought to disconnect Ms. Kidd's service (i.e., nonpayment) had nothing to do with the reason for disconnection raised by the Complaint (i.e., possible identity fraud).

ARGUMENT

The Commission should dismiss the Complaint for two reasons. First, Ms. Kidd appears to have no interest in prosecuting her claims. Second, the Commission cannot provide the relief that Ms. Kidd requests, so her claims are moot.

Want of Prosecution

Since mid-December, Ms. Kidd has shown no apparent interest in pursuing her Complaint. She failed to appear at four scheduled hearings (January 23, January 30, February 27, and May 1), even though she was consulted about each hearing date. She also failed to respond to AT&T Illinois' discovery requests in any way, even after the ALJ directed her to respond.

Section 200.370 of the Commission's Rules of Practice gives the ALJ broad authority to supervise discovery and to "issue such rulings as justice requires . . . to prevent unreasonable annoyance, expense, disadvantage or oppression." 83 Ill. Admin. Code § 200.370(b); see also 83 Ill. Admin. Code § 200.420 (allowing ALJ to strike party's pleading, or prohibit it from supporting certain claims, for failure to comply with discovery orders). Similarly, sections 200.190 and 200.550 allow the Commission to dismiss an action for want of prosecution. 83 Ill. Admin. Code §§ 200.190(a), 220.550. See Order, Nancy Livingston v. Illinois Bell Telephone Co., No. 04-0491, p. 2 (Mar. 9, 2005) (attached as Appendix 2); Order, Steve Neeley/Sky Net, Inc. v. Illinois Bell Telephone Co., No. 00-0294, p. 2 (Sept. 21, 2001) (granting motion to dismiss based on complainant's failure to respond to discovery).

In Livingston, the Commission found that it was appropriate to dismiss a complaint with prejudice after the complainant failed to appear at several hearings and

did not respond to discovery. After recognizing that the Public Utilities Act gives citizens a right to bring complaints before the Commission against regulated utilities, the Livingston order discussed the responsibilities accompanying this right:

[After initiating a complaint], citizens bear the responsibility of pursuing their claims and abiding by the rules established to protect all parties' interests. A citizen filing a complaint can not be allowed to neglect or ignore the rules governing the process and expect no consequences. In this instance, Complainant has demonstrated a lack of respect for the rules by failing to appear at three of five hearings and failing to respond to discovery requests in any way.... Commission resources are not unlimited and Complainant's approach to her own complaint should not be rewarded.

Appendix 2, at p. 2. Ms. Kidd similarly has failed to fulfill her responsibility to obey the rules governing the prosecution of complaints, and she similarly should not be rewarded for her behavior. The Commission thus should dismiss her Complaint with prejudice.

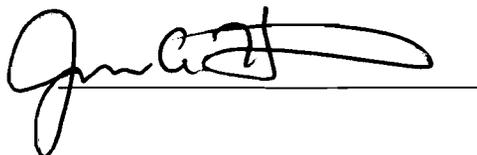
Mootness

Regardless of Ms. Kidd's lack of diligence in prosecuting her Complaint, the passage of time has made it impossible for the Commission to provide the remedy she is seeking. The only relief Ms. Kidd requests in the Complaint is that the Commission prevent AT&T Illinois from disconnecting her telephone service because of the company's concerns about identity fraud. See Complaint, p. 1, 2. However, that service was permanently disconnected on January 21 because of Ms. Kidd's failure to pay her bill. See Jones Aff. ¶ 5. As a result, any decision that the Commission might make on the identity fraud issue would not result in reconnection of Ms. Kidd's service, and thus her claim here is moot.

CONCLUSION

For all the foregoing reasons, the Complaint should be dismissed.

Respectfully submitted,

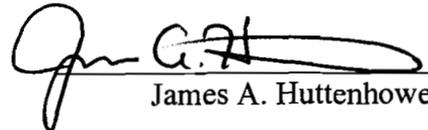
A handwritten signature in black ink, appearing to read "James A. Huttenhower", is written over a horizontal line.

James A. Huttenhower
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STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

VERIFICATION

I, James Huttenhower, state that I am an Attorney for Illinois Bell Telephone Company (“AT&T Illinois”), that I have read the above foregoing **VERIFIED MOTION OF AT&T ILLINOIS TO DISMISS** and know the contents thereof, and that the same are true to the best of my knowledge, information and belief.


James A. Huttenhower

Subscribed and sworn to before
me this 25th day of May, 2006.


Notary Public



CERTIFICATE OF SERVICE

I, James A. Huttenhower, an attorney, certify that a copy of the foregoing
VERIFIED MOTION OF AT&T ILLINOIS TO DISMISS was served on the service
list via U.S. Mail and/or electronic transmission on May 25, 2006.


James A. Huttenhower

Service List of ICC Docket 05-0729

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