

ORIGINAL

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August 7, 2003

Ms. Blanca S. Bayó
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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COMMISSION
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Re: Docket No. 030176-TP Davel Communications, Inc. ("Davel")

Dear Ms. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Close Docket, which we ask that you file in the captioned docket.

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

Sincerely,

Meredith E. Mays
Meredith E. Mays (KA)

Enclosure

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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**CERTIFICATE OF SERVICE
DOCKET NO. 030176-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 7th day of August, 2003 to the following:

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Meredith E. Mays
Meredith E. Mays (VA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Davel Communications)
Inc. Against BellSouth Telecommunications, Inc.) Docket No. 030176-TP
And Invocation of the Protections Afforded by)
Rule 25-22.032(6), F.A.C., During Pendency of) Filed: August 7, 2003
Complaint Process)
_____)

MOTION TO CLOSE DOCKET

BellSouth Telecommunications, Inc. ("BellSouth"), hereby moves the Commission to close this docket. As grounds for its motion, BellSouth states as follows:

1. Davel Communications, Inc. ("Davel") initiated this docket by filing a complaint relating to deposit requirements. Davel and BellSouth are parties to a written agreement ("MSA") that addresses various products and services that Davel buys from BellSouth across its nine-state region. The agreement includes volume and term commitments as well as associated discounts. The agreement also contains mandatory dispute resolution provisions that require the parties to submit disputes arising out of the agreement to commercial arbitration. The agreement, however, does not address deposit issues, which both parties agree are controlled by this Commission rules and BellSouth's tariffs. At the time the Complaint was filed, Davel's concern surrounded BellSouth's request for an additional deposit.

2. Both parties apparently agree that in Florida (as well as in most, if not all, of the other eight states in BellSouth's region), Davel has decided to no longer buy from BellSouth most of the services addressed in the MSA. Instead Davel has moved most of its lines to other carriers. As a result, BellSouth believes that the agreement requires Davel to make certain payments to BellSouth, and Davel disagrees. Although the parties

do not agree on whether Davel must make these payments, the parties do agree that the question of whether or not these payments are due must be submitted to commercial arbitration under the terms of the parties' agreement.

3. Davel's June 23, 2003 Reply to BellSouth's June 11, 2003 letter acknowledges that since the time the Complaint was filed, events have changed. BellSouth has not billed Davel termination liability arising out of the parties' MSA dispute. BellSouth intends to pursue its remedies concerning the parties' agreement consistent with the dispute resolution provisions therein and reserves all rights to pursue termination liabilities or other damages. Thus, it is unnecessary for this Commission to direct BellSouth to cease attempts to utilize its bills to collect such charges. Because the parties appear to be in agreement on the appropriate forum in which to address matters arising from the contract and because BellSouth agrees that it will pursue any termination liabilities and other damages in that context rather than through direct billing to Davel, there is no need for further Commission involvement between the parties on this issue.

4. The only other remaining issue between the parties concerns the deposit that Davel has previously made to BellSouth. Davel has requested that the Commission direct BellSouth to refund the \$300,000.00 deposit. This request should be denied.

5. Section A2.4.2.C.2.3 of BellSouth's Florida General Subscriber Service Tariff provides that "upon termination of service, the deposit and accrued interest may be credited by the Company against the final account and the balance, if any, shall be returned promptly to the customer" It is undisputed that pursuant to this tariff (and similar tariffs in the other eight states in BellSouth's region), BellSouth has collected a region-wide deposit in the amount of \$300,000 from Davel. While Davel claims that

BellSouth has not distinguished how this sum applies across the region, that claim is not entirely accurate. While BellSouth did request a deposit in 2002 without providing a state specific breakdown, since the time that this docket was initiated BellSouth has provided Davel's counsel with a state-by-state breakdown of the \$300,000 deposit. Moreover, Davel never requested a state specific breakdown nor did Davel complain or protest the regional aspect of BellSouth's deposit request. Had Davel requested a state specific breakdown of the \$300,000 deposit, BellSouth would have provided such information to Davel. Only \$90,000 of the region-wide deposit amount is attributable to the state of Florida.¹

5. As of the date of this filing, Davel has not disconnected all of its payphone access lines ("PTAS services") in the state of Florida, however, BellSouth anticipates that Davel will do so. Moreover, Davel has an undisputed outstanding balance in Florida of \$120,966.15. This undisputed outstanding balance is for services that Davel already has used and that BellSouth already has provided in Florida – it does not include any payments BellSouth contends are due as a result of Davel's decision to no longer buy services from BellSouth. The tariff, therefore, will allow BellSouth upon termination of Davel's remaining Florida lines to apply the \$90,000 of deposit (plus any accrued interest) that is attributable to Florida against Davel's undisputed outstanding Florida balance of \$120,966.15 and bill to Davel the difference, which is what BellSouth intends to do.

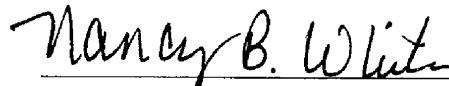
6. In closing, because BellSouth's tariffs and the rules of this Commission

¹ This figure is based on the proportion of Davel's region-wide billing that is attributable to the state of Florida.


clearly allow BellSouth to apply the portion of Davel's Florida deposit to Davel undisputed, outstanding balance due upon termination of service, Davel is not entitled to any refund in Florida. BellSouth, therefore, requests that the Commission deny Davel's request and requests also that the Commission close this docket.

Respectfully submitted this 7th day of August, 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.



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