

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of ALEC, Inc. for enforcement) Docket No. 020099-TP
of interconnection agreement)
with Sprint-Florida, Incorporated)
and request for relief.) Filed: July 15, 2002

ALEC'S AMENDED PREHEARING STATEMENT

Pursuant to Orders Establishing Procedure (Order No. PSC-02-0594-PCO-TP and Order No. PSC-02-0774-PCO-TP) ALEC, Inc. ("ALEC") files this Amended Prehearing Statement.

A. WITNESSES TO BE CALLED BY ALEC, INC:

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

B. EXHIBITS

1. Direct

<u>Number</u>	<u>Witness</u>	<u>Description</u>
<u> </u> (RM-1)	Richard McDaniel	Exhibit A to Complaint – Master Interconnection and Resale

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

DOCUMENT NUMBER 020099-TP

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		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.

2. **Rebuttal**

<u>Number</u>	<u>Witness</u>	<u>Description</u>
<u> </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 use of certain transport facilities, installed by ALEC, designed to carry Sprint’s traffic from Sprint’s Points of Interconnection (“POIs”) to ALEC’s POI. 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.

Secondly, Sprint has refused to pay undisputed amounts owed to ALEC and to pay amounts not disputed and therefore due and payable.

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. ALEC also seeks reimbursement for its attorneys' fees and costs expended in this action.

D.-G. ISSUES AND POSITIONS:

ISSUE 1: What is the Commission's Jurisdiction in this Matter?

Position: The Commission has jurisdiction to resolve disputes concerning interconnection pursuant to s. 364.162 (1), F.S. In exercising its jurisdiction the Commission must act consistent with applicable state law and controlling federal law, including the 1996 Telecommunications Act and FCC regulations and orders issued pursuant to the Act. The *ISP Remand Order*² 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.

² 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*").

ISSUE 2: Under the terms of the Parties' Interconnection Agreement, what are the appropriate dedicated transport charges for transport facilities used to transport Sprint-originated traffic from the POI to ALEC's switch?

a) Has ALEC applied the correct methodology to calculate the appropriate recurring and non-recurring dedicated transport charges to Sprint for such facilities?

b) Has ALEC applied the correct rate to calculate the appropriate recurring and non-recurring dedicated transport charges to Sprint for such facilities?

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.

ALEC incurred 100% of the cost of the interconnection facilities by leasing these facilities from Time Warner Telecom. 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.

Position: a) Yes. ALEC has applied the correct methodology to calculate the appropriate recurring and non-recurring transport charges owed by Sprint.

With respect to recurring charges, ALEC properly assessed Sprint a monthly unit charge for each DS1 and DS3 facility necessary to provide the service Sprint ordered. Such charges are not duplicative, but rather allow recompense for all recurring expenses involved in the provisioning of that single transport service.

With respect to non-recurring charges, ALEC has properly billed Sprint a one-time charge for installation of each facility. This charge includes a small access order fee for each order, an installation fee for each DS1 circuit (with a substantially higher price for the first DS1 circuit), and a charge for each Feature Group D trunk (“FGD” or “DS0”) installation (again, with a substantially higher price for the first FGD trunk). Each of these levels of service involves separate obligations and separate charges. A separate installation charge is warranted for FGD trunks, and DS1 trunks, for example, because separate identification and signaling continuity tests are required for each of the 24 FGD trunks within each DS1 trunk. Also, each DS1 facility itself must be checked and set up for the same framing and coding at each end. As is the case for the recurring charges that Sprint has billed, such non-recurring charges are not duplicative, but, rather, allow recompense for all expenses involved in the provisioning of that single transport service.

Position: b) Yes. ALEC has charged Sprint the correct rate for both recurring and nonrecurring transport charges owed by Sprint. For recurring charges, ALEC has charged Sprint the cost it paid for these leased facilities to the lessor third party, Time Warner. For non-recurring charges, because DS0 level charges for reciprocal

compensation are not contained in the Agreement between the Parties, and because the contract between Time Warner and ALEC by which ALEC obtains capacity contains no DS0 rate, ALEC has charged Sprint from its price list filed with this Commission for installation charges.

ISSUE 3: Under the terms of the Parties' Interconnection Agreement, what minute-of-use charges are applicable for the transport of Sprint-originated traffic from the POI to ALEC's switch?

Position: Such charges are not applicable to the dispute between the Parties.

ISSUE 4: Has Sprint paid ALEC the appropriate charges pursuant to the terms of the Parties' Interconnection Agreement?

Position: No. Sprint has underpaid bills Sprint was properly assessed for transport services it received from ALEC. Until very recently, Sprint had paid ALEC only \$45,389.50 of \$1,009,245.35 it had been properly assessed for transport services rendered during the period described in the complaint. These amounts paid represented less than five percent of the amount billed. Of the total \$123,990.88 Sprint has now paid ALEC, it appears that Sprint has paid for a major portion of the recurring costs for the DS1s, but not for the DS3s. Similarly, Sprint has paid a portion of the DS1 installs at the Agreement rate, not at the appropriate ALEC tariff rate, but has not paid any amount for DS0 installs. It appears that the most recent payment from Sprint to ALEC does not apply exclusively to the period in dispute.

ISSUE 5: Did Sprint waive its right to dispute charges because it did not properly follow applicable procedures outlined in the Parties' Interconnection Agreement?

Position: Yes. The Agreement contains detailed provisions requiring formal written notice of intent to dispute claims within 30 days and provides that such amounts become

due and payable if they are not properly disputed. Sprint waived its right under the Agreement to dispute assessed charges by repeatedly failing to follow applicable notification procedures. Such amounts are now due and payable.

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

I. PENDING MOTIONS: ALEC has no motions pending at this time.

J. COMPLIANCE WITH ORDER ON PREHEARING PROCEDURE:

ALEC does not know of any requirement of the Orders on Prehearing Procedure with which it cannot comply.

K. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES:

Earlier in this case Sprint raised subject matter jurisdiction as a possible defense to ALEC's claims.³ 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.⁴ But an FCC decision makes clear that a state commission is the appropriate forum to address the specific issues raised in ALEC's Complaint.

³ Sprint's Motion to Dismiss Count II of ALEC, Inc.'s Complaint and Answer, Docket No. 020099-TP (filed Mar. 4, 2002).

⁴ *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).

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.⁵ ALEC contends that if the FCC deemed the 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.

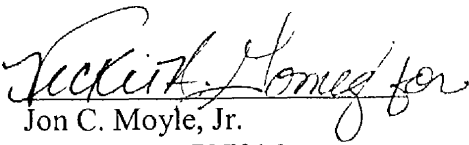
L. OBJECTIONS TO WITNESS'S QUALIFICATIONS AS AN EXPERT:

Sprint has not designated any witness as an expert witness in this proceeding. Accordingly, this section is inapplicable.

⁵ *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), 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).

Respectfully submitted,

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CERTIFICATE OF SERVICE

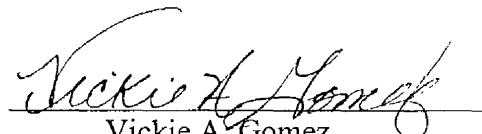
I hereby certify that a true and correct copy of the foregoing document was hand delivered on this 15th day of July, 2002, to the following:

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