

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Davel Communications, Inc.
Against BellSouth Telecommunications, Inc.
and Invocation of the Protections Afforded by
Rule 25-22.032(6), F.A.C., During Pendency
of the Complaint Process

Docket No. 030176-TP

Filed: February 14, 2003

**COMPLAINT OF DAVEL COMMUNICATIONS, INC. AGAINST BELLSOUTH
TELECOMMUNICATIONS, INC. AND INVOCATION OF THE
PROTECTIONS AFFORDED BY RULE 25-22.032(6), F.A.C.,
DURING PENDENCY OF THE COMPLAINT PROCESS**

Davel Communications, Inc. ("Davel"), pursuant to Sections 364.01, 364.03, and 364.08(1), Florida Statutes, and Rules 25-22.036(2)-(3), 25-22.032(6), and 28-106.201, Florida Administrative Code, files this Complaint and Invocation of the Protections Afforded by Rule 25-22.032(6), Florida Administrative Code, During Pendency of the Complaint Process against BellSouth Telecommunications, Inc. ("BellSouth") for violation of Florida Public Service Commission ("FPSC" or "Commission") Rule 25-4.109(3), Florida Administrative Code. Davel provides the following information in support of its Complaint against BellSouth.

1. Davel is the parent company of Telaleasing Enterprises, Inc., which holds a certificate of public convenience and necessity from the FPSC authorizing it to provide pay telephone services throughout the State of Florida (PATs Certificate No. 2358). By Order No. PSC-02-0945-PAA-TP issued July 15, 2002, which was consummated by Order No. PSC-02-1073-CO-TP issued August 8, 2002, the Commission approved the merger of PhoneTel Technologies, Inc. ("PhoneTel), holder of PATs Certificate No. 3644, with Davel and cancelled PhoneTel's PATs certificate. Davel is a Delaware corporation and as the parent company, is the most appropriate party to file this complaint with the Commission on behalf of its affiliates.

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

2. All pleadings, notices, and other documents related to this Complaint should be provided to:

Angela B. Green
Angela B. Green, P.A.
8527 S.E. 71st Avenue
Ocala, Florida 34472-3465
Tel: 352-347-9038
Fax: 352-347-9048
Email: abgreen@angelabgreen.com

Lin Harvey
Director, Regulatory Affairs
Davel Communications, Inc.
1001 Lakeside Avenue, 7th Floor
Cleveland, Ohio 44114-1152
Tel: 216-875-4296
Fax: 216-875-4338
Email: lh Harvey@phtl.com

3. This Complaint is being lodged against BellSouth, an incumbent local exchange company certificated by the Commission to provide local exchange telecommunications services within a prescribed territory in Florida. Based upon information and belief, BellSouth is a corporation organized and existing under the laws of the State of Georgia, having its headquarters at 675 West Peachtree Street, Atlanta, Georgia 30375, with the following address for service of process:

Nancy H. Sims
Director of Regulatory Affairs
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301-1556

4. Davel and BellSouth are parties to a Master Services Agreement (“MSA”) that has been in effect during all times relevant to this proceeding and which remains in effect at the time of filing this Complaint. This MSA addresses the provision of various local and intraLATA products and services purchased by Davel from BellSouth and includes term and volume

commitments by Davel. The MSA itself is not currently the subject of this Complaint, but is noted in order to put this Complaint into its proper context. The MSA provides in pertinent part at Section VII.A. that:

this Agreement does not replace or supersede existing tariffs. All services that are included in the MSA will be purchased in accordance with the approved BellSouth General Subscriber Service Tariff . . . The provisions of such tariffs applicable to the services shall apply unless and except to the extent this Agreement contains express provisions specifically in conflict therewith . . .

5. This Complaint concerns a dispute between the parties regarding deposit requirements. There are no provisions in the MSA regarding deposit requirements. Accordingly, the outcome of this dispute will be determined 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 rule in all parts relevant to the current controversy.

6. In or around March 2002, in the context of negotiations between the parties regarding the applicability of a certain provision of the MSA (not at issue here), BellSouth demanded that Davel tender a security deposit in the amount of [See Confidential Document, Item 1] on an account that was current in its payment. Davel subsequently met this demand and made payment in three equal installments.

7. Since that time, Davel has endeavored in good faith to resolve its dispute with BellSouth over the contractual provision noted above. Unfortunately, the parties remain in disagreement over that provision, and possibly other provisions of the MSA.

8. Subsequently, Davel received a letter from BellSouth dated December 20, 2002, demanding that Davel tender an additional security deposit in the amount of [See Confidential Document, Item 2], no later than January 20, 2003. This letter appears as Attachment A to this

Complaint. Davel believes that BellSouth is pursuing this avenue of attempting to extract an additional deposit from Davel solely because of the contractual dispute between the parties.

9. BellSouth's deposit demand violates the Commission's deposit rule, as well as BellSouth's own tariff provision addressing this subject. The relevant portion of Rule 25-4.109(3) states:

A company may require upon reasonable written notice of not less than 15 days, a new deposit, where previously waived or returned, or an additional deposit, in order to secure payment of current bills. Provided, however, that the total amount of required deposit should not exceed twice the average monthly toll provided by or billed by the LEC plus one month's local service charge, for the 90-day period immediately prior to the date of notice. (emphasis added)

Section A.2.4.2.B. of BellSouth's GSST is worded identically to the Commission rule.

10. Pursuant to Davel's calculations, a deposit requirement in compliance with the rule and tariff provisions would be a total deposit of no more than [See Confidential Document, Item 3]. Since Davel has already tendered a deposit of [See Confidential Document, Item 1], BellSouth would be entitled to no more than [See Confidential Document, Item 4] as an additional deposit. Davel is prepared to submit this additional sum to BellSouth upon direction from the Commission or Commission staff. Since BellSouth has already received the bulk of funds from Davel that it is entitled to, BellSouth should be ordered to cease and desist in its continuing efforts to extort additional monies from Davel in contravention of the Commission's deposit rule and BellSouth's own tariff.

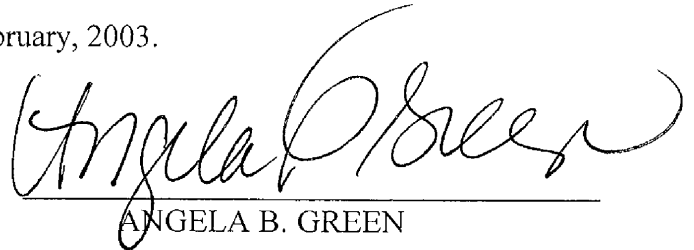
11. Davel is in imminent belief and fear that BellSouth will begin disconnecting its access lines because of Davel's refusal to capitulate to its unlawful demands. This threat is particularly onerous in the context of the parties' contractual dispute. Accordingly, Davel is invoking the protections afforded by Rule 25-22.032(6) during the pendency of the complaint process. This rule provides that "a company shall not discontinue service to a customer because

of any unpaid disputed bill.” This provision normally comes into play first during the informal portion of the complaint proceeding, but then remains in effect throughout the entire investigative process, remaining in effect through final disposition of the matter by the Commission. Davel should not be denied this important protection simply because it did not initiate this Complaint at the informal level, consuming the Commission’s time and resources, where it is clear from the outset that the informal process would not be successful.

Wherefore, based on the foregoing, Davel requests that this Commission enter an order requiring BellSouth to comply with the deposit rule and its own tariff requirements and to cease and desist in its unlawful efforts to collect additional deposits from Davel.

Respectfully submitted this 14th day of February, 2003.

By:



ANGELA B. GREEN

Angela B. Green, P.A.
8527 S.E. 71st Avenue
Ocala, Florida 34472-3465
Tel: 352-347-9038
Fax: 352-347-9048


December 20, 2002

Mr. John D. Chichester
Davel Communications, Inc
1001 Lakeside Ave
Northpoint Tower, 7th Floor
Cleveland, OH 44114

Dear Mr. Chichester,

BellSouth performs periodic credit reviews of its existing customers. Reviewed were:

- D&B Rating
- Number of years current management has been in place
- D&B Paydex (how Davel is paying others)
- Financial Stability (review of financials)
- Debt Compliance
- News Articles

After reviewing your account, an additional security deposit is required in the amount of
*  based upon your average monthly billing with BellSouth Interconnection Services.

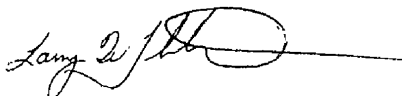
This balance can be submitted either in cash (guaranteed funds), in the form of an Irrevocable Letter of Credit or as a Surety Bond (required formats enclosed) to:

Attn: Sandra Cetti
BellSouth
1025 Lenox Park Blvd.
Room 9B24
Atlanta, GA 30319
Fax: 404.986.0166
SandrCetti@bellsouth.com

The security is to be received by January 20, 2003. If you have any questions regarding the contents of this letter, please contact Sandra Cetti or myself.

I look forward to your prompt response.

Sincerely,



Larry W. Thaxton
LarryThaxton@bellsouth.com

***Item Number 2
on Confidential Document**

cc: Richard P. Kebert


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CONFIDENTIAL DOCUMENT

Item Number 1 = 

Item Number 2 = 

Item Number 3 = 

Item Number 4 = 

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail* Overnight Mail** or Hand Delivery*** this 14th day of February, 2003, to the following:

Nancy H. Sims**
Director of Regulatory Affairs
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301-1556

Staff Counsel*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399

By:


ANGELA B. GREEN

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