

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

TOUCHSTREAM TECHNOLOGIES,  
INC.,

*Plaintiff,*

v.

CHARTER COMMUNICATIONS, INC.,  
et al.,

*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. 2:23-CV-00059-JRG-RSP  
(Lead Case)

**ORDER**

Before the Court is Plaintiff Touchstream Technologies, Inc.’s Motion for Leave to Take Deposition of David Bell. **Dkt. No. 236.** On December 19, 2024, the Court held a pretrial conference and overruled Plaintiff’s objection to Mr. Bell testifying at trial Dkt. No. 233 at 49: 23–24. The Court instructed Plaintiff to file a Motion with the Court explaining the grounds for taking such a late deposition of Mr. Bell. *Id.* at 53: 13–17. Defendants have responded in opposition. Dkt. No. 237. After consideration, the Motion is **DENIED** because it is untimely, and Plaintiff has failed to show good cause and due diligence.

First, Plaintiff’s Motion is untimely and shows a lack of due diligence. Plaintiff filed this Motion approximately two weeks before jury selection and trial are scheduled in this case. Moreover, Plaintiff only raised this issue with the Court on December 19, 2024, approximately three weeks before trial is scheduled. Plaintiff does not adequately explain why it waited so long to raise this issue. The Court finds it prejudicial to take a deposition so late in the process.

Second, Plaintiff has failed to show good cause for not having taken the deposition of Mr. Bell during discovery. Defendants timely disclosed Mr. Bell in September 2023. Dkt. No.

236 at 2. Nonetheless, Plaintiff argues that Charter failed to disclose Mr. Bell's knowledge of invalidity or Charter's "independent development" theory. *Id.* at 4. Additionally, Touchstream takes issue with Charter providing three witnesses on a 30(b)(6) topic without explanation. *Id.* Charter points out that Touchstream agreed to and confirmed the deposition of Mr. Bell, but then canceled it a week before it was scheduled. Dkt. No. 237 at 6. Charter claims that it explained that the witnesses have relevant knowledge for different time periods. *Id.* at 7–8. Regardless of any potential confusion or dispute regarding Mr. Bell's precise testimony Plaintiff had adequate opportunity to depose Mr. Bell to resolve this confusion. The Court does not find good cause for this eve-of-trial deposition here where Plaintiff unilaterally chose to forego deposing a disclosed witness and then waited months to raise its concerns with the Court.

**SIGNED this 27th day of December, 2024.**

  
ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE