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August 26, 2003

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COMMISSION
CLERK

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

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 Notice of Voluntary Dismissal.

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.

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FPSC-BUREAU OF RECORDS

Sincerely,
Angela B. Green
Angela B. Green

Enclosures

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Done 8/29/03

DOCUMENT NUMBER-DATE
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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

Docket No. 030176-TP

Filed: August 26, 2003

DAVEL'S NOTICE OF VOLUNTARY DISMISSAL

This docket was initiated by the Florida Public Service Commission ("FPSC" or "Commission") in response to a Complaint filed by Davel Communications, Inc. ("Davel") against BellSouth Telecommunications, Inc. ("BellSouth") on February 14, 2003, regarding deposit requirements. BellSouth filed its Answer to the Complaint on March 6, 2003, and Davel filed its Reply to BellSouth on March 17, 2003. On May 16, 2003, Lin Harvey, Davel's Regulatory Director, filed a letter with the Commission and on June 11, 2003, BellSouth filed a letter in response to Ms. Harvey's letter. Davel filed its Reply to BellSouth's Letter on June 23, 2003. Then, on August 7, 2003, BellSouth filed its Motion to Close Docket ("Motion").

Davel and BellSouth are parties to a Master Services Agreement ("MSA") that addresses various products and services Davel purchases from BellSouth throughout its nine-state region. The MSA includes term and volume commitments, along with associated discounts. The MSA also includes mandatory dispute resolution provisions that require the parties to submit disputes arising out of the MSA to arbitration. The MSA does not address deposit requirements, however, and both parties agree that those requirements are controlled by the Commission's rules and BellSouth's tariffs filed in accordance with those rules.

DOCUMENT NUMBER-DATE

07921 AUG 26 8

FPSC-COMMISSION CLERK

Since the time the initial Complaint was filed, circumstances have changed between the parties. Davel is no longer purchasing services from BellSouth under the MSA because it believes that BellSouth is in breach of various requirements contained in the MSA. BellSouth states in its Motion that it is no longer appropriate to seek additional deposit monies from Davel and also states that deposits on account should be applied against any remaining balances due from Davel. This proposed procedure is satisfactory to Davel, although in so stating, Davel wishes to go on record that it does not agree with the alleged balances due as listed in the Motion. In fact, the parties are presently involved in a refund and true up process related to various billing issues outside of this docket. When this true up process is completed, it is likely that the deposit still on account with BellSouth will actually exceed any balances due and the excess will need to be refunded to Davel. That being said, so long as BellSouth is willing to handle the remaining deposits on file in accordance with its tariffs and Commission requirements, this issue regarding the deposits will become moot.

A second issue that arose during the time this docket has been pending concerns certain financial penalties BellSouth has attempted to assess against Davel arising out of an alleged breach of the MSA. Initially, it appeared that BellSouth planned to use its local exchange company ("LEC") bills as a means of assessing these non-tariffed charges (the so-called "termination charges") against Davel, thus precipitating the May 16, 2003 letter from Ms. Harvey. However, based upon the assertions contained in BellSouth's Motion, it appears that BellSouth now agrees with Davel that questions regarding whether or not there was a breach and whether or not termination charges apply must be resolved consistent with the dispute resolution provisions contained in the MSA (arbitration) and that BellSouth cannot just add these termination charges to Davel's bill unilaterally. Again, so long as BellSouth is willing to

continue to handle any contractual disputes in accordance with the MSA dispute resolution procedures, this issue will also become moot.

Finally, in paragraph 5 of its Motion, BellSouth states that Davel has not disconnected all of its payphone access lines in Florida. In response to inquiry by counsel, BellSouth supplied information indicating that Davel still had three active lines in Florida. However, upon investigation, according to Davel's records, one line was disconnected six years ago, one was disconnected two years ago, and the third line does not even belong to Davel. It is because of these types of discrepancies that Davel stated earlier in this document that it does not agree with BellSouth's statements regarding unpaid balances on its account. However, so long as both parties agree to work earnestly through this closing out process, these are matters that the parties should be able to resolve between themselves.

In closing, by way of this filing, Davel hereby Voluntarily Dismisses Its Complaint, without prejudice. Davel wishes to thank the Commission Staff for all of their efforts in bringing the parties together and in helping the parties work through the issues.

Respectfully submitted this 26th day of August, 2003.

By: 
ANGELA B. GREEN

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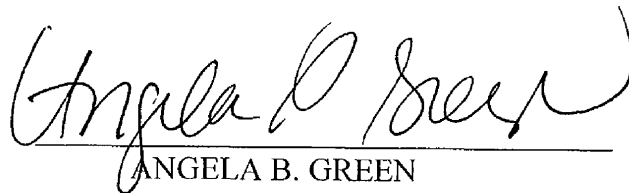
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 26th day of August, 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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