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June 23, 2003

Blanca S. Bayó, Director  
Division of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

RECEIVED  
JUN 23 AM 9:35  
COMMISSION  
CLERK

Re: Docket No. 030176-TP; Complaint by Davel Communications, Inc., parent company of Telaleasing Enterprises, Inc. (holder of PATS Certificate No. 2358), against BellSouth Telecommunications, Inc. concerning deposit requirements, and request for invocation of protections afforded by Rule 25-22.032(6), F.A.C., during pendency of complaint process

Dear Ms. Bayó:

Enclosed please find the original and seven (7) copies of Davel's Reply to BellSouth's Letter Dated June 11, 2003.

An extra copy of this letter is enclosed. Please mark it to indicate that the original documents were filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Angela B. Green

RECEIVED & FILED

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FPSC-BUREAU OF RECORDS

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint by Davel Communications, Inc.,  
Parent Company of Telaleasing Enterprises, Inc.  
(holder of PATS Certificate No. 2358), Against  
BellSouth Telecommunications, Inc. Concerning  
Deposit Requirements, and Request for Invocation  
of Protections Afforded by Rule 25-22.032(6),  
F.A.C., During Pendency of Complaint Process

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Docket No. 030176-TP

Filed: June 23, 2003

**DAVEL'S REPLY TO BELLSOUTH'S  
LETTER DATED JUNE 11, 2003**

On June 11, 2003, BellSouth Telecommunications, Inc. ("BellSouth") filed a letter with the Florida Public Service Commission ("FPSC" or "Commission") in response to a letter dated May 16, 2003, from Lin Harvey of Davel Communications, Inc. ("Davel"). This document is being filed with the Commission as Davel's reply to BellSouth's June 11, 2003 letter.

This docket was initiated in response to a Complaint filed by Davel regarding a dispute between the parties pertaining to deposit requirements. Davel notes initially, that although it had previously requested confidential treatment for the deposit amounts under dispute in this docket, it now appears that those numbers have been publicly disclosed. Accordingly, Davel will no longer assert a claim of confidential classification for the deposit requirements being discussed and determined in this proceeding.

Davel and BellSouth are parties to a Master Services Agreement ("MSA"). This MSA addresses various products and services purchased by Davel from BellSouth across its nine-state region, and includes term and volume commitments and discounts. The MSA itself is not the subject of the Complaint, but must be noted in order to view the Complaint in its proper context. As noted previously, the Complaint concerns a dispute between the parties about deposit requirements. The parties both agree that the MSA does not address deposit requirements and

that the outcome of this proceeding is controlled by Commission Rule 25-4.109(3), Florida Administrative Code (“the customer deposit rule”), and Section A.2.4.2.B. of BellSouth’s General Subscriber Service Tariff (“GSST”), which virtually mirrors the Commission’s rule in all relevant parts.

During March 2002, in the course of negotiations between the parties regarding the applicability of a certain MSA provision (not at issue here), BellSouth required Davel to post a security deposit of \$300,000, even though Davel was current on its BellSouth accounts. Davel subsequently met this requirement. BellSouth did not in any way distinguish how the \$300,000 applied across its nine-state region.

Since that time, Davel has attempted in good faith to resolve its differences with BellSouth over the contractual provision noted above. Unfortunately, it appears that the parties remain in disagreement over that particular MSA provision and that other disagreements have now developed as well regarding other provisions contained in the MSA.

Davel next received a letter from BellSouth dated December 20, 2002, which demanded an additional security deposit in the amount of \$600,000, no later than January 20, 2003. Again, this amount was a lump sum amount, with no specification as to how it was to apply across the nine-state BellSouth region. After attempts to settle this matter between the parties proved fruitless, this Complaint followed. During the time that this Complaint has been pending at the Commission, counsel for both parties have been attempting to resolve the dispute informally, with the encouragement and support of the Commission staff. Unfortunately, it does not appear that this process has been successful as of this date, despite efforts put forth from both sides.

On May 16, 2003, Lin Harvey of Davel filed a letter with the Commission, along with a copy of a letter BellSouth had sent to Davel dated May 13, 2003. In its June 11, 2003 response,

BellSouth states, “the MSA contains a mandatory dispute resolution section” that requires the use of arbitration and that “BellSouth has invoked the dispute resolution language contained in the MSA.” Davel does not disagree with these assertions at all. Be that as it may, however, those statements do not address the true concern of Ms. Harvey’s letter, which is that BellSouth is attempting to use its local exchange company (“LEC”) bills as a means of assessing non-tariffed, allegedly contractual-based charges (the so-called “termination charges”) against Davel. Simply stated, BellSouth cannot do this, and Ms. Harvey has merely requested the Commission to so inform BellSouth. The reason the deposit amounts are germane to Ms. Harvey’s letter is because it appears that BellSouth is attempting to bill Davel for these so-called “termination charges” by utilizing a regulated LEC bill as a vehicle, which would then, in BellSouth’s view, allow it to apply Davel’s deposit against these charges of over a million dollars, causing Davel to wrongfully forfeit its deposit. The alleged “termination charges” for Florida alone are over \$350,000; far in excess of the deposit Davel already has on file with BellSouth.

Again, Davel agrees with BellSouth that the MSA requires the use of arbitration for disputes arising from the MSA. Whether or not “termination charges” are appropriate and should apply in this instance is a contractual matter subject to resolution through the arbitration process. BellSouth admits it has invoked the arbitration language of the MSA. Accordingly, BellSouth cannot use its LEC bills as a vehicle for collection attempts on these disputed charges and the Commission should issue an order to that effect if BellSouth continues with these attempts.

In its June 11th letter, BellSouth states that Davel indicated in its Complaint that it is prepared to submit an additional sum to BellSouth upon direction from the Commission. Davel does not dispute making this statement in its Complaint. However, the facts and circumstances

that existed at the time this Complaint was filed have changed substantially, in that Davel is, in essence, no longer doing business with BellSouth. Because of the continuing disagreements between the parties and after Davel submitted competitive proposals to BellSouth as required by the MSA, Davel has exercised its right to take its business elsewhere and has moved almost all of its local access lines to other competitive carriers. At the time of this filing, Davel has no more than a total of 50 local access lines in all of BellSouth's nine-state territory. Given these changes, it is no longer reasonable or appropriate to think that Davel would submit any additional deposit amount to BellSouth. Rather, it appears that it is now time for BellSouth to refund the \$300,000 of Davel's that it has been holding for almost a year and a half.

In closing, Davel would ask the Commission to direct BellSouth to: (1) cease all attempts to utilize its LEC bills to collect non-regulated, allegedly contractual-based charges from Davel; (2) refund Davel's existing deposit of \$300,000; and (3) grant such other relief as the Commission finds appropriate.

Respectfully submitted this 23rd day of June, 2003.

By:

  
ANGELA B. GREEN

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served via U.S. Mail and electronic mail this 23rd day of June, 2003, to the following:

Nancy B. White, General Counsel-Florida  
Meredith E. Mays, Regulatory Counsel  
c/o Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, Florida 32301-1556

Lee Fordham  
Division of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399

By:

  
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