

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company,	:	
	:	
-vs-	:	No. 04-0756
	:	
Data Net Systems, LLC	:	
	:	
Respondent.	:	
	:	

**VERIFIED MOTION OF AT&T ILLINOIS
TO RESET TESTIMONY SCHEDULE**

Illinois Bell Telephone Company (“AT&T Illinois”) hereby seeks the entry of an order resetting the current schedule for submission of testimony. In support of its motion, AT&T Illinois states as follows:

1. On March 2, 2006, the Administrative Law Judge (“ALJ”) set a schedule for the parties’ submission of testimony. In particular, AT&T Illinois was to serve its opening testimony by April 19; Data Net Systems, LLC (“Data Net”) was to serve rebuttal testimony and opening testimony on its counterclaims by June 21; AT&T Illinois was to serve its reply testimony and rebuttal testimony on the counterclaims by July 19; and Data Net was to serve reply testimony on its counterclaims by August 23. The schedule also established September 12 as the start of the contested hearing in this matter. There was an interval of 20 days between the last testimony deadline (August 23) and the hearing date.

2. In compliance with the schedule, AT&T Illinois served its opening testimony on April 19.

3. In the late evening on May 9, Data Net issued a set of data requests to AT&T Illinois, asking for responses by June 6. The data requests related only to issues raised by the Amended Complaint and not to issues raised by Data Net's counterclaims. AT&T Illinois answered the requests by the deadline, providing substantive information and data, in some instances, and objecting to the request and providing no substantive information, in other instances. On June 13, AT&T Illinois provided Data Net with a corrected version of a chart it had supplied in response to one of the data requests.

4. On the evening of June 20 – less than one day before Data Net's testimony was due – its counsel, Michael W. Ward, left a telephone message for AT&T Illinois' counsel about possible issues with the AT&T Illinois discovery responses.

5. The attorneys had a lengthy conversation on the afternoon of June 21 about various information that Data Net had hoped to obtain through the data requests and about limitations on AT&T Illinois' ability to provide that information. At the end of the conversation, counsel for AT&T Illinois agreed to provide additional information related to one of the data requests (Request No. 6, involving credits for late payment charges ("LPC") previously assessed on Data Net). Counsel also suggested that Mr. Ward provide a written explanation of any other supposed deficiencies in AT&T Illinois' response to the data requests.

6. Data Net did not serve its testimony on June 21. Mr. Ward instead sent an email to the ALJ that evening, advising him that the parties had outstanding discovery issues, that Data Net would not be submitting its testimony yet, and that there was currently no need to change the September 12 hearing date. Mr. Ward subsequently explained to AT&T Illinois' counsel that the hearing date need not change because the

20-day interval between the last testimony deadline and the trial date would allow some slippage of the testimony due dates.

7. On June 23, counsel for AT&T Illinois sent Data Net additional information related to the calculation of LPC credits in response to Request No. 6. Counsel also invited Mr. Ward to identify in writing other possible discovery issues, so that AT&T Illinois could determine whether it could provide additional information.

8. On the evening of June 26, Mr. Ward provided, via email, a written explanation of certain issues that Data Net had with the AT&T Illinois discovery responses. Counsel for AT&T Illinois responded to Mr. Ward's email on June 27, explaining that AT&T Illinois could not provide some of the information that Data Net wanted and reiterating that some of the data requests sought information irrelevant to the case.

9. On June 29, Mr. Ward advised counsel for AT&T Illinois that he had been out of the office for a few days because of illness.

10. As of mid-day on July 11, counsel for AT&T Illinois has heard nothing further from Mr. Ward regarding when Data Net plans to submit its testimony or whether any discovery issues remain unresolved. Assuming that Data Net provided its testimony immediately and that the testimony deadlines from the existing schedule were extended on a day-for-day basis, AT&T Illinois would receive Data Net's reply testimony on September 12 -- the day that the hearing is supposed to begin.

11. Data Net's conduct has placed this case in limbo. Data Net granted itself an open-ended extension of the deadline for submitting its testimony, without taking the trouble to file a motion requesting such an extension. Although Mr. Ward may suggest

that discovery issues excuse Data Net's failure to meet its testimony deadline, Data Net only raised these supposed discovery issues on the evening before its testimony was due, and it has done nothing for the last two weeks to attempt to resolve them.

12. In contrast, AT&T Illinois has tried to keep this case on track. It met its April deadline for submission of testimony; it responded to Data Net's discovery by the requested due date; and it replied in a timely fashion to Mr. Ward's inquiries about the discovery responses. However, because of Data Net's conduct, AT&T Illinois has no idea when its reply testimony will be due, and its witnesses are uncertain about when they should schedule other work obligations or summer vacations.

13. Data Net's dilatory approach should be not rewarded. To get this case moving forward again, AT&T Illinois asks the ALJ to set a firm date for submission of Data Net's testimony and to re-calibrate the subsequent testimony deadlines. AT&T Illinois proposes the following schedule, which would maintain the current date for the contested hearing:

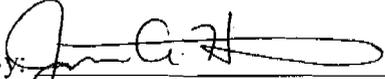
- July 19 – Data Net rebuttal testimony/opening testimony on counterclaims;
- August 16 – AT&T Illinois reply testimony/rebuttal testimony on counterclaims;
- August 28 – Data Net reply testimony on counterclaims.

AT&T Illinois also requests that the ALJ advise Data Net that its failure to meet the new deadline for its rebuttal/opening testimony could constitute grounds for a default order to be entered on the claims asserted against Data Net in the Amended Complaint and for Data Net's counterclaims to be dismissed with prejudice. Finally, AT&T Illinois asks for an expedited briefing schedule on this motion, under which Data Net's response to the

motion would be due on Thursday, July 13, and AT&T Illinois' reply would be due on Friday, July 14.

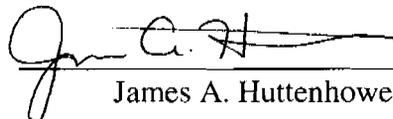
Respectfully submitted,

Illinois Bell Telephone Company

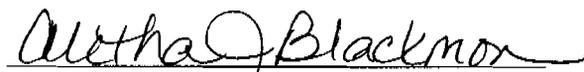
By: 
James A. Huttenhower
AT&T Illinois Law Department
225 West Randolph Street, Suite 25-D
Chicago, IL 60606
(312) 727-1444

VERIFICATION

I, James A. Huttenhower, on oath, state that I am one of the attorneys for AT&T Illinois, that I have reviewed the foregoing **VERIFIED MOTION OF AT&T ILLINOIS TO RESET TESTIMONY SCHEDULE**, and that, to the best of my knowledge, information and belief, the statements contained therein are true and correct.


James A. Huttenhower

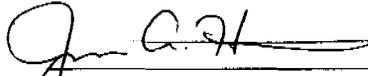
Subscribed and sworn to before
me this 11 day of July, 2006


Notary Public, State of Illinois



CERTIFICATE OF SERVICE

I, James A. Huttenhower, an attorney, certify that a copy of the foregoing
VERIFIED MOTION OF AT&T ILLINOIS TO RESET TESTIMONY
SCHEDULE was served on the service list via U.S. Mail and/or electronic transmission
on July 11, 2006.


James A. Huttenhower

SERVICE LIST FOR DOCKET 04-0756

Terrance Hilliard
Administrative Law Judge
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
thilliard@icc.illinois.gov

Torsten Clausen
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
tclausen@icc.illinois.gov

Martin Segal, Michael W. Ward
Michael W. Ward, P.C.
1608 Barclay Blvd.
Buffalo Grove, IL 60089-4523
mwward@dnsys.com
msegal@dnsys.com