

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.) Dated: August 1, 2002
_____)

EMERGENCY MOTION FOR PROTECTIVE ORDER
BY SPRINT-FLORIDA, INCORPORATED

COMES NOW, Sprint-Florida, Incorporated ("Sprint"), pursuant to Rule 1.280, Florida Rules of Civil Procedure and Rule 25-22.006 (6), Florida Administrative Code, and requests that the Commission issue a protective order, protecting from discovery certain documents requested by ALEC, Inc. ("ALEC") and, thus, for the reasons set forth below, excusing Sprint from producing such documents. Because the hearing in this matter is scheduled for August 7, 2002, Sprint is requesting an expedited ruling on this motion.

BACKGROUND

1. On May 31, 2002, ALEC, Inc. propounded its first set of interrogatories and first request for production of documents to Sprint. Included within this initial round of discovery requests were several items to which Sprint, pursuant to the Order on Procedure in the docket, Order No. PSC-02-0594-PCO-TP, filed objections on June 10, 2002, on the basis that the requests were 1) overly broad and unduly burdensome, 2) not relevant to the subject matter of the proceeding or likely to lead to the discovery of admissible evidence and 3) involved confidential information not only to Sprint, but to the telecommunications carriers who are Sprint's customers. Sprint objected specifically to Interrogatories Nos. 5-11 and PODs Nos. 6, 10, 11 and 13.

DOCUMENT NUMBER-DATE
08092 AUG-1 2002
FPSC-COMMISSION CLERK

2. Sprint proceeded to provide ALEC with its responses to its discovery requests, subject to the filed objections, on June 20, 2002.
3. On July 11, 2002, ALEC propounded its second set of interrogatories and second request for production of documents to Sprint. The second set of discovery requests included several requests that were similar to, but narrowed somewhat relative to, the original requests to which Sprint had objected. ALEC's counsel indicated in a telephone conversation with Sprint's counsel that the narrowing of the requests was ALEC's response to Sprint's objections to the original questions.
4. On July 22, 2002, again pursuant to the requirements of the Order on Procedure, Sprint filed its objections to certain items in the second set of interrogatories and second set of requests for production of documents. Again, Sprint objected to many of the narrowed interrogatories because, even as narrowed, the objections set forth in Sprint's objections to the initial set of requests still applied.
5. On July 26, 2002, ALEC counsel and Sprint counsel had a telephonic discussion regarding Sprint's objections and attempted to reach an agreement regarding what information Sprint believed it could provide to ALEC in a spirit of cooperation, in accordance with the Florida Rules of Civil Procedure governing discovery.
6. 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. 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.

7. 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. These three 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. Ultimately, Sprint and ALEC counsel agreed to reinsert some narrower language regarding the restriction on marketing personnel and to retain the other changes. However, 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.
8. 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. The relevant provisions state as follows¹:

11.1 All information which is disclosed by one party ("Disclosing Party") to the other ("Recipient") in connection with this Agreement, or acquired in the

¹ This language is taken from Sprint's agreement with ALEC, however, the language is substantially similar, if not identical, in virtually all of the interconnection agreements Sprint has with other CLECs.

course of performance of this Agreement, shall be deemed confidential and proprietary to the Disclosing Party and subject to this Agreement, such information including but not limited to, orders for services, usage information in any form, and CPNI as that term is defined by the Act and the rules and regulations of the FCC (“Confidential/Proprietary Information”)

- 11.3 Recipient shall have no obligation to safeguard Confidential information (i) which was in the Recipient’s possession free of restriction prior to its receipt from Disclosing Party, (ii) which becomes publicly known or available through no breach of this Agreement by Recipient, (iii) which is rightfully acquired by Recipient free of restrictions on its Disclosure, or (iv) which is independently developed by personnel of Recipient to whom the Disclosing Party’s Confidential Information had not been previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency, provided that Disclosing Party has been notified of the requirement promptly after Recipient becomes aware of the requirement, and provided that Recipient undertakes all lawful measures to avoid disclosing such information until Disclosing Party has had reasonable time to obtain a protective order. Recipient agrees to comply with any protective order that covers the Confidential Information to be disclosed.

INTERROGTORY NO. 17 AND
REQUEST FOR PRODUCTION OF DOCUMENTS NO. 24

9. Of particular concern is ALEC’s Interrogatory No. 17, which originally asked for all of Sprint’s invoices to ALECs or IXC’s for DS0s, DS1s and DS3s in the LATAs in which Sprint originates calls to ALEC or ALEC terminates calls from Sprint. Sprint’s research regarding the documents that would be required to respond to this request identified 40,000 ASRs that would fall into the described parameters. Since each ASR and each invoice associated with the ASR consists of multiple pages, the document production required to respond to the request is clearly unduly burdensome and would impose excessive costs on Sprint. Sprint also researched the number of ASRs for the identified facilities that were applicable only to ALECs and identified

5600 ASRs that would fall within these parameters. Once again, producing the number of pages of documents that would be responsive to this request would be unduly burdensome and excessively expensive for Sprint. More importantly, the information is likely of little relevance to the core interpretational issues of this case.

10. While Sprint's initial research regarding responding to Interrogatory No. 17 and POD No. 24 focused on the burden to Sprint, internal discussions also addressed how to protect the confidential nature of the documents, such as how they might be edited to remove information identifying the CLECs, whose proprietary billing and network information is contained in the documents requested by ALEC.
11. During the July 26, 2002 telephone conversation between ALEC and Sprint counsel, the parties discussed narrowing the request to include only invoices associated with CLECs ordering of dedicated transport facilities for the purposes of interconnection or as unbundled network elements. Sprint counsel committed to go back to the client to see if Sprint could respond to this narrowed request. Sprint determined that narrowing the request in this way limited the applicable documents to 250 ASRs and associated invoices (which could number less than 250, since some of these same facilities could be for the same CLEC and appear on one invoice). While, due to the number of pages potentially embodied in one invoice (some invoices contain as many as 80 pages), meeting this request on a timely basis still posed significant challenges for Sprint, Sprint believed it could provide the information in a reasonably timely manner. (Providing the information is time consuming and work intensive for Sprint because it requires an employee to pull up the identified ASR, find the matching

purchase order number (PON), then pull up the associated invoice and print it. Each invoice must be identified and printed individually.)²

12. Since Sprint was not aware of the scope of the revised request until Friday and significant research was required to determine whether and how we could meet the request, the actual form of the documentation that would reveal which CLEC accounts would be included in the production of the required information was not known until Wednesday, July 31, the due date for the discovery. At this point, issues related to the protection of the confidentiality of the information became critical.
13. Sprint investigated what it would take to edit the documents to “black out” any information that would identify the CLEC . The information is not easily isolated as, in addition to the name and address, an invoice may contain network identification information that can easily be used to trace the CLEC name. Attached is a sample of one invoice, edited to “black out” such identifying information. This type of procedure would have to be done by hand for each of the invoices identified above.
14. The information requested by ALEC in Interrogatory No. 17 and the associated documents to be produced in POD No. 24, are other CLEC invoices for services ordered pursuant to their individual interconnection agreements. The documents fall squarely into the categories listed in the confidentiality provisions of the applicable interconnection agreements and constitute highly sensitive competitive information about these CLECs’ operations. ALEC is an actual or potential direct competitor of many of these CLECs. Therefore, producing these documents for ALEC, particularly under the expanded distribution scope requested by ALEC and embodied in the

² Sprint estimates that the identified invoices consist of several thousand pages of documents and that it would take approximately 3 days to make copies to provide to ALEC.

protective agreement between the parties, poses a substantial risk of harm to the competitive operations of these CLECs.

INTERROGATORY NO. 21 AND POD NO. 27

15. In addition to the information requested in Interrogatory No. 17 and associated POD No. 24, ALEC requested similar information containing proprietary network and billing information for CLECs doing business with Sprint in Interrogatory No. 21 and associated POD No. 27. Interrogatory No. 21 asks Sprint to identify all CLECs who have disputed Sprint remittances during the last five years. While Sprint objected, in its July 22, 2002 objections, to this Interrogatory as being overly broad and unduly burdensome, as well as requesting information that is proprietary to CLECs, Sprint provided a list of the disputes with a very general description of the nature of the dispute in its answers to the interrogatory provided on July 31, 2002. Sprint determined that this high level information did not violate the confidentiality provisions of its interconnection agreements with the affected CLECs. However, POD No. 27 asks for all documents discussing the disputes. Sprint had identified various e-mails, both internal and exchanged between the applicable CLEC and Sprint, as being responsive to this request. However, as stated above, Sprint cannot release this information under the terms of its agreements with the CLECs without notifying them and giving them an opportunity to protect the information. As with the information requested in Interrogatory No. 17 and POD No. 21, this is highly sensitive competitive information to the affected CLEC and ALEC is an actual or potential direct competitor with them. In contrast to the high burden and involvement on parties/competitors who are not part of this dispute, this requested information has

indiscernible relevance to what is essentially an interpretational dispute between Sprint and ALEC.

INTERROGATORY NO. 20

16. Finally, in Interrogatory No. 20, ALEC asked for certain information concerning Sprint's revenues from the provision of dedicated transport services and also asked for information breaking out the distribution of these revenues by CLEC. Sprint objects to this information as not being relevant to the subject matter of the dispute or likely to lead to the discovery of admissible evidence. Despite its objections, in the interest of being responsive, Sprint provided the requested aggregate information relating to Sprint. Sprint continues to object to the provision of the information relating to CLECs. However, should the Commission determine that this information is relevant or likely to lead to the discovery of admissible evidence, which Sprint does not believe it is, Sprint would face the same difficulties concerning the release of the information as indicated for the responses to the interrogatories and PODs discussed above. Once again, this is highly sensitive competitive information to the affected CLEC and ALEC is an actual or potential direct competitor with them.

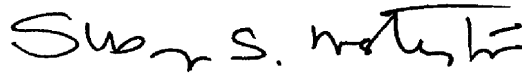
REQUEST FOR RELIEF

WHEREFORE, Sprint requests that the Commission grant Sprint the following relief, pursuant to its authority to enter protective orders regarding discovery under the Florida Rules of Civil Procedure and Commission rules:

1. Sprint asks that the Commission issue a protective order protecting these documents from discovery and excusing Sprint from providing these documents to ALEC.

2. In the alternative, should the Commission determine that Sprint must produce the documents, Sprint requests that the Commission allow Sprint a reasonable time to notify the affected CLECs and accord them an opportunity to file for protection as provided in the interconnection agreement.
3. In addition, Sprint asks that the Commission establish parameters for the release of the information by Sprint that would limit the distribution of the documents by ALEC and ensure that the documents are returned to Sprint's possession as the earliest possible time.
4. Since the cut off for discovery in this case was July 31, 2002, and the hearing is scheduled for August 7, 2002, Sprint requests that the Commission issue an expedited ruling on this Motion to facilitate the resolution of the discovery issues prior to the hearing.

RESPECTFULLY SUBMITTED this 1st day August 2002.



Susan S. Masterton
P.O. Box 2214
Tallahassee, FL 32316-2214
850-599-1560 (phone)
850-878-0777 (fax)

ATTORNEY FOR SPRINT

BILL NO 396 R49-5125 484
INVOICE NO R495125484-01319
BILL DATE NOV 15, 2001
PAGE 1

SPRINT/LOCAL TELECOMMUNICATIONS DIVISION
P.O. BOX 219489
KANSAS CITY, MO 64121-9489



* PLEASE *
* RETURN THIS *
* PAGE WITH *
* YOUR PAYMENT *

TOTAL CURRENT INVOICE:
R49512548401319FL 204.46

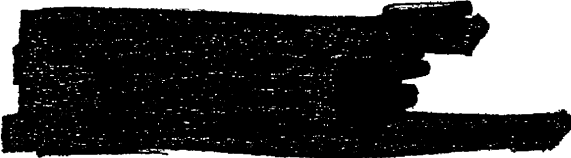
AMOUNTS ENCLOSED:

DUE BY * DEC 14, 2001 *

OVERDUE BALANCE HISTORY BY INVOICE NO.
R49512548401105FL .00
01258FL .00
01288FL 98.02

TOTAL AMOUNT DUE 302.48

TOTAL _____



BILLING INQUIRIES CALL (800) 772-9313

FOR TELCO USE:
ICSC OFC TNC

FACILITY ACCESS SERVICE

* * * BALANCE DUE INFORMATION * * *

TOTAL AMOUNT OF LAST BILL		896.05CR
PAYMENTS APPLIED		.00
ADJUSTMENTS APPLIED - SEE DETAIL		994.07
NON-JURISDICTIONAL	994.07	
TOTAL BALANCE DUE		98.02

* * * DETAIL OF CURRENT CHARGES * * *

TOTAL - FL

MONTHLY ACCESS CHARGES		
FROM NOV 15 THRU DEC 14		158.10
LOCAL	158.10	
OTHER CHARGES AND CREDITS - SEE DETAIL		46.36
LOCAL	46.36	
TAXES		.00
SURCHARGE		.00
TOTAL CURRENT CHARGES * DUE BY DEC 14, 2001 *		204.46

TOTAL AMOUNT DUE 302.48



*** SUMMARY OF ACCESS CHARGES ***

TOTAL - FL

MONTHLY ACCESS CHARGES

FROM NOV 15 THRU DEC 14

LOCAL ACCESS

LOCAL

158.10

OTHER CHARGES AND CREDITS - SEE DETAIL

LOCAL ACCESS

LOCAL

46.36

ADJUSTMENTS APPLIED - SEE DETAIL

SPECIAL ACCESS

NON JURISDICTIONAL

994.07

*** DETAIL OF ADJUSTMENTS APPLIED ***

INVOICE NO. R49512548401105FL

ADJ. SERIAL NO. 1315908
 NOV 01 01 TRANSFER OF CREDIT BALANCE TO
 ACCOUNT 394R495214484 / INVOICE 01288FL
 TRANSFER OVERPAYMENT
 FROM NOV 01 01 THRU NOV 01 01 66.25

TOTAL ADJAMT NON-JURISDICTIONAL -FL-0341 66.25 &

INVOICE NO. R49512548401258FL

ADJ. SERIAL NO. 1315910
 NOV 01 01 TRANSFER OF CREDIT BALANCE TO
 ACCOUNT 394R495214484 / INVOICE 01288FL
 TRANSFER CREDIT
 FROM NOV 01 01 THRU NOV 01 01 927.82

TOTAL ADJAMT NON-JURISDICTIONAL -FL-0341 927.82 &

TOTAL CREDIT ADJUSTMENTS APPLIED .00
 TOTAL DEBIT ADJUSTMENTS APPLIED 994.07
 TOTAL ADJUSTMENTS APPLIED 994.07
 NOTE: &CREDIT BALANCE TRANSFER ADJUSTMENTS

* * * DETAIL OF BALANCE DUE * * *

INVOICE NO. R49512548401105FL	
PREVIOUS BALANCE	66.25CR
PAYMENTS APPLIED	.00
ADJUSTMENTS APPLIED	66.25
LATE PAYMENT CHARGES APPLIED	.00

BALANCE DUE00
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INVOICE NO. R49512548401258FL	
PREVIOUS BALANCE	927.82CR
PAYMENTS APPLIED	.00
ADJUSTMENTS APPLIED	927.82
LATE PAYMENT CHARGES APPLIED	.00

BALANCE DUE00
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INVOICE NO. R49512548401288FL	
PREVIOUS BALANCE	98.02
PAYMENTS APPLIED	.00
ADJUSTMENTS APPLIED	.00
LATE PAYMENT CHARGES APPLIED	.00

BALANCE DUE	98.02
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TOTAL BALANCE DUE	98.02
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*** DETAIL OF OTHER CHARGES AND CREDITS ***

				AMOUNT

OCT 23, 01	SO C02F15005	PON ORLDM084		
				PIU 0
CIRCUIT LOCATION 2				
CHARGE FOR ACCESS SERVICE ADDED FROM OCT 23 01 THRU NOV 14 01				
CL911	1 911 PORT CHARGE			
	LOCAL FL-0341-LA			11.59
				0
CIRCUIT LOCATION 2				
CHARGE FOR ACCESS SERVICE ADDED FROM OCT 23 01 THRU NOV 14 01				
CL911	1 911 PORT CHARGE			
	LOCAL FL-0341-LA			11.59
NET EFFECT OF SO C02F15005				
PON ORLDM084				
PER MONTH	FRACTIONAL	ONE-TIME	BILLED AMOUNT	
31.62	23.18	.00	23.18	
OCT 23, 01	SO C02F15006	PON ORLDM085		
				PIU 0
CIRCUIT LOCATION 2				
CHARGE FOR ACCESS SERVICE ADDED FROM OCT 23 01 THRU NOV 14 01				
CL911	1 911 PORT CHARGE			
	LOCAL FL-0341-LA			11.59
				PIU 0
CIRCUIT LOCATION 2				
CHARGE FOR ACCESS SERVICE ADDED FROM OCT 23 01 THRU NOV 14 01				
CL911	1 911 PORT CHARGE			
	LOCAL FL-0341-LA			11.59



* * * DETAIL OF OTHER CHARGES AND CREDITS * * *

				AMOUNT

NET EFFECT OF SO C02F15006		PON ORLDM085		
PER MONTH	FRACTIONAL	ONE-TIME		BILLED AMOUNT
31.62	23.18	.00		23.18
TOTAL OTHER CHARGES AND CREDITS				46.36



*** FACILITY ACCESS CIRCUIT LISTING ***

THE FOLLOWING CIRCUITS ARE INCLUDED IN THE MONTHLY ACCESS CHARGES

CIRCUIT IDENTIFICATION	AMOUNT	MPB
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HIGH CAPACITY



LTP BF

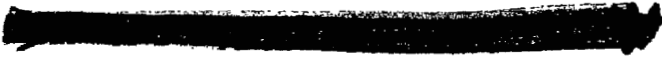


LTP BF



LOCAL

15.81



LTP BF



LOCAL

15.81

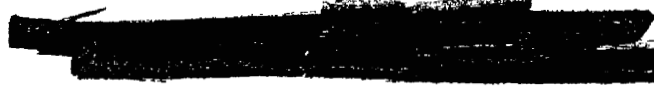


LTP BF



LOCAL

15.81



LOCAL

15.81



LOCAL

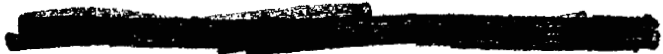
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LTP BF



LTP BF

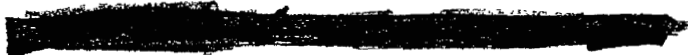


LTP BF



LOCAL

15.81



LTP BF



*** FACILITY ACCESS CIRCUIT LISTING ***

THE FOLLOWING CIRCUITS ARE INCLUDED IN THE MONTHLY ACCESS CHARGES

CIRCUIT IDENTIFICATION	AMOUNT	MPB
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[REDACTED] LOCAL	15.81	
[REDACTED] LOCAL	15.81	
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[REDACTED] LTP BF [REDACTED]		
[REDACTED] LTP BF [REDACTED]		
[REDACTED]		

*** FACILITY ACCESS CIRCUIT LISTING ***

THE FOLLOWING CIRCUITS ARE INCLUDED IN THE MONTHLY ACCESS CHARGES

CIRCUIT IDENTIFICATION	AMOUNT	MPB
LTP BF [REDACTED]		
[REDACTED]		
LTP BF [REDACTED]		
[REDACTED]		
LTP BF [REDACTED]		
[REDACTED]		
LTP BF [REDACTED]		
LOCAL SUBTOTAL	158.10	
TOTAL FACILITY ACCESS CIRCUIT CHARGE	158.10	
TOTAL FACILITY ACCESS CIRCUITS		24