

**BEFORE THE STATE OF FLORIDA  
PUBLIC SERVICE COMMISSION**

In re: Enforcement of an Interconnection Agreement Between ALEC, Inc. and Sprint-Florida, Inc.	) ) ) ) ) _____)	Docket No. 020099-TP Filed July 8, 2002
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**PREHEARING STATEMENT OF ALEC, INC.**

Pursuant to Order No. PSC-02-0594-PCO-TP (“Order Establishing Procedure”), ALEC, Inc. (“ALEC”) hereby files its Prehearing Statement.

**A. WITNESSES TO BE CALLED BY ALEC, INC.**

<b>1. <u>Direct</u></b>	<b><u>Subject Matter</u></b>	<b><u>Issues</u></b>
Richard McDaniel	The Parties’ obligations under their interconnection agreement (“Agreement”) <sup>1</sup> and Sprint’s failure to remit payments due under the Agreement.	All
<b>2. <u>Rebuttal</u></b>	<b><u>Subject Matter</u></b>	<b><u>Issues</u></b>
Richard McDaniel	The Parties’ obligations under their Interconnection Agreement (“Agreement”) <sup>2</sup> and Sprint’s failure to remit payments due under the Agreement.	All

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<sup>1</sup> Master Interconnection and Resale Agreement for the State of Florida (entered into on June 1, 2001 and deemed effective on Sept. 20, 2001).

<sup>2</sup> Master Interconnection and Resale Agreement for the State of Florida (entered into on June 1, 2001 and deemed effective on Sept. 20, 2001).

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**B. EXHIBITS**

**1. Direct**

<u>Number</u>	<u>Witness</u>	<u>Description</u>
_____ (RM-1)	Richard McDaniel	Exhibit A to Complaint – Master Interconnection and Resale Agreement for the State of Florida
_____ (RM-2)	Richard McDaniel	Exhibit B to Complaint – Sample ASR for Trunk Facilities
_____ (RM-3)	Richard McDaniel	Exhibit C to Complaint – Sprint and ALEC Points of Interconnection
_____ (RM-4)	Richard McDaniel	Exhibit D to Complaint – Invoices for ALEC Facilities and Services Provided to Sprint (Summary Tables and Underlying Invoices)
_____ (RM-5)	Richard McDaniel	Exhibit E to Complaint – Selected Correspondence Between Sprint and ALEC Regarding Reciprocal Compensation Issues
_____ (RM-6)	Richard McDaniel	Exhibit F to Complaint – Affidavit of Richard McDaniel
_____ (RM-7)	Richard McDaniel	Prefiled Testimony of ALEC, Inc. and Exhibits
_____ (RM-8)	Richard McDaniel	Prefiled Testimony of Sprint-Florida, Inc. and Exhibits
_____ (RM-9)	Richard McDaniel	Discovery Responses from Sprint-Florida, Inc.

**2. Rebuttal**

<u>Number</u>	<u>Witness</u>	<u>Description</u>
_____ (RM-1)	Richard McDaniel	Exhibit A to Complaint – Master Interconnection and Resale Agreement for the State of Florida

<u>          </u> (RM-2)	Richard McDaniel	Exhibit B to Complaint – Sample ASR for Trunk Facilities
<u>          </u> (RM-3)	Richard McDaniel	Exhibit C to Complaint – Sprint and ALEC Points of Interconnection
<u>          </u> (RM-4)	Richard McDaniel	Exhibit D to Complaint – Invoices for ALEC Facilities and Services Provided to Sprint (Summary Tables and Underlying Invoices)
<u>          </u> (RM-5)	Richard McDaniel	Exhibit E to Complaint – Selected Correspondence Between Sprint and ALEC Regarding Reciprocal Compensation Issues
<u>          </u> (RM-6)	Richard McDaniel	Exhibit F to Complaint – Affidavit of Richard McDaniel
<u>          </u> (RM-7)	Richard McDaniel	Prefiled Testimony of ALEC, Inc. and Exhibits
<u>          </u> (RM-8)	Richard McDaniel	Prefiled Testimony of Sprint-Florida, Inc. and Exhibits
<u>          </u> (RM-9)	Richard McDaniel	Discovery Responses from Sprint-Florida, Inc.

**C. STATEMENT OF BASIC POSITION**

Sprint has committed at least two separately identifiable breaches of the current Agreement between the Parties and its breach is continuing. First, Sprint has failed to pay the vast majority of billed amounts for Sprint’s installation and use of certain ALEC transport facilities designed to carry Sprint’s traffic from Sprint’s Points of Interconnection (“POIs”) to ALEC’s POI.

Attachment IV, Section 2 of the Agreement provides a mechanism for allocating the costs of interconnection facilities between the parties. Specifically, Section 2.2.3 provides:

If CLEC provides one-hundred percent (100%) of the interconnection facility via lease of meet-point circuits between Sprint and a third-party; lease of third party facilities; or construction of its own facilities; CLEC may charge Sprint for proportionate amount based on relative usage using the lesser of:

2.2.3.1            Sprint’s dedicated interconnection rate;

- 2.2.3.2 Its own costs if filed and approved by a commission of appropriate jurisdiction; and
- 2.2.3.3 The actual lease cost of the interconnecting facility.

It is uncontroverted that ALEC incurred 100% of the cost of the interconnection facilities by leasing these facilities from Sprint. As the party bearing the cost of the interconnection facility, under Section 2.2.3, ALEC was entitled to charge Sprint for its use of this facility based on Sprint's proportionate usage. All the traffic carried over the facilities was Sprint-originated traffic. ALEC was entitled to charge Sprint for all of the cost of the interconnection facility. ALEC has invoiced Sprint for these facilities but Sprint has failed to pay these invoices.

Sprint has constructively acknowledged its obligation to pay for these interconnection facilities by paying a small portion of the total charges due. The fact that Sprint has paid some portion of these charges illustrates that Sprint recognizes its obligation under the Agreement to pay ALEC for these facilities.

Second, Sprint is in breach of the Agreement for failing to pay certain undisputed amounts under the Agreement. Based on its failure to pay ALEC's charges for the interconnection facilities, Sprint has independently breached the Agreement by failing to pay charges that are "undisputed" within the meaning of the Agreement.

Sections 5.3 and 21.2 of the Agreement require the parties to pay all invoices on the due date, and to pay all undisputed amounts when formally disputing any charges from the other party. In addition, Sections 3.4 and 3.5 establish that any failure to pay an undisputed payment constitutes a material breach of the Agreement. Moreover, the Agreement provides the means by which either party may dispute a charge assessed to it, but clearly states that undisputed charges must be paid in a timely fashion. Section 5.4 provides that a written, itemized dispute or claim must be filed with the other party in order for the nonpaying party to avoid continuing liability for a particular charge, and the Agreement states that such notice must be provided within 30 days of receipt of an invoice. Sprint has failed to provide proper notice of its intent to dispute nearly all of ALEC's invoices. For certain of the unpaid invoices in dispute, Sprint provided untimely disputes or claims to ALEC. Because Sprint failed to timely render to ALEC a written, itemized dispute or claims for these invoices, Sprint constructively waived its right to contest these charges. Therefore, the amounts listed in ALEC's invoices should be characterized as "undisputed amounts" which require payment.

Accordingly, Sprint has breached, and continues to breach, the Agreement by refusing to compensate ALEC for the facilities Sprint has ordered to transport its traffic. These charges currently stand at \$981,312.10 for the period of April 2001 through January 2002. In addition, Sprint has breached, and continues to breach, the Agreement by failing to make its necessary undisputed payments to ALEC. The charges associated with Sprint's breach total \$993,206.53 for the period from April 2001 through January 2002. ALEC also seeks reimbursement for its attorneys' fees and costs expended in this action.

**D. STATEMENT OF ISSUES OF FACT AND POSITION**

Issue 1: Whether there is a valid interconnection agreement between the Parties.

- ALEC Position – There is a valid interconnection agreement between the Parties. The Parties have entered into an interconnection agreement, and a prior virtually identical agreement, that govern the Parties' obligations to interconnect their networks and exchange traffic.
- Richard McDaniel will testify to this question.

Issue 2: Whether the Agreement requires that Sprint-Florida pay ALEC for transport facilities.

- ALEC Position – The Agreement requires that Sprint-Florida pay ALEC for transport facilities used to carry Sprint traffic.
- Richard McDaniel will testify to this question.

Issue 3: Whether Sprint-Florida ordered and received transport and trunking facilities from ALEC.

- ALEC Position – Sprint-Florida ordered and received transport and trunking facilities from ALEC.
- Richard McDaniel will testify to this question.

Issue 4: Whether ALEC rendered transport invoices to Sprint-Florida.

- ALEC Position – ALEC rendered proper transport invoices to Sprint-Florida for the months from April 2001 through January 2002.
- Richard McDaniel will testify to this question.

Issue 5: Whether Sprint-Florida remitted payments for all of the transport facilities billed under Agreement.

- ALEC Position – ALEC believes that Sprint-Florida did not remit payment for all of the transport facilities that ALEC billed to Sprint.
- Richard McDaniel will testify to this question.

Issue 6: Whether Sprint-Florida properly disputed the invoices that ALEC submitted to Sprint for transport facilities.

- ALEC Position – Sprint-Florida did not properly dispute the invoices that ALEC that submitted to Sprint for transport facilities during the period from April 2001 through January 2002.
- Richard McDaniel will testify to this question.

Issue 7: Whether Sprint-Florida failed to pay undisputed amounts due to ALEC under the Agreement.

- ALEC Position – Sprint-Florida failed to pay undisputed amounts due to ALEC during the period from April 2001 through January 2002.
- Richard McDaniel will testify to this question.

#### **E. STATEMENT OF ISSUES OF LAW AND POSITION**

Issue 1: Whether Sprint-Florida breached the Parties' Agreement by refusing to compensate ALEC for transport facilities ordered and used by Sprint.

- ALEC Position – Sprint-Florida breached the Parties' Agreement by refusing to compensate ALEC for transport facilities ordered and used by Sprint during the period of April 2001 through January 2002.

Issue 2: Whether Sprint-Florida breached the Parties' Agreement by failing to pay undisputed amounts due to ALEC under the Agreement.

- ALEC Position – Sprint-Florida breached the Parties' Agreement by failing to properly dispute ALEC's transport invoices and failing to pay undisputed amounts due to ALEC under the Agreement.

#### **F. STATEMENT OF POLICY ISSUES AND POSITION**

Issue 1: Whether the Commission has subject matter jurisdiction over the issues raised in ALEC's Complaint.

- ALEC Position – The Commission has subject matter jurisdiction over the issues raised in ALEC's Complaint. The *ISP Remand Order*<sup>3</sup> does not deprive this Commission of jurisdiction. Most importantly, ALEC's Complaint does not concern the issue of compensation for ISP-bound traffic, the issue dealt with in the *ISP Remand Order*. Moreover, even if ALEC's Complaint was related to the reciprocal compensation issue, which it is not, the Federal Communications Commission ("FCC") was clear in its *ISP Remand Order*, and numerous state commissions have subsequently so concluded, that state commissions retain primary authority to enforce the substantive terms of interconnection agreements they have approved.
- Richard McDaniel will testify to this issue.

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<sup>3</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-69, *Order on Remand and Report and Order*, 16 FCC Rcd 9151 (rel. Apr. 27, 2001) ("*ISP Remand Order*").

**G. STATEMENT OF ISSUES STIPULATED TO BY THE PARTIES**

To date, the parties have not stipulated to any issues.

**H. PENDING MOTIONS AND OTHER MATTERS**

ALEC does not have any pending motions or other matters before the Commission.

**I. PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY**

ALEC does not have any pending requests or claims for confidentiality.

**J. REQUIREMENT(S) IN PREHEARING ORDER THAT CANNOT BE COMPLIED WITH AND REASONS**

ALEC does not know of any reason why it would be unable to comply with any of the requirements of this order.

**K. DECISION(S) OR PENDING DECISION(S) OF THE FCC OR COURTS THAT MAY PREEMPT OR OTHERWISE IMPACT THE COMMISSION'S ABILITY TO RESOLVE THE ISSUES PRESENTED OR RELIEF REQUESTED**

Earlier in this case Sprint raised subject matter jurisdiction as a possible defense to ALEC's claims.<sup>4</sup> Specifically, Sprint argued that the Federal Communications Commission ("FCC") preempted state commission jurisdiction over disputes arising under interconnection agreements if ISP-bound traffic is involved or implicated. In a decision that is somewhat related, this Commission has ruled that it does not have jurisdiction to address the issue of whether ISP-bound traffic should be treated as local traffic for purposes of reciprocal compensation.<sup>5</sup> But an FCC decision makes clear that a state commission is the appropriate forum to address the specific issues raised in ALEC's Complaint.

In a recent proceeding regarding Verizon's request to provide long distance service in Vermont (a so-called "271 case,") the FCC assessed an alternative LEC's (Adelphia) claim that Verizon had failed to pay invoices for reciprocal compensation for Internet-bound traffic. The FCC determined that Adelphia had described a "billing dispute," and the appropriate forum to resolve that dispute was a state commission.<sup>6</sup> ALEC contends that if the FCC deemed the

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<sup>4</sup> Sprint's Motion to Dismiss Count II of ALEC, Inc.'s Complaint and Answer, Docket No. 020099-TP (filed Mar. 4, 2002).

<sup>5</sup> *In re: Petition by BellSouth Telecommunications, Inc. for Arbitration of Certain Issues in Interconnection Agreement with Supra Telecommunications and Information Systems, Inc.*, Docket No. 00-1305-TP, Order No. PSC-02-0413-FDF-TP, Final Order (Mar. 26, 2002).

<sup>6</sup> *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions),*

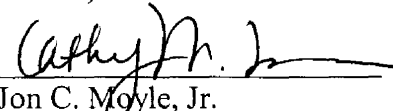
Vermont Public Service Commission to have jurisdiction over a dispute regarding payment of reciprocal compensation for *minutes of use* of ISP-bound traffic then surely this Commission is the appropriate forum for settling a dispute regarding *facilities* that carry ISP-bound traffic.

**L. OBJECTIONS TO WITNESS'S QUALIFICATIONS AS AN EXPERT**

ALEC does not have any objections to the qualifications of any of Sprint's expert witnesses.

Respectfully submitted,

**ALEC, INC.**

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*Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Vermont, Memorandum Opinion and Order, CC Docket No. 02-7, at ¶58 (rel. Apr. 17, 2002).*



**CERTIFICATE OF SERVICE**

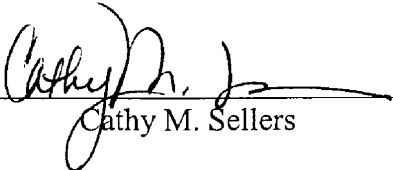
I hereby certify that a true and correct copy of the foregoing document was hand delivered on this 8<sup>th</sup> day of July, 2002, to the following:

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