

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: )  
Enforcement of an Interconnection ) Docket No. 020099-TP  
Agreement Between ALEC, Inc. and ) Filed: August 5, 2002  
Sprint-Florida, Inc. )  
\_\_\_\_\_ )

**ALEC, INC.’S MOTION TO COMPEL SPRINT-FLORIDA, INC. TO RESPOND TO  
DISCOVERY REQUESTS**

ALEC, Inc. (“ALEC”), pursuant to Uniform Rule 28-106.206 of the Florida Administrative Code (“F.A.C.”) and Rule 1.380, Florida Rules of Civil Procedure (“F.R.C.P.”) hereby moves to compel Sprint-Florida, Inc. (“Sprint”), (collectively, “the Parties”), to respond to ALEC’s Second Request for Production of Documents and Second Set of Interrogatories and to oppose Sprint’s Emergency Motion for Protective Order (“Emergency Motion”) filed on August 1, 2002.

As grounds for this Motion to Compel, ALEC states as follows.

**SUMMARY**

1. On May 31<sup>st</sup>, 2002, ALEC filed its First Set of Interrogatories (Nos. 1-14) and First Set of Requests for Production of Documents (Nos. 1-13) (collectively, “ALEC’s Initial Discovery Requests”) to Sprint. On June 10, 2002, Sprint filed general and specific objections to ALEC’s Initial Discovery Requests. On June 20, 2002, Sprint selectively responded to ALEC’s Initial Discovery Requests. On July 11, 2002, ALEC propounded its Second Request for Production of Documents (Nos. 14-31) and Second Set of Interrogatories (Nos. 15-26) to Sprint. (collectively referred to as “ALEC’s Outstanding Discovery Requests”). Many of ALEC’s Outstanding Discovery Requests were versions of ALEC’s Initial Discovery Requests

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that were significantly narrowed to accommodate Sprint's objections with respect to the scope of discovery. On July 22, 2002, nonetheless, Sprint filed general and specific objections to many of ALEC's Outstanding Discovery Requests ("Sprint's Objections to Second Requests").

2. On July 26, 2002, ALEC counsel contacted Sprint counsel by telephone to discuss Sprint's objections and to attempt to reach a compromise, in accordance with the Florida Rules of Civil Procedure governing discovery. Also at that time, Sprint and ALEC counsel were engaged in discussions concerning a protective agreement to govern confidential documents produced pursuant to discovery in the docket. Sprint had provided its standard confidentiality agreement used in Florida Commission proceedings to protect to the confidentiality of information provided pursuant to discovery to ALEC on Monday, July 22, 2002.

3. Sprint counsel and ALEC counsel had a discussion, also on Friday, July 26, regarding ALEC's concerns with some of the provisions of the agreement and ALEC counsel committed to providing a revised agreement for Sprint's consideration.

4. On Wednesday, July 31, 2002, ALEC counsel provided a redrafted agreement with three significant revisions: 1) it eliminated the restrictions prohibiting ALEC employees associated with marketing from viewing the information; 2) it allowed additional copies of the confidential documents to be made "as necessary for case preparation" and 3) it allowed individuals who had reviewed the documents on behalf of ALEC to produce an affidavit certifying that they had destroyed the information, rather than returning the documents at the applicable time. Sprint has contended in its Emergency Motion for Protective Order that these changes "significantly expanded the scope of the distribution of the information and the risk that the information would inadvertently fail to be adequately protected from misuse."

5. But as Sprint concedes in its Emergency Motion, “Ultimately, Sprint and ALEC counsel agreed to reinsert some narrower language regarding the restriction on marketing personnel and to retain the other changes.” Emergency Motion at 3.

6. Nonetheless, Sprint in the Emergency Motion asserts that, “in reviewing the changes and the expanding scope of distribution of the confidential documents, Sprint attorneys and personnel who are responsible for negotiation and implementation of our CLEC interconnection agreements became alerted to a problem with Sprint providing CLEC customer information to ALEC, even under the provisions of the protective agreement executed by the parties. Sprint’s interconnection agreements contain standard provisions relating to confidential or proprietary documents obtained by either party pursuant to the parties’ relationship under the agreements and that these confidential provisions limited access to the documents.” *Id.*

7. On July 31, 2002, Sprint served its second set of responses to ALEC’s second set of discovery requests. The materials served were woefully short of the documents and answers requested by ALEC.

8. On August 1, 2002, Sprint filed its Emergency Motion for Protective Order seeking to deny access by ALEC to the requested documents.

9. In sum, despite repeated attempts by ALEC to narrow the requests to make them less burdensome to Sprint and to allay its concerns over confidentiality since very early in the discovery process, and despite execution of a protective agreement designed to further address confidentiality concerns, Sprint on the very final day of discovery “discovered” a new Agreement provision that allowed it to deny ALEC’s reasonable requests.

9. Contrary to Sprint’s assertions, the objected-to Outstanding Discovery Requests are relevant to the subject matter of this action, and are neither overbroad nor unduly

burdensome. Sprint should be compelled to answer the objected-to Outstanding Discovery Requests.

10. ALEC does not wish to lengthen this proceeding and does not request a deferral of the hearing date. It does reserve the right to request introduction of the requested discovery documents after the hearing as a late-filed exhibit. ALEC hopes that the Commission will recognize the fundamental fairness of this request.

11. Therefore, ALEC respectfully requests that the Commission deny the Emergency Motion and grant ALEC's Motion to Compel.

### **PRELIMINARY MATTERS AND GENERAL OBJECTIONS**

#### **Scope of Discovery**

12. The Florida Rules of Civil Procedure provide that a party may obtain discovery on any matter that is not privileged if the matter is relevant to the subject matter of the pending action, regardless of whether it relates to the claim or defense of any party. The primary limiting factor on the scope of discovery is that the information sought must be reasonably calculated to lead to the discovery of admissible evidence. Rule 1.280(b), F.R.C.P.; *Simons v. Jorg*, 384 So.2d 1362 (Fla. 2d DCA 1980).

13. The Florida Rules of Civil Procedure authorize a party to propound interrogatories on any other party. Interrogatories may relate to any matter that can be inquired into under Rule 1.280(b), F.R.C.P. Interrogatories are not objectionable merely because an answer involves an opinion that relates to fact or calls for a conclusion or asks for information not within the personal knowledge of the party. A party must respond by giving such information that it has and stating the source of the information. Rule 1.340(b), F.R.C.P. Each interrogatory must be answered separately and fully, in writing under oath, unless the responding party timely

objects. If an objection is made, the grounds for the objection must be stated. Rule 1.340(a), F.R.C.P.

14. The Florida Rules of Civil Procedure also provide that any party may request the production of documents that constitute matters within the scope of Rule 1.280(b), F.R.C.P., that are in the possession or control of the party to whom the request is directed. Rule 1.350(a), F.R.C.P. When producing documents, the producing party must either produce them as they are kept in the usual course of business or identify them to correspond with the categories in the request. Rule 1.350(b), F.R.C.P.

### **General Objections.**

15. Sprint lists a host of general objections to ALEC's Outstanding Discovery Requests. See Sprint's Objections to Second Requests at pages 1-4. With the exception of an occasional addition of the word "ALEC," Sprint does not explain how any of these objections relate to ALEC's Outstanding Discovery Requests. Broad assertions of catch phrases as objections, without substantive support, are meaningless. *First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Assoc., Inc.*, 545 So.2d 502, 503 (Fla. 1<sup>st</sup> DCA 1989). As such, Sprint's general objections should be rejected.

### **INTERROGATORIES**

16. Sprint objects to ALEC's Interrogatories numbers 17, 18, 19, 20, 21, 22, and 24 on the basis that they are overbroad, unduly burdensome, and unlikely to lead to the discovery of admissible evidence. With respect to breadth and degree of burden imposed in preparing answers, Interrogatories numbers 17, 18, 19, 20, and 21 are, as Sprint concedes, narrowed from earlier versions of these Interrogatories contained in ALEC's Initial Discovery Requests.

17. ALEC has offered to accept a further narrowing of these Interrogatories by Sprint and has been rebuffed. As discussed below, the current versions of these Interrogatories are not excessive or unduly burdensome, and, furthermore, all of these Interrogatories are relevant and likely to lead to the discovery of admissible evidence.

18. These Interrogatories are as follows:

17. Identify and describe all Sprint invoices to all ALECs and Florida interexchange carriers for installation of DS3, DS1 and DS0s, and all Access Service Requests associated with these requests, prepared in the past two years in any LATA in which calls are exchanged between ALEC and Sprint, including LATAs where calls are originated by Sprint end users or terminated by ALEC.

18. Identify and describe (including but not limited to quantity and/or length) the type and location of any telecommunications switch, multiplexer, digital cross connect system, or collocation arrangement that Sprint has deployed in Florida in any LATA in which calls are exchanged between ALEC and Sprint, including LATAs where calls are originated by Sprint end users or terminated by ALEC.

19. Identify and describe (including but not limited to quantity and/or length) the type and location of any interoffice facility, loop, and/or trunks that Sprint has deployed in any LATA in which calls are exchanged between ALEC and Sprint, including LATAs where calls are originated by Sprint end users or terminated by ALEC.

20. For each of the past two years, and as a percent of all Sprint' revenues each year, identify and describe the percentage of total Sprint revenues Sprint received from transport facility installation and transport monthly recurring charges (not minute of use charges) from other telecommunications carriers' operations in Florida, the name of each telecommunications carrier remitting such payments, and the percentage of revenues received from each of these telecommunications carriers.

21. Identify and describe all telecommunications carriers that are ALECs, other than ALEC, based in, or operating from, Florida, that have disputed the accuracy of a Sprint' remittance for telecommunications services provided to Sprint in the past five years, and the nature and status of such disputes.

19. All of these questions are highly relevant to the core issues in this matter. With respect to interrogatory number 17, the manner in which Sprint charges ALECs and other telecommunications carriers for service is a core issue in this dispute. Because Sprint does not terminate ALEC-originated calls, the manner of how Sprint would charge ALEC for facilities required to transport such calls is speculative. It is likely, however, that some carriers obtain transport facilities from Sprint to move calls within the state. The terms of billing for such arrangements are directly relevant to the dispute between ALEC and Sprint, particularly given that the Agreement between the Parties is a Sprint template that Sprint likely employs with other carriers. In particular, Sprint's testimony indicates that "Instead of charging for each DS0 in a DS1, and every DS1 in a DS3, Sprint charges a single installation charge for each facility. Since the Agreement and FCC rules require symmetrical reciprocal compensation, Sprint's prices and methodology govern and ALEC's charges are clearly erroneous." Direct Testimony of Jeffrey P. Caswell at page 8, lines 17-20. Thus, not only are Sprint's billing practices at the heart of this dispute, but Sprint itself has expressly made them so. Denying ALEC a response to directly related billing interrogatories (and the related documents, as requested in Request to Produce 24), cripples ALEC's and the Commission's ability to test Sprint's assertions.

20. ALEC has attempted to ask Sprint narrower questions to determine Sprint's billing practices; and has received a response to one of these questions. However, it is very possible that Sprint's terse responses are evading description of practices that would be relevant in this proceeding and that would be provided through a response to this interrogatory. Interrogatory number 17 is not unduly burdensome or overbroad because the number of ALECs and IXCs within the state is not excessive and because the time period for which such records are requested is finite. ALEC believes that the degree of burdensomeness of this request is greatly

exaggerated by Sprint on pages 5-7 of its Emergency Motion. Because of the critical nature of such questions to the dispute to the Party, the Commission should require a full response to this Interrogatory in particular.

21. With respect to Interrogatory number 17, Sprint also suggests that the question's request for Sprint invoices involving Florida interexchange carriers question is unlikely to lead to discoverable evidence because "the dispute at issue in this docket involves local interconnection arrangements," not Sprint arrangements with interexchange carriers. This ignores, however, that the Sprint transport facilities and charges at issue in this dispute may also be purchased by IXC's as well as local exchange carriers pursuant to their interconnection agreements with Sprint. The terms and rates of such agreements with respect to transport charges would be highly relevant to this proceeding. ALEC notes that it offered to narrow this request to information for ALECs only.

22. With respect to Interrogatory numbers 18 and 19, these questions request descriptions regarding the equipment and facilities deployed by Sprint in LATAs where the Parties exchange traffic. This requested information is relevant because the type of facilities deployed by Sprint is directly relevant to the manner of charging for such facilities. Such information could also lead to the discovery of other similarly situated ALECs. These requests are not, as asserted by Sprint, overbroad and burdensome; Sprint clearly has records of the existence and deployment of its own facilities. Providing descriptions of the same should not be excessively burdensome to it.

23. With respect to Interrogatory number 20, production by Sprint of Sprint's descriptions of revenue from transport facility installation and charges and carriers from which such revenue is obtained is directly relevant to ALEC's ability to assess Sprint's incentives in



drafting and interpreting the Agreement and to obtaining further information about transport relationships between Sprint and other ALECs. The overall amount of transport revenue received would assist ALEC in determining Sprint's motives in drafting the transport provisions of the Agreement. The amount of transport revenue received from each carrier would allow ALEC to determine the relative importance of this carrier with respect to transport charge practices between the two with respect to other telecommunications carriers. The identity of such carriers would allow ALEC to seek further information regarding relationships between Sprint and these other telecommunications carriers.

24. Interrogatory number 20 is not unduly burdensome or overbroad because it has been limited by time period, the last two years, and by geography, only within Florida. Sprint has relationships with a finite number of carriers within the state. Certainly identification of such carriers alone is not unduly burdensome. Furthermore, relevant information could be obtained from arrangements between Sprint and any of these Florida telecommunications carriers, so it is not overbroad.

25. With respect to Interrogatory number 21, identification and description of ALECs based in or operating in Florida that have disputed the accuracy of Sprint remittances for telecommunications services is clearly highly relevant with respect to the current dispute between the Parties. Descriptions of such disputes could show a pattern of objectionable behavior by Sprint and could lead ALEC to discussions by Sprint, other carriers or the Commission of Sprint's Interconnection Agreements with other carriers, Sprint's billing practices, and Sprint's interpretation of relevant terms. The response produced to date by Sprint is abbreviated and inadequate.

26. Interrogatory number 21 is neither overbroad nor unduly burdensome. It is not unduly burdensome because it is limited by geography and class of carrier, to ALECs based in, or operating in, Florida and by time, for the past remittances by Sprint within the past five years. It is not overbroad because arrangements between Sprint and ALECs within the state are directly relevant to the dispute between the Parties.

27. Sprint also objects to Interrogatory number 21 because it allegedly contains an undefined term, “disputed,” that could be “excessively burdensome” because the term “in its broadest sense could be interpreted to require Sprint to identify every instance in which an ALEC has questioned a Sprint bill.” To accommodate Sprint, ALEC will offer to define “disputed” as “any instance in which other ALECs have filed a complaint or sought redress from any administrative or legal body.”

28. With respect to Interrogatories numbers 17, 18, 19, 20 and 21, in its consideration of Sprint’s claims of undue burden and overbreadth, the Commission should keep in mind that ALEC filed its original Interrogatories relating to these topics more than two months ago. Had Sprint endeavored to produce these documents, or a reasonable portion thereof, it almost certainly could have done so by this date.

29. Sprint requests clarification with respect to Requests to Interrogatories numbers 22 and 24 with respect to whether these Interrogatories are intended to apply to local traffic only or are intended to encompass toll traffic as well. ALEC has clarified to Sprint that such questions were intended to encompass toll traffic as well. Inclusion of toll traffic is necessary because, as noted earlier, arrangements and practices between Sprint and local exchange or IXC carriers with respect to such traffic could be directly relevant to the matters in dispute between the Parties. Sprint further indicates that if interrogatories 22 and 24 concern toll traffic, they are overbroad

and unduly burdensome. Both interrogatories deal with the identification of, and billing practices regarding, billing for traffic crossing LATA and local calling area boundaries. Sprint has made the treatment of such traffic at issue. Specifically, on page 4 of the Direct Testimony of Sprint Witness Jeffrey P. Caswell, Caswell states, “Where ALEC’s switch is located outside the LATA, transport becomes interLATA. Sprint is not responsible for interLATA transport, therefore transport charges are only applicable to the Winter Park to Maitland route.” These interrogatories are highly relevant and not overbroad, therefore, because they directly address arrangements that speak to the issue that Sprint itself has raised. Without an understanding of all compensation arrangements crossing LATA boundaries, the actual and appropriate payment by ALEC cannot be devined. Furthermore, such requests are not unduly burdensome. Sprint must keep records of payment for such interLATA and inter-local calling area traffic to be able to accurately bill or remit payments to other ALECs or IXC’s. In the efforts to accommodate Sprint’s concerns, ALEC has offered to narrow these questions to local traffic. Sprint has declined to respond to this narrowed request in a meaningful fashion. ALEC believes that because these interrogatories respond to an issue Sprint itself has raised, the burden rests upon it to fully comply with ALEC’s requests.

30. With respect to Interrogatory number 26, Sprint claims that this Interrogatory is overly broad and unduly burdensome because responding would force Sprint to produce rates developed based on bona fide requests or on individual case basis. ALEC believes this is not an overly burdensome request because to accurately bill ALECs for charges, Sprint must know the source of these rates. Nonetheless, in an effort to accommodate Sprint’s concerns, ALEC has offered to narrow its Interrogatory to request identification and description of only for ALEC arrangements involving reciprocal compensation and transport arrangements based in, or

operating from, Florida and only over the past three years. Sprint continues to object to even this narrowed request.

31. With respect to all the interrogatories objected to, Sprint has failed to adequately identify the amount, type or content of the information it alleges would be burdensome to compile. Sprint has the burden to quantify, for this Commission, the substantive support for its objections. *First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Assoc., Inc.*, 545 So.2d 502, 503 (Fla. 1<sup>st</sup> DCA 1989) (party objecting to discovery must quantify the manner in which discovery might be overly broad or burdensome). Even if Sprint can sustain its burden of demonstrating the factual basis for its objection, it still must produce its records to ALEC from which the answer to the Interrogatories may be derived so long as the burden of deriving the answer is substantially the same for ALEC as it is for Sprint. *See* Rule 1.340(c), F.R.C.P.; *see also* *Slatnick v. Leadership Housing Systems of Florida, Inc.*, 368 So. 2d 78 (Fla. 4<sup>th</sup> DCA 1979) (offer to open records was an acceptable alternative to answering 2,300 pages of interrogatories).

32. Sprint also objects to Interrogatories numbers 18, 19, 20, and 21 on grounds that they request “highly proprietary confidential information” from either Sprint another carrier or both. In all cases, Sprint has attempted to evade its discovery obligations by failing to provide, or offer to provide, those components of responses to answers that are nonproprietary or responses that would apply only to itself and by using the most problematic potential scenario to justify failure to disclose any information. Much of the data regarding description of disputes with other carriers regarding billing may be publicly available, yet far more easily obtained by Sprint than by ALEC. As noted by ALEC above, ALEC has repeatedly attempted to address Sprint’s confidentiality concerns, only to have new concerns discovered at the last possible moment.

## REQUESTS TO PRODUCE

33. ALEC will agree not to seek production of objected-to Request to Produce number 26. However, ALEC vigorously opposes Sprint objections to ALEC's Requests to Produce numbers 21, 24, 27 and 28 on the basis that they are overbroad, unduly burdensome, or unlikely to lead to the discovery of admissible evidence. Notably, Sprint advances no new objections for refusal to produce in response to these requests. Rather, it merely references objections it made in relation to the referenced interrogatories: Sprint's objection to Request to Produce number 21 is referenced to Sprint's objection to Interrogatory number 21; objection to Request to Produce number 24 is referenced to objections to Interrogatory number 17; objections to Request to Produce number 27 is referenced to objections to Interrogatory number 22; and Objections to Request to Produce number 28 is referenced to Objections to Interrogatory number 24. In response, ALEC references its own corresponding oppositions to such objections, as provided above in this Motion. In particular, ALEC highlights that the underlying documents requested in Request to Produce 21 are essential to allowing ALEC to fairly develop its case and that the responses alone will not suffice.

34. The urgency of the Commission's grant of ALEC's motion to compel with respect to such requests to produce is, however, even greater than with respect to the Interrogatories listed. Sprint has stonewalled with respect to providing answers to the referenced first two interrogatories (21 and 17), which are narrowed repeats of earlier-requested interrogatories. Now, with the Discovery cycle elapsed, ALEC must make a final attempt to obtain relevant documents, without the benefit of the answers to those two interrogatories that it should have been provided and that might well have provided ALEC guidance. Sprint cannot complain that ALEC's Requests to Produce are overbroad if it has denied ALEC the answers that would allow ALEC to

narrow them. Likewise, little time remains to respond to the other two interrogatories, increasing the importance of obtaining the related documents ALEC requests.

### CONCLUSION

35. By the rules that govern this proceeding, Sprint must reply to ALEC's reasonable Discovery Requests. Instead, Sprint continues to attempt to file baseless objections in an attempt to thwart ALEC's hearing preparation, despite ALEC's repeated attempts to facilitate Sprint's compliance. Sprint's general objections are inapplicable boilerplate language. Sprint's specific objections fail on the merits and fail to provide the requisite substantive support. As a Party in this docket, Sprint has a responsibility to comply with the Florida Rules of Civil Procedure and the Commission should not tolerate Sprint's unfounded efforts to evade its responsibilities and the rules.

WHEREFORE, ALEC respectfully requests that the Commission deny Sprint's Emergency Motion and, rather, issue an order compelling responses to ALEC's Second Request for Production of Documents (Nos. 14-31) and Second Set of Interrogatories (Nos. 15-26) with respect to Interrogatories 17, 18, 19, 20, 21, 22, 24, and 26, and Requests to Produce 21, 24, 27, and 28.

Respectfully submitted,

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Dated: August 5, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was hand delivered on this 5<sup>th</sup> day of August, 2002, to the following:

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