

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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Illinois Bell Telephone, Inc.	)	
	)	
v.	)	Docket No. 08-0105
	)	
Global NAPs Illinois, Inc.	)	
	)	

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**AT&T ILLINOIS' MEMORANDUM REGARDING THE ADMISSIBILITY OF AT&T  
ILLINOIS CROSS-EXHIBITS 4 AND 6**

Illinois Bell Telephone Company (“AT&T Illinois”) hereby respectfully submits its memorandum regarding the admissibility of AT&T Illinois Cross-Exhibits 4 and 6.

AT&T Illinois Cross-Exhibit 4 is the September 7, 2007 motion to dismiss and memorandum in support thereof filed in *Illinois Bell Tel. Co. Inc. v. Global NAPs Illinois, Inc. et al.*, Case No. 06-C-3431 (N.D. Ill., Darrah, J.), by defendant Global NAPs Illinois, Inc. (“Global Illinois”), the respondent here, and defendant Global NAPs New Hampshire, Inc. AT&T Illinois Cross-Exhibit 6 is the July 25, 2008 motion for stay and memorandum in support thereof filed in *The Southern New England Tel. Co. v. Global NAPs, Inc. et al.*, Case No. 3:04-CV-2075 (D. Conn., Hall, J.), by the defendants in that case, including Global NAPs, Inc. and Global Illinois’ parent corporation, Ferrous Miner Holdings, Ltd.

AT&T Illinois Cross-Exhibits 4 and 6 are admissible pursuant to Rule 200.640 of the Commission’s Rules of Practice, which states that “the Commission or Hearing Examiner may take administrative notice of . . . [a]ll other matters of which the circuit courts of this State may take judicial notice.” 83 Ill. Adm. Code 200.640(a)(7). In particular, AT&T Illinois Cross-Exhibits 4 and 6 are public documents filed in federal courts, and as such are materials of which Illinois circuit courts – and hence the Commission – may take judicial notice. As the Illinois

Supreme Court explained in *May Dep't Stores Co. v. Teamsters Union Local No. 743*, 64 Ill. 2d 153, 159 (1976), Illinois courts may take judicial notice of “public documents which are included in the records of other courts and administrative tribunals.” *See also Dalan/Jupiter, Inc. v. Draper and Kramer, Inc.*, 372 Ill. App. 3d 362, 368, 865 N.E.2d 442, 449 (1<sup>st</sup> Dist. 2007) (taking judicial notice of briefs).

Moreover, that James Scheltema, the Global Illinois witness testifying when AT&T Illinois sought to introduce Cross-Exhibits 4 and 6, may not be familiar with Cross-Exhibits 4 and 6 is beside the point. Because Cross-Exhibits 4 and 6 are judicially noticeable materials, it is not necessary for a live witness to sponsor or establish a foundation for those materials. Global Illinois has not contested the authenticity of these public court records, and, even if it did, (1) the documents are self-authenticating, as they bear the captions generated by the federal courts' electronic docketing systems, and (2) in any event, AT&T Illinois is willing to obtain and submit certified copies of these public records if necessary.

Finally, Cross-Exhibit 4 is also admissible because it contains admissions of respondent Global Illinois. Again, Global Illinois does not contest the authenticity of Cross-Exhibit 4, and the fact that Mr. Scheltema may not have personally made these admissions, and may not be familiar with them, is beside the point, because the admissibility of Global Illinois' admissions in no way turns upon Mr. Scheltema's testimony. *Compare Skonberg v. Owens-Corning Fiberglas Corp.*, 215 Ill. App. 3d 735, 749, 576 N.E.2d 28, 36 (1<sup>st</sup> Dist. 1991) (party admissions in deposition may simply be read into the record, without regard to “the availability of the witness to testify [ ] or the presence of the witness at court”).

WHEREFORE, for the forgoing reasons, the Commission should admit AT&T Illinois Cross-Exhibits 4 and 6.

Respectfully submitted,

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Dated: September 9, 2008

**CERTIFICATE OF SERVICE**

I, Mark R. Ortlieb, an attorney, certify that a copy of the foregoing *AT&T ILLINOIS' MEMORANDUM REGARDING THE ADMISSIBILITY OF AT&T ILLINOIS CROSS-EXHIBITS 4 AND 6* was served on the parties identified on the service list below by U.S. Mail and/or electronic transmission on September 9, 2008.

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